

# Senate Calendar

FRIDAY, APRIL 27, 2012

SENATE CONVENES AT: 9:00 A.M.

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**See Addendum to House Calendar for Thursday, April 26, 2012**

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**ORDERS OF THE DAY**

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**ACTION CALENDAR  
UNFINISHED BUSINESS**

**Third Reading**

**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.

**AMENDMENT TO SENATE PROPOSAL OF AMENDMENT TO  
H. 769 TO BE OFFERED BY SENATORS GALBRAITH, ASHE,  
BARUTH, BENNING, BROCK, GIARD, HARTWELL, ILLUZZI,  
MACDONALD, MULLIN, POLLINA AND STARR BEFORE THIRD  
READING**

Senators Galbraith, Ashe, Baruth, Benning, Giard, Hartwell, Illuzzi, MacDonald, Mullin, Pollina and Starr move to amend the bill by adding Secs. 19, 20, and 21 to read as follows:

**Sec. 19. WINDFALL-SHARING MECHANISMS; REPAYMENT**

Consistent with the obligations of the department of public service under Title 30 to represent the interests of the people of the state, the commissioner of public service shall reopen the memorandum of understanding entered into

on March 26, 2012 with the petitioners in public service board 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) and require direct repayment of the full amount of windfall-sharing funds established by the public service board in Docket Nos. 6460/6120 (approximately \$21 million) to CVPS ratepayers. The repayment shall be in the form of a credit or refund and shall be distributed to all ratepayers equally, regardless of rate class, shall not be recoverable in rates, and shall be payable within 60 days of board approval of the petition, if so approved.

Sec. 20. UTILITY MERGER; FILING FEES

(a) If two or more electric companies petition the public service board for approval of a merger under 30 V.S.A. § 311, the petitioners shall pay a filing fee with the public service board in the amount of \$250.00. The board may not issue a final order in any merger proceeding until it has received payment of such filing fee. Prior to the board's issuance of an order approving a petition under 30 V.S.A. § 311, the petitioners shall comply with all conditions or requirements established by the board by rule or established by law, including Sec. 19 of this act, if applicable.

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

Sec. 21. EFFECTIVE DATE

This section and Secs. 19 and 20 of this act shall take effect on passage.

**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

electd 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, local, or legislative office in a primary, special, general, 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, county, 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) 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) The ~~expenditures were~~ expenditure was made only for refreshments and related supplies that were consumed at that event.

~~(3)~~(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. 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 72<sup>nd</sup> 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.

**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.~~ 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. 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

(A) Dentist \$ 225.00

(B) Dental hygienist \$ 150.00

(C) Dental assistant \$ 60.00

(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. ~~GROUNDS 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
<del>(3) Temporary license</del>	<del>\$ 25.00</del>

\* \* \* 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.~~

~~(c) 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(e) 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.)

**PROPOSAL OF AMENDMENT TO H. 524 TO BE OFFERED BY  
SENATOR MCCORMACK**

Senator McCormack moves that the Senate propose to the House to amend the bill by adding Sec. 7a to read:

Sec. 7a. 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.

## H. 535.

An act relating to racial disparities in the Vermont criminal justice system.

### **Reported favorably with recommendation of proposal 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)

(For House amendments, see House Journal for March 27, 2012, page 818.)

**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. 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. 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.)

**PROPOSAL OF AMENDMENT TO H. 691 TO BE OFFERED BY  
SENATOR MCCORMACK**

Senator McCormack moves that the Senate propose to the House that the bill be amended by adding a new Sec. 6 to read:

Sec. 6. 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.

**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.)

**H. 766.**

An act relating to the national guard.

**Reported favorably with recommendation of proposal 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)

(No House amendments.)

**Reported favorably by Senator Starr for the Committee on Appropriations.**

(Committee vote: 5-0-2)

(No House amendments.)

## 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:

	<del>Base</del> Salary as of July 8, 2007	<u>Base</u> Salary as of July 1, 2012
(A) Administration	<del>90,745</del>	<u>90,745</u>
(B) Agriculture, food and markets	<del>90,745</del>	<u>90,745</u>
(C) <del>Banking, insurance, securities, and health care administration</del> <u>Financial regulation</u>	<del>84,834</del>	<u>84,834</u>
(D) Buildings and general services	<del>84,834</del>	<u>84,834</u>
(E) Children and families	<del>84,834</del>	<u>84,834</u>
(F) Commerce and community development	<del>90,745</del>	<u>90,745</u>
(G) Corrections	<del>84,834</del>	<u>84,834</u>
(H) Defender general	<del>76,953</del>	<u>76,953</u>
(I) Disabilities, aging, and independent living	<del>84,834</del>	<u>84,834</u>
(J) <del>Economic, housing, and community development</del>	<del>76,953</del>	<u>76,953</u>
(K) Education	<del>84,834</del>	<u>84,834</u>
(L) Environmental conservation	<del>84,834</del>	<u>84,834</u>
(M) Finance and management	<del>84,834</del>	<u>84,834</u>
(N) Fish and wildlife	<del>76,953</del>	<u>76,953</u>

(O) Forests, parks and recreation	<del>76,953</del>	<u>76,953</u>
(P) Health	<del>84,834</del>	<u>84,834</u>
(Q) <del>Housing and community affairs</del>	<del>76,953</del>	<del>[Repealed.]</del>
(R) Human resources	<del>84,834</del>	<u>84,834</u>
(S) Human services	<del>90,745</del>	<u>90,745</u>
(T) Information and innovation	<del>84,834</del>	<u>84,834</u>
(U) Labor	<del>84,834</del>	<u>84,834</u>
(V) Libraries	<del>76,953</del>	<u>76,953</u>
(W) Liquor control	<del>76,953</del>	<u>76,953</u>
(X) Lottery	<del>76,953</del>	<u>76,953</u>
(Y) Mental Health	<del>84,834</del>	<u>84,834</u>
(Z) Military	<del>84,834</del>	<u>84,834</u>
(AA) Motor vehicles	<del>76,953</del>	<u>76,953</u>
(BB) Natural resources	<del>90,745</del>	<u>90,745</u>
(CC) Natural resources board chairperson	<del>76,953</del>	<u>76,953</u>
(DD) Public Safety	<del>84,834</del>	<u>84,834</u>
(EE) Public service	<del>84,834</del>	<u>84,834</u>
(FF) Taxes	<del>84,834</del>	<u>84,834</u>
(GG) Tourism and marketing	<del>76,953</del>	<u>76,953</u>
(HH) Transportation	<del>90,745</del>	<u>90,745</u>
(II) Vermont health access	<del>84,834</del>	<u>84,834</u>
(JJ) <del>Veterans</del> <u>Veterans' home</u>	<del>76,953</del>	<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:

<del>Annual</del>	<u>Annual</u>	<u>Annual</u>
<del>Salary</del>	<u>Salary</u>	<u>Salary</u>
<del>as of</del>	<u>as of</u>	<u>as of</u>
<del>July 8,</del>	<u>July 1,</u>	<u>July 14,</u>

	<u>2007</u>	<u>2012</u>	<u>2013</u>
(1) Chief justice of supreme court	<del>\$135,421</del>	<u>\$139,280</u>	<u>\$144,434</u>
(2) Each associate justice	<del>129,245</del>	<u>132,928</u>	<u>137,847</u>
(3) Administrative judge	<del>129,245</del>	<u>132,928</u>	<u>137,847</u>
(4) Each superior judge	<del>122,867</del>	<u>126,369</u>	<u>131,045</u>
(5) <del>Each district judge</del>	<del>122,867</del>	<u>[Repealed.]</u>	
(6) Each magistrate	<del>92,641</del>	<u>95,281</u>	<u>98,807</u>
(7) Each judicial bureau hearing officer	<del>92,641</del>	<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	<del>\$48,439</del>	<u>\$49,820</u>	<u>\$51,663</u>
(2) Bennington	<del>61,235</del>	<u>62,980</u>	<u>65,310</u>
(3) Caledonia	<del>42,956</del>	<u>44,180</u>	<u>45,815</u>
(4) Chittenden	<del>91,395</del>	<u>105,104</u>	<u>108,993</u>
(5) Essex	<del>12,000</del>	<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	<del>\$89,020</del>	<u>\$91,557</u>	<u>\$94,945</u>
(2) Bennington County	<del>89,020</del>	<u>91,557</u>	<u>94,945</u>
(3) Caledonia County	<del>89,020</del>	<u>91,557</u>	<u>94,945</u>
(4) Chittenden County	<del>93,069</del>	<u>95,721</u>	<u>99,263</u>
(5) Essex County	<del>66,766</del>	<u>68,669</u>	<u>71,210</u>
(6) Franklin County	<del>89,020</del>	<u>91,557</u>	<u>94,945</u>
(7) Grand Isle County	<del>66,766</del>	<u>68,669</u>	<u>71,210</u>
(8) Lamoille County	<del>89,020</del>	<u>91,557</u>	<u>94,945</u>
(9) Orange County	<del>89,020</del>	<u>91,557</u>	<u>94,945</u>
(10) Orleans County	<del>89,020</del>	<u>91,557</u>	<u>94,945</u>
(11) Rutland County	<del>89,020</del>	<u>91,557</u>	<u>94,945</u>
(12) Washington County	<del>89,020</del>	<u>91,557</u>	<u>94,945</u>
(13) Windham County	<del>89,020</del>	<u>91,557</u>	<u>94,945</u>
(14) Windsor County	<del>89,020</del>	<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.)

**PROPOSAL OF AMENDMENT TO H. 780 TO BE OFFERED BY  
SENATOR MCCORMACK**

Senator McCormack moves that the Senate propose to the House to amend the bill by adding Sec. 12a to read:

Sec. 12a. 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.

**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. 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.

~~(j)~~(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**

**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 the following: 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

servicing 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. 556.**

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

#### **H. 771.**

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

### **Second Reading**

#### **Favorable**

#### **H. 679.**

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

**Reported favorably by Senator MacDonald for the Committee on Finance.**

(Committee vote: 6-0-1)

#### **Favorable with Recommendation of Amendment**

#### **J.R.S. 58.**

Joint resolution relating to respectful language in the Vermont Statutes Annotated.

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

The Committee recommends that the resolution be amended by striking out all after the title and inserting in lieu thereof the following:

*Whereas*, the State of Vermont is committed to eliminating all forms of abuse and harassment and to protecting the civil rights of all Vermonters, and

*Whereas*, this commitment includes achieving long-term systemic change to end discrimination against people with disabilities, and

*Whereas*, deliberate use of disrespectful language directed at people with disabilities is a form of harassment and abuse, and

*Whereas*, even if a word or phrase was not originally used with discriminatory intent, evolving societal perceptions may now cause the word or phrase to be viewed as showing disrespect to persons with disabilities, and

*Whereas*, the general assembly enacted Act No. 24 of 2011 directing that a working group under the supervision of the agency of human services identify instances in the Vermont Statutes Annotated of language that is now viewed as disrespectful to persons with disabilities, and

*Whereas*, the working group prepared a comprehensive inventory of instances where disrespectful language appears in the Vermont Statutes Annotated and recommended alternative words and phrases as replacements, and

*Whereas*, the general assembly desires that respectful language be used when referring to persons with disabilities, both in legislative deliberations and in the Vermont Statutes Annotated, *now therefore be it*

***Resolved by the Senate and House of Representatives:***

That the General Assembly requests that the legislative council prepare a bill that will propose to amend the Vermont Statutes Annotated by replacing words and phrases as recommended by the study group created pursuant to Act No. 24 of 2011.

(Committee vote: 4-0-1)

**Favorable with Proposal of Amendment**

**H. 475.**

An act relating to net metering and definitions of capacity.

**Reported favorably with recommendation of proposal of amendment by Senator MacDonald for the Committee on Finance.**

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

First: In Sec. 2 (implementation; solar registration), by striking out “30 days” and inserting in lieu thereof 21 days

Second: In Sec. 3, 30 V.S.A. § 219a(e) (net metering systems; electric energy measurement), after subdivision (3), by striking out subdivision (4) and inserting in lieu thereof a new subdivision (4) to read:

(4) For a net metering systems using time-of-day system serving a customer on a demand or other types of metering time-of-use rate schedule, the board shall specify the manner of measurement and the application of bill credits for the electric energy produced or consumed in a manner shall be substantially similar to that specified in this subsection for use with a single nondemand meter. However, if such a net metering system is interconnected directly to the electric company through a separate meter whose primary purpose is to measure the energy generated by the system:

(A) The bill credits shall apply to all kWh generated by the net metering system and shall be calculated as if the customer were charged the kWh rate component of the interconnecting company's general residential rate schedule that consists of two rate components: a service charge and a kWh rate, excluding time-of-use rates and demand rates.

(B) If a company's general residential rate schedule includes inclining block rates, the residential rate used for this calculation shall be the highest of those block rates.

Third: By striking out Sec. 4 (30 V.S.A. § 219a(f)(2) and (3)) and inserting in lieu thereof a new Sec. 4 to read:

Sec. 4. 30 V.S.A. § 219a(f) is amended to read:

(f) Consistent with the other provisions of this title, electric energy measurement for group net metering systems shall be calculated in the following manner:

\* \* \*

(2) Electric energy measurement for group net metering systems shall be calculated by subtracting total usage of all meters included in the group net metering system from total generation by the group net metering system. If the electricity generated by the group net metering system is less than the total usage of all meters included in the group net metering system during the billing period, the group net metering system shall be credited for any accumulated ~~kilowatt hour~~ credit and then billed for the net electricity supplied by the electric company, in accordance with the procedures in subsection (g)(group net metering) of this section.

\* \* \*

(4) The board shall apply the provisions of subdivision (e)(4) of this section (measurement and credits; nonstandard meters) to group net metering

systems that serve one or more customers who are on a demand or time-of-use rate schedule.

Fourth: By striking out Sec. 7 (net metering; study; report) and inserting in lieu thereof a new Sec. 7 to read:

Sec. 7. NET METERING; STUDY; REPORT

No later than January 15, 2013, the department of public service (the department) shall perform a general evaluation of Vermont's net metering statute, rules, and procedures and shall submit the evaluation and any accompanying recommendations to the general assembly. Among any other issues related to net metering that the department may deem relevant, the report shall include an analysis of whether and to what extent customers using net metering systems under 30 V.S.A. § 219a are subsidized by other retail electric customers who do not employ net metering. The analysis also shall include an examination of any benefits or costs of net metering systems to Vermont's electric distribution and transmission systems and the extent to which customers owning net metering systems do or do not contribute to the fixed costs of Vermont's retail electric utilities. Prior to completing the evaluation and submitting the report, the department shall offer an opportunity for interested persons such as the retail electric utilities and renewable energy developers and advocates to submit information and comment.

and that when so amended the bill ought to pass

(Committee vote: 7-0-0)

(For House amendments, see House Journal for March 27, 2012, page 812; March 28, 2012, page 855.)

**H. 506.**

An act relating to vinous beverages.

**Reported favorably with recommendation of proposal of amendment by Senator Ashe 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. 7 V.S.A. § 2 is amended to read:

§ 2. DEFINITIONS

The following words as used in this title, unless a contrary meaning is required by the context, shall have the following meaning:

\* \* \*

(6) “Caterer’s ~~permit license~~”: a ~~permit license~~ issued by the liquor control board authorizing the holder of a first class license or first and third class licenses for a cabaret, restaurant, or hotel premises to serve malt or vinous beverages or spirituous liquors at a function located on premises other than those occupied by a first, first and third, or second class licensee to sell alcoholic beverages.

\* \* \*

(7) “Club”: an unincorporated association or a corporation authorized to do business in this state, that has been in existence for at least two consecutive years prior to the date of application for license under this title and owns, hires, or leases a building or space in a building that is suitable and adequate for the reasonable and comfortable use and accommodation of its members and their guests and contains suitable and adequate kitchen and dining room space and equipment implements and facilities. A club may be used or leased by a nonmember as a location for a social event as if it were any other licensed commercial establishment. Such club shall file with the liquor control board, before May 1 of each year, a list of the names and residences of its members and a list of its officers. Its affairs and management shall be conducted by a board of directors, executive committee, or similar body chosen by the members at its annual meeting, and no member or any officer, agent, or employee of the club shall be paid, or directly or indirectly receive, in the form of salary or other compensation, any profits from the disposition or sale of alcoholic liquors to the members of the club or its guests introduced by members beyond the amount of such salary as may be fixed and voted at annual meetings by the members or by its directors or other governing body, and as reported by the club to the liquor control board. An auxiliary member of a club may invite one guest at any one time. An officer or director of a club may perform the duties of a bartender without receiving any payment for that service, provided the officer or director is in compliance with the requirements of this title that relate to service of alcoholic beverages. An officer, member, or director of a club may volunteer to perform services at the club other than serving alcoholic beverages, including seating patrons and checking identification, without receiving payment for those services. An officer, member, or director of a club who volunteers his or her services shall not be considered to be an employee of the club. A bona fide unincorporated association or corporation whose officers and members consist solely of veterans of the armed forces of the United States, or a subordinate lodge or local chapter of any national fraternal order, and which fulfills all requirements of this subdivision, except that it has not been in existence for two years, shall come within the terms of this definition six months after the completion of its organization. A club located on and integrally associated with at least a

regulation nine-hole golf course need only be in existence for six months prior to the date of application for license under this title.

\* \* \*

(19) “Second class license”: a license granted by the control commissioners permitting the licensee to export vinous beverages and to sell malt or vinous beverages to the public for consumption off the premises for which the license is granted.

\* \* \*

(28) “Fourth class license” or “farmers’ market license”: the license granted by the liquor control board permitting a manufacturer or rectifier of malt or vinous beverages or spirits to sell by the unopened container and distribute, by the glass with or without charge, beverages manufactured by the licensee. No more than a combined total of ten fourth class and farmers’ market licenses may be granted to a licensed manufacturer or rectifier. At only one fourth class license location, a manufacturer or rectifier of vinous beverages may sell by the unopened container and distribute by the glass, with or without charge, vinous beverages produced by no more than ~~three~~ five additional manufacturers or rectifiers, provided these beverages are purchased on invoice from the manufacturer or rectifier. A manufacturer or rectifier of vinous beverages may sell its product to no more than ~~three~~ five additional manufacturers or rectifiers. A fourth class licensee may distribute by the glass no more than two ounces of malt or vinous beverage with a total of eight ounces to each retail customer and no more than one-quarter ounce of spirits with a total of one ounce to each retail customer for consumption on the manufacturer’s premises or at a farmers’ market. A farmers’ market license is valid for all dates of operation for a specific farmers’ market location.

\* \* \*

(33) “Commercial catering license”: A license granted by the board permitting a business licensed by the department of health as a commercial caterer and having a commercial kitchen facility in the home or place of business to sell malt, vinous, or spirituous liquors at a function previously approved by the local licensing authority.

Sec. 1a. 7 V.S.A. § 222 is amended to read:

§ 222. FIRST AND SECOND CLASS LICENSES, GRANTING OF; SALE TO MINORS; CONTRACTING FOR FOOD SERVICE

With the approval of the liquor control board, the control commissioners may grant to a retail dealer for the premises where the dealer carries on business the following:

\* \* \*

(2) Upon making application and paying the license fee provided in section 231 of this title, a second class license for the premises where such dealer shall carry on the business which shall authorize such dealer to export vinous beverages and to sell malt and vinous beverages to the public from such premises for consumption off the premises and upon satisfying the liquor control board that such premises are leased, rented or owned by such retail dealers and are safe, sanitary and a proper place from which to sell malt and vinous beverages. A retail dealer carrying on business in more than one place shall be required to acquire a second class license for each place where he shall so sell malt and vinous beverages. No malt or vinous beverages shall be sold by a second class licensee to a minor.

\* \* \*

Sec. 2. 7 V.S.A. § 66 is amended to read:

§ 66. VINOUS BEVERAGE SHIPPING LICENSE; IN STATE; OUT OF STATE; PROHIBITIONS; PENALTIES

\* \* \*

(c) A manufacturer or rectifier of vinous beverages that is licensed in-state or out-of-state and holds valid state and federal permits and operates a winery in the United States may apply for a retail shipping license by filing with the department of liquor control an application in a form required by the department accompanied by a copy of their in-state or out of state license and the fee as required by subdivision 231(7)(C) of this title. The retail shipping license may be renewed annually by filing the renewal fee as required by subdivision 231(7)(C) of this title accompanied by the licensee's current in-state or out-of-state manufacturer's license. This license permits the holder, which includes the holder's affiliates, franchises, and subsidiaries, to sell up to ~~2,000~~ 5,000 gallons of vinous beverages a year directly to first or second class licensees and deliver the beverages by common carrier or the manufacturer's or rectifier's own vehicles or the vehicle of an employee of a manufacturer or rectifier, provided that the beverages are sold on invoice, and no more than ~~40~~ 100 gallons per month are sold to any single first or second class licensee. The retail shipping license holder shall ~~provide~~ report to the department documentation of the annual and monthly number of gallons sold.

\* \* \*

(e) A holder of any shipping license granted pursuant to this section shall:

\* \* \*

(4) Report at least twice a year to the department of liquor control if the holder of a direct consumer shipping license and once a year if the holder of a



retail shipping license in a manner and form required by the department all the following information:

(A) The total amount of vinous beverages shipped into or within the state for the preceding six months if a holder of a direct consumer shipping license or every twelve months if a holder of a retail shipping license.

(B) The names and addresses of the purchasers to whom the vinous beverages were shipped.

(C) The date purchased, if appropriate, the name of the common carrier used to make each delivery, and the quantity and value of each shipment.

\* \* \*

Sec. 3. 7 V.S.A. § 67 is amended to read:

§ 67. ALCOHOLIC BEVERAGE TASTINGS; PERMIT; PENALTIES

\* \* \*

(b) A wine or beer tasting event held pursuant to subdivisions (a)(1) and (2) of this section, not including an alcohol beverage tasting conducted on the premises of the manufacturer or rectifier, shall comply with the following:

(1) Continue for no more than six hours, with no more than six beverages to be offered at a single event, and no more than two ounces of any single beverage and no more than a total of eight ounces of various vinous or malt beverages to be dispensed to a customer. No more than eight customers may be served at one time.

(2) Be conducted totally within ~~an area that is clearly cordoned off by barriers that extend~~ a designated area that extends no further than 10 feet from the point of service, and a that is marked by a clearly visible sign that clearly states that no one under the age of 21 may participate in the tasting shall be placed in a visible location at the entrance to the tasting area.

\* \* \*

Sec. 4. 7 V.S.A. § 238 is amended to read:

§ 238. CATERER'S ~~PERMIT~~ LICENSE, GRANTING OF; SALE TO MINORS

(a) The liquor control board may issue a caterer's ~~permit~~ license only to those persons who hold a current first ~~and third~~ class license or current first and third class licenses for a restaurant or hotel premises.

(b) The board may issue a commercial catering license only to those persons who hold a first class license or current first and third class licenses.

(c) The liquor control board shall promulgate rules or regulations as it deems necessary to effectuate the purposes of this section.

~~(e)~~(d) No malt or vinous beverages or spirituous liquors shall be sold or served to a minor by a holder of a caterer's permit license.

~~(d)~~(e) Notwithstanding the provisions of subsection (a) of this section, the liquor control board may issue a caterer's permit license to a licensed manufacturer or rectifier who holds a current first class license.

Sec. 5. 7 V.S.A. § 238a is amended to read:

§ 238a. OUTSIDE CONSUMPTION PERMITS; ~~GOLF COURSES;~~  
~~WINERIES~~ FIRST, THIRD, AND FOURTH CLASS LICENSEES

Pursuant to regulations of the liquor control board, an outside consumption permit may be granted to the holder of a first or first and third class ~~license~~ licenses for all or part of the outside premises of a golf course or to the holder of a fourth class license for all or part of the outside premises ~~of a winery for consumption of wine produced on the premises~~ of the license holder, provided that such permit is first obtained from the local control commissioners and approved by the board.

Sec. 6. 7 V.S.A. § 231 is amended to read:

§ 231. FEEES FOR LICENSES; DISPOSITION OF FEES

(a) The following fees shall be paid:

\* \* \*

(8)(A) For a caterer's permit license, \$200.00.

(B) For a commercial catering license, \$200.00.

\* \* \*

Sec. 7. 7 V.S.A. § 104 is amended to read:

§ 104. DUTIES; AUTHORITY TO RESOLVE ALLEGED VIOLATIONS

The board shall have supervision and management of the sale of spirituous liquors within the state in accordance with the provisions of this title, and through the commissioner of liquor control shall:

(1) See that the laws relating to intoxicating liquor and to the manufacture, sale, transportation, barter, furnishing, importation, exportation, delivery, prescription and possession of malt and vinous beverages, spirituous liquors and alcohol by licensees and others are enforced, using for that purpose such of the moneys annually available to the liquor control board as may be necessary. However, the liquor control board and its agents and inspectors shall act in this respect in collaboration with sheriffs, deputy sheriffs,

constables, officers and members of village and city police forces, control commissioners, the attorney general, state's attorneys, and town and city grand jurors. When the board acts to enforce any section of this title or any administrative rule or regulation relating to sale to minors, its investigation on the alleged violation shall be forwarded to the attorney general or the appropriate state's attorney whether or not there is an administrative finding of wrongdoing. Nothing in this section shall be deemed to affect the responsibility or duties of such enforcement officers or agencies with respect to the enforcement of such laws. The commissioner or his or her designee is authorized to prosecute administrative matters under this section and shall have the authority to enter into direct negotiations with a licensee to reach a proposed resolution or settlement of an alleged violation, subject to board approval, or dismissal with or without prejudice.

\* \* \*

and that after passage the title of the bill be amended to read: "An act relating to commercial catering licenses, the export of malt and vinous beverages, and outside consumption permits".

(Committee vote: 5-0-0)

(No House amendments.)

#### **H. 753.**

An act relating to encouraging school districts and supervisory unions to provide services cooperatively or to consolidate governance structures.

**Reported favorably with recommendation of proposal of amendment by Senator Mullin 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:

Sec. 1. Sec. 2 of No. 153 of the Acts of the 2009 Adj. Sess. (2010) is amended to read:

Sec. 2. SCHOOL DISTRICT MERGER INCENTIVE PROGRAM

\* \* \*

~~(c) Board vote. On or before October 1, 2012, each supervisory union board shall vote whether to perform a more comprehensive analysis of potential merger, and shall report the results of its vote to the commissioner of education and the voters of each member school district. [Repealed.]~~

\* \* \* Reimbursement; Initial Exploration of Joint Activity \* \* \*

Sec. 2. REIMBURSEMENT OF FEES FOR CONSULTING SERVICES;  
INITIAL EXPLORATION OF JOINT ACTIVITY; SUPERVISORY  
UNIONS; SCHOOL DISTRICTS; SUNSET

(a) From the education fund, the commissioner of education shall reimburse up to \$5,000.00 of fees paid by two or more supervisory unions or two or more school districts for facilitation, legal, and other consulting services necessary for initial exploration of the value of providing services or performing duties jointly, which may include community engagement and lead to the identification of possible joint action, including the provision of shared programming, the operation of a joint contract school, the merger of supervisory unions, or the creation of union school districts pursuant to 16 V.S.A. chapter 11, subchapter 4 or the variations authorized by Secs. 15, 16, and 17 of this act and by No. 153 of the Acts of the 2009 Adj. Sess. (2010).

(b) This section is repealed on July 1, 2017.

\* \* \* Reimbursement; Joint Activity other than Merger \* \* \*

Sec. 3. REPEAL

Sec. 9a of No. 153 of the Acts of the 2009 Adj. Sess. (2010) (\$10,000.00 reimbursement of transitional costs for supervisory unions performing duties jointly) is repealed.

Sec. 4. REIMBURSEMENT OF FEES FOR CONSULTING SERVICES;  
JOINT ACTIVITY OTHER THAN MERGER; SUPERVISORY  
UNIONS; SCHOOL DISTRICTS; SUNSET

(a) From the education fund, the commissioner of education shall reimburse up to \$10,000.00 of fees paid by two or more supervisory unions or two or more school districts for:

(1) legal and other consulting services necessary to analyze in detail the advisability of providing services or performing duties jointly that will result in a measurable increase in opportunities for students and a decrease in costs; or

(2) transitional costs necessary to enter into and implement agreements to provide those services or perform those duties jointly; or

(3) both subdivisions (1) and (2) of this subsection.

(b) Each group of supervisory unions or school districts shall forward invoices to the commissioner on a quarterly basis. The commissioner shall reimburse one-half of the total amount reflected in each set of invoices and the remaining one-half upon submission to the commissioner of a written statement of the entities' analysis and conclusions, provided that no payment shall cause the total amount paid to exceed the \$10,000.00 limit.

(c) A group of supervisory unions or school districts that receives reimbursement under this section shall not be eligible to receive additional reimbursement under Sec. 5 or 9 of this act for the same proposal.

(d) This section is repealed on July 1, 2017.

\* \* \* Reimbursement and Incentives; Merger of Supervisory Unions \* \* \*

Sec. 5. REIMBURSEMENT OF FEES FOR CONSULTING SERVICES;  
MERGER; SUPERVISORY UNIONS; SUNSET

(a) From the education fund, the commissioner of education shall reimburse up to \$20,000.00 of fees paid by two or more supervisory unions for legal and other consulting services necessary to analyze the advisability of the merger into a fewer number of supervisory unions and to prepare a petition to the state board of education requesting adjustment of supervisory union boundaries.

(b) Each group of supervisory unions shall forward invoices to the commissioner on a quarterly basis. The commissioner shall reimburse one-half of the total amount reflected in each set of invoices and the remaining one-half upon submission of either a petition to the state board requesting that the boundaries be redrawn or a written statement of the entities' analysis supporting preservation of the current boundaries, provided that no payment shall cause the total amount paid to exceed the \$20,000.00 limit.

(c) Any transition facilitation grant funds paid pursuant to Sec. 6 of this act shall be reduced by the total amount of reimbursement provided under this section.

(d) This section is repealed on July 1, 2017.

Sec. 6. TRANSITION FACILITATION GRANT; MERGER;  
SUPERVISORY UNIONS; SUNSET

(a) After state board of education approval of the petition of two or more supervisory unions to merge into a fewer number of supervisory unions, the commissioner of education shall pay to the new supervisory union board or the new group of boards a transition facilitation grant from the education fund of \$150,000.00, less reimbursement funds received under Sec. 5 of this act.

(b) This section is repealed on July 1, 2017.

Sec. 7. APPLICABILITY; RUTLAND-WINDSOR AND WINDSOR  
SOUTHWEST SUPERVISORY UNIONS

If on or before July 1, 2012 the state board of education approves the petition of the Rutland-Windsor and Windsor Southwest Supervisory Unions to merge into a single, new supervisory union on or before July 1, 2013, then the new supervisory union shall be eligible to receive:

- (1) the transition facilitation grant available under Sec. 6 of this act; and
- (2) a one-time grant of \$100,000.00 from the education fund for the purposes of reducing taxes in the affected towns during fiscal year 2014.

Sec. 8. SUPERVISORY UNION SIZE AND STRUCTURE

(a) The secretary of administration or designee, in consultation with the commissioner of education or designee, shall explore the purpose, structure, duties, and authority of supervisory unions and design a revised structure based roughly on existing technical center service regions that results in no more than three supervisory unions within each region. The primary purpose of any design shall be to improve education quality. The secretary shall analyze the feasibility of the revised structure and shall develop a plan of transition. Among other things, the secretary shall:

(1) consider the optimal size of supervisory unions, in terms of geography and numbers of students, technical centers, schools, and school districts served;

(2) consider structural elements, such as:

(A) management models;

(B) staffing, including the most appropriate way to address existing contracts, staff consolidation, and salary equalization;

(C) special education services;

(D) financial and other data collection and management systems;

(E) transportation, including ownership of buses, merger of systems, and consolidation of routes;

(F) supervisory union boards, including structure, selection of members, district representation, and the purpose, authority, and membership of executive committees;

(G) supervisory union budgets, including the manner in which they are adopted and the method by which costs are assessed to the member districts;

(H) ownership of real and personal property;

(I) ability to borrow money; and

(J) alignment of curricula and calendars;

(3) consider ways in which the department and state board of education would support transition to a proposed structure; and

(4) estimate both the financial cost of transitioning to and the potential savings in the proposed structure.

(b) By January 15, 2013, the secretary shall report to the senate and house committees on education on the work required by this section. The secretary shall also provide recommendations for legislative action necessary to implement its proposed plan.

\* \* \* Reimbursement and Incentives; Merger of School Districts \* \* \*

Sec. 9. REIMBURSEMENT OF FEES FOR CONSULTING SERVICES;  
MERGER; SCHOOL DISTRICTS; SUNSET

(a) From the education fund, the commissioner of education shall reimburse up to \$20,000.00 of fees paid by a study committee established under 16 V.S.A. § 706 for legal and other consulting services necessary to analyze the advisability of creating a union school district or a unified union school district and to prepare the report required by 16 V.S.A. § 706b.

(b) The study committee shall forward invoices to the commissioner on a quarterly basis. The commissioner shall reimburse one-half of the total amount reflected in each set of invoices and the remaining one-half upon submission of the final report pursuant to 16 V.S.A. § 706c, provided that no payment shall cause the total amount paid to exceed the \$20,000.00 limit.

(c) Any transition facilitation grant funds paid to the union school board pursuant to Sec. 11 of this act shall be reduced by the total amount of reimbursement provided under this section.

(d) A regional education district ("RED") receiving incentives pursuant to Sec. 4 of No. 153 of the Acts of the 2009 Adj. Sess. (2010) as amended by this act is not eligible to receive reimbursement under this section.

(e) This section is repealed on July 1, 2017.

Sec. 10. REPEAL

Sec. 168a of No. 122 of the Acts of the 2003 Adj. Sess. (2004), as amended by Sec. 23 of No. 66 of the Acts of 2007 and further amended by Sec. 5 of No. 153 of the Acts of the 2009 Adj. Sess. (2010) (\$150,000.00 or five-percent transition aid to merging school districts), is repealed.

Sec. 11. TRANSITION FACILITATION GRANT; MERGER; SCHOOL DISTRICTS; SUNSET

(a) After voter approval of the establishment of a union, unified union, or interstate school district, the commissioner of education shall pay to the district a transition facilitation grant from the education fund equal to the lesser of:

(1) five percent of the base education amount established in 16 V.S.A. § 4001(13) multiplied by the greater of either the combined enrollment or the average daily membership of the merging districts on October 1 of the year in which the successful vote is taken; or

(2) \$150,000.00.

(b) A grant awarded under this section shall be reduced by the total amount of reimbursement paid under Sec. 9 of this act.

(c)(1) A RED receiving incentives pursuant to Sec. 4 of No. 153 of the Acts of the 2009 Adj. Sess. (2010) as amended by this act (“Act 153”) is not eligible to receive a grant under this section.

(2) An interstate, union, or unified union school district, including a RED, that expands by merging with one or more additional school districts is not eligible to receive a grant under this section if the original merged district received a transition facilitation grant under this section, Act 153, or Sec. 168a of No. 122 of the Acts of the 2003 Adj. Sess. (2004), as amended by Sec. 23 of No. 66 of the Acts of 2007, as further amended by Sec. 5 of No. 153 of the Acts of the 2009 Adj. Sess. (2010), and as repealed by Sec. 10 of this act.

(d) This section is repealed on July 1, 2017.

#### Sec. 12. APPLICABILITY; JOINT CONTRACT SCHOOL

A transition facilitation grant pursuant to Sec. 11 of this act shall be paid proportionally based on enrollment to any group of districts if in fiscal year 2012 or 2013 the voters of each district approve the issuance of bonds upon which establishment of a joint contract school is conditioned. The combined enrollment of the grades newly being offered jointly by the contracting districts shall be used to calculate the amount awarded.

\* \* \* Incentives; Regional Education Districts \* \* \*

Sec. 13. Sec. 4 of No. 153 of the Acts of the 2009 Adj. Sess. (2010) is amended to read:

#### Sec. 4. VOLUNTARY SCHOOL DISTRICT MERGER; INCENTIVES

(a) Equalized homestead property tax rates or RED incentive grant. A RED’s plan of merger shall provide whether, upon merger, the RED shall receive an equalization of its homestead property tax rates during the first four years following merger or an incentive grant during the first year following merger.

(1)(A) Equalized homestead property tax rates. Subject to the provisions of subdivision ~~(2)(C)~~ of this subsection subdivision (1) and notwithstanding any other provision of law, the RED’s equalized homestead property tax rate shall be:



(i) decreased by \$0.08 in the first year after the effective date of merger;

(ii) decreased by \$0.06 in the second year after the effective date of merger;

(iii) decreased by \$0.04 in the third year after the effective date of merger; and

(iv) decreased by \$0.02 in the fourth year after the effective date of merger.

(B) The household income percentage shall be calculated accordingly.

~~(2)(C)~~ During the years in which a RED's equalized homestead property tax rate is decreased pursuant to this subsection, the rate for each town within the RED shall not increase or decrease by more than five percent in a single year. The household income percentage shall be calculated accordingly.

(2) RED incentive grant. During the first year after the effective date of merger, the commissioner of education shall pay to the RED board a RED incentive grant from the education fund equal to \$400.00 per pupil based on the combined enrollment of the participating districts on October 1 of the year in which the successful vote was taken. The grant shall be in addition to funds received under 16 V.S.A. § 4028.

(3) ~~On~~ Common level of appraisal. Regardless of whether a RED chooses to receive an equalization of its homestead property tax rates or a RED incentive grant, on and after the effective date of merger, the common level of appraisal shall be calculated independently for each town within the RED for purposes of determining the homestead property tax rate for each town.

\* \* \*

(e) Consulting services reimbursement grant. From the education fund, the commissioner of education shall pay up to \$20,000.00 to the merger study committee established under 16 V.S.A. § 706 to reimburse the participating districts for legal and other consulting fees necessary for the analysis and report required by 16 V.S.A. § 706b. The study committee shall forward invoices to the commissioner on a quarterly basis. The commissioner shall reimburse one-half of the total amount reflected in each set of invoices and the remaining one-half upon completion of the final report, provided that no payment shall cause the total amount paid to exceed the \$20,000.00 limit. In addition, any transition facilitation grant funds paid to the RED pursuant to ~~Sec. 5 of this act~~ subsection (g) of this section shall be reduced by the total amount of ~~funds provided~~ reimbursement paid under this subsection (e).

\* \* \*

~~(g) Recent merger. If the Addison Northwest Unified Union School District becomes a body corporate and politic on or before July 1, 2010, then the merged district shall be entitled to receive any of the benefits set forth in this section that it elects and is otherwise eligible to receive if, on or before July 1, 2011:~~

~~(1) it notifies the commissioner of its election; and~~

~~(2) it provides the commissioner with a cost benefit analysis as required by Sec. 3(h) of this act. Transition facilitation grant.~~

~~(1) After voter approval of the plan of merger, the commissioner of education shall pay the RED a transition facilitation grant from the education fund equal to the lesser of:~~

~~(A) five percent of the base education amount established in 16 V.S.A. § 4001(13) multiplied by the greater of either the combined enrollment or the average daily membership of the merging districts on October 1 of the year in which the successful vote is taken; or~~

~~(B) \$150,000.00.~~

~~(2) A transition facilitation grant awarded under this subsection (g) shall be reduced by the total amount of reimbursement paid under subsection (e) of this section.~~

~~(h) This section is repealed on July 1, 2017.~~

\* \* \* Interstate School Districts \* \* \*

Sec. 14. Sec. 2(a) of No. 153 of the Acts of the 2009 Adj. Sess. (2010) is amended to read:

(a) Program created. There is created a school district merger incentive program under which the incentives outlined in Sec. 4 of this act shall be available to each new unified union school district created pursuant to Sec. 3 of this act ~~and~~ to each new district created under ~~that section~~ Sec. 3 of this act by the merger of districts that provide education by paying tuition; and to the Vermont members of any new interstate school district if the Vermont members jointly satisfy the size criterion of Sec. 3(a)(1) of this act and the new, merged district meets all other requirements of Sec. 3 of this act. Incentives shall be available, however, only if the effective date of merger is on or before July 1, 2017.

\* \* \* Other Types of Mergers Eligible for RED Incentives \* \* \*

Sec. 15. TWO OR MORE MERGERS; REGIONAL EDUCATION DISTRICT INCENTIVES

(a) Notwithstanding Sec. 3(a)(1) of No. 153 of the Acts of the 2009 Adj. Sess. (2010) that requires a single regional education district (“RED”) to have an average daily membership of at least 1,250 or result from the merger of at least four districts, or both, two or more new districts shall be eligible jointly for the incentives provided in Sec. 4 of No. 153 if:

(1) each new district is formed by the merger of at least two existing districts;

(2) each new district meets all criteria for RED formation other than the size criterion of Sec. 3(a)(1) of No. 153;

(3) one of the new districts provides education in all elementary and secondary grades by operating one or more schools and the other new district or districts pay tuition for students in one or more grades;

(4) each new district has the same effective date of merger;

(5) the new districts, when merged, are members of one supervisory union; and

(6) the new districts jointly satisfy the size criterion of Sec. 3(a)(1) of No. 153.

(b) This section is repealed on July 1, 2017.

Sec. 16. UNION ELEMENTARY SCHOOL DISTRICTS; REGIONAL EDUCATION DISTRICT INCENTIVES

(a) If a majority of the local elementary school districts in the member towns of an existing union high school district merge to form a union elementary school district pursuant to 16 V.S.A. chapter 11 that operates all grades not offered by the union high school district, then, notwithstanding provisions of No. 153 of the Acts of the 2009 Adj. Sess. (2010) to the contrary, the new union elementary school district is eligible for the incentives provided to a regional education district (“RED”) in Sec. 4 of that act, provided that the new district complies with the employment and labor relations provisions of Sec. 4(g) of that act and further provided that the effective date of the merger into the union elementary school district is within the period required for RED formation.

(b) This section is repealed on July 1, 2017.

Sec. 17. MODIFIED UNIFIED UNION SCHOOL DISTRICT

(a) Notwithstanding any provision of law to the contrary:

(1)(A) if all local elementary school districts in the member towns of an existing union high school or union middle school-high school district (“union

high school district”) vote whether to establish a unified union school district providing prekindergarten or kindergarten through grade 12, and

(B) if a majority but not all of the elementary school districts votes in favor of establishing the unified union school district, then

(2) a new modified union school district (the “modified union school district”) shall be established that shall:

(A) provide to the students residing in the member towns of the union high school district education in those grades provided by the union high school district; and

(B) provide elementary education to the students residing in the current elementary school districts that voted in favor of the unified union school district.

(b) Establishment of the modified union school district shall:

(1) dissolve the union high school district, and any assets or liabilities held by the union high school district shall be transferred to the modified union school district; and

(2) dissolve the elementary school districts that voted in favor of establishing the unified union school district, and any assets or liabilities they hold as individual districts shall be transferred to the modified union school district.

(c) Notwithstanding provisions of No. 153 of the Acts of the 2009 Adj. Sess. (2010) as amended by this act to the contrary, the modified union school district is eligible for the incentives provided to a regional education district (“RED”) in Sec. 4 of that act, provided that the new district complies with the employment and labor relations provisions of Sec. 4(g) of that act and further provided that the effective date of the merger into the modified union school district is within the period required for RED formation.

(d) This section is repealed on July 1, 2017.

\* \* \* Union School Districts Including REDs; Process \* \* \*

Sec. 18. 16 V.S.A. § 706c is amended to read:

§ 706c. CONSIDERATION BY LOCAL SCHOOL DISTRICT BOARDS AND APPROVAL BY STATE BOARD OF EDUCATION

(a) If a study committee prepares a report under section 706b of this chapter, the committee shall transmit the report to the school boards of each school district that participated in the study committee and any other school districts that the report identifies as necessary or advisable to the establishment

of the proposed union school district for the review and comment of each school board.

(b) The study committee shall transmit the report to the commissioner who shall submit the report with his or her recommendations to the state board of education. That board after notice to the study committee and after giving the committee an opportunity to be heard shall consider the report and the commissioner's recommendations, and decide whether the formation of such union school district will be for the best interest of the state, the students, and the school districts proposed to be members of the union. The board may request the commissioner and the study committee to make further investigation and may consider any other information deemed by it to be pertinent. If, after due consideration and any further meetings as it may deem necessary, the board finds that the formation of the proposed union school district is in the best interests of the state, the students, and the school districts, it shall approve the report submitted by the committee, together with any amendments, as a final report of the study committee, and shall give notice of its action to the committee. The chair of the study committee shall file a copy of the final report with the town clerk of each proposed member district at least 20 days prior to the vote to establish the union.

Sec. 19. 16 V.S.A. § 706n is amended to read:

§ 706n. AMENDMENTS TO AGREEMENTS REACHED BY ESTABLISHMENT VOTE, ORGANIZATION MEETING, OR FINAL REPORT

(a) ~~Any~~ A specific condition or agreement set forth as a distinct subsection under Article 1 of the warning required by section 706f of this chapter and adopted by the member districts pursuant to section 706f of this chapter at the vote held to establish the union school district, or any amendment subsequently adopted pursuant to the terms of this section, may be amended only at a special or annual union district meeting; provided that the prior approval of the state board of education shall be secured if the proposed amendment concerns reducing the number of grades that the union is to operate. The warning for the meeting shall contain each proposed amendment as a separate article. The vote on each proposed amendment shall be by Australian ballot. Ballots shall be counted in each member district, and the clerks of each member district shall transmit the results of the vote in that district to the union school district clerk. ~~Results~~ Although the results shall be reported to the public by member district; ~~however, no, an~~ amendment is effective ~~unless if~~ approved by a majority of ~~those~~ the electorate of the union district voting at that meeting.

(b) Any decision at the organization meeting may be amended by a majority of those present and voting at a union district meeting duly warned for that purpose.

(c) Any provision of the final report ~~which was not contained in a separate article that was included~~ in the warning required pursuant to section 706f of this chapter for the vote to form the union by reference to or incorporation of the entire report but that was not set forth as a distinct subsection under Article 1 of the warning may be amended by a simple majority vote of the union board of school directors, or by any other majority of the board as is specified for a particular matter in the report.

\* \* \* Special Education; Transition to Employment

by Supervisory Unions \* \* \*

Sec. 20. Sec. 23(b) of No. 153 of the Acts of the 2009 Adj Sess. (2010), as amended by Sec. 1 of No. 30 of the Acts of 2011, is further amended to read:

(b) Secs. 9 through 12 of this act shall take effect on passage and shall be fully implemented on July 1, 2013, subject to the provisions of existing contracts; provided, however, that the special education provisions of Sec. 9, 16 V.S.A. § 261a(a)(6), and the transportation provisions of Sec. 9, 16 V.S.A. § 261a(a)(8)(E), shall be fully implemented on July 1, 2014.

Sec. 21. SUPERVISORY UNION EMPLOYEES; SPECIAL EDUCATION;  
WORKING GROUP

(a) On or before July 1, 2012, the commissioner of education or the commissioner's designee shall convene a working group to develop a detailed plan by which supervisory unions shall fully implement, by July 1, 2014, the transition of special education staff employed by school districts to employment by supervisory unions as required by 16 V.S.A. § 261a(a)(6).

(b) The working group shall include department staff and representatives from at least the following constituencies: superintendents; school boards; principals; special educators; a teachers' organization as defined in 16 V.S.A. chapter 57; and business managers.

(c) The working group shall report to the advisory council on special education created by 16 V.S.A. § 2945 and to the house and senate committees on education during the first week of the 2013 and 2014 legislative sessions regarding the progress of the plan required by this section, including a description of the ways in which specific impediments to implementation are being addressed. The working group also shall identify any amendments to statute necessary to achieve implementation by July 1, 2014 of the requirements of 16 V.S.A. § 261a.

\* \* \* Appropriation \* \* \*

Sec. 22. APPROPRIATION

The sum of \$650,000.00 is appropriated from the education fund to be used for the purposes of this act in fiscal year 2013.

\* \* \* Excess Spending Provisions \* \* \*

Sec. 23. 16 V.S.A. § 4001(6)(B) is amended to read:

(B) For purposes of calculating excess spending pursuant to 32 V.S.A. § 5401(12), “education spending” shall not include:

\* \* \*

(viii) Tuition paid by a district that does not operate a school and pays tuition for all resident students in kindergarten through grade 12, except in a district in which the electorate has authorized payment of an amount higher than the statutory rate pursuant to subsection 823(b) or 824(c) of this title.

\* \* \* Vermont Municipal Employees’ Retirement System; Special Education Instructional Assistants and Transportation Employees; Transfer to Supervisory Union \* \* \*

Sec. 24. 24 V.S.A. § 5051(10) and (11) are amended to read:

(10) “Employee” means the following persons employed on a regular basis by a school district or by a supervisory union for ~~not less~~ no fewer than 1,040 hours in a year and for ~~not less~~ no fewer than 30 hours a week for the school year, as defined in ~~section 1071 of Title 16~~ V.S.A. § 1071, or for ~~not less~~ no fewer than 1,040 hours in a year and for ~~not less~~ no fewer than 24 hours a week year-round; provided, however, that if a person who was employed on a regular basis by a school district as either a special education or transportation employee and who was transferred to and is working in a supervisory union in the same capacity pursuant to 16 V.S.A. § 261a(a)(6) or (8)(E) and if that person is also employed on a regular basis by a school district within the supervisory union, then the person is an “employee” if these criteria are met by the combined hours worked for the supervisory union and school district. The term shall also mean persons employed on a regular basis by a municipality other than a school district for ~~not less~~ no fewer than 1,040 hours in a year and for ~~not less~~ no fewer than 24 hours per week, including persons employed in a library at least ~~half~~ one-half of whose operating expenses are met by municipal funding:

\* \* \*

(11) “Employer” means a municipality ~~or~~, a library at least ~~half~~ one-half of whose operating expenses are paid from municipal funds, or a supervisory union.

Sec. 25. 24 V.S.A. § 5053a is added to read:

§ 5053a. EMPLOYEES OF A SUPERVISORY UNION

(a) For purposes of this section, the term “transferred employee” means an employee under this chapter who transitioned from employment solely by a school district to employment, wholly or in part, by a supervisory union pursuant to 16 V.S.A. § 261a(a)(6) or (8)(E) as amended on June 3, 2010.

(b) A transferred employee from a participating school district shall remain an employee of the school district solely for the purpose of employer participation and employee membership in the system regardless of whether the supervisory union is a participant in the system on the date of transition. The membership and benefits of the transferred employee shall not be impaired or reduced by either negotiations with the supervisory union or school district under 21 V.S.A. chapter 22 or otherwise.

(c) If a supervisory union is a participant in the system on the date of transition, then:

(1) a transferred employee from a nonparticipating district shall not become a member of the system unless, through negotiations with the supervisory union under 21 V.S.A. chapter 22, the supervisory union becomes a participant in the system on the employee’s behalf;

(2) an existing employee of the supervisory union on the date of transition shall be a member to the extent the supervisory union is or becomes a participant in the system on the employee’s behalf; and

(3) a new employee of the supervisory union after the date of transition shall be a member to the extent the supervisory union is or becomes a participant in the system on the employee’s behalf.

(d) If a supervisory union is not a participant in the system on the date of transition, then:

(1) a transferred employee from a nonparticipating district shall not be a member of the system unless, through negotiations with the supervisory union under 21 V.S.A. chapter 22, the supervisory union becomes a participant in the system on the employee’s behalf;

(2) an existing employee of the supervisory union on the date of transition shall not be a member of the system unless, through negotiations with the supervisory union under 21 V.S.A. chapter 22, the supervisory union becomes a participant in the system on the employee’s behalf; and



(3) a new employee of the supervisory union after the date of transition shall not be a member of the system unless, through negotiations with the supervisory union under 21 V.S.A. chapter 22, the supervisory union becomes a participant in the system on the employee's behalf.

#### Sec. 26. TRANSITION; NEWLY MERGED DISTRICTS

(a) If two or more districts merge to form a union school district pursuant to 16 V.S.A. chapter 11, subchapter 4, or a regional education district pursuant to No. 153 of the Acts of the 2009 Adj. Sess. (2010) ("the new district") prior to the date on which employees covered by the municipal employees' retirement system provisions of 24 V.S.A. chapter 125 ("the system") transitioned from employment solely by a school district to employment, wholly or in part, by a supervisory union pursuant to 16 V.S.A. § 261a(a)(6) or (8)(E) as amended on June 3, 2010 ("the transition date"), then:

(1) on the first day of merger, the new district shall be a participant in the system on behalf of:

(A) an employee from a school district that merged to form the new district if the merging district was a participant in the system prior to merger; and

(B) a new employee hired by the new district after the effective date of merger into a job classification for which the new district is a participant in the system, if any;

(2) an employee from a school district that was not a participant in the system prior to merger shall not be a member of the system unless, through negotiations with the new district under 21 V.S.A. chapter 22, the new district becomes a participant in the system on the employee's behalf.

(b) If a new district is formed after the transition date, then the new district shall assume the responsibilities of any one or more of the merging districts that participate in the system.

(c) The existing membership and benefits of an employee shall not be impaired or reduced either by negotiations with the new district under 21 V.S.A. chapter 22 or otherwise.

\* \* \* Effective Dates \* \* \*

#### Sec. 27. EFFECTIVE DATES

(a) This section and Secs. 7, 8, 12, 24, 25, and 26 of this act shall take effect on passage.

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

(Committee vote: 5-0-0)

(For House amendments, see House Journal for February 21, 2012, page 298; February 22, 2012, page 305.)

**Reported favorably by Senator Starr for the Committee on Appropriations.**

(Committee vote: 6-1-0)

**PROPOSAL OF AMENDMENT TO H. 753 TO BE OFFERED BY  
SENATOR MULLIN**

Senator Mullin, on behalf of the Committee on Education, moves that the recommendation of the Committee on Education be amended as follows:

First: In Sec. 26, 32 V.S.A. § 6068 subsection (b), before the period, by inserting the following at the end of the subsection:  ; provided, however, that this subsection shall not be construed to extend benefits to an employee who would not otherwise be a member of the system under any other provision of law

Second: In Sec. 26, 32 V.S.A. § 6068 by adding a new subsection to be subsection (d) to read:

(d) In addition to general responsibility for the operation of the Vermont municipal employees' retirement system pursuant to 24 V.S.A. § 5062(a), the responsibility for implementation of all sections of this act relating to the system is vested in the retirement board.

**H. 782.**

An act relating to miscellaneous tax changes for 2012.

**Reported favorably with recommendation of proposal of amendment by Senator Cummings for the Committee on Finance.**

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:

\* \* \* Administrative Provisions \* \* \*

Sec. 1. 10 V.S.A. § 1942(b) is amended to read:

(b) There is assessed against every seller receiving more than \$10,000.00 annually for the bulk retail sale of heating oil, kerosene, or other dyed diesel fuel sold in this state and ~~not used to propel a motor vehicle~~; a licensing fee of one cent per gallon of such heating oil, kerosene, or other dyed diesel fuel. This fee shall be subject to the collection, administration, and enforcement provisions of 32 V.S.A. chapter 233 of Title 32, and the fees collected under this subsection by the commissioner of taxes shall be deposited into the petroleum cleanup fund established pursuant to subsection 1941(a) of this title.

The secretary, in consultation with the petroleum cleanup fund advisory committee established pursuant to subsection 1941(e) of this title, shall annually report to the legislature on the balance of the heating fuel account of the fund and shall make recommendations, if any, for changes to the program. The secretary shall also determine the unencumbered balance of the heating fuel account of the fund as of May 15 of each year, and if the balance is equal to or greater than \$3,000,000.00, then the licensing fee shall not be assessed in the upcoming fiscal year. The secretary shall promptly notify all sellers assessing this fee of the status of the fee for the upcoming fiscal year. This fee provision shall terminate April 1, 2016.

#### Sec. 2. PETROLEUM CLEANUP FUND OUTREACH

The secretary of agriculture, food and markets shall publish or broadcast in media designed to reach a farming audience information advising Vermont farmers of the existence of the petroleum cleanup fund under 10 V.S.A. chapter 59 and the terms of available assistance to farmers from that fund. The secretary shall publish or broadcast this information no fewer than four times each year that the fund is in existence.

Sec. 3. 14 V.S.A. § 3502(f) is added to read:

(f) Notwithstanding any other provision of law, a power of attorney appointing a representative to represent a person before the Vermont department of taxes that conforms to the requirements of the United States Internal Revenue Service for a valid power of attorney and declaration of representative pursuant to 25 C.F.R. § 601.503 shall be deemed to be legally executed and shall be of the same force and effect for purposes of representation before the department of taxes as if executed in the manner prescribed in this chapter.

Sec. 4. 32 V.S.A. § 3102(e) is amended to read:

(e) The commissioner may, in his or her discretion and subject to such conditions and requirements as he or she may provide, including any confidentiality requirements of the Internal Revenue Service, disclose a return or return information:

\* \* \*

(14) to the office of the state treasurer, only in the form of mailing labels, with only the last address known to the department of taxes of any person identified to the department by the treasurer by name and Social Security number, for the treasurer's use in notifying owners of unclaimed property; and

(15) to the department of liquor control provided that the information is limited to information concerning the sales and use tax and meals and rooms

tax filing history with respect to the most recent five years of a person seeking a liquor license or a renewal of a liquor license.

Sec. 5. 32 V.S.A. § 3102(j) and (k) are added to read:

(j) Tax bills prepared by a municipality under subdivision 5402(b)(1) of this title showing only the amount of total tax due shall not be considered confidential return information under this section. For the purposes of calculating adjustments under chapter 154 of this title, information provided by the commissioner to a municipality under subsection 6066a(a) of this title and information provided by the municipality to a taxpayer under subsection 6066a(f) shall be considered confidential return information under this section.

(k) Notwithstanding subsection (j) of this section, the commissioner or a municipal official acting as his or her agent may provide the information in subsection 6066a(f) of this title to the following people without incurring liability under this section:

(1) an escrow agent, the owner of the property to which the adjustment applies, a town auditor, or a person hired by the town to serve as an auditor;

(2) a lawyer, including a paralegal or assistant of the lawyer, an employee or agent of a financial institution as that term is defined in 8 V.S.A. § 11101, a realtor, or a certified public accountant as that term is defined in 26 V.S.A. § 13(12) who represents that he or she has a need for the information as it pertains to a real estate transaction or to a client or customer relationship; and

(3) any other person as long as the taxpayer has filed a written consent to such disclosure with the municipality.

Sec. 6. 32 V.S.A. § 3206 is added to read:

§ 3206. RECOMMENDATION FOR EXTRAORDINARY RELIEF

(a) The taxpayer advocate may make a written recommendation for extraordinary relief to the commissioner under the provisions of this section. A recommendation for extraordinary relief may be made only in response to a request from a taxpayer and after a thorough investigation of the taxpayer's circumstances by the taxpayer advocate which results in findings by the taxpayer advocate that:

(1) Vermont tax laws apply to the taxpayer's circumstances in a way that is unfair and unforeseen or that results in significant hardship; and

(2) the taxpayer has no available appeal rights or administrative remedies to correct the issue that led to such unfair result or hardship.

(b) For purposes of this section, "extraordinary relief" means a remedy that is within the power of the commissioner to grant under this title, a remedy that

compensates for the result of inaccurate classification of property as homestead or nonresidential pursuant to section 5410 of this title through no fault of the taxpayer, or a remedy that makes changes to a taxpayer's property tax adjustment or renter rebate claim necessary to remedy the problem identified by the taxpayer advocate.

(c) Notwithstanding any other provision of law, if in response to the taxpayer advocate's recommendation, the commissioner determines that the taxpayer should receive a refund or other monetary adjustment, the commissioner shall certify that amount to the commissioner of finance and management who shall issue his or her warrant in favor of the taxpayer for payment by the treasurer from the appropriate fund.

(d) A recommendation for extraordinary relief shall be in writing, shall be addressed to the commissioner, and shall include a description of the problem sought to be remedied along with specific recommendations to the commissioner. The taxpayer advocate's decision to make or not make a recommendation for extraordinary relief shall be final and not subject to review.

(e) The commissioner may choose to act on the recommendation of the taxpayer advocate, not act on the recommendation, or act on part of the taxpayer advocate's recommendation, and the commissioner's decision shall be final and not subject to any further review. Nothing in this section shall be construed to limit any other power or authority granted to the commissioner in this title.

Sec. 7. 32 V.S.A. § 5824 is amended to read:

§ 5824. ADOPTION OF FEDERAL INCOME TAX LAWS

The statutes of the United States relating to the federal income tax, as in effect for taxable year ~~2010~~ 2011, but without regard to federal income tax rates under Section 1 of the Internal Revenue Code, are hereby adopted for the purpose of computing the tax liability under this chapter.

Sec. 8. 32 V.S.A. § 6061(5) is amended to read:

(5) "Modified adjusted gross income" means "federal adjusted gross income":

(A) before the deduction of any trade or business loss, loss from a partnership, loss from a small business or "subchapter S" corporation, loss from a rental property, or capital loss, except that in the case of a business which sells a business property with respect to which it is required, under the Internal Revenue Code, to report a capital gain, a business loss incurred in the same tax year with respect to the same business may be netted against such

capital gain, and except that a business loss incurred in the same tax year with respect to a different business may be netted against any business gain;

Sec. 9. 32 V.S.A. § 6066a(f) is amended to read:

(f) Property tax bills.

(1) For individuals and amounts stated in the notice to towns on July 1, municipalities shall ~~include on the~~ create and send to taxpayers a homestead property tax bill notice to the taxpayer of, separate from the bill required under subdivision 5402(b)(1) of this title, providing the total amount allocated to payment of homestead education property tax liabilities and notice of the balance due. Municipalities shall apply the amount allocated under this chapter to current-year property taxes in equal amounts to each of the taxpayers' property tax installments that include education taxes.

\* \* \*

Sec. 10. 32 V.S.A. § 7475 is amended to read:

§ 7475. ADOPTION OF FEDERAL ESTATE AND GIFT TAX LAWS

The laws of the United States, relating to federal estate and gift taxes as in effect on ~~January 1, 2009~~ December 31, 2011, are hereby adopted for the purpose of computing the tax liability under this chapter, except:

(1) the credit for state death taxes shall remain as provided for under Sections 2011 and 2604 of the Internal Revenue Code as in effect on January 1, 2001;

(2) the applicable credit amount shall remain as provided for under Section 2010 of the Internal Revenue Code as in effect on January 1, 2008; and

(3) the deduction for state death taxes under Section 2058 of the Internal Revenue Code shall not apply.

Sec. 11. Sec. 1(c) of No. 71 of the Acts of the 2011 Adj. Sess. (2012) is amended to read:

(c) Use. ~~Residents of the state of Vermont may display an approved commemorative plate on a motor vehicle registered as a pleasure car and on motor trucks registered~~ An approved Vermont Strong commemorative plate may be displayed on a motor vehicle registered in Vermont as a pleasure car or on a motor truck registered in Vermont for less than 26,001 pounds (but excluding vehicles registered under the International Registration Plan) by covering the front registration plate with the commemorative plate any time from the effective date of this act until June 30, 2014. The regular front registration plate shall not be removed. The regular rear registration plate shall be in place and clearly visible at all times.

\* \* \* Compliance Provisions \* \* \*

Sec. 12. 7 V.S.A. § 421(c) is amended to read:

(c) For the purpose of ascertaining the amount of tax, on or before the tenth day of each calendar month, each bottler and wholesaler shall transmit to the commissioner of taxes, upon a form prepared and furnished by the commissioner, a statement or return under oath or affirmation showing the quantity of malt and vinous beverages sold by the bottler or wholesaler during the preceding calendar month, and report any other information requested by the commissioner accompanied by payment of the tax required by this section. The amount of tax computed under subsection (a) of this section shall be rounded to the nearest whole cent. At the same time this form is due, each bottler and wholesaler also shall transmit to the commissioner in electronic format a separate report showing the description, quantity, and price of malt and vinous beverages sold by the bottler or wholesaler to each retail dealer as defined in 7 V.S.A. § 2(18); provided, however, for direct sales to retail dealers by manufacturers or rectifiers of vinous beverages the report required by this subsection may be submitted in a nonelectronic format.

Sec. 13. 32 V.S.A. § 3108 is amended to read:

§ 3108. ESTABLISHMENT OF INTEREST RATE

(a) Not later than December 15 of each year, the commissioner shall establish a rate of interest applicable to ~~unpaid tax liabilities and~~ tax overpayments which shall be equal to the average prime rate charged by banks during the immediately preceding 12 months commencing on October 1 of the prior year, rounded upwards to the nearest ~~whole~~ quarter percent. ~~The~~ An annual rate thus established ~~may~~ shall be converted to a monthly rate which shall be rounded upwards to the nearest tenth of a percent. Not later than December 15 of each year, the commissioner shall establish annual and monthly rates of interest applicable to unpaid tax liabilities, which in each instance shall be equal to the annual and monthly rates established for tax overpayments plus 200 basis points. The ~~rate~~ rates established hereunder shall be effective on January 1 of the immediately following year. For purposes of this section, the term “prime rate charged by banks” shall mean the average predominate prime rate quoted by commercial banks to large businesses as determined by the board of governors of the Federal Reserve ~~System~~ Board.

(b) Whenever the commissioner is authorized or directed to pay interest on an overpayment of any taxes, nevertheless no interest shall be paid on such overpayment:

(1) where the commissioner finds that such overpayment was made with the intention or expectation of receiving a payment of interest thereon and for no other reason;

(2) for any period of time prior to: 45 days after the date the return other than a corporate income tax return was due, including any extensions of time thereto; or 45 days after the return was filed, whichever is the later date, and with respect to corporate income tax returns, for any period of time prior to 90 days after the date the return was due or 90 days after the return was filed, whichever is the later date;

\* \* \*

\* \* \* Income Tax Provisions \* \* \*

Sec. 14. 32 V.S.A. § 5832(2) is amended to read:

(2)(A) \$75.00 for small farm corporations. “Small farm corporation” means any corporation organized for the purpose of farming, which during the taxable year is owned solely by active participants in that farm business and receives less than \$100,000.00 gross receipts from that farm operation, exclusive of any income from forest crops; or

(B) An amount determined in accordance with section 5832a of this title for a corporation which qualifies as and has elected to be taxed as a digital business entity for the taxable year; or

~~(C) \$250.00 for all other corporations~~ For C corporations with gross receipts from \$0–\$2,000,000.00, the greater of the amount determined under subdivision (1) of this section or \$250.00; or

(D) For C corporations with gross receipts from \$2,000,001.00–\$5,000,000.00, the greater of the amount determined under subdivision (1) of this section or \$500.00; or

(E) For C corporations with gross receipts greater than \$5,000,000.00, the greater of the amount determined under subdivision (1) of this section or \$750.00.

Sec. 15. 32 V.S.A. § 5920(g) is added to read:

(g)(1) Subsection (c) of this section shall not apply to a partnership or limited liability company engaged solely in the business of operating one or more federal new market tax credit projects in this state, provided such partnership or limited liability company shall:

(A) notify its nonresident partners or nonresident members of their obligation under subchapter 6 of this chapter to file Vermont personal income tax returns and under subchapter 2 of this chapter to pay a tax on income earned from such investment;

(B) instruct each nonresident partner or nonresident member to pay such tax; and



(C) in addition to filing copies of all schedules K-1 with its partnership or limited liability company return, file with the commissioner segregated duplicate copies of all nonresident schedules K-1.

(2) For purposes of this subsection, “federal new market tax credit project” means a business that is intended primarily to benefit low income Vermont residents throughout the period of investment and that is subject to the following:

(A) has been determined by the United States Department of the Treasury to be a community development entity;

(B) has been awarded an allocation of federal new market tax credits under 26 U.S.C. § 45D; and

(C) is a partnership or limited liability corporation which is a pass-through of the federal new market tax credit to the nonresident investor.

Sec. 16. 32 V.S.A. § 5930b(c)(9) is amended to read:

(9) Incentive claims must be filed annually no later than the last day of April of each year of the utilization period. For a claim to be considered a timely filing and eligible for an incentive payment, all forms and workbooks must be complete and all underlying documentation, such as that required pursuant to subsection 5842(b) of this title, must be filed with the department of taxes. Incomplete claims may be considered to have been timely filed if a complete claim is filed within the time prescribed by the department of taxes. If a claim is not filed each year of the utilization period, any incentive installment previously paid shall be recaptured in accordance with subsection (d) of this section. The incentive return shall be subject to all provisions of this chapter governing the filing of tax returns. No interest shall be paid by the department of taxes for any reason with respect to incentives allowed under this section.

Sec. 17. 32 V.S.A. § 5930b(e) is amended to read:

(e) Reporting. ~~By May 1, 2008 and by May 1~~ September 1 each year ~~thereafter~~, the council and the department of taxes shall file a joint report on the employment growth incentives authorized by this section with the chairs of the house committee on ways and means, the house committee on commerce and economic development, the senate committee on finance, the senate committee on economic development, housing and general affairs, the house and senate committees on appropriations, and the joint fiscal committee of the general assembly and provide notice of the report to the members of those committees. The joint report shall contain the total ~~authorized award~~ amount of incentives ~~granted~~ authorized during the preceding year, ~~amounts actually earned and paid from inception of the program to the date of the report,~~

~~including the date and amount of the award, the expected calendar year or years in which the award will be exercised, whether the award is currently available, the date the award will expire, and the amount and date of all incentives exercised and, with respect to each recipient, the date and amount of authorization, the calendar year or years in which the authorization is expected to be exercised, whether the authorization is active, and the date the authorization will expire. The joint report shall also include information on recipient performance in the year in which the incentives were applied, including the number of applications for the incentive, the number of approved applicants who complied with all their requirements for the incentive, the following aggregate information: total number of claims and total incentive payments made in the current and prior claim years, the balance of credits not yet allocated, the aggregate number of qualifying new jobs created, the aggregate and qualifying payroll of those jobs and the identity of businesses whose applications were approved, and qualifying new capital investments. The council and department shall use measures to protect proprietary financial information, such as reporting information in an aggregate form. Data and information in the joint report made available to the public shall be presented in a searchable format.~~

Sec. 18. Sec. 3(c) of No. 184 of the Acts of the 2005 Adj. Sess. (2006), as amended by Sec. 2 of No. 52 of the Acts of 2011, is amended to read:

(c) Beginning April 1, 2009, the economic incentive review board is authorized to grant payroll-based growth incentives pursuant to the Vermont employment growth incentive program established by Sec. 9 of this act. Unless extended by act of the General Assembly, as of July 1, ~~2012~~ 2017, no new Vermont employment growth incentive (VEGI) awards under 32 V.S.A. § 5930b may be made. Any VEGI awards granted prior to July 1, ~~2012~~ 2017 may remain in effect until used.

Sec. 19. 32 V.S.A. § 5930u(g) is amended to read:

(g) In any fiscal year, the allocating agency may award up to \$400,000.00 in total first-year credit allocations to all applicants for rental housing projects; and may award up to ~~\$100,000.00~~ \$300,000.00 per year for owner-occupied unit applicants. In any fiscal year, total first-year allocations plus succeeding-year deemed allocations shall not exceed ~~\$2,500,000.00~~ \$3,500,000.00.

Sec. 20. 32 V.S.A. § 5930bb(d) is added to read:

(d) Notwithstanding any other provision of this subchapter, qualified applicants may apply to the state board at any time prior to June 30, 2013 to obtain a tax credit not otherwise available under subsections 5930cc(a)–(c) of this title of 10 percent of qualified expenditures resulting from damage caused

by a federally declared disaster in Vermont in 2011. The credit shall only be claimed against the taxpayer's state individual income tax under section 5822 of this title. To the extent that any allocated tax credit exceeds the taxpayer's tax liability for the first tax year in which the qualified project is completed, the taxpayer shall receive a refund equal to the unused portion of the tax credit. If within two years after the date of the credit allocation no claim for a tax credit or refund has been filed, the tax credit allocation shall be rescinded and recaptured pursuant to subdivision 5930ee(6) of this title. The total amount of tax credits available under this subsection shall not be less than \$500,000.00 and not more than \$700,000.00 and shall not be subject to the limitations contained in section 5930ee(2) of this subchapter.

Sec. 21. CREDIT LIMIT FOR FISCAL YEAR 2013

Notwithstanding any other provision of law, for fiscal year 2013 only, the limitation provided in 32 V.S.A. § 5930ee(1) shall be \$2,200,000.00 instead of \$1,700,000.00.

Sec. 21a. 32 V.S.A. § 9603(23) is amended to read:

(23) Transfers of leasehold or fee interests made to low income individuals by organizations qualifying under Section 501(c)(3) of the Internal Revenue Code of 1986 or from a wholly-owned subsidiary of such an organization when such a transfer is made concurrently with the transfer of an improvement located on the leasehold or fee property, or is a renewal of such a lease where the purpose of the lease is to provide affordable housing, or to ensure the continued affordability of such housing, or both.

\* \* \* Property Tax Adjustment and Renter Rebate Provisions \* \* \*

Sec. 22. 32 V.S.A. § 5410(b) is amended to read:

(b)(1) Annually on or before the due date for filing the Vermont income tax return, without extension, each homestead owner shall, on a form prescribed by the commissioner, which shall be verified under the pains and penalties of perjury, declare his or her homestead, if any, as of, or expected to be as of, April 1 of the year in which the declaration is made ~~for property that was acquired by the declarant or was made the declarant's homestead after April 1 of the previous year. The declaration of homestead shall remain in effect until the earlier of:~~

(A) ~~the transfer of title of all or any portion of the homestead; or~~

(B) ~~that time that the property or any portion of the property ceases to qualify as a homestead.~~

(2) Within 30 days of the transfer of title of all or any portion of the homestead, or upon any portion of the property ceasing to be a homestead, the

declarant shall provide notice to the commissioner on a form to be prescribed by the commissioner.

Sec. 23. 32 V.S.A. § 6061(5)(D) is amended to read:

(D) without the inclusion of adjustments to total income except certain business expenses of reservists, one-half of self-employment tax paid, alimony paid, deductions for tuition and fees, ~~and~~ health insurance costs of self-employed individuals, and health savings account deductions; and

Sec. 24. 32 V.S.A. § 6066a is amended to read:

§ 6066a. DETERMINATION OF PROPERTY TAX ADJUSTMENTS

(a) Annually, the commissioner shall determine the property tax adjustment amount under section 6066 of this title, related to a homestead owned by the claimant. The commissioner shall notify the municipality in which the housesite is located of the amount of the property tax adjustment for the claimant for homestead property tax liabilities, on July 1 for ~~timely filed~~ timely filed claims and on ~~September 15~~ November 1 for late claims filed by ~~September 1~~ October 15. The tax adjustment of a claimant who was assessed property tax by a town which revised the dates of its fiscal year, however, is the excess of the property tax which was assessed in the last 12 months of the revised fiscal year, over the adjusted property tax of the claimant for the revised fiscal year as determined under section 6066 of this title, related to a homestead owned by the claimant.

\* \* \*

(c) The commissioner shall notify the municipality of any claim and refund amounts unresolved by ~~September 15~~ November 1 at the time of final resolution, including adjudication if any; provided, however, that towns will not be notified of any additional adjustment amounts after ~~September 15~~ November 1 of the claim year, and such amounts shall be paid to the claimant by the commissioner.

\* \* \*

(f) Property tax bills.

\* \* \*

(2) For property tax adjustment amounts for which municipalities receive notice on or after ~~September 15~~ November 1, municipalities shall issue a new homestead property tax bill with notice to the taxpayer of the total amount allocated to payment of homestead property tax liabilities and notice of the balance due.

\* \* \*

(g) Annually, on August 1 and on ~~September 15~~ November 1, the commissioner of taxes shall pay to each municipality the amount of property tax adjustment of which the municipality was notified on July 1 for the August 1 transfer, or ~~September 15~~ November 1 for the ~~September 15~~ November 1 transfer, related to municipal property tax on homesteads within that municipality, as determined by the commissioner of taxes.

Sec. 25. 32 V.S.A. § 6074 is amended to read:

§ 6074. AMENDMENT OF CERTAIN CLAIMS

At any time within three years after the date for filing claims under subsection 6068(a) of this chapter, a claimant who filed a claim by ~~September 1~~ October 15 may file to amend that claim to correct the amount of household income reported on that claim.

Sec. 26. 32 V.S.A. § 6068 is amended to read:

(a) A tax adjustment claim or request for allocation of an income tax refund to homestead property tax payment shall be filed with the commissioner on or before the due date for filing the Vermont income tax return, without extension, and shall describe the school district in which the homestead property is located and shall particularly describe the homestead property for which the adjustment or allocation is sought, including the school parcel account number prescribed in subsection 5404(b) of this title. A renter rebate claim shall be filed with the commissioner on or before the due date for filing the Vermont income tax return, without extension.

(b) Late-filing penalties. If the claimant fails to file a timely claim, the amount of the property tax adjustment under this chapter shall be reduced by \$15.00, but not below \$0.00, which shall be paid to the municipality for the cost of issuing an adjusted homestead property tax bill. No benefit shall be allowed in the calendar year unless the claim is filed with the commissioner on or before ~~September 1~~ October 15.

(c) No request for allocation of an income tax refund or for a renter rebate claim may be made after ~~September 1~~ October 15.

Sec. 27. 32 V.S.A. § 6067 is amended to read:

§ 6067. CREDIT LIMITATIONS

Only one individual per household per taxable year shall be entitled to a benefit under this chapter. An individual who received a homestead exemption or adjustment with respect to property taxes assessed by another state for the taxable year shall not be entitled to receive an adjustment under this chapter. No taxpayer shall receive an adjustment under subsection 6066(b) of this title in excess of \$3,000.00. No taxpayer shall receive total adjustments under this chapter in excess of \$8,000.00 related to any one property tax year.

Sec. 28. RENTER REBATE CLAIM

The office of legislative council is authorized to change references to “renter credit claim” in 32 V.S.A. chapter 154 to read “renter rebate claim.”

Sec. 29. Sec. 51(b) of No. 160 of the Acts of the 2009 Adj. Sess. (2010) is amended to read:

(b) ~~The following sections of Title 32 relating to homestead education property tax income sensitivity adjustments are repealed for claims filed on and after January 1, 2013:~~

~~(1) 32 V.S.A. § 6061(5)(E) (requiring adjustment for interest and dividend income for purposes of calculating modified adjusted gross income).~~

~~(2) The amendments in this act to 32 V.S.A. § 6066(a) regarding the equalized value of a housesite in excess of \$500,000.00~~ The amendments in this act related to 32 V.S.A. § 6066(a), regarding the equalized value of a housesite in excess of \$500,000.00, are repealed on January 1, 2013.

Sec. 30. LANDLORD CERTIFICATES

The commissioner of taxes shall report to the senate committee on finance and the house committee on ways and means no later than January 15, 2013 on how to develop an electronic system for the reporting and issuance of the landlord certificate under 32 V.S.A. § 6069. The commissioner’s report shall include recommendations for legislative changes to implement such a system.

\* \* \* Property Tax Provisions \* \* \*

Sec. 31. 27A V.S.A. § 1-105 is amended to read:

§ 1-105. SEPARATE TITLES AND TAXATION

(a) In a condominium or planned community:

(1) if there is any unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate;

(2) if there is any unit owner other than a declarant, each unit shall be separately taxed and assessed, and no separate tax or assessment may be rendered against any common elements for which a declarant has reserved no development rights; provided, however, that if a portion of the common elements is located in a town other than the town in which the unit is located, the town in which the common elements are located may designate that portion of the common elements within its boundaries as a parcel for property tax assessment purposes and may tax each unit owner at an appraisal value pursuant to 32 V.S.A. § 3481.

\* \* \*

Sec. 32. 32 V.S.A. § 3409 is amended to read:

§ 3409. PREPARATION OF PROPERTY MAPS

Consistent with available resources and pursuant to a memorandum of understanding entered into between the commissioner and the Vermont center for geographic information, the center shall provide regional planning commissions, state agencies, and the general public with orthophotographic maps of the state at a scale appropriate for the production and revision of town property maps. Periodically, such ~~maps~~ digital imagery shall be ~~revised and updated to reflect~~ updated to capture land use changes, new settlement patterns and such additional information as may have become available to the director or the center.

(1) The center shall supply to ~~the clerk and to the listers or assessors of~~ each town such ~~maps~~ orthophotographic imagery as ~~have~~ has been prepared by it of the total area of that town. Any map shall be available, without charge, for public inspection in the office of the town clerk to whom the map was supplied.

(2) ~~The state of Vermont shall retain the copyright of any map prepared by the Vermont mapping program, and the center and the Vermont mapping program shall jointly own the copyright to any map prepared on or after the effective date of this act.~~

(3) ~~A person who, without the written authorization of the director and the center, copies, reprints, duplicates, sells, or attempts to sell any map prepared under this chapter shall be fined an amount not to exceed \$1,000.00.~~

(4) At a reasonable charge to be established by the center and the director, the center shall supply to any person or agency other than a town clerk or lister a copy of any ~~map~~ digital format orthophotographic imagery prepared created under this section.

(3) Hardcopy or nondigital format orthophotographic imagery created under this section shall be available for public review at the state archives.

Sec. 33. 32 V.S.A. § 4301 is amended to read:

§ 4301. BASIS FOR COUNTY TAXES

(a) The equalized municipal property tax grand lists for each town, unorganized town and gore, and the unified towns and gores of Essex County shall be the basis of taxation for county purposes.

(b) Annually, on or before January 1, the director shall provide to each county treasurer the equalized municipal property tax grand list for each town, unorganized town, and gore, and the unified towns and gores of Essex County

within the county. "Equalized municipal property tax grand list" in this section shall mean the equalized education property tax grand list as defined in chapter 135 of this title plus inventory, machinery and equipment subject to municipal tax in that municipality at its grand list value.

Sec. 34. 32 V.S.A. chapter 133, subchapter 5 is amended to read:

Subchapter 5. Assessment and Collection in  
Unified Unorganized Towns and Gores

\* \* \*

Sec. 35. 32 V.S.A. § 5401(13) is amended to read:

(13) "District spending adjustment" means the greater of: one or a fraction in which the numerator is the district's education spending plus excess spending, per equalized pupil, for the school year; and the denominator is the base education amount for the school year, as defined in 16 V.S.A. § 4001. For a district that pays tuition to a public school or an approved independent school, or both, for all of its resident students in any year, and which has decided by a majority vote of its school board to opt into this provision, the district spending adjustment shall be the average of the district spending adjustment calculated under this subdivision for the previous year and for the current year. Any district opting for a two-year average under this subdivision may not opt out of such treatment, and the averaging shall continue until the district no longer qualifies for such treatment.

Sec. 36. FISCAL YEAR 2013 EDUCATION PROPERTY TAX RATE

(a) For fiscal year 2013 only, the education property tax imposed under 32 V.S.A. § 5402(a) shall be reduced from the rates of \$1.59 and \$1.10 and shall instead be at the following rates:

(1) the tax rate for nonresidential property shall be \$1.38 per \$100.00; and

(2) the tax rate for homestead property shall be \$0.89 multiplied by the district spending adjustment for the municipality per \$100.00 of equalized property value as most recently determined under 32 V.S.A. § 5405.

(b) For claims filed in 2013 only, "applicable percentage" in 32 V.S.A. § 6066(a)(2) shall be reduced from 2.0 percent and instead shall be 1.80 percent multiplied by the fiscal year 2013 district spending adjustment for the municipality in which the homestead residence is located; but in no event shall the applicable percentage be less than 1.80 percent.

Sec. 37. FISCAL YEAR 2013 BASE EDUCATION AMOUNT

Notwithstanding 16 V.S.A. § 4011(b) or any other provision of law, the base education amount for fiscal year 2013 shall be \$8,723.00.



Sec. 38. SUPPLEMENTAL PROPERTY TAX RELIEF

Notwithstanding any other provision of law, on October 1, 2012, the commissioner shall determine the balance in the supplemental property tax relief fund and determine by how much the “applicable percentage” in 32 V.S.A. § 6066(a)(2) could be reduced if the entire balance of the fund was transferred to the education fund for that purpose, while maintaining the existing balance in the education fund. If the “applicable percentage” could be reduced by 0.1 of one percent or more for the upcoming fiscal year, the commissioner shall disregard 32 V.S.A. § 6075(b), and recommend in 32 V.S.A. § 5402(b) that the balance of the property tax relief fund be transferred to the education fund and the applicable percentage be lowered by the amount determined under that subsection, even if that recommendation would take the applicable percentage below 1.8 percent.

Sec. 39. 32 V.S.A. § 5402b(b) is amended to read:

(b) If the commissioner makes a recommendation to the general assembly to adjust the education tax rates under section 5402 of this title, the commissioner shall also recommend a proportional adjustment to the applicable percentage base for homestead income based adjustments under section 6066 of this title, but the applicable percentage base shall not be adjusted below ~~1.8~~ 1.7 percent.

\* \* \* Current Use Provisions \* \* \*

Sec. 40. 32 V.S.A. § 3752(5) is amended to read:

(5) “Development” means, for the purposes of determining whether a land use change tax is to be assessed under section 3757 of this chapter, the construction of any building, road or other structure, or any mining, excavation or landfill activity. “Development” also means the subdivision of a parcel of land into two or more parcels, regardless of whether a change in use actually occurs, where one or more of the resulting parcels contains less than 25 acres each; but if subdivision is solely the result of a transfer to one or more of a spouse, parent, grandparent, child, grandchild, niece, nephew, or sibling of the transferor, or to the surviving spouse of any of the foregoing, then “development” shall not apply to any portion of the ~~newly created~~ newly created parcel or parcels which qualifies for enrollment and for which, within 30 days following the transfer, each transferee or transferor applies for reenrollment in the use value appraisal program. “Development” also means the cutting of timber on property appraised under this chapter at use value in a manner contrary to a forest or conservation management plan as provided for in subsection 3755(b) of this title during the remaining term of the plan, or contrary to the minimum acceptable standards for forest management if the plan has expired; or a change in the parcel or use of the parcel in violation of

the conservation management standards established by the commissioner of forests, parks and recreation. The term “development” shall not include the construction, reconstruction, structural alteration, relocation, or enlargement of any building, road, or other structure for farming, logging, forestry, or conservation purposes, but shall include the subsequent commencement of a use of that building, road, or structure for other than farming, logging, or forestry purposes.

Sec. 41. 32 V.S.A. § 3753(b) is amended to read:

- (b) The membership of the board shall consist of:
  - (1) The following persons or their designees:

\* \* \*

(E) ~~Dean of the college of natural resources, agriculture and life sciences of the University of Vermont.~~ [Deleted.]

\* \* \*

Sec. 42. 32 V.S.A. § 3755(b) is amended to read:

(b) Managed ~~forest land~~ forestland shall be eligible for use value appraisal under this subchapter only if:

(1) the land is subject to a forest management plan, or subject to a conservation management plan in the case of lands certified under 10 V.S.A. § 6306(b), which:

(A) is signed by the owner of a tract the parcel;

(B) which complies with subdivision 3752(9) of this title;

(C) is filed with and approved by the department of forests, parks and recreation; and

(D) by October 1, which provides for continued conservation management or forest crop production on the tract parcel for at least ten years. During a period of use value appraisal under this subchapter, a conservation or forest management plan for at least ten years, including the 12-month period beginning April 1 of the year for which use value appraisal is sought, signed by the owner, shall be on file with the department in such a manner and in such form as is prescribed by the department. Upon the An initial forest management plan or conservation management plan must be filed with the department of forests, parks and recreation no later than October 1 and shall be effective for a ten-year period beginning the following April 1. Prior to expiration of a ten-year ten-year plan and no later than April 1 of the year in which the plan expires, the owner shall file a new conservation or forest

management plan for ~~at least~~ the next succeeding ten years to remain in the program.

\* \* \*

\* \* \* Wastewater permit provisions \* \* \*

Sec. 43. 32 V.S.A. § 3752(5) is amended to read:

(5) “Development” means, for the purposes of determining whether a land use change tax is to be assessed under section 3757 of this chapter, the construction of any building, road or other structure, or any mining, excavation or landfill activity. “Development” also means the subdivision of a parcel of land into two or more parcels, regardless of whether a change in use actually occurs, where one or more of the resulting parcels contains less than 25 acres each; but if subdivision is solely the result of a transfer to one or more of a spouse, parent, grandparent, child, grandchild, niece, nephew, or sibling of the transferor, or to the surviving spouse of any of the foregoing, then “development” shall not apply to any portion of the newly created parcel or parcels which qualifies for enrollment and for which, within 30 days following the transfer, each transferee or transferor applies for reenrollment in the use value appraisal program. “Development” also means the cutting of timber on property appraised under this chapter at use value in a manner contrary to a forest or conservation management plan as provided for in subsection 3755(b) of this title during the remaining term of the plan, or contrary to the minimum acceptable standards for forest management if the plan has expired; or a change in the parcel or use of the parcel in violation of the conservation management standards established by the commissioner of forests, parks and recreation. Enrolled land is also considered “developed” under this section if a wastewater system permit has been issued for the land pursuant to 10 V.S.A § 1973 and the commissioner of the department of forest, parks, and recreation has certified to the director that (1) the permit is contrary to a forest or conservation management plan or the minimum acceptable standards for forest management; (2) use of the parcel would violate the conservation management standards; or (3) after consulting with the secretary of agriculture, the permit is not part of a farm operation. The commissioner of forests, parks and recreation may develop standards regarding circumstances under which land with wastewater system and potable water permits will not be certified to the director. The term “development” shall not include the construction, reconstruction, structural alteration, relocation, issuance of a wastewater system permit under 10 V.S.A § 1973 or enlargement of any building, road, or other structure for farming, logging, forestry, or conservation purposes, but shall include the subsequent commencement of a use of that building, road, ~~or~~ structure or wastewater system permit for other than farming, logging, or forestry purposes.

Sec. 44. 32 V.S.A. § 3757 is amended to read:

§ 3757. LAND USE CHANGE TAX

(a) Land which has been classified as agricultural land or managed forest land pursuant to this chapter shall be subject to a land use change tax ~~on the earliest of either~~ upon the development of that land, as defined in section 3752 of this chapter, ~~or two years after the issuance of all permits legally required by a municipality for any action constituting development, or two years after the issuance of a wastewater system and potable water supply permit under 10 V.S.A. § 1973.~~ Said tax shall be at the rate of 20 percent of the full fair market value of the changed land determined without regard to the use value appraisal; or the tax shall be at the rate of 10 percent if the owner demonstrates to the satisfaction of the director that the parcel has been enrolled continuously more than 10 years. If changed land is a portion of a parcel, the fair market value of the changed land shall be the fair market value of the changed land prorated on the basis of acreage, divided by the common level of appraisal. Such fair market value shall be determined as of the date the land is no longer eligible for use value appraisal. This tax shall be in addition to the annual property tax imposed upon such property. Nothing in this section shall be construed to require payment of an additional land use change tax upon the subsequent development of the same land, nor shall it be construed to require payment of a land use change tax merely because previously eligible land becomes ineligible, provided no development of the land has occurred.

\* \* \*

(d) The land use change tax shall be due and payable by the owner 30 days after the tax notice is mailed to the taxpayer unless, in the case of land use change tax due with respect to development occurring as a result of the issuance of a wastewater system permit, the landowner enters into a payment agreement with the commissioner of taxes. The tax shall be paid to the commissioner for deposit into the general fund. The commissioner shall issue a form to the assessing officials which shall provide for a description of the land developed, the amount of tax payable, and the fair market value of the land at the time of development or withdrawal from use value appraisal. The owner shall fill out the form and shall sign it under the penalty of perjury. After receipt of payment, the commissioner shall furnish the owner with one copy, shall retain one copy and shall forward one copy to the local assessing officials and one to the register of deeds of the municipality in which the land is located. Thereafter, the land which has been developed shall be appraised and listed at its full fair market value in accordance with the provisions of chapter 121 of this title.

\* \* \*

Sec. 45. 32 V.S.A. § 3758(d) is amended to read:

(d) Any owner who is aggrieved by a decision of the department of forests, parks and recreation concerning the filing of an adverse inspection report or denial of approval of a management plan or certification to the director with respect to land for which a wastewater permit is issued may appeal to the commissioner of the department of forests, parks and recreation. An appeal of this decision of the commissioner may be taken to the superior court in the same manner and under the same procedures as an appeal from a decision of a board of civil authority, as set forth in chapter 131, subchapter 2 of chapter 131 of this title.

Sec. 46. REPEAL

Sec. 13h of No. 45 of the Acts of 2011 (tracking wastewater permits) is repealed.

\* \* \* Sales and Use Tax Provisions \* \* \*

Sec. 47. 24 V.S.A. § 138(g) is added to read:

(g) If the legislative body of a municipality by a majority vote recommends, or by petition of ten percent of the voters of a municipality recommends, the voters of a municipality may, at an annual or special meeting warned for that purpose, by a majority vote of those present and voting, rescind any or all of the local option taxes assessed under subsection (b) of this section.

Sec. 48. 32 V.S.A. § 9741(48) is amended to read:

(48) Sales of tangible personal property sold by an auctioneer licensed under 26 V.S.A. chapter 89 of Title 26, including any buyer's premium charged by the auctioneer, that are conducted on the premises of the owner of the property, provided that no other person's property is sold on the auction premises and provided that the property was obtained by the owner, through purchase or otherwise, for his or her own use.

Sec. 49. 32 V.S.A. § 9771 is amended to read:

§ 9771. IMPOSITION OF SALES TAX

Except as otherwise provided in this chapter, there is imposed a tax on retail sales in the state. The tax shall be paid at the rate of six percent of the sales price charged for but in no case shall any one transaction be taxed under more than one of the following:

\* \* \*

(8) Specified digital products transferred electronically to an end user regardless of whether for permanent use or less than permanent use and

regardless of whether or not conditioned upon continued payment from the purchaser.

Sec. 50. 32 V.S.A. § 9817(a) is amended to read:

(a) Any aggrieved taxpayer may, within 30 days after any decision, order, finding, assessment or action of the commissioner made under this chapter, appeal to the Washington superior court or the superior court of the county in which the taxpayer resides or has a place of business. The appellant shall give security, approved by the commissioner, conditioned to pay the tax levied, if it remains unpaid, with interest and costs, as set forth in subsection (c) of this section.

Sec. 51. TEMPORARY MORATORIUM ON ENFORCEMENT OF SALES TAX ON PREWRITTEN SOFTWARE ACCESSED REMOTELY

Notwithstanding the imposition of sales and use tax on prewritten computer software by 32 V.S.A. chapter 233, the department of taxes shall not assess tax on charges for remotely accessed software made after December 31, 2006 and before January 1, 2014, and taxes paid on such charges shall be refunded upon request if within the statute of limitations and documented to the satisfaction of the commissioner. "Charges for remotely accessed software" means charges for the right to access and use prewritten software run on underlying infrastructure that is not managed or controlled by the consumer or a related company. Enforcement of the sales and use tax imposed on the purchase of specified digital products pursuant to 32 V.S.A. § 9771(8) is not affected by this section.

Sec. 52. STUDY COMMITTEE ON CLOUD COMPUTING

(a) Creation of committee. There is created a cloud computing study committee to examine issues related to the taxation of software as a service.

(b) Membership. The committee shall be composed of five members. Two members of the committee shall be members of the general assembly. The committee on committees of the senate shall appoint one member of the senate and the speaker of the house shall appoint one member of the house. The committee on committees shall appoint a chair of the study committee who shall be a committee member who is also a member of the general assembly. Three members of the committee shall be as follows:

(1) the governor shall appoint a member representing consumers of software and software services;

(2) the secretary of administration or his or her designee;

(3) the commissioner of taxes or his or her designee;

(c) Powers and duties.

(1) The committee established by this section shall study the taxation of software as a service, including the character of sales transactions involving software accessed remotely, the sourcing of such sales, and experience of other jurisdictions in taxing software as a service.

(2) For purposes of its study of these issues, the committee shall have the assistance of the office of legislative council, the joint fiscal office, and the department of taxes.

(d) Report. By January 15, 2013, the committee shall report to the senate committee on finance and the house committee on ways and means on its findings and any recommendations for legislative action.

(e) Reimbursement. For attendance at meetings during adjournment of the general assembly, legislative members of the committee shall be entitled to compensation and reimbursement for expenses as provided in 2 V.S.A. § 406; and other members of the committee who are not employees of the state of Vermont shall be reimbursed at the per diem rate set in 32 V.S.A. § 1010.

#### Sec. 53. SECONDARY PACKAGING

The commissioner of taxes shall study the taxation and exemption of secondary packaging machinery and no later than January 15, 2013 shall report to the senate committee on finance and the house committee on ways and means on its findings. The commissioner shall specifically examine and report on the various types of secondary machinery typically used in manufacturing, the use of secondary packaging machinery in Vermont, the different options for exempting secondary packaging machinery that are administratively feasible, and how other states tax or exempt secondary packaging machinery.

#### Sec. 54. SALES AND USE TAX REBATES FOR MOBILE HOMES

(a) Notwithstanding the provisions of 32 V.S.A. chapters 231 and 233 and 24 V.S.A. § 138, sales and use tax, local option sales tax, or property transfer tax shall not apply to sales to individuals of mobile homes purchased after April 1, 2011 but before July 1, 2012 to replace a mobile home that was damaged or destroyed as a result of flooding and storm damage that occurred as a result of a federally declared disaster in Vermont in 2011.

(b) Any resident of Vermont who purchased a mobile home that meets the criteria under subsection (a) of this section shall be entitled to a reimbursement in the amount of any sales and use tax, local option sales tax, or property transfer tax paid.

(c) The department of taxes may establish standards and procedures necessary to implement this section. The department of taxes shall reimburse taxpayers that qualify under subsection (a) of this section.

\* \* \* Electrical energy generating tax provisions \* \* \*

Sec. 55. REPEAL

32 V.S.A. § 5402a (electric generating plant education property tax) is repealed.

Sec. 56. 32 V.S.A § 8661 is amended to read:

§ 8661. TAX LEVY

(a) There is hereby assessed ~~each year~~ upon electric generating plants constructed in the state subsequent to July 1, 1965, and having a name plate generating capacity of 200,000 kilowatts, or more, a state tax ~~in accordance with the following table:~~ at the rate of \$0.0025 per kWh of electrical energy produced.

<del>If megawatt hour production is:</del>	<del>tax is:</del>
<del>Less than 2,300,000 megawatt hours</del>	<del>\$2.0 million</del>
<del>2,300,000 to 3,800,000 megawatt hours</del>	<del>\$2.0 million plus \$0.40 per megawatt hour over 2,300,000</del>
<del>3,800,001 to 4,200,000 megawatt hours</del>	<del>\$2.6 million</del>
<del>Over 4,200,000 megawatt hours</del>	<del>\$2.6 million plus \$0.40 per megawatt hour over 4,200,000</del>

~~For purposes of this section, “megawatt hour production” means the average of net production for sale in the three most recent preceding calendar years. The tax imposed by this section shall be paid to the commissioner in equal quarterly installments on the electrical energy generated in the prior quarter on or before the 25th day of the calendar month succeeding the quarter ending on the last day of March, June, September, and December by the person or corporation then owning or operating such electric generating plant.~~

~~(b) If an entity subject to this tax generates no electricity during the tax year due to termination or expiration of a necessary license, or due to permanent cessation of operations, no tax shall be due for that year.~~

~~(e) A person or corporation failing to make returns or pay the tax imposed by this section within the time required shall be subject to and governed by the provisions of sections 3202, 3203, 5868, and 5873 3203 of this title.~~

Sec. 57. TRANSITION



An electric generating plant shall receive a credit against the tax under 32 V.S.A. § 8661 for any sums it has irrevocably paid to the state after March 21, 2012 under agreements for operation under a certificate of public good or pending a public service board proceeding for the issuance of a certificate of public good. Any credit under this section shall be applied to any current liability of the taxpayer, and if the amount of the credit exceeds the amount of the current liability, the credit may be carried forward to the next return period.

\* \* \* Meals and rooms tax provisions \* \* \*

Sec. 58. 32 V.S.A. § 9202(3) is amended to read:

(3) “Hotel” means an establishment which holds itself out to the public by offering sleeping accommodations for a consideration, whether or not the major portion of its operating receipts is derived therefrom and whether or not the sleeping accommodations are offered to the public by the owner or proprietor or lessee, sublessee, mortgagee, licensee, or any other person or the agent of any of the foregoing. The term includes but is not limited to; inns, motels, tourist homes and cabins, ski dormitories, ski lodges, lodging homes, rooming houses, furnished-room houses, boarding houses, and private clubs, as well as any building or structure or part thereof to the extent to which any such building or structure or part thereof in fact is held out to the public by offering sleeping accommodations for a consideration. The term shall not include the following:

(A) a hospital, licensed under 18 V.S.A. chapter 43 of Title 18, or a sanatorium, convalescent home, nursing home, or a home for the aged residential care home, assisted living residence, home for the terminally ill, therapeutic community residence as defined pursuant to 33 V.S.A. chapter 71, or independent living facility;

\* \* \*

Sec. 59. 32 V.S.A. § 9202(10)(D)(ii)(IV) is amended to read:

(IV) prepared and served by the employees ~~thereof and served in, volunteers, or contractors of~~ any hospital licensed under 18 V.S.A. chapter 43 of Title 18, ~~or sanatorium, convalescent home, nursing home or home for the aged,~~ residential care home, assisted living residence, home for the terminally ill, therapeutic community residence as defined pursuant to 33 V.S.A. chapter 71, or independent living facility; provided, however, that “contractor” under this subsection excludes:

(aa) persons or entities that lease space from one of these organizations, and

(bb) means provided by a restaurant as defined by subdivision (15) of this section when furnished to residents of a nursing home, residential care home, assisted living residence, home for the terminally ill, therapeutic community residence as defined pursuant to 33 V.S.A. chapter 71, or independent living facility, when not otherwise available generally to residents of the facility;

Sec. 60. 32 V.S.A. § 9202(18) is added to read:

(18) “Independent living facility” means a congregate living environment, however named, for profit or otherwise, that meets the definitions of housing complexes for older persons as enumerated in 9 V.S.A. § 4503(b) and (c), or housing programs designed to meet the needs of individuals with a handicap or disability as defined in 9 V.S.A. § 4501(2) and (3).

Sec. 61. EFFECTIVE DATES

This act shall take effect upon passage, except:

(1) Secs. 1 (conforming petroleum cleanup fee base to fuel gross receipts tax base), 2 (petroleum cleanup fund outreach), 6 (extraordinary relief), 8 (Irene checkoff), 12 (reporting requirements), 20 (downtown tax credit for disaster expenses), 21 (limitation on downtown tax credits for fiscal year 2013), and 21a (low income property transfer tax exemption) of this act shall take effect on July 1, 2012.

(2) Secs. 7 (link to Internal Revenue Code) of this act shall apply to taxable years beginning on and after January 1, 2011, and Sec. 10 (estate tax link to Internal Revenue Code) shall apply to decedents on or after January 1, 2011.

(3) Sec. 14 (increasing minimum tax on certain C corporations) of this act shall apply to taxable years beginning on and after January 1, 2012.

(4) Secs. 23 (health savings accounts) 24, 25, and 26 (moving final date for filing renter rebate or property tax adjustment claims), and 27 (renter rebate cap) of this act shall take effect on January 1, 2013 and apply to property tax adjustments and renter rebate claims for 2013 and after.

(5) Secs. 36 (education base rates) and 37 (education base amount) shall take effect on passage and apply to education property tax rates and the base education amount for fiscal year 2013.

(6) Secs. 43 through 46 (wastewater permits) shall take effect retroactively on July 1, 2011.

(7) Sec. 48 (auction sale exemption) of this act is effective retroactively to May 24, 2011.

(8) Secs. 55 (repeal), 56 (electrical generation tax), and 57 (transition) shall take effect on July 1, 2012 and apply to power generated after that date.

(9) Secs. 58 (rooms tax definitions), 59 (meals tax definitions), and 60 (definition of independent living facility) shall take effect on passage and apply retroactively to July 1, 2012.

(Committee vote: 7-0-0)

(For House amendments, see House Journal for March 27, 2012, page 812; March 28, 2012, page 855.)

**AMENDMENTS TO PROPOSAL OF AMENDMENT OF THE  
COMMITTEE ON FINANCE TO H. 782 TO BE OFFERED BY  
SENATOR ILLUZZI**

Senator Illuzzi moves to amend the proposal of amendment of the Committee on Finance as follows

First: By adding a new section to be numbered Sec. 54a to read as follows:  
Sec. 54a. 32 V.S.A. § 9741(2) is amended to read:

(2) Drugs intended for human use, durable medical equipment, mobility enhancing equipment, and prosthetic devices and supplies, including blood, blood plasma, insulin, and medical oxygen, used in treatment intended to alleviate human suffering or to correct, in whole or in part, human physical disabilities; provided however, that toothbrushes, floss, and similar items of nominal value given by dentists and hygienists to patients during treatment are supplies used in treatment to alleviate human suffering or to correct, in whole or part, human physical disabilities and are exempt under this subdivision.

Second: In Sec. 61(1) before “21a” by striking “and”, and after “(low income property transfer tax exemption)” by adding the following: , and 54a (dental equipment)

**AMENDMENTS TO PROPOSAL OF AMENDMENT OF THE  
COMMITTEE ON FINANCE TO H. 782 TO BE OFFERED BY  
SENATOR ILLUZZI**

Senator Illuzzi moves to amend the proposal of amendment of the Committee on Finance as follows:

By striking out Secs. 51 (cloud computing moratorium) and 52 (cloud computing study committee) in their entirety and by adding new Secs. 51 and 52 to read as follows:

Sec. 51. SALES TAX ON PREWRITTEN SOFTWARE DOES NOT APPLY TO REMOTELY ACCESSED SOFTWARE

The general assembly finds that assessments for the sale of remotely accessed software were based on a technical bulletin, No. TB-54 (originally issued 9/13/10), issued by the department of taxes. The imposition of sales and use tax on prewritten computer software by 32 V.S.A. chapter 233 shall not be construed to apply to charges for remotely accessed software made after December 31, 2006. Taxes paid on such charges shall be refunded upon request if within the statute of limitations and documented to the satisfaction of the commissioner. "Charges for remotely accessed software" means charges for the right to access and use prewritten software run on underlying infrastructure that is not managed or controlled by the consumer. Enforcement of the sales and use tax imposed on the purchase of specified digital products pursuant to 32 V.S.A. § 9771(8) is not affected by this section.

Sec. 52. [Deleted.]

### **House Proposal of Amendment**

#### **S. 89**

An act relating to Medicaid for Working Persons with Disabilities.

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. ANALYSIS OF COSTS AND SAVINGS

(a) The agency of human services shall analyze the costs or savings associated with each of the following options:

(1) Entering into an agreement with the Social Security Administration in which the state pays the Medicare Part B premium for individuals enrolled in the Medicaid for Working People with Disabilities program.

(2) Increasing or eliminating the income limits or asset limits or both for eligibility for the Medicaid for Working People with Disabilities program.

(3) Disregarding spousal income or spousal assets or both when determining eligibility for the Medicaid for Working People with Disabilities program.

(4) Disregarding the income of a spouse enrolled in the Medicaid for Working People with Disabilities program when determining the other spouse's eligibility to receive Medicaid benefits.

(5) Permitting an individual receiving Medicaid pursuant to 33 V.S.A. § 1902(b) immediately preceding a hospitalization or period of temporary unemployment to maintain his or her Medicaid eligibility during that period, as long as the period of hospitalization or unemployment does not exceed 90 days.

(6) Allowing an individual's enrollment in the Medicaid for Working People with Disabilities program to establish his or her eligibility for developmental disability services under Vermont's Global Commitment to Health waiver.

(7) Using benefits counselors at public and nonprofit organizations to increase public awareness of the Medicaid for Working People with Disabilities program and other work incentives for individuals with disabilities.

(b) No later than January 15, 2013, the secretary of human services shall report to the house committees on human services and on appropriations and the senate committees on health and welfare and on appropriations the results of the analysis conducted pursuant to subsection (a) of this section, as well as recommendations about whether and how to pursue any or all of the options described in subdivisions (a)(1) through (7) of this section.

#### Sec. 2. SPOUSAL INCOME DISREGARD; RULEMAKING

(a) If supported by the analysis performed pursuant to Sec. 1(a)(4) of this act, the secretary of human services shall disregard the income of an individual receiving Medicaid pursuant to 33 V.S.A. § 1902(b) in determining the eligibility of such person's spouse to receive medical assistance pursuant to Title XIX (Medicaid) of the Social Security Act. The secretary shall implement the income disregard in a timely manner in order to ensure that it will be in place as soon as practicable when the new Medicaid eligibility and enrollment system is operational.

(b) The secretary of human services shall adopt rules pursuant to 3 V.S.A. chapter 25 as necessary to implement the income disregard.

#### Sec. 3. DEVELOPMENTAL DISABILITY SERVICES

If supported by the analysis performed pursuant to Sec. 1(a)(6) of this act, the secretary of human services shall deem an individual's enrollment in the Medicaid for Working People with Disabilities program as establishing his or her financial eligibility for developmental disability services under the state's Global Commitment to Health waiver; provided that the individual shall still be required to meet clinical eligibility and funding priority criteria in order to receive developmental disability services pursuant to the waiver. The secretary shall implement the change to the financial eligibility criteria in a timely manner in order to ensure that it will be in place as soon as practicable when the new Medicaid eligibility and enrollment system is operational.

#### Sec. 4. ORGAN AND TISSUE DONATION

(a) Subject to available resources, the commissioner of health shall undertake such actions as are necessary and appropriate, in his or her discretion, to coordinate the efforts of public and private entities involved with

the donation and transplantation of human organs and tissues in Vermont and to increase organ and tissue donation rates.

(b) No later than January 15, 2013, the commissioner shall report to the house committee on human services and the senate committee on health and welfare regarding the actions taken pursuant to subsection (a) of this section and any additional efforts that the commissioner recommends but believes would require legislation.

#### Sec. 5. ORGAN AND TISSUE DONATION WORKING GROUP

(a) There is created an organ and tissue donation working group to make recommendations to the general assembly and the governor relating to organ and tissue donations.

(b) The members of the organ and tissue donation working group shall include:

(1) the commissioner of health or designee, who shall chair the working group;

(2) the commissioner of motor vehicles or designee;

(3) a representative of the Vermont Medical Society;

(4) representatives from the federally designated organ procurement organizations serving Vermont; and

(5) other interested stakeholders.

(c) The working group shall develop recommendations regarding:

(1) coordination of the efforts of all public and private entities within the state that are involved with the donation and transplantation of human organs and tissues;

(2) the creation of a comprehensive statewide program for organ and tissue donations and transplants;

(3) the establishment of goals and strategies for increasing donation rates in Vermont of deceased and, where appropriate, live organs and tissues;

(4) other issues related to organ and tissue donation and transplantation.

(d) The working group shall receive administrative support from the department of health.

(e) The working group shall report its findings and recommendations to the house committees on human services, on health care, and on transportation and the senate committees on health and welfare and on transportation, and to the governor, by January 15, 2013, after which time the working group shall cease to exist. The report shall include a recommendation about whether the

department of health should establish an ongoing advisory council on organ and tissue donation.

Sec. 6. 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 organ and tissue donation and Medicaid for Working Persons with Disabilities”

**House Proposal of Amendment**

**S. 200**

An act relating to the reporting requirements of health insurers.

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. 18 V.S.A. § 9414a is added to read:

§ 9414a. ANNUAL REPORTING BY HEALTH INSURERS

(a) Health insurers with a minimum of 5,000 Vermont lives covered at the end of the preceding year or who offer insurance through the Vermont health benefit exchange pursuant to 33 V.S.A. chapter 18, subchapter 1 shall annually report the following information to the commissioner of financial regulation, in plain language, as an addendum to the health insurer’s annual statement:

(1) the health insurer’s state of domicile and the total number of states in which the insurer operates;

(2) the total number of Vermont lives covered by the health insurer;

(3) the total number of claims submitted to the health insurer;

(4) the total number of claims denied by the health insurer;

(5) the total number of denials of service by the health insurer at the preauthorization level, including:

(A) the total number of denials of service at the preauthorization level appealed to the health insurer at the first-level grievance and, of those, the total number overturned;

(B) the total number of denials of service at the preauthorization level appealed to the health insurer at any second-level grievance and, of those, the total number overturned;

(C) the total number of denials of service at the preauthorization level for which external review was sought and, of those, the total number overturned;

(6) the total number of adverse benefit determinations made by the health insurer, including:

(A) the total number of adverse benefit determinations appealed to the health insurer at the first-level grievance and, of those, the total number overturned;

(B) the total number of adverse benefit determinations appealed to the health insurer at any second-level grievance and, of those, the total number overturned;

(C) the total number of adverse benefit determinations for which external review was sought and, of those, the total number overturned;

(7) the total number of claims denied by the health insurer because the service was experimental, investigational, or an off-label use of a drug, was not medically necessary, involved access to a provider that is inconsistent with the limitations imposed by the plan, or was subject to a preexisting condition exclusion;

(8) the total number of claims denied by the health insurer as duplicate claims, as coding errors, or for services or providers not covered;

(9)(A) the names, positions, and salaries of all corporate officers and board members during the preceding year;

(B) the bonuses and compensatory benefits of all corporate officers and board members during the preceding year;

(10) the health insurer's marketing and advertising expenses during the preceding year;

(11) the health insurer's federal and Vermont-specific lobbying expenses during the preceding year;

(12) the amount and recipient of each political contribution made by the health insurer during the preceding year;

(13) the amount and recipient of dues paid during the preceding year by the health insurer to trade groups that engage in lobbying efforts or that make political contributions;

(14) the health insurer's legal expenses related to claims or service denials during the preceding year; and

(15) the amount and recipient of charitable contributions made by the health insurer during the preceding year.

(b) Health insurers may indicate the extent of overlap or duplication in reporting the information described in subsection (a) of this section.



(c) The department of financial regulation shall create a standardized form using terms with uniform, industry-standard meanings for the purpose of collecting the information described in subsection (a) of this section, and each health insurer shall use the standardized form for reporting the required information as an addendum to its annual statement. To the extent possible, health insurers shall report information specific to Vermont on the standardized form and shall indicate on the form where the reported information is not specific to Vermont.

(d)(1) The department of financial regulation shall post on its website the standardized form completed by each health insurer pursuant to this section.

(2) The department of Vermont health access shall post on the Vermont health benefit exchange established pursuant to 33 V.S.A. chapter 18, subchapter 1 an electronic link to the standardized forms posted by the department of financial regulation pursuant to subdivision (1) of this subsection.

(e) The commissioner of financial regulation may adopt rules pursuant to 3 V.S.A. chapter 25 to carry out the purposes of this act.

## Sec. 2. INTERIM WORKING GROUP ON INSURANCE FILINGS

(a) The department of financial regulation shall convene a working group on consumer-oriented insurance filings for the purpose of assessing and making recommendations to improve the accessibility and comprehensibility of filings required of health insurers by this act.

(b) The working group shall be composed of the following members:

(1) the commissioner of financial regulation or designee, who shall serve as facilitator;

(2) the state health care ombudsman;

(3) a representative of a consumer advocacy group, appointed by the commissioner of financial regulation; and

(4) two individuals representing the interests of Vermont's insurance industry, appointed by the commissioner of financial regulation.

(c)(1) The working group established by this section shall study the content and availability of filings required of health insurers by this act, including:

(A) the type of information currently disclosed, the format of such disclosures, and the accessibility of reported information to consumers; and

(B) the presentation of the reported information with regard to clarity and ease of consumer comprehension.

(2) The working group shall make recommendations for improving the format, content, accessibility, and delivery of filings required of health insurers by this act in a manner that enhances consumer comprehension and empowers informed decision-making.

(3) The working group shall submit a detailed report of its findings and recommendations to the senate committee on health and welfare and the house committee on health care on or before January 15, 2014. Where appropriate, the working group's recommendations shall include specific suggestions for administrative and legislative action, including additional information that should be reported by health insurers and how "lives covered," as used in 18 V.S.A. § 9414a(a)(2), should be defined.

(4) For the purposes of its study of these issues, the working group shall have administrative support from the department of financial regulation.

(d) The working group on consumer-oriented insurance filings shall cease to exist on January 31, 2014.

Sec. 3. 18 V.S.A. § 9421 is redesignated to read:

§ 9421. PHARMACY BENEFIT MANAGEMENT; REGISTRATION;  
INSURER AUDIT OF PHARMACY BENEFIT MANAGER  
ACTIVITIES

Sec. 4. 18 V.S.A. chapter 79 is added to read:

CHAPTER 79. PHARMACY AUDITS

§ 3801. DEFINITIONS

As used in this subchapter:

(1)(A) "Health insurer" shall have the same meaning as in section 9402 of this title and shall include:

(i) a health insurance company, a nonprofit hospital and medical service corporation, and health maintenance organizations;

(ii) an employer, a labor union, or another group of persons organized in Vermont that provides a health plan to beneficiaries who are employed or reside in Vermont; and

(iii) except as otherwise provided in section 3805 of this title, the state of Vermont and any agent or instrumentality of the state that offers, administers, or provides financial support to state government.

(B) The term "health insurer" shall not include Medicaid, the Vermont health access plan, Vermont Rx, or any other Vermont public health care assistance program.

(2) “Health plan” means a health benefit plan offered, administered, or issued by a health insurer doing business in Vermont.

(3) “Pharmacy” means any individual or entity licensed or registered under 26 V.S.A. chapter 36.

(4) “Pharmacy benefit management” means an arrangement for the procurement of prescription drugs at a negotiated rate for dispensation within this state to beneficiaries, the administration or management of prescription drug benefits provided by a health plan for the benefit of beneficiaries, or any of the following services provided with regard to the administration of pharmacy benefits:

(A) mail service pharmacy;

(B) claims processing, retail network management, and payment of claims to pharmacies for prescription drugs dispensed to beneficiaries;

(C) clinical formulary development and management services;

(D) rebate contracting and administration;

(E) certain patient compliance, therapeutic intervention, and generic substitution programs; and

(F) disease or chronic care management programs.

(5) “Pharmacy benefit manager” means an entity that performs pharmacy benefit management. The term includes a person or entity in a contractual or employment relationship with an entity performing pharmacy benefit management for a health plan.

(6) “Responsible party” means the entity, including a health insurer or pharmacy benefit manager, responsible for payment of claims for health care services other than:

(A) the individual to whom the health care services were rendered;

(B) that individual’s guardian or legal representative; or

(C) the agency of human services, its agents, and contractors.

#### § 3802. PHARMACY RIGHTS DURING AN AUDIT

Notwithstanding any provision of law to the contrary, whenever a health insurer, a third-party payer, or an entity representing a responsible party conducts an audit of the records of a pharmacy, the pharmacy shall have a right to all of the following:

(1) To have an audit involving clinical or professional judgment be conducted by a pharmacist licensed to practice pharmacy in one or more states,

who has at least a familiarity with Vermont pharmacy statutes and rules and who is employed by or working with an auditing entity.

(2) If an audit is to be conducted on-site at a pharmacy, the entity conducting the audit:

(A) shall give the pharmacy at least 14 days' advance written notice of the audit and the specific prescriptions to be included in the audit; and

(B) may not audit a pharmacy on Mondays or on weeks containing a federal holiday, unless the pharmacy agrees to alternative timing for the audit.

(3) Not to have an entity audit claims that:

(A) were submitted to the pharmacy benefit manager more than 18 months prior to the date of the audit, unless:

(i) required by federal law; or

(ii) the originating prescription was dated within the 24-month period preceding the date of the audit; or

(B) exceed 200 selected prescription claims.

(4) To have auditors enter the prescription department only when accompanied by or authorized by a member of the pharmacy staff, and not to have auditors disrupt the provision of services to the pharmacy's customers.

(5) Not to have clerical or recordkeeping errors, including typographical errors, scrivener's errors, and computer errors, on a required document or record deemed fraudulent in the absence of any financial harm or other evidence; provided that this subdivision shall not be construed to prohibit recoupment of actual fraudulent payments.

(6) If required under the terms of the contract, to have the auditing entity provide to the pharmacy, upon request, all records related to the audit in an electronic or digital media format.

(7) In order to validate a pharmacy record with respect to a prescription or refill, to have the properly documented records of a hospital or of any person authorized by law to prescribe medication transmitted by any means of communication.

(8) To use any prescription that meets the requirements to be a legal prescription under Vermont law, including prescriber notations such as "as directed" and "as needed" which require the professional judgment of the pharmacist to determine that the dose dispensed is within normal guidelines, to validate claims submitted for reimbursement for dispensing of original and refill prescriptions, or changes made to prescriptions.

(9) To dispense and receive reimbursement for the full quantity of the smallest commonly available commercially packaged product, including eye drops, insulin, and topical products, that contains the total amount required to be dispensed to meet the days' supply ordered by the prescriber, even if the full quantity of the commercially prepared package exceeds the maximum days' supply allowed.

(10) To determine the days' supply using the highest daily total dose that may be utilized by the patient pursuant to the prescriber's directions, and for prescriptions with a titrated dose schedule, to use the schedule to determine the days' supply.

(11) To be subject to recoupment only following the correction of a claim and to have recoupment limited to amounts paid in excess of amounts payable under the corrected claim.

(12) Not to have a demand for recoupment, repayment, or offset against future reimbursement for overpayment of a claim for dispensing of an original or refill prescription include the dispensing fee, unless the prescription that is the subject of the claim was not actual dispensed, was not valid, was fraudulent, or was outside the provisions of the contract; provided that this subdivision shall not apply if a pharmacy is required to correct an error in a claim submitted in good faith.

(13) Unless otherwise agreed to by contract, not to have an audit finding or demand for recoupment, repayment, or offset against future reimbursement made for any claim for dispensing of an original or refill prescription due to information missing from a prescription or to information not placed in a particular location when the information or location is not required or specified by state or federal law. The pharmacy shall be allowed 30 days to document and correct the missing information.

(14) In the event the actual quantity dispensed on a valid prescription for a covered beneficiary exceeded the allowable maximum days' supply of the product as defined in the contract, to have the amount to be recouped, repaid, or offset against future reimbursement limited to an amount calculated based on the quantity of the product dispensed found to be in excess of the allowed days' supply quantity and using the cost of the product as reflected on the original claim.

(15) Not to have the accounting practice of extrapolation used in calculating any recoupment or penalty, unless otherwise required by federal law or by federal health plans.

(16) Except for cases of federal Food and Drug Administration regulation or drug manufacturer safety programs, to be free of recoupments based on either:

(A) documentation requirements in addition to or in excess of state board of pharmacy documentation creation or maintenance requirements; or

(B) a requirement that a pharmacy or pharmacist perform a professional duty in addition to or in excess of state board of pharmacy professional duty requirements.

(17) Except for Medicare claims, to be subject to reversals of approval for drug, prescriber, or patient eligibility upon adjudication of a claim only in cases in which the pharmacy obtained the adjudication by fraud or misrepresentation of claim elements.

(18) To be audited under the same standards and parameters as other similarly situated pharmacies audited by the same entity.

(19) To have the preliminary audit report delivered to the pharmacy within 60 days following the conclusion of the audit.

(20) To have at least 30 days following receipt of the preliminary audit report to produce documentation to address any discrepancy found during the audit.

(21) To have a final audit report delivered to the pharmacy within 120 days after the end of the appeals period, as required by section 3803 of this title.

(22) Except for audits initiated to address an identified problem, to be subject to no more than one audit per calendar year, unless fraud or misrepresentation is reasonably suspected.

(23) Not to have audit information from an audit conducted by one auditing entity shared with or utilized by another auditing entity, except as required by state or federal law.

#### § 3803. APPEALS

(a) An entity that audits a pharmacy shall provide the pharmacy with a preliminary audit report, which shall be delivered to the pharmacy or to its corporate office of record within 60 days following completion of the audit.

(b) A pharmacy shall have 30 days following receipt of the preliminary audit report in which to respond to questions, provide additional documentation, and comment on and clarify audit findings. Receipt of the report shall be based on the date postmarked on the envelope or the date of a computer transmission, if transferred electronically.

(c) If an audit results in the dispute or denial of a claim, the entity conducting the audit shall allow the pharmacy to resubmit the claim using any commercially reasonable method, including U.S. mail, facsimile, or electronic

claims submission, as long as the period of time during which a claim may be resubmitted has not expired.

(d) Within 120 days after the completion of the appeals process established by this section, a final audit report shall be delivered to the pharmacy or to its corporate office of record. The final audit report shall include a disclosure of any funds recovered by the entity that conducted the audit.

(e) An entity that audits a pharmacy shall have in place a written appeals process by which a pharmacy may appeal the preliminary audit report and the final audit report, and shall provide the pharmacy with notice of the appeals process.

(f) A pharmacy shall be entitled to request a mediator agreed upon by both parties to resolve any disagreements; such request shall not be deemed to waive any existing rights of appeal.

#### § 3804. PHARMACY AUDIT RECOUPMENTS

(a) Recoupment of any disputed funds shall occur only after the final internal disposition of an audit, including the appeals process set forth in section 3803 of this title.

(b) An entity conducting an audit may not:

(1) Include dispensing fees in calculations of overpayments unless the prescription is determined to have been dispensed in error.

(2) Recoup funds for clerical or recordkeeping errors, including typographical errors, scribes' errors, and computer errors on a required document or record unless the error resulted in overpayment or the entity conducting the audit has evidence that the pharmacy's actions reasonably indicate fraud or other intentional or willful misrepresentation.

(3) Collect any funds, charge-backs, or penalties until the audit and all appeals are final, unless the entity conducting the audit is alleging fraud or other intentional or willful misrepresentation.

(4) Recoup an amount in excess of the actual overpayment.

(c) Recoupment on an audit shall be refunded to the responsible party as contractually agreed upon by the parties.

(d) The entity conducting the audit may charge or assess the responsible party, directly or indirectly, based on amounts recouped if both of the following conditions are met:

(1) the responsible party and the entity conducting the audit have entered into a contract that explicitly states the percentage charge or assessment to the responsible party; and

(2) a commission or other payment to an agent or employee of the entity conducting the audit is not based, directly or indirectly, on amounts recouped.

§ 3805. APPLICABILITY

The provisions of this chapter shall not apply to any audit or investigation undertaken by any state agency, including the office of the attorney general or the agency of human services, to a fiscal agent of the state, or to any audit, review, or investigation that involves alleged Medicaid fraud, Medicaid waste, Medicaid abuse, insurance fraud, or criminal fraud or misrepresentation.

Sec. 5. 24 V.S.A. § 2689 is added to read:

§ 2689. REIMBURSEMENT FOR AMBULANCE SERVICE PROVIDERS

(a) When an ambulance service provides emergency medical treatment to a person who is insured by a health insurance policy, plan, or contract that provides benefits for emergency medical treatment, the insurer shall reimburse the ambulance service directly, subject to the terms and conditions of the health insurance policy, plan, or contract.

(b) Nothing in this section shall be construed to interfere with coordination of benefits or to require a health insurer to provide coverage for services not otherwise covered under the insured's policy, plan, or contract.

(c) Nothing in this section shall preclude an insurer from negotiating with and subsequently entering into a contract with a nonparticipating ambulance service to establish rates of reimbursement for emergency medical treatment.

Sec. 6. EFFECTIVE DATES

(a) Secs. 1 and 2 of this act and this section shall take effect on July 1, 2012, and reporting by health insurers shall begin with the annual statement due under Title 8 for calendar year 2012.

(b) Secs. 3 and 4 of this act shall take effect on July 1, 2012 and shall apply to contracts entered into or renewed on and after that date.

(c) Sec. 5 of 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 pharmacy audits, reimbursement for ambulance services, and the reporting requirements of health insurers"

**House Proposal of Amendment**

**S. 223**

An act relating to health insurance coverage for early childhood developmental disorders, including autism spectrum disorders.



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. 8 V.S.A. § 4088i is amended to read:

§ 4088i. COVERAGE FOR DIAGNOSIS AND TREATMENT OF AUTISM SPECTRUM EARLY CHILDHOOD DEVELOPMENTAL DISORDERS

(a)(1) A health insurance plan shall provide coverage for the evidence-based diagnosis and treatment of ~~autism spectrum disorders~~ early childhood developmental disorders, including applied behavior analysis supervised by a nationally board-certified behavior analyst, for children, beginning at 18 months of age birth and continuing until the child reaches age six or enters the first grade, whichever occurs first 21.

(2) Coverage provided pursuant to this section by Medicaid, the Vermont health access plan, or any other public health care assistance program shall comply with all federal requirements imposed by the Centers for Medicare and Medicaid Services.

(3) Any benefits required by this section that exceed the essential health benefits specified under Section 1302(b) of the Patient Protection and Affordable Care Act, Public Law 111-148, as amended, shall not be required in a health insurance plan offered in the individual, small group, and large group markets on and after January 1, 2014.

(b) A health insurance plan shall not limit in any way the number of visits an individual eligible for coverage under subsection (a) of this section may have with an autism services provider. The amount, frequency, and duration of treatment described in this section shall be based on medical necessity and may be subject to a prior authorization requirement under the health insurance plan.

(c) A health insurance plan shall not impose greater coinsurance, co-payment, deductible, or other cost-sharing requirements for coverage of the diagnosis or treatment of ~~autism spectrum~~ early childhood developmental disorders than apply to the diagnosis and treatment of any other physical or mental health condition under the plan.

(d)(1) A health insurance plan shall provide coverage for applied behavior analysis when the services are provided or supervised by a licensed provider who is working within the scope of his or her license or who is a nationally board-certified behavior analyst.

(2) A health insurance plan shall provide coverage for services under this section delivered in the natural environment when the services are furnished by a provider working within the scope of his or her license or under the direct supervision of a licensed provider or, for applied behavior analysis, by or under the supervision of a nationally board-certified behavior analyst.

(e) Except for inpatient services, if an individual is receiving treatment for an early developmental delay, the health insurance plan may require treatment plan reviews based on the needs of the individual beneficiary, consistent with reviews for other diagnostic areas and with rules established by the department of financial regulation. A health insurance plan may review the treatment plan for children under the age of eight no more frequently than once every six months.

(f) As used in this section:

(1) “Applied behavior analysis” means the design, implementation, and evaluation of environmental modifications using behavioral stimuli and consequences to produce socially significant improvement in human behavior. The term includes the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.

~~(2) “Autism services provider” means any licensed or certified person providing treatment of autism spectrum disorders.~~

~~(3) “Autism spectrum disorders” means one or more pervasive developmental disorders as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including autistic disorder, pervasive developmental disorder not otherwise specified, and Asperger’s disorder.~~

~~(3) “Behavioral health treatment” means evidence-based counseling and treatment programs, including applied behavior analysis, that are:~~

~~(A) necessary to develop skills and abilities for the maximum reduction of physical or mental disability and for restoration of an individual to his or her best functional level, or to ensure that an individual under the age of 21 achieves proper growth and development;~~

~~(B) provided or supervised by a nationally board-certified behavior analyst or by a licensed provider, so long as the services performed are within the provider’s scope of practice and certifications.~~

~~(4) “Diagnosis of autism spectrum disorder early childhood developmental disorders” means medically necessary assessments, evaluations, ~~including neuropsychological evaluations; genetic testing; or other testing or tests~~ to determine whether an individual has ~~one or more~~ an early childhood developmental delay, including an autism spectrum disorders disorder.~~

~~(5) “Habilitative care” or “rehabilitative care” means professional counseling, guidance, services, and treatment programs, including applied behavior analysis and other behavioral health treatments, in which the covered individual makes clear, measurable progress, as determined by an autism~~

~~services provider, toward attaining goals the provider has identified~~ “Early childhood developmental disorder” means a childhood mental or physical impairment or combination of mental and physical impairments that results in functional limitations in major life activities, accompanied by a diagnosis defined by the Diagnostic and Statistical Manual of Mental Disorders (DSM) or the International Classification of Disease (ICD). The term includes autism spectrum disorders, but does not include a learning disability.

(6) “Evidence-based” means the same as in 18 V.S.A. § 4621.

(7) “Health insurance plan” means Medicaid, the Vermont health access plan, and any other public health care assistance program, any individual or group health insurance policy, any hospital or medical service corporation or health maintenance organization subscriber contract, or any other health benefit plan offered, issued, or renewed for any person in this state by a health insurer, as defined in 18 V.S.A. § 9402. The term does not include benefit plans providing coverage for specific diseases or other limited benefit coverage.

~~(7)(8)~~ “(8) “Medically necessary” means any care, treatment, intervention, service, or item that is prescribed, provided, or ordered by a physician licensed pursuant to chapter 23 of Title 26 or by a psychologist licensed pursuant to chapter 55 of Title 26 if such treatment is consistent with the most recent relevant report or recommendations of the American Academy of Pediatrics, the American Academy of Child and Adolescent Psychiatry, or another professional group of similar standing describes health care services that are appropriate in terms of type, amount, frequency, level, setting, and duration to the individual’s diagnosis or condition, are informed by generally accepted medical or scientific evidence, and are consistent with generally accepted practice parameters. Such services shall be informed by the unique needs of each individual and each presenting situation, and shall include a determination that a service is needed to achieve proper growth and development or to prevent the onset or worsening of a health condition.

(9) “Natural environment” means a home or child care setting.

(10) “Pharmacy care” means medications prescribed by a licensed physician and any health-related services deemed medically necessary to determine the need for or effectiveness of a medication.

(11) “Psychiatric care” means direct or consultative services provided by a licensed physician certified in psychiatry by the American Board of Medical Specialties.

(12) “Psychological care” means direct or consultative services provided by a psychologist licensed pursuant to 26 V.S.A. chapter 55.

~~(8)~~(13) “Therapeutic care” means services provided by licensed or certified speech language pathologists, occupational therapists, or physical therapists, ~~or social workers.~~

~~(9)~~(14) “Treatment of disorders for early developmental disorders” means ~~the following~~ evidence-based care and related equipment prescribed, provided, or ordered for an individual ~~diagnosed with one or more autism spectrum disorders~~ by a ~~physician licensed pursuant to chapter 23 of Title 26~~ licensed health care provider or a ~~licensed psychologist licensed pursuant to chapter 55 of Title 26 if such physician or psychologist who~~ licensed psychologist who determines the care to be medically necessary, including:

- (A) ~~habilitative or rehabilitative care~~ behavioral health treatment;
- (B) pharmacy care;
- (C) psychiatric care;
- (D) psychological care; and
- (E) therapeutic care.

~~(e)~~(g) Nothing in this section shall be construed to affect any obligation to provide services to an individual under an individualized family service plan, individualized education program, or individualized service plan. A health insurance plan shall not reimburse services provided under 16 V.S.A. § 2959a.

(h) It is the intent of the general assembly that the department of financial regulation facilitate and encourage health insurance plans to bundle co-payments accrued by beneficiaries receiving services under this section to the extent possible.

## Sec. 2. REPORT

The agency of human services shall submit a report, in consultation with Autism Speaks and health insurers, to the senate committee on health and welfare and the house committee on health care on or before January 15, 2014 regarding the implementation of this act, including an assessment of whether eligible individuals are receiving evidence-based services, how such services may be improved, and the fiscal impact of these services.

## Sec. 3. EFFECTIVE DATES

(a) This act shall take effect on July 1, 2012 and shall apply to Medicaid, the Vermont health access plan, and any other public health care assistance program on or after July 1, 2012.

(b) The provisions of this act shall apply to all other health insurance plans on or after October 1, 2012, on such date as a health insurer issues, offers, or renews the health insurance plan, but in no event later than October 1, 2013.

## House Proposal of Amendment

### S. 244

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

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

First: In Sec. 2, in subdivision (b)(1), by striking out “pursuant to 23 V.S.A. §§ 674 or 676”

Second: In Sec. 2, in subsection (e), by striking out “department shall reinstate the person’s operator’s license” and inserting in lieu thereof person shall be eligible to have his or her license reinstated.

Third: In Sec. 2, by striking subsection (k) and inserting in lieu thereof a new subsection (k) to read:

(k) The court administrator, the director of the court diversion program, and the commissioner of motor vehicles shall jointly report to the general assembly on or before December 15, 2014 on the following:

- (1) implementation of the DLS diversion program;
- (2) the number of people enrolled in the program;
- (3) the number of people who have successfully completed the program;
- (4) the number of licenses reinstated;
- (5) the number of fines and amounts modified;
- (6) additional money collected by the state as a result of the program;
- (7) the advisability of implementing the program through roadside stops for driving without a license; and
- (8) extending the program to persons who are currently prohibited from participation pursuant to subdivision (b)(2) of this section.

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

Sec. 2a. 23 V.S.A. § 674(a)(3) is added to read:

(3) Violations of section 676 of this title that occurred prior to the date a person successfully completes the driving with license suspended diversion program shall not be counted as prior offenses under subdivision (2) of this subsection.

Fifth: By adding a Sec. 2b to read as follows:

Sec. 2b. 23 V.S.A. § 2502 is amended to read:

§ 2502. POINT ASSESSMENT; SCHEDULE

(a) Any person operating a motor vehicle shall have points assessed against his or her driving record for convictions for moving violations of the indicated motor vehicle statutes in accord with the following schedule: (All references are to Title 23 of the Vermont Statutes Annotated.)

\* \* \*

(4) Five points assessed for:

\* \* \*

(D)	<del>§ 676.</del>	<del>Operating after suspension, revocation or refusal—civil violation;</del>
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\* \* \*

(5) Ten points assessed for:

(A)	<del>§ 674.</del>	<del>Operating after suspension or revocation of license;</del>
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\* \* \*

Sixth: By adding a Sec. 2c to read as follows:

Sec. 2c. 23 V.S.A. § 2506 is amended to read:

§ 2506. PROCEDURE

When a sufficient number of points have been acquired, the commissioner shall suspend the license of an operator or the privilege of an unlicensed person, or nonresident to operate a motor vehicle, upon not less than 10 days' notice, and upon hearing, if requested for verification of the conviction records. The suspension shall be for 10 days for an accumulation of 10 points, 30 days for 15 points, 90 days for 20 points and for a period increasing by 30 days for each additional 5 points; except the suspension period for a conviction for first offense of sections ~~674~~, 1091, 1094, 1128, and 1133 of this title shall be 30 days; for a second conviction 90 days and for a third or subsequent six months, or the suspension period under the point values, whichever is greater. If a fatality occurs, the suspension shall be for a period of one year in addition to the suspension under the point values. For purposes of this section, a month shall be considered as 30 days and one year shall equal 365 days.

Seventh: By adding a Sec. 5 to read as follows:

Sec. 5. SUNSET

This act shall be repealed on July 1, 2015.

**House Proposal of Amendment**

## S. 251

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

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

By adding four new sections after Sec. 11 to be sections 12–15 to read as follows:

\* \* \* Gold Star and Next-of-kin Registration Plates \* \* \*

Sec. 12. 23 V.S.A. § 304(k) is amended to read:

(k)(1) The commissioner of motor vehicles shall, upon proper application, issue special gold star and next-of-kin plates ~~to gold star family members, as defined for use only on vehicles registered at the pleasure car rate and on trucks registered for less than 26,001 pounds and excluding vehicles registered under the International Registration Plan, as follows:~~

(A) Gold star plates shall be issued to the widow or widower, parents, and next of kin as defined in 10 U.S.C. § 1126(d) of members of the armed forces who lost their lives under the circumstances described in 10 U.S.C. § 1126, for use only on vehicles registered at the pleasure car rate and on trucks registered for less than 26,001 pounds and excluding vehicles registered under the International Registration Plan 1126(a).

(B) Next-of-kin plates shall be issued to the widow or widower, parents, and next of kin as defined in 10 U.S.C. § 1126(d) of members of the armed forces not eligible for gold star plates under subdivision (A) of this subdivision (1) who lost their lives while serving on active duty or on active duty for training, or while assigned in a reserve or national guard unit in drill status, or as a result of injury or illness incurred during such service or assignment.

(2) The type and style of the gold star ~~plate~~ and next-of-kin plates shall be determined by the commissioner and the Vermont office of veterans' affairs, except that a gold star shall appear on one side of ~~the plate~~ gold star plates and a distinct emblem shall be approved for next-of-kin plates. An applicant shall apply on a form prescribed by the commissioner, and the applicant's eligibility will be certified by the office of veterans' affairs. A plate shall be reissued only to the original holder of the plate. The commissioner may adopt rules to implement the provisions of this subsection. Except for new or renewed registrations, applications for the issuance of gold star or next-of-kin plates shall be processed in the order received by the department subject to normal workflow considerations.

\* \* \* Emergency Services; Recovery of Expenses \* \* \*

Sec. 13. 23 V.S.A. § 1112 is amended to read:

§ 1112. CLOSED HIGHWAYS

(a) Except by the written permit of the authority responsible for the closing, no person shall drive any vehicle over any highway across which there is a barrier or a sign indicating that the highway is closed to public travel.

(b) A person, including a municipal, county, or state entity, that deploys police, fire, ambulance, rescue, or other emergency services in order to aid a stranded operator of a vehicle, or to move a disabled vehicle, operated on a closed highway in violation of this section, may recover from the operator in a civil action the costs of providing any such services.

\* \* \* Operating on a Closed Highway; Assessment of Points \* \* \*

Sec. 14. 23 V.S.A. § 2502 is amended to read:

§ 2502. POINT ASSESSMENT; SCHEDULE

(a) Any person operating a motor vehicle shall have points assessed against his or her driving record for convictions for moving violations of the indicated motor vehicle statutes in accord with the following schedule: (All references are to Title 23 of the Vermont Statutes Annotated.)

(1) Two points assessed for:

\* \* \*

- |                                     |   |
|-------------------------------------|---|
| (LL) § 1095.                        | <del>Operating with television set installed</del><br><u>Entertainment picture visible to the operator;</u> |
| (MM) § 1099.                        | Texting prohibited—first offense;   |
| <u>(NN) § 1112.</u>                 | <u>Closed highways;</u>   |
| <del>(NN)</del> <u>(OO)</u> § 1113. | Illegal backing;  |
| <del>(OO)</del> <u>(PP)</u> § 1114. | Illegal riding on motorcycles;  |
| <del>(PP)</del> <u>(QQ)</u> § 1115. | Illegal operation of motorcycles on roadways laned for traffic;   |
| <del>(QQ)</del> <u>(RR)</u> § 1116. | Clinging to other vehicles;   |
| <del>(RR)</del> <u>(SS)</u> § 1117. | Illegal footrests and handlebars;   |
| <del>(SS)</del> <u>(TT)</u> § 1118. | Obstructing the driver's view;  |
| <del>(TT)</del> <u>(UU)</u> § 1119. | Improper opening and closing vehicle doors;   |
| <del>(UU)</del> <u>(VV)</u> § 1121. | Coasting prohibited;  |



~~(VV)~~(WW) § 1122. Following fire apparatus prohibited;  
~~(WW)~~(XX) § 1123. Driving over fire hose;  
~~(XX)~~(YY) § 1124. Position of operator;  
~~(YY)~~(ZZ) § 1127. Unsafe control in presence of horses and  
cattle;  
~~(ZZ)~~(AAA) § 1131. Failure to give warning signal;  
~~(AAA)~~(BBB) § 1132. Illegal driving on sidewalk;  
~~(BBB)~~(CCC) § 1243. Lighting requirements;  
~~(CCC)~~(DDD) § 1256. Motorcycle headgear;  
~~(DDD)~~(EEE) § 1257. Face protection;  
~~(EEE)~~(FFF) § 800. Operating without financial  
responsibility;  
~~(FFF)~~(GGG) All other moving violations which have  
no specified points;

\* \* \*

\* \* \* Conforming Change \* \* \*

Sec. 15. 23 V.S.A. § 3501(5) is amended to read:

(5) "All-terrain vehicle" or "ATV" means any nonhighway recreational vehicle, except snowmobiles, having no less than two low pressure tires (10 pounds per square inch, or less), not wider than 60 inches with two-wheel ATVs having permanent, full-time power to both wheels, and having a dry weight of less than 1,700 pounds, when used for cross-country travel on trails or on any one of the following or a combination thereof: land, water, snow, ice, marsh, swampland, and natural terrain. An ATV on a public highway shall be considered a motor vehicle, as defined in section 4 of this title, only for the purposes of those offenses listed in subdivisions 2502(a)(1)(H), (N), (R), (U), (Y), (FF), (GG), (II), and ~~(ZZ)~~(BBB); (2)(A) and (B); (3)(A), (B), (C), and (D); (4)(A) and (B) and (5) of this title and as provided in section 1201 of this title. An ATV shall not include an electric personal assistive mobility device.

and by renumbering the remaining section to be numerically correct.

## **House Proposal of Amendment to Senate Proposal of Amendment**

### **H. 37**

An act relating to telemedicine

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

First: In Sec. 4, in 18 V.S.A. § 9361, in subsection (b), after the (b), by inserting two new sentences to read as follows: A patient receiving teleophthalmology or teledermatology by store and forward means shall be informed of the right to receive a consultation with the distant site health care provider and shall receive a consultation with the distant site health care provider upon request. If requested, the consultation with the distant site health care provider may occur either at the time of the initial consultation or within a reasonable time of the patient’s notification of the results of the initial consultation.

Second: In Sec. 5, Rulemaking, in subsection (b), by striking out “banking, insurance, securities, and health care administration” and inserting in lieu thereof financial regulation

## **House Proposal of Amendment to Senate Proposal of Amendment**

### **H. 503**

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

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

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

#### **Sec. 5. CONSTABLES; LAW ENFORCEMENT AUTHORITY**

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

Sec. 6. VERMONT CRIMINAL JUSTICE TRAINING COUNCIL;  
CONSTABLE FIELD TRAINING

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

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

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

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

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

(c) Powers and duties. The study shall:

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

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

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

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

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

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

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

Sec. 8. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

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

### **House Proposal Of Amendment**

#### **H. 759**

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

The House requests that the Senate recede from its proposal of amendment.

(For text of Senate Proposal of Amendment, see Senate Journal of April 28, 2012, page 724.)

### **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**

**H. 792.**

An act relating to approval of amendments to the charter of the city of Burlington.

**Reported favorably by Senator Flory for the Committee on Government Operations.**

(Committee vote: 4-0-1)

(No House amendments.)

**H. 793.**

An act relating to approval of amendments to the charter of the Winooski incorporated school district.

**Reported favorably by Senator Pollina for the Committee on Government Operations.**

(Committee vote: 4-0-1)

(No House amendments.)

**Favorable with Proposal of Amendment**

**H. 552.**

An act relating to payment of workers' compensation benefits by electronic payroll card.

**Reported favorably with recommendation of proposal 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:

\* \* \* Vermont internship program \* \* \*

Sec. 1. 3 V.S.A. § 330 is amended to read:

§ 330. VERMONT INTERNSHIP PROGRAM

(a) A Vermont internship program is created for permanent or limited employees in state government:

(1) to attract persons to train for and then serve state government in occupations where the state anticipates difficulty attracting or retaining qualified employees;

(2) to provide an enriched experience designed to bring trainees to full class performance levels in a logical and systematic manner;

(3) to support equal employment opportunity; and

(4) to provide upward mobility, lateral movement or other opportunities for current employees who have demonstrated high potential.

(b) Position authorization.

\* \* \*

(3) Each position authorized by the commissioner shall be established for a specific period of time not to exceed ~~five years~~ two years without the

specific authorization of the commissioner of human resources. In accordance with the approved plan, or where the commissioner deems it appropriate, Vermont internship program positions shall revert to the commissioner for reallocation.

\* \* \*

(5) Requests for positions under the Vermont internship program shall be in a form and following procedures prescribed by the commissioner. ~~All requests shall certify that all reasonable efforts shall be made to insure a vacant position will be available to each Vermont internship program participant upon completion of the program.~~

\* \* \*

(e)(1) Development of candidates. All Vermont internship program members shall have individual development plans approved by the commissioner of human resources.

\* \* \*

(3) The department or agency making use of a Vermont internship program for state government shall conduct regular reviews of performance and progression of capabilities and shall submit written documentation of this on a form and using procedures provided for by the commissioner of human resources.

(f)(1) Rights of Vermont internship program members. Vermont internship program participants ~~shall be deemed to be classified state employees in their initial probationary period~~ who are otherwise classified state employees shall continue their status for the entire period of their participation, and continuation of one's training in Vermont internship programs shall be in the discretion of the appointing authority. They shall be paid the minimum rate for comparable positions in the classified service, unless otherwise authorized by the commissioner of human resources.

(2) Vermont internship program participants shall agree, if a condition of the submitted training plan of the department, to work in a state position consistent with the approved plan after completion of the planned Vermont internship for a period of time equal to the length of Vermont internship program participation. Any Vermont internship program member who does not satisfy this requirement shall reimburse the state for all tuition, fees and/or expenses paid by the state in connection with Vermont internship program participation, including salary paid during periods of paid educational leave, unless waived by the commissioner of human resources.

\* \* \*

Sec. 1a. 3 V.S.A. § 330a is added to read:

§ 330a. STUDENT INTERN PROGRAM

The commissioner of human resources shall coordinate requests from agency secretaries and department commissioners for the hiring of student interns for short-term assignments and training that will inform and enhance their educational choices and career opportunities. In order to receive approval, the secretary or commissioner shall submit a written request to the department of human resources and to the applicable collective bargaining representative identifying the work to be performed, length of service, and the candidate's information, and shall identify the available funding and proposed rate of pay. The commissioner of human resources shall ensure that the intern is not performing work normally assigned to any employee who has been displaced or laid off from classified service. Interns may be in high schools if they have completed at least their junior year, may be college students, or have graduated from college or graduate school within two years of this placement.

\* \* \* Commissioner of labor \* \* \*

Sec. 2. 21 V.S.A. § 7 is added to read:

§ 7. POWERS OF COMMISSIONER

In addition to all other powers granted the commissioner by this title, the commissioner or his or her designee may, upon presenting appropriate credentials, at reasonable times, enter and inspect any place of business or employment, question any employees, and investigate any facts, conditions, or matters necessary and material to the administration of chapters 9 and 17 of this title. If entry is refused the commissioner may apply, without notice to the employer, to the civil division of the superior court of Washington County for an order to enforce the rights given the commissioner under this section.

\* \* \* Wage claims \* \* \*

Sec. 3. 14 V.S.A. § 1205 is amended to read:

§ 1205. CLASSIFICATION OF CLAIMS

(a) If the applicable assets of the estate are insufficient to pay all claims in full, the executor or administrator shall make payment in the following order:

(1) costs and expenses of administration;

(2) reasonable funeral, burial, and headstone expenses, and perpetual care, not to exceed \$3,800.00 exclusive of governmental payments, and reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him or her;

(3) ~~all outstanding wages due employees of the decedent which have been earned within three months prior to the death of the decedent, not to exceed \$300.00 to each claimant;~~

(4) ~~all other claims; including the balance of wages due but unpaid under subdivision (3) of this subsection.~~

\* \* \*

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.

\* \* \*

\* \* \* Employment practices \* \* \*

Sec. 4. 21 V.S.A. § 342 is amended to read:

§ 342. WEEKLY BIWEEKLY AND SEMIMONTHLY PAYMENT OF WAGES; SCHOOL EMPLOYEES; CALENDAR YEAR

(a)(1) Any person having employees doing and transacting business within the state shall pay each week, in lawful money or checks, the wages earned by each employee to a day not more than six days prior to the date of such payment.

(2) After giving written notice to the employees, any person having employees doing and transacting business within the state may, notwithstanding subdivision (1) of this subsection, pay ~~bi-weekly~~ biweekly or ~~semi-monthly~~ semimonthly in lawful money or checks, each employee the wages earned by the employee to a day not more than six days prior to the date of the payment. If a collective bargaining agreement so provides, the payment may be made to a day not more than 13 days prior to the date of payment.

(3) Any person having employees within the state who fails to make timely payment upon separation from employment in accordance with this section may be assessed an administrative penalty of up to \$100.00 for each day that wages remain unpaid, not to exceed \$500.00 per employee.

\* \* \*

Sec. 5. 21 V.S.A. § 348 is added to read:

§ 348. RETALIATION PROHIBITED

(a) An employer shall not discharge or in any other manner retaliate against an employee because:

(1) The employee lodged a complaint of a violation of this subchapter.

(2) The employee has cooperated with the commissioner or commissioner's designee in an investigation of a violation of this subchapter.

(3) The employer believes that the employee may lodge a complaint or cooperate in an investigation of a violation of this subchapter.

(b) Any person aggrieved by a violation of this section may bring an action in the civil division of the superior court seeking compensatory and punitive damages or equitable relief, including restraint of prohibited acts, restitution of wages or benefits, reinstatement, costs, reasonable attorney's fees, and other appropriate relief.

Sec. 6. 21 V.S.A. § 397 is added to read:

§ 397. RETALIATION PROHIBITED

(a) An employer shall not discharge or in any other manner retaliate against an employee because:

(1) The employee lodged a complaint of a violation of this subchapter.

(2) The employee has cooperated with the commissioner or commissioner's designee in an investigation of a violation of this subchapter.

(3) The employer believes that the employee may lodge a complaint or cooperate in an investigation of a violation of this subchapter.

(b) Any person aggrieved by a violation of this section may bring an action in the civil division of the superior court seeking compensatory and punitive damages or equitable relief, including restraint of prohibited acts, restitution of wages or benefits, reinstatement, costs, reasonable attorney's fees, and other appropriate relief.

Sec. 7. 21 V.S.A. § 385a is added to read:

§ 385a. REQUIRED APPAREL

(a) An employer that is a common carrier engaged in interstate commerce that requires an employee to wear uniform apparel which displays the employer's trademark, logo, or other clearly identifying characteristic shall furnish to employees based in this state the uniform apparel. The amount provided shall be reasonable for the needs of the position.

(b) An employer that requires an employee to wear clothing sold or produced by the employer shall furnish the clothing free of charge to the employee.

(c) An employer may require an employee to return any uniform or clothing upon separation from employment.

\* \* \* Workers' compensation \* \* \*

Sec. 8. 21 V.S.A. § 624 is amended to read:

§ 624. DUAL LIABILITY; CLAIMS, SETTLEMENT PROCEDURE

\* \* \*

(e)(1) In an action to enforce the liability of a third party, the injured employee may recover any amount which the employee or the employee's personal representative would be entitled to recover in a civil action. Any recovery against the third party for damages resulting from personal injuries or death only, after deducting ~~expenses of recovery~~ attorney's fees, and litigation expenses and costs, shall first reimburse the employer or its workers' compensation insurance carrier for any amounts paid or payable under this chapter to date of recovery, and the balance shall forthwith be paid to the employee or the employee's dependents or personal representative and shall be treated as an advance payment by the employer on account of any future payment of compensation benefits. Reimbursement required under this subsection, except to prevent double recovery, shall not reduce the employee's recovery of any benefit or payment provided by a plan or policy that was privately purchased by the injured employee, including uninsured-underinsured motorist coverage, or any other first party insurance payments or benefits.

(2) In addition to the limitations on recovery set forth in subdivision (1) of this subsection, if a lien or subrogation claim that arose out of the payment of medical expenses or benefits under this chapter exists in respect to a claim of personal injury or death and the injured employee's recovery is diminished by comparative fault or the inability to collect the full value of the claim due to limited liability insurance or other cause, the lien or subrogation claim shall be diminished in the same proportion as the injured employee's recovery is diminished. The settlement agreement may include reference to the amount by which the employee's recovery is diminished by comparative fault or the inability to collect the full value of the claim due to limited liability insurance or other cause. In the event the agreement or release does not contain such information, the amount by which the recovery is compromised or diminished shall be established by affidavit of the employee.

\* \* \*



Sec. 8a. 12 V.S.A. § 5653 is amended to read:

§ 5653. LIMITATIONS

(a) This chapter applies to all arbitration agreements to the extent not inconsistent with the laws of the United States. However, this chapter does not apply to labor interest arbitration, ~~nor to arbitration agreements contained in a contract of insurance,~~ nor to grievance arbitration under 3 V.S.A. chapter 28 of ~~Title 3~~. “Labor interest arbitration” means the method of concluding labor negotiations by having a disinterested person determine what will be the terms of an agreement.

\* \* \*

Sec. 9. 21 V.S.A. § 643a is amended to read:

§ 643a. DISCONTINUANCE OF BENEFITS

Unless an injured worker has successfully returned to work, an employer shall notify both the commissioner and the employee prior to terminating benefits under either section 642 or 646 of this title. The notice of intention to discontinue payments shall be filed on forms prescribed by the commissioner and shall include the date of the proposed discontinuance, the reasons for it, and, if the employee has been out of work for 90 days, a verification that the employer offered vocational rehabilitation screening and services as required under this chapter. All relevant evidence, including evidence that does not support discontinuance in the possession of the employer not already filed, shall be filed with the notice. The liability for the payments shall continue for ~~seven days after the notice is received by the commissioner and the employee~~ at least 14 days after the notice is received by the commissioner and the employee, during which time the claimant may file with the commissioner an objection to discontinuance. The notice shall include a provision that the injured worker may object to the discontinuance with the commissioner with supporting evidence or arguments. If the employee files an objection with an explanation, the liability for the payments shall continue until a decision is issued by the commissioner. ~~Those payments~~ Payments made after the notice of discontinuance is received by the commissioner shall be made without prejudice to the employer and may be deducted from any amounts due pursuant to section 648 of this title if the commissioner determines that the discontinuance is warranted or if otherwise ordered by the commissioner. Every notice shall be reviewed by the commissioner to determine the sufficiency of the basis for the proposed discontinuance. If, after review of all the evidence in the file, the commissioner finds that a preponderance of all the evidence in the file does not reasonably support the proposed discontinuance, the commissioner shall order that payments continue until a formal hearing is held and a decision is rendered. Prior to a formal hearing, an injured worker

may request reinstatement of benefits by providing additional new evidence to the department that establishes that a preponderance of all evidence now supports the claim. If the commissioner's decision, after a hearing, is that the employee was not entitled to any or all benefits paid between the discontinuance and the final decision, upon request of the employer, the commissioner may order that the employee repay all benefits to which the employee was not entitled. The employer may enforce a repayment order in any court of law having jurisdiction.

Sec. 10. 21 V.S.A. § 692 is amended to read:

§ 692. PENALTIES; FAILURE TO INSURE; STOP WORK ORDERS

\* \* \*

(b) Stop-work orders. If an employer fails to comply with the provisions of section 687 of this title after investigation by the commissioner, the commissioner shall issue an emergency order to that employer to stop work until the employer has secured workers' compensation insurance. If the commissioner determines that issuing a stop-work order would immediately threaten the safety or health of the public, the commissioner may permit work to continue until the immediate threat to public safety or health is removed. The commissioner shall document the reasons for permitting work to continue, and the document shall be available to the public. In addition, the employer shall be assessed an administrative penalty of not more than \$250.00 for every day that the employer fails to secure workers' compensation coverage after the commissioner issues an order to obtain insurance and may also be assessed an administrative penalty of not more than \$250.00 for each employee for every day that the employer fails to secure workers' compensation coverage as required in section 687 of this title. When a stop-work order is issued, the commissioner shall post a notice at a conspicuous place on the work site of the employer informing the employees that their employer failed to comply with the provisions of section 687 of this title and that work at the work site has been ordered to cease until workers' compensation insurance is secured. If an employer fails to comply with a stop-work order, the commissioner may seek injunctive relief in the civil division of the superior court by filing a complaint and supporting affidavit. The court shall issue without notice and hearing an ex parte order temporarily or permanently enjoining the employer from employing workers. The ex parte order shall be provided to the employer. Thereafter, the court may modify or vacate the order at the request of the commissioner or employer. The stop-work order shall be rescinded as soon as the commissioner determines that the employer is in compliance with section 687 of this title. An employer against whom a stop-work order has been issued, or who has not been in compliance with section 687 of this title, unless the failure to comply was inadvertent or excusable, is prohibited from

contracting, directly or indirectly, with the state or any of its subdivisions for a period of up to three years following the date of the issuance of the stop-work order, as determined by the commissioner in consultation with the commissioner of buildings and general services or the secretary of transportation, as appropriate. Either the secretary or the commissioner, as appropriate, shall be consulted in any contest of the prohibition of the employer from contracting with the state or its subdivisions.

\* \* \*

\* \* \* Unemployment compensation \* \* \*

Sec. 11. 21 V.S.A. § 1101 is amended to read:

§ 1101. APPRENTICESHIP DIVISION AND COUNCIL

The apprenticeship division and state apprenticeship council, hereinafter referred to as the "council," shall be located within the department of labor. The commissioner of labor shall supervise the work of the division, and shall be the chair of the council. The council shall consist of ~~10~~ 12 members, four ex officio members and ~~six~~ eight members who shall be appointed by the governor. Of the ex officio members, one shall be the commissioner of labor, one shall be the commissioner of public safety, or designee, one shall be the commissioner of education or designee, and one shall be the director of the apprenticeship division who shall act as secretary of the council without vote. The council shall be composed of persons familiar with apprenticeable occupations. Of the ~~appointive~~ appointed members, three shall be individuals who ~~on account of previous vocation, employment, occupation, or affiliation can be classed as~~ represent employers and, three shall be individuals who ~~on account of previous vocation, employment, occupation, or affiliation can be classed as employees~~ represent employees or employee organizations, and two shall be members of the public. Appointment of the employer and the employee members shall be made for the term of three years except the employer and employee members first appointed shall be appointed for the term of one, two, and three years respectively. The governor shall annually designate one member of the council as chair. Each member of the council who is not a salaried official or employee of the state shall be entitled to compensation and expenses as provided in 32 V.S.A. § 1010.

Sec. 12. 21 V.S.A. § 1301 is amended to read:

§ 1301. DEFINITIONS

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

\* \* \*

(6)(A)(i) "Employment," subject to the other provisions of this subdivision (6), means service within the jurisdiction of this state, performed prior to January 1, 1978, which was employment as defined in this subdivision prior to such date and, subject to the other provisions of this subdivision, service performed after December 31, 1977, by an employee, as defined in subsections 3306(i) and (o) of the Federal Unemployment Tax Act, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied. Services partly within and partly without this state may by election as hereinbefore provided be treated as if wholly within the jurisdiction of this state. And whenever an employing unit shall have elected to come under the provisions of a similar act of a state where a part of the services of an employee are performed, the commissioner, upon his or her approval of said election as to any such employee, may treat the services covered by said approved election as having been performed wholly without the jurisdiction of this state.

\* \* \*

(C) The term "employment" shall not include:

\* \* \*

(xxi) Service performed by a direct seller if the individual is in compliance with all the following:

(I) The individual is engaged in:

(aa) the trade or business of selling or soliciting the sale of consumer products, including services or other intangibles, in the home or a location other than in a permanent retail establishment, including whether the sale or solicitation of a sale is to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis for resale by the buyer or any other person.

(bb) the trade or business of the delivery or distribution of newspapers or shopping news that are delivered on a weekly or less frequent basis, including any services directly related to such trade or business.

(II) Substantially all the remuneration, whether or not received in cash, for the performance of the services described in subdivision (I) of this subdivision (C)(xxi) is directly related to sales or other output, including the performance of services, rather than to the number of hours worked.

(III) The services performed by the individual are performed pursuant to a written contract between the individual and the person for whom the services are performed, and the contract provides that the individual will not be treated as an employee for federal and state tax purposes.

Sec. 13. 21 V.S.A. § 1301a is amended to read:

§ 1301a. DEPARTMENT OF LABOR; COMPOSITION

The department of labor, created by ~~section 3 V.S.A. § 212 of Title 3~~, shall consist of a commissioner of labor, the Vermont employment security board, the Vermont workforce development division, the unemployment insurance and wages division, the economic and labor market information division, the workforce development council which serves as the statewide workforce investment board, and the workers' compensation and safety division. The chair of the employment security board shall be the commissioner of labor ex officio. The deputy commissioner of labor or a designee chosen by the commissioner may serve as chair in the absence of the commissioner as the commissioner's designee.

Sec. 14. [Deleted.]

Sec. 15. [Deleted.]

Sec. 15a. 21 V.S.A. § 349 is added to read:

§ 349. 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, except that "plant" shall not be limited to renewable energy.

(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. § 349 (payment of prevailing wages) shall apply to wages paid on and after passage of this act.

Sec. 16. 21 V.S.A. § 1347 is amended to read:

§ 1347. NONDISCLOSURE OR MISREPRESENTATION

\* \* \*

(c) The person liable under this section shall repay such amount to the commissioner for the fund. In addition to the repayment, if the commissioner

finds that a person intentionally misrepresented or failed to disclose a material fact with respect to his or her claim for benefits, the person shall pay an additional penalty of 15 percent of the amount of the overpaid benefits. Such amount may be collectible by civil action in a Vermont district or superior court, in the name of the commissioner. ~~No action shall be commenced for the collection of such amount more than five years after the date of such determination under this section or the final decision confirming the liability of such person on an appeal from such determination.~~

(d) In any case in which under this section a person is liable to repay any amount to the commissioner for the fund, the commissioner may withhold, in whole or in part, any future benefits payable to such person, and credit such withheld benefits against the amount due from such person until it is repaid in full, less any penalties assessed under subsection (c) of this section. ~~No benefits shall be withheld after five years from the date of such determination or the date of the final decision confirming the liability of such person on an appeal from such determination.~~

(e) In addition to the foregoing, when it is found by the commissioner that a person intentionally misrepresented or failed to disclose a material fact with respect to his or her claim for benefits and in the event the person is not prosecuted under section 1368 of this title and penalty provided in section 1373 of this title is not imposed, the person shall be disqualified and shall not be entitled to receive benefits to which he or she would otherwise be entitled after the determination for such number of weeks not exceeding 26 as the commissioner shall deem just, ~~provided, however, that no benefits shall be denied to a claimant because of such determination after three years from the date thereof or the date of final decision on an appeal from such determination.~~ The notice of determination shall also specify the period of disqualification imposed hereunder.

\* \* \*

\* \* \* Short-time compensation \* \* \*

Sec. 17. 21 V.S.A. § 1451 is amended to read:

§ 1451. DEFINITIONS

For the purpose of this subchapter:

(1) “Affected unit” means a specific plan, department, shift, or other definable unit consisting of not less than five employees to which an approved short-time compensation plan applies.

(2) “Short-time compensation” or “STC” means the unemployment benefits payable to employees in an affected unit under an approved short-time compensation plan as distinguished from the unemployment benefits otherwise

payable under the conventional unemployment compensation provisions of this chapter.

(3) “Short-time compensation plan” means a plan of an employer under which there is a reduction in the number of hours worked by employees of an affected unit rather than temporary layoffs. The term “temporary layoffs” for this purpose means the total separation of one or more workers in the affected unit for an indefinite period expected to last for more than two months but not more than six months.

(4) “Short-time compensation employer” means an employer who has one or more employees covered by an approved “Short-Time Compensation Plan.” ~~Both employers with experience rating records and employers who make payments in lieu of tax contributions to the UI Trust Fund may become short time compensation employers.~~ “Short-time compensation employer” includes employers with experience-rating records and employers who make payments in lieu of tax contributions to the unemployment compensation trust fund and that meet the following:

(A) Has five or more employees covered by an approved short-time compensation plan.

(B) Is not delinquent in the payment of contributions or reimbursement, or in the reporting of wages.

(C) Is not a negative balance employer. For the purposes of this section, a negative balance employer is an employer who has for three or more consecutive calendar years paid more in unemployment benefits to its employees than it has contributed to its unemployment insurance account.

(5) “Usual weekly hours of work” means the normal hours of work for full-time and regular part-time employees in the affected unit when that unit is operating on its normally full-time basis but not less than 30 hours and not to exceed 40 hours and not including overtime.

(6) “Unemployment compensation” means the unemployment benefits payable under this chapter other than short-time compensation and includes any amounts payable pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(7) “Fringe benefits” means benefits including health insurance, retirement benefits, paid vacations and holidays, sick leave, and similar benefits that are incidents of employment.

(8) “Intermittent employment” means employment that is not continuous but may consist of intervals of weekly work and intervals of no weekly work.

(9) “Seasonal employment” means employment with an employer who experiences at least a 20-percent difference between its highest level of employment during a particular season and its lowest level of employment during the off-season in each of the previous three years as reported to the department, or employment with an employer on a temporary basis during a particular season.

Sec. 18. 21 V.S.A. § 1452 is amended to read:

§ 1452. CRITERIA FOR APPROVAL

An employer wishing to participate in an STC program shall submit a department of labor electronic application or a signed written short-time compensation plan to the commissioner for approval. The commissioner may approve an STC plan only if the following criteria are met:

- (1) the plan identifies the specified affected units to which it applies;
- (2) the employees in the affected unit or units are identified by name, Social Security number, and by any other information required by the commissioner;
- (3) the plan ~~specifies any impact on~~ certifies that fringe benefits, including health insurance, of employees participating in the plan will not be reduced;
- (4) the usual total weekly hours of work for employees in the affected unit or units are reduced by not less than 20 percent and not more than 50 percent;
- (5) the plan certifies that the aggregate reduction in work hours is in lieu of temporary total layoffs of one or more workers which would have resulted in an equivalent reduction in work hours and which the commissioner finds would have caused an equivalent dollar amount to be payable in unemployment compensation;
- (6) the plan certifies that the STC employer will submit a request for a STC plan termination to the department within 24 hours of a layoff that occurs during an active STC plan;
- (7) the identified work week reduction is applied consistently throughout the duration of the plan;
- (8) the plan applies to at least 10 percent of the employees in the affected unit, and when applicable applies to all affected employees of the unit equally;
- ~~(7)~~(9) the plan will not subsidize seasonal employers during the off-season, nor subsidize employers who have traditionally used part-time employees or intermittent employment;



~~(8)~~(10) the employer agrees to maintain records relative to the plan for a period of three years and furnish reports relating to the proper conduct of the plan and agrees to allow the commissioner or his or her authorized representatives access to all records necessary to verify the plan prior to approval and, after approval, to monitor and evaluate application of the plan;

~~(9)~~(11) the plan certifies that the collective bargaining agent or agents for the employees, if any, have agreed to participate in the program. If there is no bargaining unit, the employer specifies how he or she will notify the employees in the affected group and work with them to implement the program once the plan is approved; and

~~(10)~~(12) in addition to subdivisions (1) through ~~(9)~~(11) of this section, the commissioner shall take into account any other factors which may be pertinent to proper implementation of the plan.

Sec. 19. 21 V.S.A. § 1453 is amended to read:

§ 1453. APPROVAL OR REJECTION; RESUBMISSION

The commissioner shall approve or reject a plan in writing within 30 days of its receipt, and in the case of rejection shall state the reasons therefor. The reasons for rejection shall be final and nonappealable, but the employer shall be allowed to submit another plan for approval, that addresses the reasons that led to the rejection of the original plan.

Sec. 20. 21 V.S.A. § 1454 is amended to read:

§ 1454. EFFECTIVE DATE; DURATION

A plan shall be effective on the date specified in the plan or on a date mutually agreed upon by the employer and the commissioner. It shall expire at the end of the sixth full calendar month after its effective date or on the date specified in the plan if such date is earlier; provided, that the plan is not previously revoked by the commissioner; or on the effective date of any transfer of ownership of the legal business entity. If a plan is revoked by the commissioner, it shall terminate on the date specified in the commissioner's written order of revocation. No employer shall be eligible for a short-time compensation plan for more than 26 weeks in any 12-month period.

Sec. 21. 21 V.S.A. § 1458 is amended to read:

§ 1458. SHORT-TIME COMPENSATION BENEFITS

\* \* \*

(f)(1) If an individual works in the same week for both the short-time employer and another employer and his or her combined hours of work for both employers are equal to or greater than 81 percent of the usual hours of work with the short-time employer, he or she shall not be entitled to benefits

under these short-time provisions or the unemployment compensation provisions.

(2) If an individual works in the same week for both the short-time employer and another employer and his or her combined hours of work for both employers are equal to or less than 80 percent of the usual hours of work for the short-time employer, the benefit amount payable for that week shall be the weekly unemployment compensation amount reduced by the same percentage that the combined hours are of the usual hours of work. A week for which benefits are paid under this provision shall count as a week of short-time compensation.

(3) An individual who does not work during a week for the short-time employer, and is otherwise eligible, shall be paid his or her full weekly unemployment compensation benefit amount under the provisions of the regular unemployment compensation program. Such a week shall not be counted as a week for which short-time compensation benefits were received.

(4) An individual that does not work the short-time employer's identified workweek reduction hours as certified by the application due to the use of paid vacation or personal time shall be paid benefits for the week under the partial unemployment compensation provisions of the regular unemployment compensation program.

~~(4)~~(5) An individual who does not work for the short-time employer during a week but works for another employer and is otherwise eligible, shall be paid benefits for that week under the partial unemployment compensation provisions of the regular UI program. Such a week shall not be counted as a week with respect to which STC benefits were received.

\* \* \* Directory of new hires \* \* \*

Sec. 22. 33 V.S.A. § 4110 is amended to read:

§ 4110. EMPLOYER OBLIGATIONS

\* \* \*

(c) As used in this section:

(1) "Employee" means

(A) an individual who is an employee within the meaning of chapter 24 of the Internal Revenue Code of 1986; and

(B) does not include an employee of a federal or state agency performing intelligence or counterintelligence functions, if the head of such agency has determined that reporting pursuant to this section with respect to the employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(2) "Employer" has the meaning given such term in Section 3401(d) of the Internal Revenue Code of 1986 and includes any governmental entity and any labor organization.

(3) "First date of employment" is the first day services are performed for compensation as a new hire.

(4) "~~New hire~~" ~~means an employee for whom a W 4 filing is required and whose wages have not been reported by the filing employer to the department of labor during the last reporting quarter~~ means an employee who:

(A) has not previously been employed by the employer; or

(B) was previously employed by the employer but has been separated from that employment for at least 60 consecutive days.

\* \* \* Independent contractors \* \* \*

Sec. 23. 21 V.S.A. § 398 is added to read:

§ 398. NOTICE TO PERSONS RECEIVING REMUNERATION AS AN INDEPENDENT CONTRACTOR

(a) Every employer shall post in a prominent and accessible place on the site where work is performed a legible statement, provided by the commissioner, that describes the responsibility of independent contractors to pay taxes required by state and federal law, the rights of employees to workers' compensation, unemployment benefits, minimum wage, overtime, and other federal and state workplace protections, and the protections against retaliation and the penalties in this title if the independent contractor fails to classify properly an individual as an employee. This notice shall also contain contact information for individuals to file complaints or inquire with the commissioner about employment classification status. This information shall be provided in English or other languages required by the commissioner. The posted statement shall be constructed of materials capable of withstanding adverse weather conditions.

(b) Within 30 days of the effective date of this section, the commissioner shall create the notice described in subsection (a) of this section and post the notice on the department's website for downloading by hiring entities.

(c) Employers who violate this section shall be subject to an administrative penalty of up to \$100.00 per violation.

Sec. 24. 21 V.S.A. § 8 is added to read:

§ 8. INDEPENDENT CONTRACTOR DEFINITION

The commissioner is directed to formulate a single definition of independent contractor for the purposes of chapters 9 (workers' compensation)

and 17 (unemployment compensation) of this title. The definition shall be simple to understand and provide clarity to employers and employees as to an individual's status as an employee or an independent contractor. The commissioner shall also formulate a test based upon the definition of independent contractor that will allow employers and employees to quickly and easily determine independent contractor status. It is not the intent of this section to substantively change the benefits and protections of employment under this title.

\* \* \* Fair-share representation fees \* \* \*

#### Sec. 25. POLICY

It is the policy of the state of Vermont that employees in bargaining units organized under state law who exercise their rights not to join a labor organization required to provide them certain services shall pay to that labor organization a fair-share agency fee, representing that portion of the labor organization's membership fees which are attributable to those services.

#### 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.

\* \* \* State employees \* \* \*

Sec. 27. 3 V.S.A. § 903 is amended to read:

§ 903. EMPLOYEES’ RIGHTS AND DUTIES; PROHIBITED ACTS

(a) Employees shall have the right to self-organization; to form, join, or assist employee organizations; to bargain collectively through representatives of their own choice, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities, except as provided in ~~subsection~~ subsections (b) and (c) of this section, and to appeal grievances as provided in this chapter.

(b) No state employee may strike or recognize a picket line of an employee or labor organization while in the performance of his or her official duties.

(c) An employee who exercises the right not to join the employee organization representing the employee’s certified unit pursuant to section 941 of this title shall pay a collective bargaining fee to the representative of the bargaining unit in the same manner as employees who pay membership fees to the representative.

(d) All employers, their officers, agents, and employees or representatives shall exert every reasonable effort to make and maintain agreements concerning matters allowable under section 904 of this title and to settle all disputes, whether arising out of the application of those agreements, or growing out of any dispute between the employer and the employees thereof.

Sec. 28. 3 V.S.A. § 904 is amended to read:

§ 904. SUBJECTS FOR BARGAINING

(a) All matters relating to the relationship between the employer and employees shall be the subject of collective bargaining except those matters which are prescribed or controlled by statute. Such matters appropriate for collective bargaining to the extent they are not prescribed or controlled by statute include ~~but are not limited to:~~

\* \* \*

(9) Rules and regulations for personnel administration, except the following: rules and regulations relating to persons exempt from the classified service under section 311 of this title and rules and regulations relating to applicants for employment in state service and employees in an initial probationary status including any extension or extensions thereof provided such rules and regulations are not discriminatory by reason of an applicant's race, color, creed, sex, or national origin; ~~and~~

~~(10) A collective bargaining service fee.~~

\* \* \*

Sec. 29. 3 V.S.A. § 941 is amended to read:

§ 941. UNIT DETERMINATION, CERTIFICATION, AND REPRESENTATION

\* \* \*

(k) Nothing in this chapter requires an individual to seek the assistance of his or her collective bargaining unit or its representative(s) in any grievance proceeding. He or she may represent himself or herself or be represented by counsel of his or her own choice. Employees who are eligible for membership in a collective bargaining unit who exercise their right not to join such unit may upon agreement with the unit representative avail themselves of the services of the unit representative(s) in grievance proceedings upon payment to the unit of a fee established by the unit representative, provided that in the event a collective bargaining service fee is negotiated or imposed, the unit representative shall represent nonmember employees in grievance proceedings without charge.

Sec. 30. 3 V.S.A. § 962 is amended to read:

§ 962. EMPLOYEES

It shall be an unfair labor practice for an employee organization or its agents:

\* \* \*

(10) To charge a collective bargaining fee ~~negotiated pursuant to section 904 of this title~~ unless such employee organization has established and maintained a procedure to provide nonmembers with:

(A) an audited financial statement that identifies the major categories of expenses, and divides them into chargeable and nonchargeable expenses;

(B) an opportunity to object to the amount of the agency fee sought, any amount reasonably in dispute to be placed in escrow;

(C) prompt arbitration by the board to resolve any objection over the amount of the collective bargaining fee.

\* \* \* Judiciary employees \* \* \*

Sec. 31. 3 V.S.A. § 1012 is amended to read:

§ 1012. EMPLOYEES' RIGHTS AND DUTIES; PROHIBITED ACTS

(a) Employees shall have the right to self-organization; to form, join, or assist employee organizations; to bargain collectively through their chosen representatives; to engage in concerted activities of collective bargaining or other mutual aid or protection; to refrain from any or all those activities, except as provided in ~~subsection (b)~~ subsections (b) and (c) of this section; and to appeal grievances as provided in this chapter.

(b) No employee may strike or recognize a picket line of an employee organization while performing the employee's official duties.

(c) An employee who exercises the right not to join the employee organization representing the employee's certified unit pursuant to section 1021 of this title shall pay a collective bargaining fee to the representative of the bargaining unit in the same manner as employees who pay membership fees to the representative.

~~(e)~~(d) The employer and employees and the employee's representative shall exert every reasonable effort to make and maintain agreements concerning matters allowable under section 1013 of this title and to settle all disputes, whether arising out of the application of those agreements or growing out of any dispute between the employer and the employees.

Sec. 32. 3 V.S.A. § 1013 is amended to read:

§ 1013. SUBJECTS FOR BARGAINING

All matters relating to the relationship between the employer and employees are subject to collective bargaining, to the extent those matters are not prescribed or controlled by law, including:

\* \* \*

~~(10) A collective bargaining service fee.~~

Sec. 33. 3 V.S.A. § 1027 is amended to read:

§ 1027. EMPLOYEES

It shall be an unfair labor practice for an employee organization or its agents:

\* \* \*

(10) To charge a ~~negotiated~~ collective bargaining fee unless the employee organization has established and maintained a procedure to provide nonmembers with all the following:

(A) An audited financial statement that identifies the major categories of expenses and divides them into chargeable and nonchargeable expenses.

(B) An opportunity to object to the amount of the fee requested and to place in escrow any amount reasonably in dispute.

(C) Prompt arbitration by the board to resolve any objection over the amount of the collective bargaining fee.

\* \* \* Teachers \* \* \*

Sec. 34. 16 V.S.A. § 1982 is amended to read:

§ 1982. RIGHTS

(a) Teachers shall have the right to or not to join, assist, or participate in any teachers' organization of their choosing. However, teachers ~~may be required to pay an agency fee~~ who choose not to join the teachers' organization, recognized pursuant to an agreement negotiated under section 1992 of this chapter as the exclusive representative, shall pay an agency fee in the same manner as teachers who choose to join the teachers' organization pay membership fees.

(b) Principals, assistant principals, and administrators other than superintendent and assistant superintendent shall have the right to or not to join, assist, or participate in any administrators' organization or as a separate unit of any teachers' organization of their choosing. However, administrators other than the superintendent and assistant superintendent ~~may be required to pay an agency fee~~ who choose not to join the administrators' organization,



recognized pursuant to an agreement negotiated under section 1992 of this chapter as the exclusive representative, shall pay an agency fee in the same manner as administrators who choose to join the administrators' organization pay membership fees.

(c) Neither the school board nor any employee of the school board serving in any capacity, nor any other person or organization shall interfere with, restrain, coerce, or discriminate in any way against or for any teacher or administrator engaged in activities protected by this legislation.

\* \* \* Certain private sector employees \* \* \*

Sec. 35. 21 V.S.A. § 1502 is amended to read:

§ 1502. DEFINITIONS

In this chapter, the following words shall have the following meaning:

\* \* \*

(14) "Agency service fee" means a fee for representation in collective bargaining not exceeding labor organization dues, payable to a labor organization which is the exclusive representative for employees in a bargaining unit from individuals who are not members of the labor organization.

Sec. 36. 21 V.S.A. § 1621 is amended to read:

§ 1621. UNFAIR LABOR PRACTICES

(a) It shall be an unfair labor practice for an employer:

\* \* \*

(6) Nothing in this chapter or any other statute of this state shall preclude an employer from making an agreement with a labor organization (not established, maintained or assisted by any action defined in this subsection (a) as an unfair labor practice) to require as a condition of employment membership in such labor organization on or after the 30th day following the beginning of such employment or the effective date of such agreement, whichever is the later (i) if such labor organization is the representative of the employees as provided in section 1583 of this chapter, in the appropriate collective bargaining unit covered by such agreement when made and (ii) unless following an election held as provided in section 1584 of this chapter within one year preceding the effective date of such agreement, the board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement. Absent such an agreement, an employee who does not become a member of the labor organization shall, in the same manner as employees who choose to join the labor organization pay membership fees,

pay an agency service fee to that organization. No employer shall justify any discrimination against an employee for nonmembership in a labor organization:

(A) If the employer has reasonable grounds for believing that membership was not available to the employee on the same terms and conditions generally applicable to other members; or

(B) If the employer has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

\* \* \*

(b) It shall be an unfair labor practice for a labor organization or its agents:

\* \* \*

(9) To charge an agency service fee unless the employee organization has established and maintained a procedure to provide nonmembers with all the following:

(A) An audited financial statement that identifies the major categories of expenses and divides them into chargeable and nonchargeable expenses.

(B) An opportunity to object to the amount of the fee requested and to place in escrow any amount reasonably in dispute.

(C) Prompt arbitration by an arbitrator selected jointly by the objecting fee payer and the labor organization or pursuant to the rules of the American Arbitration Association to resolve any objection over the amount of the agency service fee.

\* \* \*

\* \* \* Municipal employees \* \* \*

Sec. 37. 21 V.S.A. § 1726 is amended to read:

§ 1726. UNFAIR LABOR PRACTICES

(a) It shall be an unfair labor practice for an employer:

\* \* \*

(8) Nothing in this chapter or any other statute of this state shall preclude a municipal employer from making an agreement with the exclusive bargaining agent ~~to require an agency service fee to be paid as a condition of employment, or~~ to require as a condition of employment membership in such employee organization on or after the 30th day following the beginning of such employment or the effective date of such agreement, whichever is the later.

Absent such an agreement, an employee who does not become a member of the employee organization shall, in the same manner as employees who choose to join the employee organization pay membership fees, pay an agency service fee to that organization. No municipal employer shall discharge or discriminate against any employee for nonpayment of an agency service fee or for nonmembership in an employee organization:

(A) If the employer has reasonable grounds for believing that membership was not available to the employee on the same terms and conditions generally applicable to other members; or

(B) If the employer has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

(b) It shall be an unfair labor practice for an employee organization or its agents:

\* \* \*

(6) To require employees covered by an agency service fee ~~agreement~~ requirement or other union security agreement authorized under subsection (a) of this section to pay an initiation fee which the board finds excessive or discriminatory under all the circumstances, including the practices and customs of employee organizations representing municipal employees, and the wages paid to the employees affected.

\* \* \*

(12) To charge an agency service fee unless the employee organization has established and maintained a procedure to provide nonmembers with all the following:

(A) An audited financial statement that identifies the major categories of expenses and divides them into chargeable and nonchargeable expenses.

(B) An opportunity to object to the amount of the fee requested and to place in escrow any amount reasonably in dispute.

(C) Prompt arbitration by an arbitrator selected jointly by the objecting fee payer and the labor organization or pursuant to the rules of the American Arbitration Association to resolve any objection over the amount of the agency service fee.

\* \* \* Miscellaneous provisions \* \* \*

Sec. 38. WORKERS' COMPENSATION RATING ADVISORY ORGANIZATIONS

(a) The department of financial regulation is directed to reconsider its reliance on the data provided by the National Council on Compensation Insurance, Inc. (NCCI) and whether it needs a workers' compensation insurance rating advisory organization in order to assist in the calculation of insurance rates. If the department determines that it needs a workers' compensation advisory organization to assist in calculating insurance rates, it is to consider using alternatives to NCCI. The department is further directed to evaluate whether proposed insurance rates made by NCCI were in line with the actual resulting insurance rates.

(b) The department shall report its findings to the senate committee on economic development, housing and general affairs and the house committee on commerce and economic development by January 15, 2013.

#### Sec. 39. STUDY OF UNEMPLOYMENT COMPENSATION TRAINING PROGRAMS

The commissioner of labor shall study the benefits and feasibility of developing and implementing a job training program for persons collecting unemployment benefits in Vermont, allowing the department to place persons collecting unemployment into job sites for job training and skill development to enhance the individual's job prospects and career development. The study shall examine conformity issues with federal and state unemployment and wage and hour laws. The commissioner shall solicit public input and engage interested parties from the business and labor communities in determining the benefits of any such program. The commissioner shall report his or her findings to the chairs of the senate committees on appropriations and on economic development, housing and general affairs, and the house committees on appropriations and on commerce and economic development.

#### Sec. 40. FINDINGS

The general assembly finds that:

(1) Some studies have concluded that over one-third of American workers have been the targets of malicious or abusive treatment by supervisors or coworkers which is wholly unrelated to legitimate workplace goals or acceptable business practices.

(2) Those studies have concluded that 45 percent of bullied employees suffer stress-related health problems, including debilitating anxiety, panic attacks, clinical depression, and post-traumatic stress.

(3) Abusive behavior occurs even in the absence of any motive to discriminate on the basis of race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, or age or against a qualified

disabled individual. Such nondiscriminatory abuse is often referred to as “workplace bullying.”

(4) The Vermont office of attorney general’s civil rights unit reports that of the 1,200 to 1,300 requests for assistance it receives each year, a substantial number involve allegations of severe workplace bullying that cannot be addressed by current state or federal law or common law tort claims. Similarly, the Vermont human rights commission, which has jurisdiction in employment discrimination claims against the state, reports that it must refuse complaints of workplace bullying because the inappropriate behaviors are not motivated by the targeted employee’s membership in a category protected by antidiscrimination laws. The Vermont department of labor reports that the wage and hour division receives up to 100 telephone calls each day, many of which involve complaints relating to workplace incivility, bullying, and retaliatory actions against employees who bring complaints.

(5) Sweden enacted the first workplace bullying law in 1993, and since then several countries have taken a variety of approaches to the problem, including the creation of private legal remedies and the prohibition of workplace bullying through occupational safety and health laws.

(6) The general assembly recognizes that there is a need to strike a balance between affording Vermont workers relief from bullying and unduly interfering with the operation of workplaces.

(7) However, given the limited duration of the legislative session, the potential impact on existing labor contracts and personnel policies, and the various options available to address this issue, a considered approach should be presented for consideration by the 2012 session of the general assembly.

#### Sec. 41. STUDY OF WORKPLACE BULLYING

(a) A committee is established to study the issue of workplace bullying in Vermont and to make recommendations to address the manner in which workplace bullying should be addressed by the state, by employers, and by affected employees. The committee shall examine and report on the following:

(1) Existing programs and best practice models for workplace civility, anti-bullying, prevention of workplace violence, reporting and nonretaliation provisions that have been adopted by employers and, if available, survey results and data from those employers.

(2) A definition of “workplace bullying” or “abusive conduct” in the workplace not addressed by existing law.

(3) Whether there is a need for additional laws regarding workplace bullying.

(4) Different models for remedying workplace bullying, including:

(A) Creating a private right of action that would include the recovery of damages.

(B) Creating a mechanism for injunctive relief similar to those relating to stalking, hate crimes, or relief-from-abuse orders.

(C) State enforcement similar to the employment discrimination law.

(D) State enforcement by the Vermont occupational safety and health administration.

(E) Any other issues relevant to workplace bullying.

(b) The committee established by subsection (a) of this section shall also recommend any measures, including proposed legislation, to address bullying in the workplace.

(c) The committee established by subsection (a) of this section shall consist of the following members:

(1) The attorney general or designee.

(2) The executive director of the human rights commission or designee.

(3) The commissioner of labor or designee.

(4) The commissioner of human resources or designee.

(5) The state coordinator of the Vermont healthy workplace advocates.

(6) Two representatives from the business community, one to be appointed by the speaker of the house and one to be appointed by the committee on committees.

(7) Two representatives from labor organizations, one to be appointed by the speaker of the house and one to be appointed by the committee on committees.

(8) The executive director of the American Civil Liberties Union of Vermont or designee.

(9) The executive director of the Vermont Bar Association or designee.

(d) The committee shall convene its first meeting no later than July 15, 2012. The commissioner of labor shall be designated as the chair of the commission, and shall convene the first and subsequent meetings.

(e) The committee shall report its findings and any recommendations to the senate committee on economic development, housing and general affairs, and the house committee on commerce and economic development on or before January 15, 2013. The report shall include any recommended legislation to address the issue of workplace bullying.

(f) The committee shall cease to function upon transmitting its report.

Sec. 41a. 23 V.S.A. § 944 is added to read:

§ 944. DISPUTE RESOLUTION

All motor vehicle liability insurance policies issued in the state shall contain a requirement that claims for damages involving underinsured motor vehicles be submitted to arbitration pursuant to 12 V.S.A. chapter 192.

Sec. 42. EFFECTIVE DATES

(a) Sec. 16 (relating to nondisclosure or misrepresentation in order to receive unemployment benefits) of this act shall take effect on July 1, 2013.

(b) Secs. 27, 28, 29, 30, 31, 32, and 33 (relating to state employees) of this act shall take effect on July 2, 2012 and apply to new successor collective bargaining agreements subject to the provisions of 3 V.S.A. chapters 27 and 28.

(c) Secs. 34, 35, 36, and 37 (relating to teachers, municipal employees, and certain private employers) of this act shall take effect on June 30, 2012 and apply to employees subject to 16 V.S.A. chapter 57 and 21 V.S.A. chapters 19 and 22 on the date following the expiration date stated in the collective bargaining agreement, if any, then in effect, but in no event shall an employee be required to pay an agency fee, agency service fee, or collective bargaining service fee under this act for any period prior to July 1, 2012. In the event that no collective bargaining agreement is in effect on June 30, 2012, Secs. 34, 35, 36, and 37 of this act shall take effect on June 30, 2012 and apply to employees subject to 16 V.S.A. chapter 57 and 21 V.S.A. chapters 19 and 22 on July 1, 2012.

(d) This section shall take effect on passage.

and that after passage the title of the bill be amended to read: “An act relating to workforce development, workers’ compensation, unemployment compensation, and workplace rights and responsibilities”

(Committee vote: 5-0-0)

(No House amendments.)

**H. 577.**

An act relating to public water systems.

**Reported favorably with recommendation of proposal of amendment by Senator Brock for the Committee on Natural Resources and Energy.**

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. 5. 10 V.S.A. § 1973 is amended to read:

§ 1973. PERMITS

\* \* \*

(j)(1) When an applicant for a permit under this section proposes a water supply or wastewater system with isolation distances that extend onto property other than the property for which the permit is sought, the permit applicant shall send ~~a copy of the complete permit application~~ by certified mail, on a form provided by the secretary, a notice of an intent to file a permit application, including any plans the site plan that accurately depicts all isolation distances, to any landowner affected by the proposed isolation distances ~~no later than~~ at least seven calendar days prior to the date that the permit application is submitted to the secretary.

(2) If, during the course of the secretary's review of an application for a permit under this section, the location of a water supply or wastewater system permit is revised and the isolation distances of the revised system extend onto property other than the property for which the permit is sought, the permit applicant shall ~~provide~~ send by certified mail a copy of any revised plan to any landowner affected by the isolation distances.

(3) If, after a permit has been issued under this section, a water supply or wastewater system is not installed according to the permitted plan and the record drawings submitted under subsection (e) of this section indicate that the isolation distances of the ~~as-built~~ system as constructed extend onto property other than the property on which the ~~as-built~~ system is located, the permittee shall ~~provide~~ send by certified mail a notification form provided by the secretary with a copy of the record drawings showing all isolation distances to any landowner affected by the isolation distances.

(4) A permit applicant or permittee subject to the requirements of subdivisions (1) through (3) of this subsection shall certify to the secretary that the ~~notice~~ notices and information required by this subsection have been sent to affected landowners and shall include in the certification the name and address of all affected landowners. If the secretary approves a permit application under this section, the permit shall not be issued to a permit



applicant subject to the requirements of ~~subdivisions subdivision (1) and~~ (2) of this subsection until seven calendar days after the permit applicant certifies to the secretary that the notice required under this subsection has been sent to affected landowners.

#### Sec. 6. EFFECTIVE DATE

(a) This section and Secs. 1 (combined sewer overflows; awards), 2 (public water systems permits), 3 (repeal of temporary permits for public water systems), and 4 (awards from special environmental revolving loan fund) of this act shall take effect on July 1, 2012.

(b) Sec. 5 (notice of isolation distances) shall take effect on September 1, 2012.

and that after passage the title of the bill be amended to read: “An act relating to public water systems and potable water supply and wastewater system isolation distances”

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 28, 2012, page 449.)

**Reported favorably by Senator Nitka for the Committee on Finance.**

(Committee vote: 5-0-2)

#### **H. 747.**

An act relating to cigarette manufacturers.

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

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

First: In Sec. 1, 7 V.S.A. § 1003, by striking out subsection (g) in its entirety and inserting in lieu thereof a new subsection (g) to read:

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

Second: By striking out Sec. 5 and inserting in lieu thereof a new Sec. 5 to read:

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

§ 1920. AGENT FOR SERVICE OF PROCESS

(a) Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or other business entity shall, as a condition precedent to having its brand families included or retained in the directory, appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of this subchapter or subchapter 1A of this chapter, or both, may be served in any manner authorized by law. Such service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, telephone number, and satisfactory proof of the appointment and availability of such agent to the attorney general. The secretary of state shall be designated as agent for service of process for importers of nonparticipating manufacturers located outside the United States. Service shall be made upon the secretary of state in accordance with the provisions of 12 V.S.A. §§ 851 and 852.

\* \* \*

Third: By adding Secs. 9 and 10 to read:

Sec. 9. 6 V.S.A. § 561 is amended to read:

§ 561. INTENT

The intent of this act is to establish policy and procedures for growing industrial hemp in Vermont so that farmers and other businesses in the Vermont agricultural industry can take advantage of this market opportunity ~~when federal regulations permit.~~

Sec. 10. REPEAL

Sec. 3 of No. 212 of the Acts of the 2007 Adj. Sess. (2008) (delayed effective date of industrial hemp cultivation program) is repealed.

and that after passage the title of the bill be amended to read: “An act relating to cigarette manufacturers, commercial cigarette rolling machines, and industrial hemp”

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 20, 2012, page 670.)

**Reported favorably by Senator Ashe for the Committee on Finance.**

(Committee vote: 7-0-0)

## H. 794.

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

### **Reported favorably with recommendation of proposal of amendment by Senator Ashe 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. 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 was 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 four members. The members of the committee shall be as follows:

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

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

(Committee vote: 5-0-0)

(For House amendments, see House Journal for April 19, 2012, page 1112; April 20, 2012, page 1122.)

**PROPOSAL OF AMENDMENT TO H. 794 TO BE OFFERED BY  
SENATOR ILLUZZI**

Senator Illuzzi, on behalf of the Committee on Economic Development, Housing, and General Affairs, moves that the bill be amended as recommended by the Committee and that it be further 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”

**Report of Committee of Conference**

**H. 789**

An act relating to reapportioning the final representative districts of the House of Representatives.

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:

**H. 789.** An act relating to reapportioning the final representative districts of the House of Representatives and the senatorial districts of the Senate

Respectfully reports that it has met and considered the same and recommends that the Senate recede from its proposals of amendment and that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 17 V.S.A. § 1893, as amended by Sec. 1 of No. 74 of the Acts of the 2011 Adj. Sess. (2012), is amended to read:

§ 1893. INITIAL DIVISION

The state is divided into the following initial districts, each of which shall be entitled to the indicated number of representatives:

District	Towns and Cities	Representatives
	* * *	
<u>BENNINGTON-3</u>	<del>Arlington, Glastenbury, Sandgate, Shaftsbury, Stratton, Sunderland, and that portion of the town of Rupert encompassed within a boundary beginning at the point where the boundary line of Rupert and the state of New York intersects with VT Route 153; then northeasterly along the southern side of the centerline of VT 153 to the intersection of East Street; then easterly along the southern side of the centerline of East Street to the intersection of Kent Hollow Road; then southerly along the western side of the centerline of Kent Hollow Road to the boundary of the town of Sandgate; then westerly along the Sandgate town line to the boundary of New York; then northerly along the New York state line to the point of beginning</del>	2
<u>BENNINGTON-3</u>	<u>Glastenbury, Shaftsbury, and that portion of the town of Sunderland encompassed within a boundary beginning at the point where the boundary line of Sunderland and</u>	

Glastenbury intersects with VT Route 7; then northerly along the eastern side of the centerline of VT 7 to the intersection of North Road; then northerly along the eastern side of the centerline of North Road to the intersection of Borough Road; then northerly along the eastern side of the centerline of Borough Road to the intersection of Sunderland Hill Road; then northeasterly along the southern side of the centerline of Sunderland Hill Road to the boundary of the town of Manchester; then easterly along the Manchester town line to the boundary of the town of Winhall; then easterly along the Winhall town line to the boundary of the town of Stratton; then southerly along the Stratton town line to the boundary of Glastenbury; then westerly along the Glastenbury town line to the point of beginning 1

BENNINGTON-4 Arlington, Manchester, Sandgate, and that portion of the town of Sunderland not in BENNINGTON-3 42

\* \* \*

CHITTENDEN-4-1 Charlotte and, in Hinesburg, the following census block 003507: 1039 that portion of the town of Hinesburg encompassed within a boundary beginning at the point where the boundary line of Hinesburg and Charlotte intersects with Drinkwater Road; then easterly along the southern side of the centerline of Drinkwater Road to the intersection of Baldwin Road; then southerly along the western side of the centerline of Baldwin Road to the boundary of the town of Monkton; then westerly along the Monkton town line to the boundary of Charlotte; then northerly along the Charlotte town line to the point of beginning 1

CHITTENDEN-4-2 Hinesburg, except that portion of the town in CHITTENDEN-4-1 1

CHITTENDEN-5 Shelburne and St. George 2

CHITTENDEN-6 Burlington and Winooski 12

CHITTENDEN-7 South Burlington 4

CHITTENDEN-8-1 That portion of the town of Essex not included in CHITTENDEN-8-2 or 8-3 2

CHITTENDEN-8-2 The village of Essex Junction, except the following census block 002601: 1023 that portion of the village

encompassed within a boundary beginning at the point where Pearl Street intersects with Warner Avenue; then northerly along the western side of the centerline of Warner Avenue to the intersection with Sunderland Brook; then northwesterly along the southern side of the centerline of Sunderland Brook to the intersection with Susie Wilson Road and Pearl Street; then southeasterly along the northern side of the centerline of Pearl Street to the point of beginning 2

CHITTENDEN-8-3 Westford and that portion of the town of Essex encompassed within a boundary beginning at the point where the boundary line of Essex and the town of Colchester intersects with Curve Hill Road; then southeasterly along the northern side of the centerline of Curve Hill Road to the intersection of Lost Nation Road; then southeasterly along the northern side of the centerline of Lost Nation Road to the intersection of Old Stage Road; then northerly along the western side of the centerline of Old Stage Road to the intersection of Towers Road; then southeasterly along the northern side of the centerline of Towers Road to the intersection of ~~Clover Drive; then northeasterly along the western side of the centerline of Clover Drive to the intersection with Alder Brook; then southeasterly along the northern side of the centerline of Alder Brook to the intersection with~~ Brown's River Road; then easterly along the northern side of the centerline of Brown's River Road to the intersection of Weed Road; then easterly along the northern side of the centerline of Weed Road to the intersection of Jericho Road; then easterly along the northern side of the centerline of Jericho Road to the boundary of the town of Jericho; then northeasterly along the Jericho town line to the boundary of Westford; then westerly along the Westford town line to the boundary of Colchester; then southwesterly along the Colchester town line to the point of beginning 1

CHITTENDEN-9 Colchester 4

\* \* \*



LAMOILLE-2 Belvidere, Hyde Park, Johnson, and Wolcott, ~~and that portion of the town of Eden not in~~  
ORLEANS LAMOILLE 2

\* \* \*

ORLEANS-2 Coventry, Irasburg, Newport City, and Newport Town, and that portion of the town of Troy encompassed within a boundary beginning at the point where the boundary line of Troy and Newport Town intersects with the Canadian Pacific railway; then northwesterly along the southern side of the centerline of the railway to the intersection of VT Route 105; then northwesterly along the southern side of the centerline of VT 105 to the intersection of East Hill Road; then southerly along the eastern side of the centerline of East Hill Road to the intersection of VT Route 100; then westerly along the southern side of the centerline of VT 100 to the intersection with the Missisquoi River; then southwesterly along the eastern side of the centerline of the Missisquoi River to the boundary of the town of Westfield; then southerly along the Westfield town line to the boundary of the town of Lowell; then easterly along the Lowell town line to the boundary of Newport Town; then northerly along the Newport Town boundary to the point of beginning 2

\* \* \*

ORLEANS-  
LAMOILLE Eden, Jay, Lowell, Troy, Westfield, and that portion of the town of Eden that is west of the centerline of Route 100 Troy not in ORLEANS-2 1

RUTLAND-  
BENNINGTON Middletown Springs, Pawlet, Rupert, Wells, and that portion of the town of Tinmouth, ~~that portion of the town of Wells not in RUTLAND 1, and that portion of the town of Rupert not in BENNINGTON 3~~ not in RUTLAND-2 1

RUTLAND-1 Ira, and Poultney, ~~and that portion of the town of Wells encompassed within a boundary beginning at the point where the boundary line of Wells and Poultney intersects with West Lake Road; then southerly along~~

~~the eastern and Lake St. Catherine side of the centerline of West Lake Road to the intersection of VT Route 30; then northerly along the western and Lake St. Catherine side of the centerline of VT 30 to the boundary of Poultney; then westerly along the Poultney town line to the point of beginning~~ 1

RUTLAND-2 Clarendon, Proctor, Wallingford, and West Rutland, and that portion of the town of Tinmouth encompassed within a boundary beginning at the point where the boundary line of Tinmouth and Danby intersects with East Road; then northerly along the eastern side of the centerline of East Road and then continuing along the eastern side of the centerline of North East Road to the boundary of Clarendon; then easterly along the Clarendon town line to the boundary of Wallingford; then southerly along the Wallingford town line to the boundary of Danby; then westerly along the Danby town line to the point of beginning 2

\* \* \*

WINDHAM-5 Marlboro, Newfane, and ~~that portion that portion of the town of Townshend not in WINDHAM-BENNINGTON~~ 1

WINDHAM-6 Halifax, ~~Whitingham, and~~ Wilmington, and of the town of Whitingham not in WINDHAM-BENNINGTON 1

WINDHAM-BENNINGTON Dover, Readsboro, Searsburg, Somerset, Stamford, Wardsboro, and that portion of the town of ~~Townshend~~ Whitingham encompassed within a boundary beginning at the ~~northernmost point where the boundary line of Townshend and the town of Wardsboro intersects with West Hill Road; then northerly along the eastern side and easterly along the southern side of the centerline of West Hill Road to the intersection of State Forest Road; then easterly along the southern side and southerly along the western side of the centerline of State Forest Road to the boundary of the town of Newfane; then westerly along the town line of Newfane to the boundary line of Wardsboro; then~~

~~northerly along the town line of Wardsboro to the point of beginning~~ point where the boundary line of Whitingham and Readsboro intersects with VT Route 100; then southerly along the Readsboro town line to the boundary of the state of Massachusetts; then easterly along the Massachusetts state line to the intersection of Kentfield Road; then northerly along the western side of the centerline of Kentfield Road to the intersection with the Nog Brook; then northerly along the western side of the centerline of Nog Brook to the intersection with VT 100; then southerly along the eastern side and westerly along the southern side of the centerline of VT 100 to the point of beginning 1

WINDHAM-

BENNINGTON-

WINDSOR

Jamaica, Londonderry, Stratton, Weston, and Winhall  
1

\* \* \*

WINDSOR-3-1

Andover, Baltimore, Chester, and that portion of the town of Springfield encompassed within a boundary beginning at the point where the boundary line of Springfield and Chester intersects with Route 10; then easterly along the southern side of the centerline of Route 10 to the intersection of Cemetery Road; then easterly along the southern side of the centerline of Cemetery Road to the intersection of School Street; then southerly on the western side of the centerline of School Street to the intersection of Main Street; then easterly on the southern side of the centerline of Main Street to the intersection of Church Street; then southerly along the western side of the centerline of Church Street to the intersection ~~with Great Brook; then southerly along the western side of the centerline of Great Brook to the intersection with~~ Spoonerville Road; then southerly along the western side of the centerline of Spoonerville Road to the boundary line of Chester; then northerly along the Chester town line to the point of beginning 1



~~intersection of Lopes Avenue and Roseade Parkway including all the residences in Farrington's Trailer Park and on Poirier Place, then northeasterly along the back property lines between property fronting on Roseade Parkway and Arlington Court including all the residences on Arlington Court, and turning northwesterly along the back property lines of property fronting Arlington Court to the intersection of the back property lines of property fronting Farrington Parkway, then easterly along the back property lines of property fronting Farrington Parkway to the south, then easterly along Farrington Parkway to the intersection of Farrington Parkway and Ethan Allen Parkway, then northerly along Ethan Allen Parkway to a point where the back property lines of property fronting the north side of Farrington Parkway intersect Ethan Allen Parkway, then westerly along the back property lines of property fronting the north side of Farrington Parkway to include all residences on Farrington Parkway, continuing west across the end of Gosse Court to the southeast corner of the Lyman C. Hunt School property, then northwesterly along the property boundary of the Lyman C. Hunt School property to its northeast corner, then northeasterly along the back property lines of property fronting on Janet Circle to a point where said back property lines intersect the back property lines of property fronting on James A~~

~~venue, then northwesterly along the back property lines of property fronting on James Avenue and Sandra Circle and continuing northeasterly along the back property lines of property fronting on Sandra Circle to the intersection of the right-of-way of the Winooski Valley Park Way, then northerly in a straight line to the Winooski River, then northerly along the Winooski River to its intersection with Lake Champlain, then southerly along the shore of Lake Champlain back to the point of beginning.~~

~~2~~

~~CHITTENDEN 3 2.— Consisting of all that portion of the City of Burlington encompassed within a boundary beginning where the northerly property line of Leddy Park intersects the shore of Lake Champlain, then northeasterly along said property line and said property line extended to North Avenue, then southeasterly along North Avenue to the southerly boundary of Farrington's Trailer Park, then northeasterly and northwesterly along the boundary of Farrington's Trailer Park and the back property lines of property fronting Lopes Avenue to the northwest corner of the corner lot at the intersection of Lopes Avenue and Roseade Parkway including all the residences on Lopes Avenue and Blondin Circle, then northeasterly along the back property lines between property fronting on Roseade Parkway and Arlington Court including all the residences on Roseade Parkway, and turning northwesterly along the back property lines of property fronting Arlington Court to the intersection of the back property lines of property fronting Farrington Parkway, then easterly along the back property lines of property fronting Farrington Parkway to the south, then easterly along Farrington~~

~~Parkway to the intersection of Farrington Parkway and Ethan Allen Parkway including all units at 282 Ethan Allen Parkway, then northerly along Ethan Allen Parkway to a point where the back property lines of property fronting the north side of Farrington Parkway intersect Ethan Allen Parkway, then westerly along the back property lines of property fronting the north side of Farrington Parkway, continuing west across the end of Gosse Court to the southeast corner of the Lyman C. Hunt School property, then northwesterly along the property boundary of the Lyman C. Hunt School property to its northeast, then northeasterly along the back property lines of property fronting on Janet Circle to a point where said back property lines intersect the back property lines of property fronting on James Avenue including all residences on Janet Circle, then northwesterly along the back property lines of property fronting on James Avenue and Sandra Circle and continuing northeasterly along the back property lines of property fronting on Sandra Circle to the intersection of the right of way of the Winooski Valley Park Way including all residences on Sandra Circle, then northerly in a straight line to the Winooski River, then following the Winooski River easterly to the railroad bridge, then westerly along the railroad bridge and continuing along the railroad tracks until it intersects at a point with the straight line extension of the property boundary between 603 and 617 Riverside Avenue, then southerly along the straight line extension of the property boundary between 603 and 617 Riverside Avenue, continuing southerly along the property boundary of 603 and 617 Riverside Avenue to its intersection with Riverside Avenue, then westerly along Riverside Avenue to the intersection of Intervale Avenue, then southwestly along Intervale Avenue to the intersection of Archibald Street, then westerly along Archibald Street to the intersection of Spring Street, then northwesterly along Spring Street to the intersection of Manhattan Drive, then westerly along Manhattan Drive to the intersection of Pitkin Street, then southerly along Pitkin Street to the intersection of Strong Street, then westerly along Strong Street to the intersection of North Avenue, then northwesterly along North Avenue to the intersection of Sunset Court, then southwestly along Sunset Court to its end to include all residences on the northwesterly side of Sunset Court, continuing southeasterly in a straight line extension of Sunset Court to its intersection with the railroad tracks, then southerly along the railroad tracks to the intersection of the northern boundary line of the property to the north of the Moran Plant, then westerly along the boundary line to the intersection of the shore of Lake Champlain, then northerly along the shore of Lake Champlain to the point of beginning.~~

~~‡~~

~~CHITTENDEN 3-3. Consisting of that portion of the City of Burlington encompassed within a boundary beginning at the intersection of Maple and Willard Streets, then westerly along Maple Street to the intersection of St. Paul Street, then southerly along St. Paul Street to the intersection of Kilburn Street,~~

~~then westerly along Kilburn Street to the intersection of Pine Street, then southerly along Pine Street to where the railroad track parallels Pine Street, then northwesterly along the railroad track to the intersection of Maple Street, then westerly along Maple Street to the shore of Lake Champlain, then northerly along the shore of Lake Champlain to the intersection of the northern boundary line of the property to the north of the Moran Plant, then easterly along the boundary line to the intersection of the railroad tracks, then northerly along the railroad tracks to an intersection with a straight line extension of Sunset Court, then northeasterly along the straight line extension of Sunset Court and continuing along Sunset Court to its intersection with North Avenue to include all residences on the southeasterly side of Sunset Court, then southeasterly along North Avenue to the intersection of Strong Street, then easterly along Strong Street to the intersection of Pitkin Street, then northerly along Pitkin Street to the intersection of Manhattan Drive, then easterly along Manhattan Drive to the intersection of Spring Street, then southeasterly along Spring Street to the intersection of Archibald Street, then easterly along Archibald Street to the intersection of North Union Street, then southwestly and southerly along North Union Street to the intersection of Pearl Street, then easterly along Pearl Street to the intersection of Willard Street, then southerly along Willard Street to the point of beginning.~~

2

~~CHITTENDEN 3 4. Consisting of that portion of the City of Burlington encompassed within a boundary beginning at the intersection of Davis Road and the boundary between the City of Burlington and the City of South Burlington, then southwestly along Davis Road to the intersection of South Prospect Street, then northerly along South Prospect Street to the intersection of Main Street, then westerly along Main Street to the intersection of Willard Street, then northerly along Willard Street to the intersection of Pearl Street, then westerly along Pearl Street to the intersection of North Union Street, then northerly along North Union Street to the intersection of North Winooski Avenue, then northeasterly along North Winooski Avenue to the intersection of Archibald Street, then westerly along Archibald Street to the intersection of Intervale Avenue, then northeasterly along Intervale Avenue to the intersection of Riverside Avenue, then easterly along Riverside Avenue to the intersection of North Winooski Avenue, then northerly along the property boundary between 603 and 617 Riverside Avenue to the northeastern corner of 617 Riverside Avenue, then northerly along the straight line extension of the property boundary between 603 and 617 Riverside Avenue to the intersection of the railroad tracks, then easterly along the railroad tracks to the intersection of Intervale Road, then southerly along Intervale Road, crossing Riverside Avenue, and continuing southerly along North Prospect Street to the intersection of North Street, then easterly along North Street to the intersection of Mansfield Avenue, then southerly along Mansfield Avenue to the~~

~~intersection of Colchester Avenue, then northeasterly along Colchester Avenue to the intersection of Chase Street, then northeasterly along Chase Street to the intersection of Grove Street, then southeasterly along Grove Street to the intersection of the boundary line between the City of Burlington and the City of South Burlington, then southwesterly along the boundary line to the intersection of Main Street, then northwesterly along Main Street to the intersection with the boundary line, then southerly along the boundary line to the point of beginning.~~

~~2~~

~~CHITTENDEN 3 5. Consisting of that portion of the City of Burlington encompassed within a boundary beginning from the shore of Lake Champlain and the boundary line with the City of South Burlington, then easterly along the boundary line between the City of Burlington and the City of South Burlington to Shelburne Street, then northerly and then easterly along the boundary line with the City of South Burlington, then northerly along the boundary line with the City of South Burlington to the intersection of Davis Road, then southwesterly along Davis Road to the intersection of South Prospect Street, then northerly along South Prospect Street to the intersection of Main Street, then westerly along Main Street to the intersection of Willard Street, then southerly along Willard Street to the intersection of Maple Street, then westerly along Maple Street to the intersection of St. Paul Street, then southerly along St. Paul Street to the intersection of Kilburn Street, then westerly along Kilburn Street to the intersection of Pine Street, then southerly along Pine Street to where the railroad track parallels Pine Street, then northwesterly along the railroad track to the intersection of Maple Street, then westerly along Maple Street to the intersection of the shore of Lake Champlain, then southerly along the shore of Lake Champlain to the point of beginning.~~

~~2~~

~~CHITTENDEN 3 6. Consisting of all the City of Winooski and that portion of the City of Burlington encompassed within a boundary beginning at the northern terminus of the boundary line between the cities of Burlington and South Burlington located at a point adjacent to the Winooski River west of Interstate 89, then southwesterly along the boundary line to the intersection of the boundary line and Grove Street, then northwesterly along Grove Street to the intersection of Chase Street, then southwesterly along Chase Street to the intersection of Colchester Avenue, then southwesterly along Colchester Avenue to the intersection of Mansfield Avenue, then northerly along Mansfield Avenue to the intersection of North Street, then westerly on North Street to the intersection of North Prospect Street, then northerly along North Prospect Street, crossing Riverside Avenue, and continuing along Intervale Road to the intersection of the railroad tracks, then easterly along the railroad tracks to the Winooski River and the boundary of the City of Burlington and the City of Winooski.~~

~~2~~



~~CHITTENDEN 3-7. That portion of the City of South Burlington starting at a point on Lake Champlain at the Shelburne South Burlington boundary and following the Shelburne South Burlington boundary easterly to Shelburne Road; then northerly following Shelburne Road to Allen Road; then easterly following Allen Road to Spear Street; then northerly on Spear Street to Pheasant Way; then westerly on Pheasant Way to Deerfield Drive; then northerly on Deerfield Drive; then easterly on Deerfield Drive to the intersection with Spear Street; then across Spear Street to Nowland Farm Road to the intersection with Pinnacle Drive; then northerly on Pinnacle Drive; then easterly on Pinnacle Drive; then northerly on Pinnacle Drive; then westerly on Pinnacle Drive; then southerly on Pinnacle Drive to the intersection with Olivia Drive; then westerly along Olivia Drive to Spear Street; then northerly on Spear Street to Swift Street; then westerly on Swift Street to Shelburne Road; then westerly along the Burlington South Burlington boundary to Lake Champlain; then following the shore of Lake Champlain southerly to the point of beginning. †~~

~~CHITTENDEN 3-8. That portion of the City of South Burlington starting at the junction of Dorset Street and the Shelburne South Burlington boundary and proceeding easterly to the junction of the Shelburne South Burlington Williston boundaries; then northerly following the Williston South Burlington boundary to Williston Road; then continuing westerly to the intersection of Hinesburg Road/Patchen Road; then southerly following Hinesburg Road to Wooderest Street; then westerly on Wooderest Street; then northerly on Wooderest Street; then westerly on Wooderest Street; then southerly on Wooderest Street to Dean Street; then easterly on Dean Street to Hinesburg Road; then southerly along Hinesburg Road to Interstate 89; then westerly along Interstate 89 to its intersection with Dorset Street; then southerly to Swift Street; then westerly following Swift Street to Spear Street; then southerly along Spear Street to Olivia Drive; then easterly on Olivia Drive to Pinnacle Drive; then northerly on Pinnacle Drive; then easterly on Pinnacle Drive; then southerly on Pinnacle Drive; then westerly on Pinnacle Drive; then southerly on Pinnacle Drive to Nowland Farm Road; then westerly to Spear Street; then across Spear Street to Deerfield Drive; then westerly on Deerfield Drive; then southerly on Deerfield Drive to Pheasant Way; then easterly on Pheasant Way to Spear Street; then southerly along Spear Street to Allen Road; then westerly following Allen Road to the intersection of Shelburne Road; then southerly on Shelburne Road to the Shelburne South Burlington boundary; then easterly on the Shelburne South Burlington boundary to the point of beginning at Dorset Street and the Shelburne South Burlington boundary. †~~

~~CHITTENDEN 3-9. That portion of the City of South Burlington starting at the junction of the Burlington South Burlington boundary and Williston Road and following that boundary starting northerly following the~~

~~city boundary to the Winooski River, then following the South Burlington-Winooski River boundary to Muddy Brook, then following the Muddy Brook-South Burlington boundary to Williston Road, then westerly to Hinesburg Road/Patchen Road, then southerly to Woodcrest Street, then westerly on Woodcrest Street, then northerly on Woodcrest Street, then westerly on Woodcrest Street, then southerly on Woodcrest Street to Dean Street, then easterly on Dean Street to Hinesburg Road, then continuing southerly on Hinesburg Road to Potash Brook, then westerly following the centerline of Potash Brook to the intersection with Kennedy Drive, then westerly on Kennedy Drive to Dorset Street, then northerly on Dorset Street to Williston Road, then westerly to the point beginning at the junction of the Burlington-South Burlington boundary and Williston Road.~~ 1

~~CHITTENDEN 3-10. That portion of the City of South Burlington not contained in CHITTENDEN 3-7, 3-8, or 3-9.~~ 1

~~(3) CHITTENDEN-6 is subdivided into the following districts:~~

~~CHITTENDEN 6-1. That portion of the Town of Essex not included in CHITTENDEN 6-2 or 6-3.~~ 2

~~CHITTENDEN 6-2. The Village of Essex Junction.~~ 2

~~CHITTENDEN 6-3. The Town of Westford, plus that portion of the Town of Essex bounded by the centerline of the road from Curve Hill at the Colchester Town line, then to Lost Nation Road, then northerly on Old Stage Road to Towers Road, then continuing easterly to Brown's River Road to Weed Road, then easterly on Jericho Road to the Jericho town line.~~ 1

~~(4) CHITTENDEN 7 is subdivided into the following districts:~~

~~CHITTENDEN 7-1. That portion of the town of Colchester north of Malletts Creek and west of Interstate 89 to the Milton town line, plus that portion of the town of Colchester east of Interstate 89.~~ 2

~~CHITTENDEN 7-2. That portion of the town of Colchester not included in CHITTENDEN 7-1.~~ 2

~~(5) GRAND ISLE CHITTENDEN 1 is subdivided into the following districts:~~

~~GRAND ISLE CHITTENDEN 1-1. The towns of Alburg, Grand Isle, Isle La Motte, North Hero and South Hero, plus that portion of the town of Milton bounded by a line beginning at the mouth of the Lamoille River and Lake Champlain, then along the river upstream to the Interstate 89 bridge crossing the Lamoille River, then northerly along Interstate 89 to the Georgia town line, then along the Georgia town line to Lake Champlain, then southerly along the lakeshore to the place of beginning.~~ 2

~~CHITTENDEN 9. That portion of the town of Milton not included in  
GRAND ISLE CHITTENDEN 1. 2~~

~~(6) RUTLAND 1 is subdivided into the following districts:~~

~~RUTLAND 1 1. The town of Poultney and that part of the town of Ira encompassed within a boundary beginning in the southwest at the intersection of the town boundaries of Ira, Middletown Springs and Poultney, then northerly along the boundary with Poultney and continuing northerly along the boundary with Castleton, then easterly along the boundary with Castleton to the boundary with West Rutland, then southeasterly along the boundary with West Rutland to the ridge line of the mountain range, then southwesterly along the ridge line of the mountain range to the boundary with Middletown Springs, then westerly along the boundary with Middletown Springs to the point of beginning. 1~~

~~RUTLAND 1 2. The towns of Clarendon, Proctor, West Rutland and that part of the town of Ira not included in RUTLAND 1 1. 2~~

~~(7) RUTLAND 5 is subdivided into the following districts:~~

~~RUTLAND 5 1. That portion of the City of Rutland encompassed within a boundary beginning at the point where the boundary line of Rutland City and Rutland Town intersects with Lincoln Avenue, then southerly along the east side of the centerline of Lincoln Avenue to the intersection of West Street, then easterly along the north side of the centerline of West Street across North Main Street, then easterly along the north side of Terrill Street to the intersection of Lafayette Street, then southerly along the east side of the centerline of Lafayette Street to the intersection of Easterly Avenue, then easterly along the north side of Easterly Avenue to the intersection of Easterly Avenue and Piedmont Drive, then easterly along the north side of the centerline of Piedmont Drive to the intersection of Piedmont Drive and Piedmont Parkway, then easterly along the centerline of Piedmont Parkway to the intersection of Piedmont Parkway and Stratton Road, then southerly along the easterly side of the centerline of Stratton Road to the intersection of Stratton Road and Killington Avenue, then easterly along the north side of the centerline of Killington Avenue, including both sides of Grandview Terrace, to the boundary between Rutland City and Rutland Town, then northerly following the boundary line to its intersection with Gleason Road, then westerly along the south side of the centerline of Gleason Road to Woodstock Avenue, then following the boundary line back to the point of beginning. 1~~

~~RUTLAND 5 2. That portion of the City of Rutland encompassed within a boundary beginning at the point where the boundary line of Rutland City and Rutland Town intersects with South Main Street, then northerly along the easterly side of the centerline of South Main Street to the intersection of~~

~~South Main Street and Strongs Avenue, then northwesterly along the east side of the centerline of Strongs Avenue to the intersection of Strongs Avenue and Prospect Street, then northerly along the east side of the centerline of Prospect Street to the intersection of Prospect Street and Washington Street, then easterly along the south side of the centerline of Washington Street to the intersection of Washington Street and Court Street, then northerly along the east side of the centerline of Court Street to the intersection of Court Street and West Street, then easterly along the south side of the centerline of West Street, to the intersection of West Street and South Main Street, then east across South Main Street, to the intersection of South Main Street and Terrill Street, then easterly along the south side of the centerline of Terrill Street to the intersection of Terrill Street and Lafayette Street, then southerly along the west side of the centerline of Lafayette Street to the intersection of Lafayette Street and Easterly Avenue, then easterly along the south side of the centerline of Easterly Avenue to the intersection of Easterly Avenue and Piedmont Drive, then easterly along the south side of the centerline of Piedmont Drive to the intersection of Piedmont Drive and Piedmont Parkway, then easterly along the south side of the centerline of Piedmont Parkway to the intersection of Piedmont Parkway and Stratton Road, then southerly along the west side of the centerline of Stratton Road to the intersection of Stratton Road and Killington Avenue, then easterly along the south side of the centerline of Killington Avenue to the boundary of Rutland City and Rutland Town, then southerly along the city line to the intersection of the city line and South Main Street to the point of beginning.~~

~~‡~~

~~RUTLAND 5 3. That portion of the City of Rutland encompassed within a boundary beginning at the point where the boundary line of Rutland City and Rutland Town intersects with South Main Street, then northerly along the west side of the centerline of South Main Street to the intersection of South Main Street and Strongs Avenue, then northwesterly along the west side of the centerline of Strongs Avenue to the intersection of Strongs Avenue and Prospect Street, then northerly along the west side of the centerline of Prospect Street to the intersection of Prospect Street and Washington Street, then easterly along the north side of the centerline of Washington Street to the intersection of Washington Street and Court Street, then northerly along the west side of the centerline of Court Street to the intersection of Court Street and West Street, then easterly along the north side of the centerline of West Street to the intersection of West Street and Lincoln Avenue, then northerly along the west side of the centerline of Lincoln Avenue to the intersection of Lincoln Avenue and Williams Street, then west along the south side of the centerline of Williams Street to the intersection of Williams Street and Grove Street, then north along the west side of the centerline of Grove Street to the intersection of Grove Street and Maple Street, then west along the south side of~~

~~the centerline of Maple Street to the intersection of Maple Street and Pine Street, then south along the east side of the centerline of Pine Street to the intersection of Pine Street and Robbins Street, then west along the south side of the centerline of Robbins Street to the intersection of Robbins Street and Baxter Street, then south along the east side of the centerline of Baxter Street to the intersection of Baxter Street and State Street, then west along the south side of the centerline of State Street to the intersection of State Street and Cramton Avenue, then south along the east side of the centerline of Cramton Avenue to the intersection of Cramton Avenue and West Street, then westerly along the south side of the centerline of West Street to the intersection of Ripley Road, then southerly along the Rutland City Rutland Town line to the intersection of the city line and South Main Street, the point of beginning. †~~

~~RUTLAND 5 4. That portion of the City of Rutland not located within the boundaries of RUTLAND 5 1, 5 2 or 5 3. †~~

~~(8) WASHINGTON 3 is subdivided into the following districts:~~

~~WASHINGTON 3 1. That portion of the City of Barre bounded on the north, east and south by Barre Town, and bounded on the west by a line running along the center of Hall Street to the intersection of Elm Street, then along the center of Elm Street to the intersection of North Main Street, then along the center of North Main Street to the intersection of Prospect Street, then along the center of Prospect Street to the intersection of Allen Street, then along the western back lot line of Allen Street to the Barre Town boundary. †~~

~~WASHINGTON 3 2. That portion of the City of Barre bound on the north and south by the Barre Town line, on the east by the boundary with WASHINGTON 3 1, and on the west by the boundary with WASHINGTON 3 3. †~~

~~WASHINGTON 3 3. The town of Berlin and that portion of the City of Barre bound on the west by the Berlin town line, on the north and south by the Barre Town line, and on the east by a boundary running from the Barre Town northern boundary along the center of Beekley Street, then along the center of Third Street to North Main Street, then along the center of North Main Street to the intersection of Berlin Street, then along the center of Berlin Street to Prospect Street, then along the center of Prospect Street to the Barre Town line. †~~

~~(9) WINDHAM 3 is subdivided into the following districts:~~

~~WINDHAM 3 1. That portion of the Town of Brattleboro to the west of a boundary beginning at Upper Dummerston Road at the Dummerston town line, then southeasterly along the centerline of Upper Dummerston Road to Interstate 91, then southerly along the median of Interstate 91 to Williams Street, then easterly along the centerline of Williams Street to where the~~

~~Whetstone Brook crosses, then southwesterly along the western bank of the Whetstone Brook to Lamson Street and southerly along the centerline of Lamson Street to Chestnut Street, then westerly along the centerline of Chestnut Street to Interstate 91, then southerly along the median of Interstate 91 to the Guilford town line.~~ 1

~~WINDHAM 3-2. That portion of the Town of Brattleboro to the south of a boundary beginning at the Connecticut River at the Whetstone Brook, westerly along the southern bank of the Whetstone Brook to Elm Street, then northerly along the centerline of Frost Street to Williams Street and following the centerline of Williams Street to West Street, then westerly along the centerline of West Street to Williams Street and westerly along the centerline of Williams Street to where the Whetstone Brook crosses, then southwesterly along the eastern bank of the Whetstone Brook to Lamson Street and southerly along the centerline of Lamson Street to Chestnut Street, then westerly along the centerline of Chestnut Street to Interstate 91, and east of Interstate 91 to the Guilford town line.~~ 1

~~WINDHAM 3-3. That portion of the Town of Brattleboro not located in WINDHAM 3-1 or 3-2.~~ 1

~~(10) WINDSOR-1 is subdivided into the following districts:~~

~~WINDSOR 1-1. The towns of Andover, Baltimore, Chester and that portion of the town of Springfield encompassed within a boundary beginning at the Chester-Springfield town lines at Northfield Drive, then easterly along the centerline of Northfield Drive to the intersection with Fairbanks Road, then northerly along the centerline of Fairbanks Road to the intersection with Main Street, North Springfield, then easterly along the centerline of Main Street, North Springfield to the intersection with the County Road, then northeasterly along the centerline of the County Road to the intersection with VT 106, then northwesterly along the centerline of VT 106 to the intersection with the Baltimore Road, then northwesterly along the centerline of the Baltimore Road to the Chester boundary line, then southerly along the Chester boundary line to the point of the beginning.~~ 1

~~WINDSOR 1-2. That portion of the town of Springfield not part of WINDSOR 1-1.~~ 2

~~(11) WINDSOR-6 is subdivided into the following districts:~~

~~WINDSOR 6-1. The towns of Barnard and Pomfret and that portion of the town of Hartford lying westerly and northerly of a boundary beginning on the Norwich-Hartford town line at the centerline of Newton Lane, then southerly along the centerline of Newton Lane to its intersection with Jericho Street, then westerly along the centerline of Jericho Street to its intersection with Dothan Road, then southerly along the centerline of Dothan Road to VT~~

~~14, then westerly along the centerline of VT 14 to the intersection of the centerline of Runnels Road and VT 14, then at a right angle to a utility pole marked 137T/6 ET&T/3>/136/GMP Corp/156/40030 on the south edge of VT 14, then southerly in a straight line across the White River to the junction of Old River Road and the beginning of Costello Road, then southerly and easterly along the center of Costello Road to its end on U.S. Route 4, then westerly along the centerline of U.S. Route 4 to the intersection of Waterman Hill Road, then northerly along the centerline of Waterman Hill Road to the northerly low watermark of the Ottauquechee River, then westerly and southerly along the northerly and westerly low watermark of the Ottauquechee River to the Hartford Hartland town line, then westerly along the town line to the northerly low watermark of the Ottauquechee River, then along the northerly low watermark of the Ottauquechee River to the Hartford-Pomfret town line.~~

~~1~~

~~WINDSOR 6 2. That portion of the town of Hartford not located in WINDSOR 6 1.~~

~~2~~

~~(b) The following initial House districts, created and assigned two members by section 1893 of this title, as amended by No. 85 of the Acts of 2002, are subdivided as recommended by their respective boards of civil authority into final House districts, as designated and defined below, each of which shall be entitled to elect one representative:~~

~~(1) CHITTENDEN 1 is subdivided into the following districts:~~

~~CHITTENDEN 1 1. The town of Hinesburg, except two portions: the first being that portion of the town of Hinesburg in the southwest corner of the town bounded by a line beginning at the intersection of the Monkton town line and Baldwin Road, then northerly along Baldwin Road to its intersection with Drinkwater Road, then westerly along the centerline of Drinkwater Road to the Charlotte town line, and the second being that portion of the town of Hinesburg in the northwest corner of the town bounded by a line beginning at the junction of VT 116 and the St. George town line, then southerly along the centerline of VT 116 to its intersection with Falls Road, then westerly along the centerline of Falls Road to its intersection with O'Neill Road, then westerly along the centerline of O'Neill Road to the Charlotte town border.~~

~~1~~

~~CHITTENDEN 1 2. The town of Charlotte, plus the two portions of the town of Hinesburg not included in CHITTENDEN 1 1.~~

~~1~~

~~(2) CHITTENDEN 5 is subdivided into the following districts:~~

~~CHITTENDEN 5 1. That portion of the town of Shelburne bounded by a line beginning on the southwest corner of the Shelburne-Charlotte town line, then following the shore of Lake Champlain to the mouth of Munroe Brook, including all of the Lake that is part of the town of Shelburne, then upstream~~

~~along the center of Munroe Brook to the intersection with Spear Street, then south along the centerline of Spear Street to the Shelburne Charlotte town line, then west along the Shelburne Charlotte town line to the place of beginning. 1~~

~~CHITTENDEN 5-2. The town of St. George, plus that portion of Shelburne which is not in CHITTENDEN 5-1. 1~~

(a) CHITTENDEN-5 is subdivided into the following districts:

(1) CHITTENDEN-5-1. That portion of the town of Shelburne encompassed within a boundary beginning at the point where the boundary line of Shelburne and the town of Charlotte intersects with the shore of Lake Champlain; then northerly along the shore of Lake Champlain to the mouth of Munroe Brook, including all of the lake that is part of the town of Shelburne; then upstream along the western side of the centerline of Munroe Brook to the intersection with Spear Street; then southerly along the western side of the centerline of Spear Street to the boundary of Charlotte; then westerly along the Charlotte town line to the point of beginning 1

(2) CHITTENDEN-5-2. St. George and that portion of the town of Shelburne not in CHITTENDEN-5-1 1

(b) CHITTENDEN-6 is subdivided into the following districts:

(1) CHITTENDEN-6-1. That portion of the city of Burlington encompassed within a boundary beginning at the point where the northwestern property line of Leddy Park intersects with the shore of Lake Champlain; then northeasterly along the northern side of that property line and continuing from that property line in a straight line to the intersection of North Avenue; then southeasterly along the northeastern side of the centerline of North Avenue to the southern boundary of Farrington's Trailer Park; then northeasterly and then northwesterly along the boundary of Farrington's Trailer Park and the back property lines of property fronting Lopes Avenue to the northwest corner of the corner lot at the intersection of Lopes Avenue and Roseade Parkway, including all of the residences in Farrington's Trailer Park and on Poirier Place; then northeasterly along the back property lines between property fronting on Roseade Parkway and Arlington Court, including all the residences on Arlington Court; then turning northwesterly along the back property lines of property fronting Arlington Court to the intersection of the back property lines of property fronting Farrington Parkway on the southern side; then easterly along those back property lines to Farrington Parkway; then easterly along the northern side of the centerline of Farrington Parkway to the intersection of Ethan Allen Parkway; then northerly along the western side of the centerline of Ethan Allen Parkway to the intersection of VT Route 127; then northwesterly along the southern side of the centerline of VT 127 to the intersection of the boundary of the town of Colchester at the Heineberg Bridge over the Winooski



River; then northerly and westerly along the Colchester town line to the intersection with Lake Champlain; then southerly along the shore of Lake Champlain to the point of beginning 2

(2) CHITTENDEN-6-2. That portion of the city of Burlington encompassed within a boundary beginning at the point where the northwestern property line of Leddy Park intersects with the shore of Lake Champlain; then northeasterly along the southern side of that property line and continuing from that property line in a straight line to the intersection of North Avenue; then southeasterly along the southwestern side of the centerline of North Avenue to the southern boundary of Farrington's Trailer Park; then northeasterly and then northwesterly along the boundary of Farrington's Trailer Park and the back property lines of property fronting Lopes Avenue to the northwest corner of the corner lot at the intersection of Lopes Avenue and Roseade Parkway, including all the residences on Lopes Avenue and Blondin Circle; then northeasterly along the back property lines between property fronting on Roseade Parkway and Arlington Court, including all the residences on Roseade Parkway; then turning northwesterly along the back property lines of property fronting Arlington Court to the intersection of the back property lines of property fronting Farrington Parkway on the southern side; then easterly along those back property lines to Farrington Parkway; then easterly along the southern side of the centerline of Farrington Parkway to the intersection of Ethan Allen Parkway, including all units at 282 Ethan Allen Parkway; then northerly along the eastern side of the centerline of Ethan Allen Parkway to the intersection of VT Route 127; then northwesterly along the northern side of the centerline of VT 127 to the intersection of the boundary of the town of Colchester at the Heineberg Bridge over the Winooski River; then easterly and southerly along the Colchester town line and continuing along the boundary of the city of Winooski to the railroad bridge; then westerly along the northern side of the centerline of the railroad bridge and continuing along the northern side of the centerline of the railroad tracks to the intersection of a point representing the centerline of the railroad tracks and a straight line extension of the centerline of Spring Street; then southeasterly along the western side of the centerline of that straight line to the intersection of Spring Street and Manhattan Drive; then westerly along the northern side of the centerline of Manhattan Drive to the intersection of Pitkin Street; then southerly along the western side of the centerline of Pitkin Street to the intersection of North Street; then easterly along the southern side of the centerline of North Street to the intersection of North Champlain Street; then southerly along the western side of the centerline of North Champlain Street to the intersection of Pearl Street; then westerly along the northern side of the centerline of Pearl Street to the intersection of Battery Street; then southerly along the western side of the centerline of Battery Street to the intersection of College Street; then westerly

along the northern side of the centerline of College Street to the intersection of the Island Line Trail; then southerly along the western side of the Island Line Trail to a point representing the southern end of the Union Station building; then northwesterly from that point to a point representing the intersection of a straight line extension of Main Street and the shore of Lake Champlain; then northwesterly along the shore of Lake Champlain to the point of beginning

1

(3) CHITTENDEN-6-3. That portion of the city of Burlington encompassed within a boundary beginning at the point of the intersection of Spring Street and Manhattan Drive; then westerly along the southern side of the centerline of Manhattan Drive to the intersection of Pitkin Street; then southerly along the eastern side of the centerline of Pitkin Street to the intersection of North Street; then easterly along the northern side of the centerline of North Street to the intersection of North Champlain Street; then southerly along the eastern side of the centerline of North Champlain Street to the intersection of Pearl Street; then westerly along the southern side of the centerline of Pearl Street to the intersection of Battery Street; then southerly along the eastern side of the centerline of Battery Street to the intersection of College Street; then westerly along the southern side of the centerline of College Street to the intersection of the Island Line Trail; then southerly along the eastern side of the centerline of the Island Line Trail to the southern end of the Union Station building; then northwesterly from that point to a point representing the intersection of a straight line extension of Main Street and the shore of Lake Champlain; then southerly along the shore of Lake Champlain to a point representing the intersection of the shore of Lake Champlain and a straight line extension of Maple Street; then easterly along the northern side of the centerline of Maple Street to the intersection of South Willard Street; then northerly along the western side of the centerline of South Willard Street to the intersection of Main Street; then westerly along the southern side of the centerline of Main Street to the intersection of South Union Street; then northerly along the western side of the centerline of South Union Street to the intersection of Pearl Street; then continuing on North Union Street to the intersection of North Street; then easterly along the northern side of the centerline of North Street to the intersection of North Willard Street; then northerly along the western side of the centerline of North Willard Street to the intersection of Hyde Street; then northeasterly along the western side of the centerline of Hyde Street to a point representing the intersection of a straight line extension of Hyde Street and the railroad tracks; then westerly along the southern side of the centerline of the railroad tracks to the intersection of a point representing the intersection of the centerline of the railroad tracks and a straight line extension of the centerline of Spring Street; then southeasterly

along the eastern side of the centerline of that straight line to the point of beginning 2

(4) CHITTENDEN-6-4. That portion of the city of Burlington encompassed within a boundary beginning at the point of the intersection of North Street and North Union Street; then southerly along the eastern side of the centerline of North Union Street to the intersection of Pearl Street; then easterly along the northern side of the centerline of Pearl Street to the intersection of South Prospect Street; then southerly along the eastern side of the centerline of South Prospect Street to the intersection of Main Street; then easterly along the northern side of the centerline of Main Street to the northeastern boundary of 461 Main Street; then southeasterly along the eastern side of the boundary of 461 Main Street and 475 Main Street, including the property at 475, 479, and 481 Main Street and excluding the property at 461 Main Street and continuing in a straight line to the southwestern corner of the property located at 475 Main Street, including that property; then continuing on to and along the eastern side of the boundary between property located on Robinson Parkway and property located on University Terrace, including the University Terrace properties, to the intersection with University Heights Road; then continuing southerly from the intersection with University Heights Road on the eastern side of the boundary between properties within University Heights and those properties on South Prospect Street and on Henderson Terrace to the intersection of a road running along the southern side of the Gucciardi Recreation and Fitness Center and the Gutterson Fieldhouse and Davis Road; then easterly along the northern side of the centerline of the road on the southern boundary of the center and fieldhouse to the boundary of the city of South Burlington; then northerly and easterly along the South Burlington city line to the intersection with Grove Street, including the residences on the inside and southern side of the circle at 284 Grove Street, also known as Apple Grove, but excluding the residences on the outside and northern side of the circle at 284 Grove Street; then westerly along the southern side and northerly along the western side of the centerline of Grove Street to the intersection of Chase Street; then westerly and southwestwardly along the southern side of the centerline of Chase Street to the intersection of Colchester Avenue; then northerly along the western side of the centerline of Colchester Avenue to the intersection of Riverside Avenue; then southerly along the eastern side and westerly along the southern side of the centerline of Riverside Avenue to the intersection of Intervale Road; then northwestwardly along the western side of the centerline of Intervale Road to the intersection with the railroad tracks; then westerly along the southern side of the centerline of the railroad tracks to a point representing the intersection of the centerline of the railroad tracks and a straight line extension of the centerline of Hyde Street; then southwestwardly along the eastern side of the centerline of that line

extension and then Hyde Street to the intersection of North Willard Street; then southerly along the eastern side of the centerline of North Willard Street to the intersection of North Street; then westerly along the southern side of the centerline of North Street to the point of beginning 2

(5) CHITTENDEN-6-5. That portion of the city of Burlington encompassed within a boundary beginning at the point where the boundary of Burlington and the city of South Burlington intersects with the shore of Lake Champlain; then northerly along the shore of Lake Champlain to the intersection of the shore of the lake with a point representing a straight line extension of Maple Street; then easterly along the southern side of the centerline of Maple Street to the intersection of South Willard Street; then southerly along the western side of the centerline of South Willard Street to the intersection of Cliff Street; then easterly along the southern side of the centerline of Cliff Street to the intersection of South Prospect Street; then southerly along the western side of the centerline of South Prospect Street to the intersection of Davis Road; then easterly along the southern side of the centerline of Davis Road to the intersection of the road running along the southern boundary of the Gucciardi Recreation and Fitness Center and the Gutterson Fieldhouse; then easterly along the southern side of the centerline of the road on the southern boundary of the center and fieldhouse to the boundary of the city of South Burlington; then southerly and westerly along the South Burlington city line to the shore of Lake Champlain and the point of beginning 2

(6) CHITTENDEN-6-6. That portion of the city of Burlington encompassed within a boundary beginning at the point of the intersection of Pearl Street and North Union Street; then easterly along the southern side of the centerline of Pearl Street to the intersection of South Prospect Street; then southerly along the western side of the centerline of South Prospect Street to the intersection of Main Street; then easterly along the southern side of the centerline of Main Street to the northeastern boundary of 461 Main Street; then southeasterly along the western side of the boundary of 461 Main Street and 475 Main Street, excluding the property at 475, 479, and 481 Main Street and including the property at 461 Main Street and continuing in a straight line to the southwestern corner of the property located at 475 Main Street, excluding that property; then continuing on to and along the western side of the boundary between property located on Robinson Parkway and property located on University Terrace, including the Robinson Parkway properties, to the intersection with University Heights Road; then continuing southerly from the intersection with University Heights Road on the western side of the boundary between properties within University Heights and those properties on South Prospect Street and on Henderson Terrace to the intersection of a road running along the southern side of the Gucciardi Recreation and Fitness Center and the

Gutterson Fieldhouse and Davis Road; then westerly along the northern side of the centerline of Davis Road to the intersection of South Prospect Street; then northerly along the eastern side of the centerline of South Prospect Street to the intersection of Cliff Street; then westerly along the northern side of the centerline of Cliff Street to the intersection of South Willard Street; then northerly along the eastern side of the centerline of South Willard Street to the intersection of Main Street; then westerly along the northern side of the centerline of Main Street to the intersection of South Union Street; then northerly along South Union Street to the intersection of Pearl Street; then continuing northerly along the eastern side of the centerline of North Union Street to the point of beginning 1

(7) CHITTENDEN-6-7. The city of Winooski and that portion of the city of Burlington not included in CHITTENDEN-6-1, 6-2, 6-3, 6-4, 6-5, or 6-6 2

(c) CHITTENDEN-7 is subdivided into the following districts:

(1) CHITTENDEN-7-1. That portion of the city of South Burlington encompassed within a boundary beginning at the point where the boundary of South Burlington and the city of Burlington intersects with the shore of Lake Champlain; then southerly along the shore of Lake Champlain, including all of the lake belonging to South Burlington, to the boundary of the town of Shelburne; then easterly along the Shelburne town line to the intersection of Shelburne Road; then northerly along the western side of the centerline of Shelburne Road to the intersection of Allen Road; then easterly along the northern side of the centerline of Allen Road to the intersection of Spear Street; then northerly along the western side of the centerline of Spear Street to the intersection of Nowland Farm Drive; then easterly along the northern side of the centerline of Nowland Farm Drive to the intersection of Dorset Street; then northerly along the western side of the centerline of Dorset Street to the intersection of Swift Street; then westerly along the southern side of the centerline of Swift Street and then continuing along the Burlington city line to the shore of Lake Champlain and the point of beginning 1

(2) CHITTENDEN-7-2. That portion of the city of South Burlington encompassed within a boundary beginning at the point of the intersection of Nowland Farm Drive and Spear Street; then southerly along the eastern side of the centerline of Spear Street to the intersection of Allen Road; then westerly along the southern side of the centerline of Allen Road to the intersection of Shelburne Road; then southerly along the eastern side of the centerline of Shelburne Road to the boundary of the town of Shelburne; then easterly along the Shelburne town line to the boundary of the town of Williston; then northerly along the Williston town line to the intersection of VT Route 2; then westerly along the southern side of the centerline of VT 2 to the intersection of

the back property lines of property fronting Elsom Parkway on the western side of Elsom Parkway; then southerly along those back property lines including all of the properties along Elsom Parkway and continuing in a straight line to the intersection with the Potash Brook; then southwesterly along the southern side of the centerline of the Potash Brook to the intersection with Hinesburg Road; then southeasterly along the eastern side of the centerline of Hinesburg Road to the intersection with Interstate 89; then westerly along the southern side of the centerline of Interstate 89 to the intersection with Dorset Street; then southerly along the eastern side of the centerline of Dorset Street to the intersection of Nowland Farm Drive; then westerly along the southern side of the centerline of Nowland Farm Drive to the point of beginning 1

(3) CHITTENDEN-7-3. That portion of the city of South Burlington encompassed within a boundary beginning at the northwestern-most point where the boundary line of South Burlington and the city of Burlington intersects with Williston Road; then southerly and westerly along the Burlington city line to the intersection with Swift Street; then easterly along the northern side of the centerline of Swift Street to the intersection of Dorset Street; then northerly along the western side of the centerline of Dorset Street to the intersection with Interstate 89; then easterly along the northern side of the centerline of Interstate 89 to the intersection with Hinesburg Road; then northwesterly along the western side of the centerline of Hinesburg Road to the intersection with the Potash Brook; then southwesterly along the southern side of the centerline of the Potash Brook to the intersection with Kennedy Drive; then westerly along the southern side of the centerline of Kennedy Drive to the intersection of Dorset Street; then northerly along the western side of the centerline of Dorset Street to the intersection of Williston Road; then northwesterly along the southern side of the centerline of Williston Road to the point of beginning 1

(4) CHITTENDEN-7-4. That portion of the city of South Burlington not in CHITTENDEN-7-1, 7-2, or 7-3 1

(d) CHITTENDEN-9 is subdivided into the following districts:

(1) CHITTENDEN-9-1. That portion of the town of Colchester north of Malletts Creek and west of Interstate 89 to the Milton town line; plus that portion of the town of Colchester east of Interstate 89, except the portion of that portion of the town encompassed within a boundary beginning at the point where Interstate 89 intersects with VT Route 127; then easterly along the southern side of the centerline of VT 127 to the intersection of the Roosevelt Highway; then southerly along the western side of the centerline of the Roosevelt Highway to the intersection of the Sunderland Brook; then westerly along the northern side of the centerline of the Sunderland Brook to the

intersection with Interstate 89; then northerly along the eastern side of the centerline of Interstate 89 to the point of beginning 2

(2) CHITTENDEN-9-2. That portion of the town of Colchester not in CHITTENDEN-9-1 2

Sec. 3. 17 V.S.A. § 1881 is amended to read:

§ 1881. NUMBER TO BE ELECTED

Senatorial districts and the number of senators to be elected from each are as follows:

(1) Addison senatorial district, composed of the towns of Addison, ~~Brandon~~, Bridport, Bristol, Buel's Gore, Cornwall, Ferrisburgh, Goshen, Granville, Hancock, Huntington, Leicester, Lincoln, Middlebury, Monkton, New Haven, Orwell, Panton, Ripton, Salisbury, Shoreham, Starksboro, Vergennes, Waltham, ~~Whiting and Weybridge, and Whiting~~..... two;

(2) Bennington senatorial district, composed of the towns of Arlington, Bennington, Dorset, Glastenbury, Landgrove, Manchester, Peru, Pownal, Readsboro, Rupert, Sandgate, Searsburg, Shaftsbury, Stamford, Sunderland, Wilmington, Winhall, and Woodford..... two;

(3) Caledonia senatorial district, composed of the towns of Barnet, Bradford, Burke, Danville, Fairlee, Groton, Hardwick, Kirby, Lyndon, Newark, Newbury, Orange, Peacham, Ryegate, St. Johnsbury, Sheffield, Stannard, Sutton, Topsham, Walden, Waterford, West Fairlee, and Wheelock..... two;

(4) Chittenden senatorial district, composed of the towns of Bolton, ~~Buel's Gore~~, Burlington, Charlotte, Essex, Hinesburg, ~~Huntington~~, Jericho, Milton, Richmond, St. George, Shelburne, South Burlington, Underhill, Westford, Williston, and Winooski..... six;

(5) Essex-Orleans senatorial district, composed of the towns of Albany, Averill, Avery's Gore, Barton, Bloomfield, Brighton, Brownington, Brunswick, Canaan, Charleston, Concord, Coventry, Craftsbury, Derby, East Haven, ~~Eden~~, Ferdinand, Glover, Granby, Greensboro, Guildhall, Holland, Irasburg, Jay, Lemington, Lewis, Lowell, Lunenburg, Maidstone, Montgomery, Morgan, Newport City, Newport Town, Norton, Richford, Troy, Victory, Warner's Grant, ~~Warren's~~ Warren Gore, Westfield, Westmore, and Wolcott..... two;

(6) Franklin senatorial district, composed of the towns of ~~Alburg~~ Alburgh, Bakersfield, Berkshire, ~~Enosburg~~ Enosburgh, Fairfax, Fairfield, Fletcher, Franklin, Georgia, Highgate, St. Albans City, St. Albans Town, Sheldon, and Swanton..... two;

(7) Grand Isle senatorial district, composed of the towns of Colchester, Grand Isle, Isle La Motte, North Hero, and South Hero..... one;

(8) Lamoille senatorial district, composed of the towns of Belvidere, Cambridge, Eden, Elmore, Hyde Park, Johnson, Morristown, Stowe, and Waterville..... one;

(9) Orange senatorial district, composed of the towns of Braintree, Brookfield, Chelsea, Corinth, Randolph, Strafford, Thetford, Tunbridge, Vershire, Washington, and Williamstown..... one;

(10) Rutland senatorial district, composed of the towns of Benson, Brandon, Castleton, Chittenden, Clarendon, Danby, Fair Haven, Hubbardton, Ira, Killington, Mendon, Middletown Springs, ~~Mt. Holly~~, Mt. Tabor, Pawlet, Pittsfield, Pittsford, Poultney, Proctor, Rutland City, Rutland Town, Shrewsbury, Sudbury, Tinmouth, Wallingford, Wells, West Haven, and West Rutland..... three;

(11) Washington senatorial district, composed of the towns of Barre City, Barre Town, Berlin, Cabot, Calais, Duxbury, East Montpelier, Fayston, Marshfield, Middlesex, Montpelier, Moretown, Northfield, Plainfield, Roxbury, Waitsfield, Warren, Waterbury, Woodbury, and Worcester.....three;

(12) Windham senatorial district, composed of the towns of Athens, Brattleboro, Brookline, Dover, Dummerston, Grafton, Guilford, Halifax, Jamaica, ~~Londonderry~~, Marlboro, Newfane, Putney, Rockingham, Somerset, Stratton, Townshend, Vernon, Wardsboro, Westminster, Whitingham, and Windham..... two;

(13) Windsor senatorial district, composed of the towns of Andover, Baltimore, Barnard, Bethel, Bridgewater, Cavendish, Chester, Hartford, Hartland, Londonderry, Ludlow, Mt. Holly, Norwich, Plymouth, Pomfret, Reading, Rochester, Royalton, Sharon, Springfield, Stockbridge, Weathersfield, Weston, West Windsor, Windsor, and Woodstock..... three.

#### Sec. 4. TIME FOR FILING PRIMARY PETITIONS AND STATEMENTS OF NOMINATION

Notwithstanding the provisions of 17 V.S.A. § 2356 regarding the earliest date by which primary petitions and statements of nomination from minor party candidates and independent candidates may be filed, for the 2012 elections, primary petitions and statements of nomination shall be filed no sooner than Tuesday, May 29, 2012.

#### Sec. 5. EFFECTIVE DATE

This act shall take effect on passage and shall apply to representative and senatorial districts for the 2012 election cycle and thereafter.



*JEANETTE K. WHITE  
VINCENT ILLUZZI  
RICHARD W. SEARS*

*Committee on the part of the Senate*

*DONNA G. SWEANEY  
WILLEM W. JEWETT*

*Committee on the part of the House*

### **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**

### **CONCURRENT RESOLUTIONS FOR NOTICE**

**H.C.R. 370-381 and 383-390** (For text of Resolutions, see Addendum to House Calendar for April 26, 2012)

### **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)