

# Senate Calendar

WEDNESDAY, MAY 2, 2012

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**ACTION CALENDAR  
CALLED UP FOR ACTION**

**Second Reading**

**Favorable with Proposal of Amendment**

**H. 794.**

An act relating to the management of search and rescue operations.

**PENDING QUESTION:** Shall the Senate proposal of amendment be amended as recommended by Sen. Illuzzi?

(For text of Sen. Illuzzi proposal of amendment see Senate Journal for April 28, 2012, page 1321.)

**UNFINISHED BUSINESS**

**Third Reading**

**H. 753.**

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

**PROPOSAL OF AMENDMENT TO H. 753 TO BE OFFERED BY  
SENATORS SEARS, HARTWELL AND GALBRAITH**

Senators Sears, Hartwell and Galbraith move that the Senate propose to the House that the bill be further amended after Sec. 23, by inserting a new section to be Sec. 23a to read:

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

(ix) For a regional education district formed pursuant to the provisions of Sec. 3 of No. 153 of the Acts of the 2009 Adj. Sess. (2010), as amended from time to time, that provides for the education of resident pupils in one or more grades by paying tuition and does not maintain a school that includes that grade or grades:

(I) a budget deficit under the terms set forth in subdivision (vi) of this subdivision (6)(B); or

(II) unexpected tuition costs under the terms set forth in subdivision (vii) of this subdivision (6)(B).

## Second Reading

### 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

(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.)

**PROPOSAL OF AMENDMENT TO H. 552 TO THE PROPOSAL OF  
AMENDMENT OF THE COMMITTEE ON ECONOMIC  
DEVELOPMENT, HOUSE AND GENERAL AFFAIRS TO BE  
OFFERED BY SENATOR ILLUZZI**

Senator Illuzzi moves to amend the proposal of amendment of the Committee on Economic Development, Housing and General Affairs by adding a new section to be numbered Sec. 12a to read as follows:

Sec. 12a. 21 V.S.A. § 1343 is amended to read:

§ 1343. CONDITIONS

\* \* \*

(c) After March 31, 1984 benefits are payable on the basis of service in employment as defined in subdivision 1301(6)(A)(ix) and (x) of this title, in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other service subject to this chapter, except that:

(1) With respect to services performed in an instructional, research, or principal administrative capacity for an educational institution, benefits shall not be payable on the basis of such services for any week of unemployment commencing during the period between two successive academic years or terms (or, when an agreement provides instead for a similar period between two regular but not successive terms, during such period) or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if such individual performs such services in the first of such academic years or terms and if there is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms;

~~(2) With respect to services performed in any other capacity for an educational institution benefits shall not be payable on the basis of such services to any individual for any week of unemployment which commences during a period between two successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services for any educational institution in the second of such academic years or terms, except that if benefits are denied to any individual under this subdivision and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of the benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this subdivision;~~

~~(3)(2) With respect to any services described in subdivision (1) or (2) of this subsection~~ With respect to services performed in any capacity for an educational institution, benefits shall not be payable on the basis of services in any such capacities to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess;

~~(4)(3)~~ With respect to any services described in subdivision (1) or (2) of this subsection, benefits shall not be payable on the basis of services in any

such capacities as specified in subdivisions ~~(1), (2), and (3)~~ (1) and (2) to any individual who performed such services in an educational institution while in the employ of an educational service agency. For purposes of this subdivision, the term “educational service agency” means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

\* \* \*

**PROPOSAL OF AMENDMENT TO H. 552 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 H. 552 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.

### **PROPOSAL OF AMENDMENT TO H. 552 TO BE OFFERED BY SENATOR MCCORMACK**

Senator McCormack moves that the Senate propose to the House to amend the bill by adding Sec. 41b to read:

Sec. 41b. 33 V.S.A. § 3515 is added to read:

#### § 3515. EXTENSION OF LIMITED COLLECTIVE BARGAINING RIGHTS TO CHILD CARE PROVIDERS

(a) 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:

(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 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.

(b) Such negotiations shall not constitute an antitrust violation.

(c) The provisions of 21 V.S.A. chapter 19 related to election process shall apply to this section.

(d) Child care providers shall not strike.

(e)(1) There is established a child care working group, chaired by the commissioner for children and families or designee, to make recommendations to the commissioner as to whether program directors and staff working at licensed child care facilities shall have the right to choose a representative organization for purposes of negotiating with the state about the subjects set forth in subsection (a) of this section.

(2) The working group shall be established no later than July 1, 2012 and shall consist of 11 persons appointed by the governor, one of which will be the commissioner for children and families or designee, one of which shall be the executive director of the Vermont labor relations board or designee, one of which shall be the executive director of Building Bright Futures or designee, two of which shall be center-based program directors, three of which shall be center-based teachers, one of which shall be a representative of a parent organization, one of which shall be a representative of Voices for Vermont's Children, and one of which shall be a representative of kids are priority one coalition.

(3) The commissioner for children and families shall report the working group's findings and recommendations to the governor and the general assembly on or before November 1, 2012.

**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.)

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

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

Sec. 6. 33 V.S.A. § 3515 is added to read:

§ 3515. EXTENSION OF LIMITED COLLECTIVE BARGAINING RIGHTS TO CHILD CARE PROVIDERS

(a) 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:

(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 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.

(b) Such negotiations shall not constitute an antitrust violation.

(c) The provisions of 21 V.S.A. chapter 19 related to election process shall apply to this section.

(d) Child care providers shall not strike.

(e)(1) There is established a child care working group, chaired by the commissioner for children and families or designee, to make recommendations to the commissioner as to whether program directors and staff working at licensed child care facilities shall have the right to choose a representative organization for purposes of negotiating with the state about the subjects set forth in subsection (a) of this section.

(2) The working group shall be established no later than July 1, 2012 and shall consist of 11 persons appointed by the governor, one of which will be the commissioner for children and families or designee, one of which shall be the executive director of the Vermont labor relations board or designee, one of which shall be the executive director of Building Bright Futures or designee, two of which shall be center-based program directors, three of which shall be



center-based teachers, one of which shall be a representative of a parent organization, one of which shall be a representative of Voices for Vermont's Children, and one of which shall be a representative of kids are priority one coalition.

(3) The commissioner for children and families shall report the working group's findings and recommendations to the governor and the general assembly on or before November 1, 2012.

#### **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)

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

(Committee vote: 5-0-2)

(No House amendments.)

#### **H. 774.**

An act relating to meat inspection, delivery of liquid fuels, dairy operations, and animal foot baths.

**Reported favorably with recommendation of proposal of amendment by Senator Kittell for the Committee on Agriculture.**

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

First: In Sec. 4, subsection (b) in the first sentence after the word “fuels”, by inserting the following: sold at retail, as defined by 32 V.S.A. § 9701(5).

Second: In Sec. 9, subsection (b)(1) in the first sentence after the word “the” and before the word “commissioner”, by inserting the following: commissioner of the department of environmental conservation and the

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

(Committee vote: 7-0-0)

**PROPOSAL OF AMENDMENT TO H. 774 TO BE OFFERED BY  
SENATOR KITTELL**

Senator Kittell moves that the report of the Committee on Agriculture be amended as follows:

First: By adding Sec. 3a to read:

Sec. 3a. AGENCY OF AGRICULTURE, FOOD AND MARKETS;  
EDUCATION AND OUTREACH REGARDING HUMANE HANDLING  
AND SLAUGHTER

(a) On or before October 15, 2012, the secretary of agriculture, food and markets, after consultation with representatives of organizations with an interest in itinerant or custom slaughter, shall:

(1) conduct regional outreach regarding humane treatment of livestock, humane slaughter of livestock, and sanitary slaughtering and processing methods; and

(2) make available to the public informational materials regarding humane treatment of livestock, humane slaughter of livestock, and sanitary slaughtering and processing methods.

(b) On or before January 15, 2013, the secretary of agriculture, food and markets shall report back to the senate and house committees on agriculture regarding how the secretary of agriculture, food and markets complied with the requirements of subsection (a) of this section.

Second: In Sec. 9, in 6 V.S.A. § 796, by striking out subsection (b) in its entirety and inserting in lieu thereof the following:

(b)(1) The secretary shall adopt rules to implement regulation of animal foot baths for livestock, including:

(A) if appropriate, a ban on the use of certain chemicals, such as formaldehyde, as foot baths; and

(B) requirements for the administration of foot baths, the type of chemicals used, disposal of the chemicals found in used foot baths, and additional requirements deemed necessary by the secretary.

(2) The secretary shall work with the commissioner of health and the secretary of natural resources in drafting the rules to be adopted under this subsection.

(3) In adopting the rules required by this subsection, the secretary shall utilize information regarding the use of formaldehyde from the federal Department of Health and Human Services Agency for Toxic Substances and Disease Registry and from the ongoing investigation of the use of formaldehyde for agricultural practices conducted by the commissioner of health in collaboration with the secretary of agriculture, farms and markets and the secretary of natural resources.

(4) The secretary may adopt emergency rules for the use of foot baths on Vermont farms if the secretary determines such rules are necessary to protect the public health, safety, and welfare.

Third: By adding Secs. 10a and 10b to read as follows:

Sec. 10a. STATEMENT OF PURPOSE; HUMANE TREATMENT; GESTATION

It shall be the purpose of this part of the act related to humane treatment of animals to prohibit the cruel confinement of sows during gestation in a manner that does not allow them to turn around freely, lie down, stand up, or fully extend their limbs.

Sec. 10b. 6 V.S.A. chapter 201 is amended to read:

CHAPTER 201. HUMANE SLAUGHTER OF LIVESTOCK

\* \* \*

§ 3134. PENALTY

A person who violates section 3132 or 3135 of this title shall be guilty of a misdemeanor and shall be fined upon conviction not more than \$ \$1,000.00 for the first violation, not more than \$5,000.00 for the second violation, and not more than \$10,000.00 per violation for the third and any subsequent violations, or imprisoned not more than two years, or both. In addition to the penalties provided in this subsection, the secretary may seek an injunction against a slaughterer, packer, or stockyard operator who engages in practices which are prohibited by section 3132 or 3135 of this title, by application to the superior court for the county in which such slaughterer, packer, or stockyard operator resides, or where such violations occur. The secretary may refer a violation of section 3132 or 3135 of this title to the attorney general or the state's attorney for criminal prosecution. The secretary may also take any action authorized under chapter 1 of this title.

§ 3135. DEFINITIONS



(a) In this section:

(1) “Enclosure” means a cage, crate, or other structure used to confine an animal, including what is commonly described as a “gestation crate” for sows.

(2) “Farm” means the land, building, support facilities, and other equipment that are wholly or partially used for the commercial production of animals or animal products used for food or fiber and does not include live animal markets.

(3) “Farm owner or operator” means any person who owns or controls the operations of a farm and does not include any nonmanagement employee, contractor, or consultant.

(4) “Fully extending the animal’s limbs” means fully extending all limbs without touching the side of an enclosure.

(5) “Sow in gestation” means a pregnant animal of the porcine species kept for the primary purpose of breeding.

(6) “Turning around freely” means turning in a complete circle without any impediment, including a tether, and without touching the side of an enclosure.

(b) Prohibition. Notwithstanding any other provision of law, a person is guilty of unlawful confinement of a sow during gestation if the person is a farm owner or operator who knowingly tethers or confines the sow in an enclosure in a manner that prevents the sow from turning around freely, lying down, standing up, and fully extending its limbs.

(c) Exceptions. The prohibition in subsection (b) of this section shall not apply:

(1) During examination or testing or individual treatment of or operation on an animal for veterinary purposes;

(2) During transportation;

(3) During rodeo exhibitions, state or county fair exhibitions, 4-H programs, and similar exhibitions or educational programs;

(4) To the humane slaughter of an animal in accordance with this chapter and the rules adopted pursuant to section 3133 of this title pertaining to the slaughter of animals; and

(5) To a sow during the seven-day period prior to the sow’s expected date of giving birth.

(d) Relation to other laws.

(1) The provisions of this section are in addition to and not in lieu of any other laws protecting animal welfare.

(2) It is not an affirmative defense to alleged violations of this section that the sow was kept as part of an agricultural operation and in accordance with customary animal husbandry or farming practices.

**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.~~ section 20 V.S.A. § 3587; 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 ~~10 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. 138**

An act relating to calculation of criminal sentences and record keeping for search warrants.

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. 7 V.S.A. § 61 is amended to read:

**§ 61. RESTRICTIONS; EXCEPTIONS**

A person, partnership, association, or corporation shall not furnish or sell, or expose or keep with intent to sell, any malt or vinous beverage, or spirits, or manufacture, sell, barter, transport, import, export, deliver, prescribe, furnish, or possess any alcohol, except as authorized by this title. However, this chapter shall not apply to the furnishing of such beverages or spirits by a person in his or her private dwelling, ~~unless to an habitual drunkard, or unless~~ such dwelling becomes a place of public resort, nor to the sale of fermented cider by the barrel or cask of not less than 32 liquid gallons capacity, provided

the same is delivered and removed from the vendor's premises in such barrel or cask at the time of such sale, nor to the use of sacramental wine, nor to the furnishing, purchase, sale, barter, transportation, importation, exportation, delivery, prescription, or possession of alcohol for manufacturing, mechanical, medicinal, and scientific purposes, provided the same is done under and in accordance with rules and regulations made and permits issued by the liquor control board as hereinafter provided, nor to the furnishing of such beverages or spirits by the Vermont criminal justice training council to drinking subjects during DUI enforcement courses of instruction at the Vermont police academy.

Sec. 2. 13 V.S.A. § 7031 is amended to read:

§ 7031. FORM OF SENTENCES; MAXIMUM AND MINIMUM TERMS

(a) When a respondent is sentenced to any term of imprisonment, other than for life, the court imposing the sentence shall not fix the term of imprisonment, unless such term is definitely fixed by statute, but shall establish a maximum and may establish a minimum term for which such respondent may be held in imprisonment. The maximum term shall not be more than the longest term fixed by law for the offense of which the respondent is convicted and the minimum term shall be not less than the shortest term fixed by law for such offense. If the court suspends a portion of said sentence, the unsuspended portion of such sentence shall be the minimum term of sentence solely for the purpose of any reductions of term for good behavior as provided for in 28 V.S.A. § 811. A sentence shall not be considered fixed as long as the maximum and minimum terms are not identical.

(b) The sentence of imprisonment of any person convicted of an offense shall commence to run from the date on which the person is received at the correctional facility for service of the sentence. The court shall give the person credit toward service of his or her sentence for any days spent in custody ~~in connection with the offense for which sentence was imposed~~ as follows:

(1) The period of credit for concurrent and consecutive sentences shall include all days served from the date of arraignment or the date of the earliest detention for the offense, whichever occurs first, and end on the date of the sentencing. Only a single credit shall be awarded in cases of consecutive sentences, and no credit for one period of time shall be applied to a later period.

(2) In sentencing a violation of probation, the court shall give the person credit for any days spent in custody from the time the violation is filed or the person is detained on the violation, whichever occurs first, until the violation is sentenced. In a case in which probation is revoked and the person



is ordered to serve the underlying sentence, the person shall receive credit for all time previously served in connection with the offense.

(c) If any such person is committed to a jail or other place of detention to await transportation to the place at which his or her sentence is to be served, his or her sentence shall commence to run from the date on which he or she is received at such jail or such place of detention.

(d) A person who receives a zero minimum sentence for a conviction of a nonviolent misdemeanor or nonviolent felony as defined in 28 V.S.A. § 301 shall report to probation and parole as directed by the court and begin to serve the sentence in the community immediately, unless the person is serving a prior sentence at such time.

Sec. 3. 13 V.S.A. § 7032(c) is amended to read:

(c) In all cases where multiple or additional sentences have been or are imposed, the term or terms of imprisonment under those sentences shall be determined in accordance with the following definitions.

(1) When terms run concurrently, the shorter minimum terms merge in and are satisfied by serving the longest minimum and the shorter maximum terms merge in and are satisfied by discharge of the longest maximum term.

(2) When terms run consecutively, the minimum terms are added to arrive at an aggregate minimum to be served equal to the sum of all minimum terms and the maximum terms are added to arrive at an aggregate maximum equal to the sum of all maximum terms. No person shall serve more time on consecutive minimum sentences than the sum of the minimum terms, regardless of whether the sentences are imposed on the same or different dates. If a person has served a minimum term and subsequently incurs another criminal charge, the time the person spends in custody awaiting disposition of the new charge shall count toward the minimum term of the new sentence, if one is imposed. This subdivision shall not require the department of corrections to release a person from incarceration to community supervision at the person's minimum term.

Sec. 4. 18 V.S.A. § 4216 is amended to read:

#### § 4216. AUTHORIZED POSSESSION BY INDIVIDUALS

(a) A person to whom or for whose use any regulated drug has been prescribed, sold or dispensed, and the owner of any animal for which any such drug has been prescribed, sold or dispensed, may lawfully possess the same on the condition that such drug was prescribed, sold or dispensed by a physician, dentist, pharmacist, or veterinarian licensed under this chapter or under the laws of another state or country wherein such person has his or her practice; ~~and further that all,~~

(b)(1) Except as otherwise provided in subdivision (2) of this subsection, all amounts of the drug are shall be retained in the lawful container in which it was delivered to him the patient by the person selling or dispensing the same, provided however, that for the purposes of this section an amount of regulated drugs of not more than two days' individual prescribed dosage may be possessed by a patient for his personal use.

(2) A patient may possess an amount of regulated drugs of not more than seven days' individual prescribed dosage, for personal use, which shall not be required to be retained in its lawful container. A patient may possess an amount of regulated drugs of more than seven days' individual prescribed dosage, for personal use, which shall not be required to be retained in its lawful container, provided the patient personally possesses proof of a lawful, written prescription.

Sec. 5. 28 V.S.A. § 808a(a) is amended to read:

(a) An When recommended by the department and ordered by the court, an offender may be sentenced to serve a term of imprisonment, but placed by a court on treatment furlough to participate in such programs administered by the department in the community that reduce the offender's risk to reoffend or that provide reparation to the community in the form of supervised work activities.

#### Sec. 6. FEASIBILITY STUDY FOR A STATEWIDE ONLINE SENTENCING TOOL

(a) The general assembly established the Nonviolent Misdemeanor Sentence Review Committee (committee) in No. 41 of the Acts of 2011, an act relating to effective strategies to reduce criminal recidivism, to propose alternatives to incarceration for nonviolent, low-risk misdemeanor offenses. In its report, the committee expressed concern regarding "the varying degrees of justice meted out by the different counties in Vermont" and concluded that "any efforts to reduce recidivism and increase alternatives to incarceration must foster statewide equity in treatment of those charged or convicted with a criminal offense."

(b) The committee believes that judicial discretion is the cornerstone of sentencing in Vermont courts and that sentencing is at its best when the decision-makers have accurate and timely information about the offender, the offenses, and the options available for sentencing.

(c) Evidence-based practice research suggests that sentencing of criminal defendants should be based on the seriousness of the offense, risk, and probability of recidivism. Criminal sentencing that is based on these three principles is more likely to protect the public, reduce recidivism, and reduce costs than sentencing practices that are based on anecdotal experience.

(d) The committee took testimony on a new sentencing tool developed by the Missouri Sentencing Advisory Commission which employs these principles and which is available electronically to judges, attorneys, and other people involved in Missouri's criminal justice system. According to the commission, the "goal of the system is to ensure sentencing that is fair, protects the public, uses corrections resources wisely, and reduces sentence disparity."

(e) There is created a sentencing task force for the purpose of conducting a feasibility study to determine whether a set of sentencing data based on the seriousness of the offense, risk, and probability of recidivism can be developed and implemented in Vermont. The task force shall comprise the following members:

(1) A member of the senate committee on judiciary appointed by the committee on committees.

(2) A member of the house committee on judiciary appointed by the speaker of the house.

(3) A judge appointed by the chief justice of the Vermont supreme court.

(4) The commissioner of corrections.

(5) A state's attorney appointed by the executive committee of the department of state's attorneys.

(6) The defender general.

(f) The Vermont Center for Justice Research, the state's criminal justice statistical analysis center, has been involved with the analysis of criminal sentencing data in Vermont for the past 20 years. At the direction of the task force, the center shall undertake the statistical analysis necessary to develop the policy decisions required for the sentencing matrices which are the foundation of the project. The pilot analysis shall focus on five to ten felony or misdemeanor crimes prosecuted in Vermont during a two-year period. The center shall evaluate the availability and quality of data which would be required to generate sentencing information similar to those used in the Missouri model.

(g) The task force shall report the sentencing information for the crimes selected for the feasibility study along with a report with recommendations regarding the feasibility of a Vermont online sentencing tool to the senate and house committees on judiciary by March 15, 2013.

(h) The secretary of administration shall seek sources of grants and funding in fiscal year 2013 for the purpose of aiding the sentencing task force with a feasibility study to determine whether a set of sentencing data based on the

seriousness of the offense, risk, and probability of recidivism can be developed and implemented in Vermont. The cost is currently estimated to be \$33,600.00.

Sec. 7. Sec. 4 of No. 41 of the Acts of 2011 is amended to read:

Sec. 4. NONVIOLENT MISDEMEANOR SENTENCE REVIEW COMMITTEE

(a) Creation of committee. There is created a nonviolent misdemeanor sentence review committee to propose alternatives to incarceration for nonviolent, low-risk misdemeanor offenses and to study whether records produced by public agencies in the course of the detection and investigation of crime should be open to public inspection or confidential.

(b) Membership. The committee shall be composed of the following members:

(1) a former member of either the house committee on judiciary or the senate committee on judiciary appointed jointly by the speaker of the house and the senate ~~committee on committees~~ president pro tempore;

(2) the chair of the senate committee on judiciary;

(3) the chair of the house committee on judiciary;

(4) a member of the senate appointed by the senate committee on committees;

(5) a member of the house appointed by the speaker of the house;

(6) the governor's special assistant on corrections; and

(7) the administrative judge.

(c) Powers and duties.

\* \* \*

(2) The committee shall study whether records produced by public agencies in the course of the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal investigation by law enforcement, should be open to public inspection or confidential. The committee's study shall include:

(A) A determination of which records dealing with the detection and investigation of a crime should be public records and which records should be confidential.

(B) Consideration of the need to balance public safety and privacy when determining which criminal investigation records should be public and which records should be confidential and the societal benefit and promotion of

due process and the rule of law which are served by permitting public inspection of criminal investigation records.

(C) Legislation to implement the policy recommended by the committee.

~~(2)~~(3) The committee shall consult with stakeholders while engaging in its mission, including the following:

(A) The secretary of human services or designee.

(B) The secretary of state or designee.

(C) The executive director of the American Civil Liberties Union of Vermont or designee.

(D) A representative of the Vermont Press Association.

(E) The defender general or designee.

(F) The attorney general or designee.

(G) The executive director of the Vermont association of chiefs of police or designee.

(H) The executive director of the Vermont Bar Association or designee.

(I) A representative from the department of public safety.

(J) The executive director of the state's attorneys and sheriffs' association or designee.

(K) A member of the supreme court public access to court records advisory rules committee appointed by the chief justice.

(L) The executive director of the Vermont Center for Crime Victims Services or designee.

~~(3)~~(4) For purposes of its study of these issues, the committee shall have the legal and administrative assistance of the office of legislative council and the department of corrections.

(d) Report. ~~By December 1, 2011, the~~ The committee shall report annually to the general assembly on its findings and any recommendations for legislative action.

(e) Number of meetings; term of committee; reimbursement. The committee may meet no more than ~~five~~ seven times annually and shall cease to exist on January 1, ~~2012~~ 2014.

\* \* \*

and that after passage the title of the bill be amended to read: “An act relating to calculation of criminal sentences and expansion of the Misdemeanor Sentence Review Committee”

### **House Proposal of Amendment**

#### **S. 183**

An act relating to the testing of potable water supplies.

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. FINDINGS

The general assembly finds and declares that:

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

(2) Owners of certain properties in the state with potable water supplies from groundwater currently are not required to test the groundwater source.

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

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

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

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

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

#### § 1396. RECORDS AND REPORTS

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

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

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

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

(3), (4) [Repealed.]

(c) No report shall be required to be filed with the department if the well is hand driven or is dug by use of a hand auger or other manual means.

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

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

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

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

#### § 501b. CERTIFICATION OF LABORATORIES

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

(1) required under 10 V.S.A. chapter 56 and the federal Safe Drinking Water Act if such laboratory meets the standards currently in effect of the National Environmental Laboratory Accreditation Conference and is

~~accredited by an approved National Environmental Laboratory Accreditation Program accrediting authority or its equivalent; and~~

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

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

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

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

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

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

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

\* \* \*

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

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

§ 616. GROUNDWATER SOURCE TESTING; DISCLOSURE OF INFORMATIONAL MATERIAL

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

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

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



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

(c) Penalty; liability. Liability for failure to provide the informational materials required by this section shall be limited to a civil penalty, imposed by the department of health under 18 V.S.A., Chapter 3, of no less than \$25.00 and no more than \$250.00 for each violation.

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

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

(b) The department of health, after consultation with representatives of licensed real estate brokers, as that term is defined in 26 V.S.A. § 2211, shall propose language to be added to a seller's property information report regarding the requirement under 27 V.S.A. § 616 that a seller of real property with a potable water supply that is not served by a public water system provide the buyer informational material regarding the potential health effects of the consumption of contaminated groundwater and the availability of test kits provided by the department of health.

Sec. 6. EFFECTIVE DATE

This act shall take effect on January 1, 2013.

**House Proposal of Amendment**

**S. 202**

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

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

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

CHAPTER 32. FLOOD HAZARD AREAS

§ 751. PURPOSE

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

§ 752. DEFINITIONS

For the purpose of this chapter:

(1) “Agency” means the agency of natural resources.

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

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

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

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

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

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

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

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

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

~~(8)~~(10) “Regional planning commission” means the regional planning commission of which a municipality is a member or would be a member based upon its location.

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

~~(9)~~(12) “Secretary” means the secretary of the ~~agency~~ of natural resources or the secretary’s duly authorized representative.

#### § 753. FLOOD HAZARD AREAS; COOPERATION; MAPPING

(a) Cooperation to secure flood insurance. ~~To meet the objective of this chapter and the requirements of 24 V.S.A. § 4412, the designation and management of flood hazard areas shall adhere to the following procedure and~~

~~schedule.~~—~~All~~ The secretary and all municipalities, regional planning commissions, and departments and agencies of state government shall mutually cooperate to ~~these ends~~ achieve the purposes of this chapter and to secure flood plain insurance for municipalities and the state of Vermont. All correspondence sent to a municipality pursuant to this chapter shall be sent to the municipal clerk, the municipal manager, if one exists, the legislative body, and the planning commission, and the conservation commission, if one exists. Copies of this correspondence shall be sent to the regional planning commission, and the agency of commerce and community development, ~~and the state planning office.~~

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

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

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

(a) Rulemaking authority.

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

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

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

(b) Required rulemaking content. The rules shall:

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

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

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

(c) Discretionary rulemaking. The rules may establish requirements that exceed the requirements of the National Flood Insurance Program for uses exempt from municipal regulation, provided that any rules adopted under this subsection that exceed the minimum requirements of the National Flood Insurance Program shall be designed to prevent or limit a risk of harm to life, property, or infrastructure from flooding.

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

(e) Consultation with interested parties. Prior to submitting the rules required by this section to the secretary of state under 3 V.S.A. § 838, the secretary shall solicit the recommendations of and consult with affected and interested persons and entities such as: the secretary of commerce and community development; the secretary of agriculture, food and markets; the secretary of transportation; the commissioner of financial regulation; representatives of river protection interests; representatives of fishing and recreational interests; representatives of the banking industry; representatives of the agricultural community; representatives of the forest products industry the regional planning commissions; municipal interests; and representatives of municipal associations.

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

(g) Delegation.

(1) The secretary may delegate to another state agency the authority to

implement the rules adopted under this section, to issue a permit under subsection (h) of this section, and to enforce the rules and a permit.

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

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

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

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

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

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

minimizes the risk of harm to life, property, and infrastructure from flooding.

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

\* \* \* Stream Alteration; Emergency Activities \* \* \*

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

§ 1002. DEFINITIONS

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

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

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

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

(4) “Board” means the natural resources board.

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

(6) “Dam” applies to any artificial structure on a stream or at the outlet of a pond or lake, which is utilized for holding back water by ponding or storage together with any penstock, flume, piping or other facility for transmitting water downstream to a point of discharge, or for diverting water from the natural watercourse to another point for utilization or storage.

(7) “Department” means the department of environmental conservation.

(8) ~~Repealed.~~ “Instream material” means:

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

(B) ledge rock; or

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

(9) “Person” means any individual; partnership; company; corporation; association; unincorporated association; joint venture; trust; municipality; the

state of Vermont or any agency, department, or subdivision of the state, any federal agency, or any other legal or commercial entity.

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

(11) “Secretary” means the secretary of the agency of natural resources, or the secretary’s duly authorized representative.

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

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

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

§ 1021. ALTERATION PROHIBITED; EXCEPTIONS

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

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

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

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

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



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

\* \* \*

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

§ 1023. INVESTIGATION, PERMIT

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

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

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

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

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

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

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

purposes of section 1024 of this title, if a permit has been deemed to have been granted under this subsection, that permit shall constitute a decision of the secretary.

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

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

(B) flooding; or

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

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

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

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

§ 1027. RULEMAKING; EMERGENCY PERMIT

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

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

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

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

(B) criteria for different categories of activities covered under a

general emergency permit, including emergency protective measures under subdivision 1021(b) of this title;

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

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

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

(2) A rule adopted under this section may:

(A) establish reporting requirements for categories of activities;

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

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

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

§ 1264. STORMWATER MANAGEMENT

\* \* \*

(k) The secretary may adopt rules regulating stormwater discharges and stormwater infrastructure repair or maintenance during a state of emergency declared under 20 V.S.A. chapter 1 or during flooding or other emergency conditions that pose an imminent risk to life or a risk of damage to public or private property. Any rule adopted under this subsection shall comply with National Flood Insurance Program requirements. A rule adopted under this subsection shall include a requirement that an activity receive an individual stormwater discharge emergency permit or receive coverage under a general stormwater discharge emergency permit.

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

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

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

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

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

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

(2) A rule adopted under this section may:

(A) establish reporting requirements for categories of activities;

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

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

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

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

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

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

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

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

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

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

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

\* \* \* River Corridor Assessment and Planning \* \* \*

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

§ 1421. POLICY

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

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

§ 1422. DEFINITIONS

In this chapter, unless the context clearly requires otherwise:

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

\* \* \*

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

\* \* \*

(12) "River corridor" means the land area adjacent to a river that is required to accommodate the dimensions, slope, planform, and buffer of the

naturally stable channel; and ~~that is necessary to maintain or restore fluvial~~ for the natural maintenance or natural restoration of dynamic equilibrium conditions and minimize for minimization of fluvial erosion hazards, as delineated by the agency of natural resources in accordance with river corridor protection procedures.

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

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

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

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

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

(18) “Infrastructure” means public and private buildings, roads, and public works, including public and private buildings; state and municipal highways and roads; bridges; sidewalks and other traffic enhancements; culverts; private roads; public and private utility construction, state and municipal public works, cemeteries, and public parks and fields.

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

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

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

§ 1427. RIVER CORRIDORS AND BUFFERS

(a) River corridor and floodplain management program. The secretary of

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

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

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

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

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

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

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

§ 1428. RIVER CORRIDOR PROTECTION

(a) River corridor maps. Upon completion of a sensitivity assessment for a river or river segment under section 1427 of this title, the secretary shall provide to each municipality and regional planning commission in which the

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

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

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

\* \* \* Municipal Planning; Flood Hazard and  
Protection Areas \* \* \*

River Corridor

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

§ 4303. DEFINITIONS

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



\* \* \*

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

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

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

(C) “Hazard area” means land subject to landslides, soil erosion, fluvial erosion, earthquakes, water supply contamination, or other natural or human-made hazards as identified within a “local mitigation plan” enacted under section 4424 of this title and in conformance with and approved pursuant to the provisions of 44 C.F.R. ~~section~~ § 201.6.

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

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

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

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

(ii) Any alteration of a structure listed on the National Register of

Historic Places or a state inventory of historic places.

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

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

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

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

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

\* \* \*

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

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

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

districts.

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

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

\* \* \*

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

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

\* \* \*

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

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

(a) Any municipality may adopt freestanding bylaws under this chapter to address particular hazard areas in conformance with the municipal plan or, for the purpose of adoption of a flood hazard area bylaw, a local hazard mitigation plan approved under 44 C.F.R. § 201.6, including the following, which may also be part of zoning or unified development bylaws:

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

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

(A) Purposes.

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

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

(iii) To manage all flood hazard areas designated pursuant to

10 V.S.A. § 753.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(i) The appropriate municipal panel finds that the repair, relocation, or enlargement of the nonconforming structure is required for the continued economically feasible operation of a nonresidential enterprise.~~

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

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

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

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

§ 4469. APPEAL; VARIANCES

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

appellant, if all the following facts are found, and the finding is specified in its decision:

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 2291. ENUMERATION OF POWERS

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

\* \* \*

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

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

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

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

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

Sec. 18. IMPLEMENTATION; TRANSITION

(a)(1) Prior to the secretary of natural resources' adopting rules under

10 V.S.A. § 754 for the regulation in flood hazard areas of uses exempt from municipal regulation:

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

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

(i) a school;

(ii) a hospital;

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

(v) a power-generating plant or transmission facility regulated under 30 V.S.A. § 248.

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

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

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

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

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

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

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

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

(4) The state and its regulatory agencies currently are subject to multiple



requirements to respond to, remediate, and prevent water quality problems in the state, including the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Agricultural water quality. After consultation with the secretary of

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

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

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

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

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

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

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

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

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

(d) Conduct of report; consultation. In developing the recommendations required by subsection (c) of this section, the secretary of the agency of natural

resources shall consult with interested parties for guidance, including but not limited to: the secretary of transportation or his or her designee; the secretary of agriculture, food and markets or his or her designee; the chair of the natural resources board or his or her designee; legislators and legislative staff; representatives of environmental groups; representatives of municipalities or municipal interests; representatives of municipalities subject to the federal Clean Water Act requirements for discharges from municipal separate storm sewer systems; representatives of the agricultural community; representatives of the business community; representatives of municipal stormwater utilities or other municipal stormwater controls; representatives of engineering or consulting firms; and other interested persons or organizations relevant to completion of the report. The secretary shall warn any meeting with interested parties in fulfillment of this section by posting a notice of such a meeting to the website of the agency of natural resources no later than seven days before the meeting.

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

\* \* \* ANR Rulemaking Authority \* \* \*

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

§ 905b. DUTIES; POWERS

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

\* \* \*

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

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

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

runoff;

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

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

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

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

(vi) provides stopover habitat for migratory birds;

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

(viii) provides for threatened and endangered species habitat;

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

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

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

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

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

\* \* \*

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

§ 1252. CLASSIFICATION OF WATERS; MIXING ZONES

\* \* \*

(b) The secretary may establish mixing zones or waste management zones

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

\* \* \*

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

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

\* \* \*

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

§ 1253. CLASSIFICATION OF WATERS DESIGNATED,  
RECLASSIFICATION

\* \* \*

(c) On its own motion, or on receipt of a written request that the ~~board~~ secretary adopt, amend, or repeal a reclassification rule, the ~~board~~ secretary shall comply with 3 V.S.A. § 806 and may initiate a rulemaking proceeding to reclassify all or any portion of the affected waters in the public interest. In the course of this proceeding, the ~~board~~ secretary shall comply with the provisions of 3 V.S.A. chapter 25, and may hold a public hearing convenient to the waters in question. If the ~~board~~ secretary finds that the established classification is contrary to the public interest and that reclassification is in the public interest, ~~it~~ he or she shall file a final proposal of reclassification in accordance with 3 V.S.A. § 841. If the ~~board~~ secretary finds that it is in the public interest to

change the classification of any pond, lake or reservoir designated as Class A waters by subsection (a) of this section, ~~it~~ the secretary shall so advise and consult with the department of health and shall provide in its reclassification rule a reasonable period of time before the rule becomes effective. During that time, any municipalities or persons whose water supply is affected shall construct filtration and disinfection facilities or convert to a new source of water supply.

(d) The ~~board~~ secretary shall determine what degree of water quality and classification should be obtained and maintained for those waters not classified by ~~it~~ the board before 1981 following the procedures in sections 1254 and 1258 of this title. Those waters shall be classified in the public interest. The secretary shall revise all 17 basin plans by January 1, 2006, and update them every five years thereafter. On or before January 1 of each year, the secretary shall report to the house committees on agriculture, on natural resources and energy, and on fish, wildlife and water resources, and to the senate committees on agriculture and on natural resources and energy regarding the progress made and difficulties encountered in revising basin plans. By January 1, 1993, the secretary shall prepare an overall management plan to ensure that the water quality standards are met in all state waters.

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

\* \* \*

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

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

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

#### § 1424. USE OF PUBLIC WATERS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 6025. RULES

\* \* \*



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

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

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

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

~~(4) Rules regulating the surface use of public waters, and rules pertaining to the designation of outstanding resource waters, in accordance with chapter 49 of this title.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 410. RULEMAKING; ENCROACHMENTS ON PUBLIC WATERS

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

Sec. 26. FORMER WATER RESOURCES PANEL RULES

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

Sec. 27. STATUTORY REVISION

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

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

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

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

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

Sec. 28. PURPOSE AND INTENT; PUBLIC PARTICIPATION IN DEPARTMENT OF ENVIRONMENTAL CONSERVATION RULEMAKING

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

\* \* \* Agricultural Water Quality \* \* \*

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

§ 303. DEFINITIONS

As used in this chapter:

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

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

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

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

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

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

(D) the preservation of historic properties or resources;

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

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

(G) the development of capacity on the part of an eligible applicant to engage in an eligible activity.

(4) “Eligible applicant” means any:

(A) municipality;

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

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

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

\* \* \*

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

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

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

\* \* \* Land Application of Septage \* \* \*

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

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

(A) that the applicant needs to dispose of accumulated sludge or septage promptly, and that delay would likely cause public health, or

environmental damage, or nuisance conditions, or would result in excessive and unnecessary cost to the public, and that the applicant has lost authority to use previously certified sites through no act or omission of the applicant; and

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

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

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

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

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

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

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

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

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

(1) Include or reference the elements set forth in 40 C.F.R. § 130.6(c)

for water quality management plans;

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

(3) Develop a process for identifying critical source areas for non-point source pollution in each subwatershed. As used in this subdivision, "critical source area" means an area in a watershed with high potential for the release, discharge, or runoff of phosphorus to the waters of the state;

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

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

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

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

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

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

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

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

~~(c) On or before January 15, 2010, the secretary of natural resources shall report to the house committee on fish, wildlife and water resources, the senate committee on natural resources, and the house and senate committees on agriculture with a summary of the contents of and the process leading to the adoption under subsection (a) of this section of the implementation plan for the~~

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

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

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

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

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

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

Sec. 33. REPEAL

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

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

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

§ 8003. APPLICABILITY

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

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

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

\* \* \*

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

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

\* \* \*

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

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

(1) The following provisions of this title:

\* \* \*

(R) chapter 32 (flood hazard areas).

\* \* \*

Sec. 36. REPEAL

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

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

§ 34. PUBLIC EDUCATION ON PROPANE TANK SAFETY

The general assembly finds that there is a need for a coordinated public safety message on the normal storage and handling of propane tanks and fuel oil tanks, and for the recovery of propane tanks and fuel oil tanks that are displaced by a natural disaster, such as flooding. The department of public service, the division of fire safety, and the agency of natural resources shall



cooperate with relevant municipal, professional, and industry organizations to develop a variety of educational materials for distribution to the public to provide information on any special treatment of propane tanks that might be required in the event of a natural disaster, such as flooding.

Sec. 38. EFFECTIVE DATES

This act shall take effect on passage except that:

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

(2) Sec. 3 (stream alteration; prohibitions and exceptions) of this act shall take effect on March 1, 2013.

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

**House Proposal of Amendment**

**S. 214**

An act relating to customer rights regarding smart meters.

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

\* \* \* Renewable Energy Goals, Definitions \* \* \*

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

§ 8001. RENEWABLE ENERGY GOALS

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

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

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

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

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

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

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

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

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

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

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

§ 8002. DEFINITIONS

For purposes of this chapter:

\* \* \*

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

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

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

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

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

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

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

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

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

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

(5) ~~“Qualifying SPEED resources” means contracts for in-state resources in the SPEED program established under section 8005 of this title that meet the definition of new renewable energy under this section, whether or not renewable energy credits environmental attributes are attached.~~

~~(6) “Nonqualifying SPEED resources” means contracts for in-state resources in the SPEED program established under section 8005 of this title that are fossil fuel based, combined heat and power (CHP) facilities that sequentially produce both electric power and thermal energy from a single~~

~~source or fuel. In addition, at least 20 percent of a facility's fuel's total recovered energy must be thermal and at least 13 percent must be electric, the design system efficiency (the sum of full load design thermal output and electric output divided by the heat input) must be at least 65 percent, and the facility must meet air quality standards established by the agency of natural resources.~~

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

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

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

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

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

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

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

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

(11) "Commissioned" or "commissioning" means the first time a plant is put into operation following initial construction or modernization if the costs of modernization are at least 50 percent of the costs that would be required to build a new plant including all buildings and structures technically required for the new plant's operation. However, these terms shall not include activities necessary to establish operational readiness of a plant.

(12) "Plant" means ~~any~~ an independent technical facility that generates electricity from renewable energy. A group of newly constructed facilities, such as wind turbines, shall be considered one plant if the group is part of the

same project and uses common equipment and infrastructure such as roads, control facilities, and connections to the electric grid.

\* \* \*

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

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

\* \* \* Renewable Portfolio Standard \* \* \*

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

§ 8004. RENEWABLE PORTFOLIO STANDARDS FOR SALES OF ELECTRIC ENERGY

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

(b) Amounts required; schedule.

(1) New renewable energy. Each retail electricity provider in Vermont shall ~~provide a certain amount of new renewable resources in its portfolio. Subject to subdivision 8005(d)(1) of this title each retail electricity provider in Vermont shall supply an amount of energy equal to its total incremental energy growth between January 1, 2005 and January 1, 2012 through the use of electricity generated by new renewable resources. The retail electricity provider may meet this requirement through eligible new renewable energy credits, new renewable energy resources with renewable energy credits still attached, or a combination of those credits and resources. No retail electricity provider shall be required to provide in excess of a total of 10 percent of its calendar year 2005 retail electric sales with electricity generated by new~~

renewable resources own the environmental attributes of new renewable energy that is delivered or capable of delivery to Vermont in an amount that is not less than the percentages of its annual retail electric sales during each of the compliance periods shown on the table contained in this subdivision (b)(1).

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

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

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

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

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

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

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

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

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

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

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

~~(c) The requirements of subsection (b) of this section shall apply to all retail electricity providers in this state, unless the retail electricity provider demonstrates and the board determines that compliance with the standard would impair the provider's ability to meet the public's need for energy~~

~~services after safety concerns are addressed, at the lowest present value life cycle cost, including environmental and economic costs~~ Use of SPEED power. The use of energy from a plant to satisfy the requirements of section 8005 of this title shall not preclude the use of the same energy to satisfy the requirements of this section, as long as the provider possesses the energy's environmental attributes.

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

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

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

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

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

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

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

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

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



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

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

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

\* \* \* SPEED Program; General \* \* \*

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

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

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

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

(1) Name one or more entities to become engaged in the purchase and resale of electricity generated within the state by means of ~~qualifying SPEED resources or nonqualifying SPEED resources, and shall implement the standard offer required by subdivision (2) of this subsection through this entity or entities.~~ An entity appointed under this subdivision shall be known as a SPEED facilitator.

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

~~that the term of a standard offer for a plant using solar power shall be 10 to 25 years. The price paid to a plant owner under a standard offer required by this subdivision shall include an amount for each kWh generated that shall be set as follows:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(C) On or before January 15, 2012 and on or before every second January 15 after that date, the board shall review the prices set under subdivision (2)(B) of this subsection and determine whether such prices are providing sufficient incentive for the rapid development and commissioning of plants. In the event the board determines that such a price is inadequate or excessive, the board shall reestablish the price, in accordance with the requirements of subdivision (2)(B)(i) of this subsection, for effect on a prospective basis commencing two months after the price has been reestablished.~~

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

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

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

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

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

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

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

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

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

~~(iv) The price and term of a standard offer contract under this subdivision (2)(F) shall be the same, as of the date such a contract is executed, as the price and term otherwise in effect under this subsection (b) for a plant that uses methane derived from an agricultural operation.~~

~~(G) Notwithstanding the requirement of this subsection (b) that a standard offer be available for qualifying SPEED resources, the board shall make a standard offer available under this subdivision (2) to an existing hydroelectric plant that does not exceed the 2.2 MW plant capacity limit of this subsection. To such plants, the board shall not allocate more of the cumulative 50 MW plant capacity under this subdivision (2) than exceeds the amount of such capacity that is unsubscribed as of January 1, 2012. Before making this standard offer available, the board shall notify potentially eligible plants known to it and shall publish broad public notice of the future availability of the standard offer. The notice shall direct that all potentially eligible plants shall file with the board a statement of interest in the standard offer by a date to be no less than 30 days from the date of the notice. No plant may participate in~~

~~this standard offer unless it timely files such a statement. The filing of such a statement shall constitute the consent of the plant owner to produce such information as the board may reasonably require to carry out this subdivision (2)(G), including information the board deems necessary to determine a generic cost in setting the price. The board shall have authority to require the production of such information from a plant that files a statement of interest. For the purpose of this subdivision (2)(G):~~

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

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

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

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

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

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

~~(5) Require In accordance with section 8005a of this section, require all Vermont retail electricity providers to purchase from the SPEED facilitator; ~~in accordance with subdivision (g)(2) of this section,~~ the power generated by the~~

plants that accept the standard offer required to be issued under ~~subdivision (2) of this subsection~~ section 8005a. For the purpose of this subdivision (5), the board and the SPEED facilitator constitute instrumentalities of the state.

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

(7) ~~Create a mechanism by which a retail electricity provider may establish that it has a sufficient amount of renewable energy, or resources that would otherwise qualify under the provisions of subsection (d) of this section, in its portfolio so that equity requires that the retail electricity provider be relieved, in whole or in part, from requirements established under this subsection that would require a retail electricity provider to purchase SPEED power, provided that this mechanism shall not apply to the requirement to purchase power under subdivision (5) of this subsection. However, a retail electricity provider that establishes that it receives at least 25 percent of its energy from qualifying SPEED resources that were in operation on or before September 30, 2009, shall be exempt and wholly relieved from the requirements of subdivisions (b)(5) (requirement to purchase standard offer power) and (g)(2) (allocation of standard offer electricity and costs) of this section. [Repealed.]~~

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

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

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

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

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

~~(2)(1) 2017 SPEED Goal. A state goal is to assure that 20 percent of total statewide electric retail sales before July 1, 2017 during the year commencing January 1, 2017 shall be generated by SPEED resources that constitute new renewable energy. The board shall report to the house and senate committees on natural resources and energy and to the joint energy committee by December 31, 2011 with regard to the state's progress in meeting this goal. In addition, the board shall report to the house and senate committees on natural resources and energy and to the joint energy committee by December 31, 2013 with regard to the state's progress in meeting this goal and, if necessary, shall include any appropriate recommendations for measures that will make attaining the goal more likely. On or before January 31, 2018, the board shall meet and open a proceeding to determine, for the calendar year 2017, the total amount of SPEED resources that were supplied to Vermont retail electricity providers and the total amount of statewide retail electric sales.~~

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

have the effect stated in subdivision 8004(b)(1)(A) (RPS percentages; SPEED goal) of this title.

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

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

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

(C) Each retail electricity provider shall manage its supply portfolio to be reasonably consistent with the target amounts established by this subdivision (2). The board shall consider such consistency during the course of reviewing a retail electricity provider's charges and rates under this title, integrated resource plans under section 218c of this title, and petitions under section 248 (new gas and electric purchases, investments, and facilities) of this title. However, nothing in this subdivision (2) shall relieve a retail electricity provider from the obligations of section 8004 (renewable portfolio standards) of this title.

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

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

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

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



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

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

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

~~(5) All reasonable costs of a Vermont retail electricity provider incurred under this subsection shall be included in the provider's revenue requirement for purposes of ratemaking under sections 218, 218d, 225, and 227 of this title. In including such costs, the board shall appropriately account for any credits received under subdivisions (2) and (3) of this subsection. Costs included in a retail electricity provider's revenue requirement under this subdivision shall be allocated to the provider's ratepayers as directed by the board.~~

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

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

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

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

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

~~(i) With respect to standard offers under this section, the board shall determine whether its existing rules sufficiently address metering and the~~

~~allocation of metering costs, and make such rule revisions as needed to implement the standard offer requirements of this section.~~

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

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

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

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

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

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

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

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

\* \* \* SPEED Program; Standard Offer \* \* \*

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

§ 8005a. SPEED; STANDARD OFFER PROGRAM

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) The relationship of the availability of energy or capacity purchased through the standard offer to the ability of the Vermont composite electric utility system or a portion thereof to avoid costs.

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

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

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

(2) Market-based mechanisms. For new standard offer projects, in the alternative to the pricing mechanism described under subdivision (1) (avoided costs) of this subsection, the board may use a market-based mechanism, such

as a reverse auction or other procurement tool, to obtain a particular amount of a category of renewable energy, if it first finds that:

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

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

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

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

(g) Qualifying existing agricultural plants. Notwithstanding any other provision of this section, on and after June 8, 2010, a standard offer shall be available for a qualifying existing plant as defined in Sec. 3 of No. 159 of the Acts of the 2009 Adj. Sess. (2010) (Act 159). The provisions of 30 V.S.A. § 8005(b)(2), as they existed on June 4, 2010, the effective date of Act 159, shall govern a standard offer under this subsection. Standard offers for these plants shall not be subject to subsection (c) of this section (cumulative capacity; new standard offer plants).

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

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

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

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

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

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

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

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

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

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

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

(4) The SPEED facilitator shall transfer all capacity rights attributable to the plant capacity associated with the electricity purchased under standard offer contracts to the Vermont retail electricity providers in accordance with

their pro rata share of the costs for such electricity as determined under subdivision (2) of this subsection (k).

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

(c) Interconnection application.

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

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

\* \* \* Renewable Energy; Reporting \* \* \*

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

§ 8005b. RENEWABLE ENERGY PROGRAMS; BIENNIAL REPORT

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

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

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

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

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

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

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

applications received, the number of participating plants under contract, and the number of participating plants actually in service.

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

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

(8) An assessment of whether strict compliance with the requirements of section 8004 (renewable portfolio standards) or 8005a (SPEED program; standard offer) of this title will cause one or more retail electricity providers to incur unexpected costs that will impair the provider's ability to meet the public's need for energy services in the manner set forth under section 218c of this title (least-cost integrated planning) and, if so, whether statutory changes should be made to grant providers additional flexibility in meeting one or more of those requirements.

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

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

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

§ 8009. BASELOAD RENEWABLE POWER PORTFOLIO REQUIREMENT

(a) In this section:

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

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

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

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

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

\* \* \*

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

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

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

\* \* \*

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

§ 8015. VERMONT CLEAN ENERGY DEVELOPMENT FUND

(a) Creation of fund.

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

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

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

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

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

\* \* \*

#### Sec. 10. STATUTORY REVISION

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

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

\* \* \* Net Metering; Environmental Attributes \* \* \*

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

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

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

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

#### § 218c. LEAST COST INTEGRATED PLANNING

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

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

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

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

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

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

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

\* \* \*

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

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

\* \* \*

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

construction in the manner set out under subdivision 218c(a)(1) (least cost integrated plan) of this title;

\* \* \*

\* \* \* Total Energy \* \* \*

Sec. 14. TOTAL ENERGY; REPORT

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

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

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

\* \* \* Greenhouse Gas Accounting \* \* \*

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

§ 582. GREENHOUSE GAS INVENTORIES; REGISTRY; ACCOUNTING

\* \* \*

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

(g) of this section, nothing in this section shall limit a state agency from adopting any rule within its authority.

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

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

\* \* \* Energy Efficiency \* \* \*

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

(7) Net revenues above costs associated with payments from the New England Independent System Operator (ISO-NE) for capacity savings resulting from the activities of the energy efficiency utility designated under subdivision (2) of this subsection shall be deposited into the electric efficiency fund established by this section. Any such net revenues not transferred to the state PACE reserve fund under 24 V.S.A. § 3270(c) shall be used by the entity appointed under subdivision (2) of this subsection to deliver heating and process-fuel energy efficiency services to Vermont consumers of such fuel on a whole-buildings basis to help meet the state's building efficiency goals established by 10 V.S.A. § 581. In delivering such services with respect to heating systems, the entity shall give priority to incentives for the installation of ~~woody~~ high efficiency biomass heating systems and shall have a goal of offering an incentive that is equal to 25 percent of the installed cost of such a system. For the purpose of this subdivision (7), "~~woody~~ biomass" means organic nonfossil material ~~from trees or woody plants~~ constituting a source of renewable energy within the meaning of subdivision 8002(2) of this title. ~~Provision of an incentive under this subdivision (7) for a woody biomass heating system shall not be contingent on the making of other energy efficiency improvements at the property on which the system will be installed.~~

Sec. 17. EFFECTIVE DATES; IMPLEMENTATION

(a) This section and Secs. 1 (renewable energy chapter; goals), 2 (renewable energy chapter; definitions), 3 (renewable portfolio standards), 4 (SPEED; total renewables targets); 5 (SPEED; standard offer program).



6 (standard offer; prior capacity; interconnection application), and 14 (total energy; report) of this act shall take effect on passage.

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

(c) The public service board shall:

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

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

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

and that after passage the title of the bill be amended to read: “An act relating to the Vermont energy act of 2012”

**PROPOSAL OF AMENDMENT TO HOUSE PROPOSAL OF  
AMENDMENT TO S. 214 TO BE OFFERED BY SENATOR  
GALBRAITH**

**S. 214**

Senator Galbraith moves that the Senate concur with the House Proposal of Amendment with further proposal of amendment to read as follows:

An act relating to customer rights regarding smart meters

By adding two new sections to be numbered Sec. 10a and 10b to read as follows:

Sec. 10a. FINDINGS

The general assembly finds:

(1) Vermont’s beautiful landscape, including its mountains, is a major factor in the quality of life for Vermonters and makes an important contribution to the state’s economy.

(2) Vermont’s parks, forests, wilderness, and conserved lands exist for the benefit of present and future generations and should be kept in a natural state.

Sec. 10b. 10 V.S.A. chapter 87 is added to read:

CHAPTER 87. PROHIBITION; COMMERCIAL CONSTRUCTION;  
CERTAIN PUBLIC AND CONSERVED LANDS

§ 2801. PROHIBITION

(a) No construction for any commercial purpose, including the generation of electric power, shall be permitted within any state park or forest, wilderness area designated by law, natural area designated under section 2607 of this title, or any area conserved to protect its wilderness, scenic, or wildlife habitat characteristics, or on any land managed by the agency of natural resources created under 3 V.S.A. chapter 51.

(b) This section shall not prohibit the construction of:

(1) A concession or other structure for the use of visitors to state parks or forests.

(2) A modification or improvement to a dam in existence as of the effective date of this section, if the modification or improvement is to allow the dam's use for the generation of electricity and to construct any power lines and facilities necessary for such use.

(3) Telecommunications facilities, as defined under 30 V.S.A. § 248a(b) (certificate of public good; communications facilities), in accordance with all other applicable state law.

(4) A temporary structure or road for forestry purposes as may be permitted on a state land or pursuant to the terms governing a conserved land.

(5) Tapping of maple trees and associated activities on state forestland authorized under a license pursuant to section 2606b of this title.

(6) Construction on state land that is permitted under a lease or license that was in effect on June 1, 2012.

**House Proposal of Amendment**

**S. 230**

An act relating to property and casualty insurers and electronic notices.

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. § 3666 is added to read:

§ 3666. DELIVERY OF NOTICES BY ELECTRONIC MEANS

(a) As used in this section:

(1) "Delivered by electronic means" includes:

(A) delivery to an electronic mail address at which a party has consented to receive notice; and

(B) posting on an electronic network, together with separate notice to a party sent to the electronic mail address at which the party has consented to receive notice of the posting.

(2) "Party" means an applicant, an insured, or a policyholder.

(b) Subject to subsection (d) of this section, any notice to a party required under section 3880, 3881, 4224, 4225, 4712, or 4713 of this title may be, but is not required to be delivered by electronic means provided the process used to obtain consent of the party to have notice delivered by electronic means meets the requirements of 9 V.S.A. chapter 20, the Uniform Electronic Transactions Act.

(c) Delivery of a notice pursuant to subsection (b) of this section shall be considered equivalent to any delivery method required under section 3883, 4226, or 4714 of this title, including delivery by first-class mail, certified mail, or certificate of mailing.

(d) A notice may be delivered by electronic means by an insurer to a party under this section if:

(1) The party has affirmatively consented to such method of delivery and not subsequently withdrawn consent.

(2) The party, before giving consent, is provided with a clear and conspicuous statement informing the party of:

(A) the right of the party to have the notice provided or made available in paper or another nonelectronic form at no additional cost;

(B) the right of the party to withdraw consent to have notice delivered by electronic means;

(C) whether the party's consent applies:

(i) only to the particular transaction as to which the notice must be given; or

(ii) to identified categories of notices that may be delivered by electronic means during the course of the party's relationship with the insurer;

(D) how, after consent is given, the party may obtain a paper copy of a notice delivered by electronic means at no additional cost; and

(E) the procedures the party must use to withdraw consent to have notice delivered by electronic means and to update information needed to contact the party electronically.

(3) The party:

(A) before giving consent, is provided with a statement of the hardware and software requirements for access to and retention of a notice delivered by electronic means; and

(B) consents electronically and confirms consent electronically, in a manner that reasonably demonstrates that the party can access information in the electronic form that will be used for notices delivered by electronic means as to which the party has given consent.

(4) After consent of the party is given, the insurer, in the event a change in the hardware or software requirements needed to access or retain a notice delivered by electronic means creates a material risk that the party will not be able to access or retain a subsequent notice to which the consent applies:

(A) provides the party with a statement of:

(i) the revised hardware and software requirements for access to and retention of a notice delivered by electronic means; and

(ii) a revised statement required by subdivision (2) of this subsection; and

(B) the party affirmatively consents to continued delivery of notices by electronic means.

(e) Every notice delivered pursuant to subsection (b) of this section shall include the statement required by subdivision (d)(2) of this section. This section does not otherwise affect the content or timing of any notice required under chapter 105, 113, or 128 of this title.

(f) If a provision of chapter 105, 113, or 128 of this title requiring notice to be provided to a party expressly requires verification or acknowledgment of receipt of the notice, the notice may be delivered by electronic means only if the method used provides for verification or acknowledgment of receipt. Absent verification or acknowledgement of receipt of the initial notice on the part of the party, the insurer shall send two subsequent notices at intervals of five business days.

(g) The legal effectiveness, validity, or enforceability of any contract or policy of insurance may not be made contingent upon obtaining electronic consent or confirmation of consent of a party in accordance with subdivision (d)(3)(B) of this section.

(h)(1) A withdrawal of consent by a party does not affect the legal effectiveness, validity, or enforceability of a notice delivered by electronic means to the party before the withdrawal of consent is effective.

(2) A withdrawal of consent by a party is effective within 30 days after receipt of the withdrawal by the insurer.

(3) Failure to comply with subdivision (d)(4) of this section shall be treated as a withdrawal of consent for purposes of this section.

(i) A party who does not consent to delivery of notices by electronic means under subsection (b) of this section, or who withdraws his or her consent, shall not be subjected to any additional fees or costs for having notices provided or made available in paper or another nonelectronic form.

(j) This section shall not be construed to modify, limit, or supersede the provisions of the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. chapter 96, relating to the use of an electronic record to provide or make available information that is required to be provided or made available in writing to a party.

## Sec. 2. INTERPRETATION

The delivery of notice in accordance with Sec. 1 of this act is intended and shall be construed to meet the requirements of state insurance regulation 78-01, section 1, as revised.

## Sec. 3. STATEMENT OF CONSUMER RIGHTS; ELECTRONIC NOTICES

The commissioner of financial regulation shall issue a bulletin regarding the statement to be provided to a party under 8 V.S.A. § 3666(d)(2). The bulletin shall require insurance companies to clearly and conspicuously inform the party of the types of notices (cancellation and nonrenewal) permitted to be delivered by electronic means; the risks associated with electronic notifications and the party's assumption of those risks if he or she consents to receive electronic notifications; the party's right to receive notices by mail at no additional cost; and any other provisions the commissioner deems necessary to protect the interests of Vermonters and otherwise carry out the purposes of this act. In addition, the bulletin shall provide guidance to insurers on the appropriate form of the electronic notices and their provisions as well as on the specific withdrawal of consent procedures required under 8 V.S.A. § 3666(d)(2)(D).

Sec. 4. 21 V.S.A. § 618 is amended to read:

## § 618. COMPENSATION FOR PERSONAL INJURY

\* \* \*

(f) If an injured worker voluntarily consents in writing, the worker may be paid compensation benefits by means of direct deposit or an electronic payroll card account in accord with the requirements of section 342 of this title, and any rules adopted by the commissioner to implement this section. An

electronic payroll card account may be used only for weekly payment of benefits and not for the payment of a lump sum award.

Sec. 5. EFFECTIVE DATES

This section and Sec. 4 of this act shall be effective on July 1, 2012 and Secs. 1, 2, and 3 of this act shall take effect on January 1, 2013 and apply to all policies and certificates delivered, issued for delivery, or renewed in this state on or after that date.

**House Proposal of Amendment**

**S. 252**

An act relating to the repeal or revision of reporting requirements.

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. § 18 is amended to read:

§ 18. SPOUSE ABUSE PROGRAMS; ELIGIBILITY; ~~REPORTING~~

\* \* \*

~~(c) The center shall, on or before January 1 of each year, forward to the speaker of the house and president of the senate an annual report on the status of the program. This report shall include, but not be limited to, such areas as:~~

~~(1) actual disbursements;~~

~~(2) number of facilities and programs served;~~

~~(3) the impact of the monies relative to the continued success of each particular program;~~

~~(4) incidence of spouse abuse in the state;~~

~~(5) identification of potential funding sources. [Repealed.]~~

\* \* \*

Sec. 2. 3 V.S.A. § 117(c) is amended to read:

(c) The secretary shall adopt policies and procedures necessary to carry out the provisions of this section ~~and shall report annually to the governor and the general assembly on the state archives and records administration program.~~

Sec. 3. 3 V.S.A. § 2473a(e) is amended to read:

(e) The receipt and expenditure of moneys from the revolving fund shall be under the supervision of the business manager and at the direction of the publisher, subject to the provisions of this section. Vermont Life magazine shall maintain accurate and complete records of all receipts and expenditures

by and from the fund, and shall make an annual report on the condition of the fund to the secretary of the agency, who shall in turn provide the report to the secretary of administration.

Sec. 4. 3 V.S.A. § 2822 is amended to read:

§ 2822. BUDGET AND REPORT; POWERS

(a) The secretary shall be responsible to the governor and shall plan, coordinate, and direct the functions vested in the agency. The secretary shall prepare and submit to the governor an annual budget and shall prepare and submit to the governor and the general assembly in November of each year a report concerning the operation of the agency for the preceding fiscal year and the future goals and objectives of the agency.

\* \* \*

(g) The secretary shall make all practical efforts to process permits in a prompt manner. The secretary shall establish time limits for the processing of each permit as well as procedures and time periods within which to notify applicants whether an application is complete. The secretary shall report no later than the third Tuesday of each annual legislative session to the ~~house and senate committees on natural resources and government operations~~ general assembly by electronic submission. The annual report shall assess the agency's performance in meeting the limits; identify areas which hinder effective agency performance; list fees collected for each permit; summarize changes made by the agency to improve performance; describe staffing needs for the coming year; and certify that the revenue from the fees collected is at least equal to the costs associated with those positions; and discuss the operation of the agency during the preceding fiscal year and the future goals and objectives of the agency. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection. This report is in addition to the fee report and request, required by ~~subchapter 6 of chapter 7 of Title 32~~ V.S.A. chapter 7, subchapter 6.

\* \* \*

Sec. 5. 10 V.S.A. § 126 is amended to read:

§ 126. ~~REPORTS AND AUDITS~~ AUDIT

~~On or before January 15 of each year, the center shall prepare and submit to the governor a three year work plan which describes the goals, objectives and activities of the center and cooperating state agencies and other public and private organizations. The plan also should include the estimated cost of each major activity of the center, and a report concerning data gathered, documents generated, and problems and opportunities for use of VGIS information. Control of funds appropriated and all procedures incident to the carrying out of~~

the purposes of this chapter shall be vested in the board of directors. The books of account of the center shall be audited annually ~~and a report filed with the secretary of administration not later than October 1 of each year.~~

Sec. 6. 10 V.S.A. § 374f is amended to read:

§ 374f. RECORDS; ~~ANNUAL REPORT; AUDIT~~

The corporation shall keep an accurate account of all its activities ~~and report to the authority and to the governor and the general assembly in accordance with section 217 of this title. The administrative costs of the program shall be accurately stated in the report.~~

Sec. 7. 10 V.S.A. § 1978(e)(3) is amended to read:

(3) The technical advisory committee shall provide annual reports, starting January 15, 2003, to the chairs of the house committee on corrections and institutions and the senate committees committee on natural resources and energy institutions. The reports shall include information on the following topics: the implementation of this chapter and the rules adopted under this chapter; the number and type of alternative or innovative systems approved for general use, approved for use as a pilot project, and approved for experimental use; the functional status of alternative or innovative systems approved for use as a pilot project or approved for experimental use; the number of permit applications received during the preceding calendar year; the number of permits issued during the preceding calendar year; and the number of permit applications denied during the preceding calendar year, together with a summary of the basis of denial.

Sec. 8. 10 V.S.A. § 2609a is amended to read:

§ 2609a. INCOME FROM LEASE OF MOUNTAINTOP COMMUNICATION SITES

Annually on February 15, the agency of natural resources shall submit a report to the senate and house ~~appropriations committees, the senate finance committee and the house ways and means committee~~ on natural resources and energy containing an itemization of the income generated through the end of the previous fiscal year from the use of sites for communication purposes.

Sec. 9. 10 V.S.A. § 4143(a) is amended to read:

(a) The commissioner may sell fish fry, fingerlings, and adult trout to residents of this state for the purpose of stocking waters in the state and he or she may sell to residents fish reared by the state. Such fish shall be sold at a price sufficient to return the state a reasonable profit. The commissioner shall keep an itemized account of such sales ~~and include the same in his or her biennial report.~~



Sec. 10. 10 V.S.A. § 6083(d) is amended to read:

(d) The panels of the board and commissions shall make all practical efforts to process matters before the board and permits in a prompt manner. The land use panel shall establish time limits for the processing of land use permits issued under section 6086 of this title as well as procedures and time periods within which to notify applicants whether an application is complete. The land use panel shall report annually by February 15 to the ~~house and senate committees on natural resources and energy and on government operations, and the house committee on fish, wildlife and water resources~~ general assembly by electronic submission. The annual report shall assess the performance of the board and commissions in meeting the limits; identify areas which hinder effective performance; list fees collected for each permit; summarize changes made to improve performance; and describe staffing needs for the coming year. The annual report shall list the number of enforcement actions taken by the land use panel, the disposition of such cases, and the amount of penalties collected. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection.

Sec. 11. 10 V.S.A. § 6630 is amended to read:

§ 6630. TOXICS USE REDUCTION AND HAZARDOUS WASTE REDUCTION PERFORMANCE REPORT

(a) On or before March 31, 1994, or March 31 of the year following the first plan, whichever is later, and annually thereafter, each generator or large user shall prepare and submit a hazardous materials management performance report to the house and senate committees on natural resources and energy documenting toxics use reduction and hazardous waste reduction methods implemented by the generator or large user.

\* \* \*

Sec. 12. 10 V.S.A. § 7113(a) is amended to read:

(a) There is created an advisory committee on mercury pollution to consist of one member of the house of representatives, appointed by the speaker; one member of the senate, appointed by the committee on committees; the secretary of natural resources or the secretary's designee; the commissioner of fish and wildlife or the commissioner's designee; and the following persons, as appointed by the governor: one representative of an industry that manufactures consumer products that contain mercury; one public health specialist; one hospital representative; one representative of the Abenaki Self-Help Association, Inc.; one toxicologist; one representative of a municipal solid waste district; and one scientist who is knowledgeable on matters related to mercury contamination. The advisory committee shall advise the general

assembly, the executive branch, and the general public on matters relating to the prevention and cleanup of mercury pollution and the latest science on the remediation of mercury pollution. ~~By January 15 of each year, the advisory committee will report to the general assembly updated information on the following:~~

~~(1) The extent of mercury contamination in the soil, waters, air, and biota of Vermont.~~

~~(2) The extent of any health risk from mercury contamination in Vermont, especially to pregnant women, children of the Abenaki Self Help Association, Inc., and other communities that use fish as a major source of food.~~

~~(3) Methods available for minimizing risk of further contamination or increased health risk to the Vermont public.~~

~~(4) Potential costs of minimizing further risk and recommendations of how to raise funds necessary to reduce contamination and minimize risk of mercury related problems in Vermont.~~

~~(5) Coordination needed with other states to address effectively mercury contamination.~~

~~(6) The effectiveness of the established programs, including manufacturer based reverse distribution systems for in state collection, subsequent transportation, and subsequent recycling of mercury from waste mercury added products, and recommendations for altering the programs to make them more effective.~~

~~(7) Ways to reduce the extent to which solid waste produced within the state is incinerated at incinerators, regardless of location, that fail to use the best available technology in scrubbing and filtering emissions from the incinerator stack.~~

Sec. 13. 13 V.S.A. § 5256 is amended to read:

#### § 5256. REPORTS

The defender general shall submit an annual report of his or her activities to the governor, ~~the general assembly, and the supreme court~~ house and senate committees on judiciary showing the number of persons represented under this chapter, the crimes involved, the outcome of each case, and the expenditures ~~totalled~~ totaled by kind made in carrying out the responsibilities imposed by this chapter.

Sec. 14. 16 V.S.A. § 2733 is amended to read:

§ 2733. ~~REPORTS BY MEMBERS TO GOVERNOR~~ ACCOUNTS

The members from this state shall obtain accurate accounts of all the board's receipts and disbursements ~~and shall report to the governor on or before the fifteenth day of November, in even numbered years, the transactions of the board for the biennium ending on the preceding June thirtieth. They shall include in such report recommendations for any legislation which they consider necessary or desirable to carry out the intent and purposes of the compact.~~

Sec. 15. 16 V.S.A. § 2885(g) is amended to read:

(g) The University of Vermont, the Vermont State Colleges, and the Vermont Student Assistance Corporation shall review expenditures made from the fund; and evaluate the impact of the expenditures on higher education in Vermont, and report this information to the ~~state treasurer~~ house and senate committees on education each year in January.

Sec. 16. 18 V.S.A. § 9405(b)(6) is amended to read:

(6) The plan or any revised plan proposed by the commissioner shall be the health resource allocation plan for the state after it is approved by the governor or upon passage of three months from the date the governor receives the plan, whichever occurs first, unless the governor disapproves the plan, in whole or in part. If the governor disapproves, he or she shall specify the sections of the plan which are objectionable and the changes necessary to meet the objections. The sections of the plan not disapproved shall become part of the health resource allocation plan. ~~Upon its adoption, the plan shall be submitted to the appropriate legislative committees.~~

Sec. 17. 20 V.S.A. § 2735 is amended to read:

§ 2735. STATE BUILDINGS

The commissioner shall establish a risk classification system for all state buildings. State buildings classified as high or medium risk shall be inspected at least every five years; ~~and the commissioner's findings and recommendations shall be reported to the secretary of administration.~~

Sec. 18. 24 V.S.A. § 290b is amended to read:

§ 290b. ~~QUARTERLY REPORTS;~~ AUDITS

(a) ~~Quarterly, on or before April 30, July 31, October 31 and January 31, the sheriff and each full time deputy sheriff shall furnish to the finance and management commissioner and to the assistant judges for filing with the county clerk, on forms provided by the commissioner, a sworn statement of all sums in addition to full time salaries received by each of them as~~

~~compensation acquired by virtue of their offices. Such reports shall be public records. The sheriff shall revoke the commission of any full time deputy sheriff who fails to file such a report. The commissioner of finance and management shall withhold payments of salary and expenses to any sheriff or full time deputy sheriff who fails to file such a report. [Repealed.]~~

\* \* \*

(d) Annually each sheriff shall furnish the auditor of accounts on forms provided by the auditor, a financial report reflecting the financial transactions and condition of the sheriff's department. The sheriff shall submit a copy of this report to the assistant judges of the county. The assistant judges shall prepare a report reflecting funds disbursed by the county in support of the sheriff's department and forward a copy of their report to the auditor of accounts. The auditor of accounts shall compile the reports and submit one report to the general assembly house and senate committees on judiciary.

\* \* \*

Sec. 19. 24 V.S.A. § 1939(d) is amended to read:

(d) The board shall meet no fewer than six times a year to develop policies and recommendations for law enforcement priority needs, including retirement benefits, recruitment of officers, training needs, homeland security issues, dispatching, and comprehensive drug enforcement. The board shall present its findings and recommendations in brief summary to the general assembly and the governor house and senate committees on judiciary annually by

January 15.

Sec. 20. 24 V.S.A. § 4025 is amended to read:

§ 4025. REPORT

At least once a year, an authority shall file with the clerk ~~(or in the case of the state authority, with the governor)~~ a report of its activities for the preceding year and shall make recommendations with reference to such additional legislation or other actions as it deems necessary in order to carry out the purpose of this chapter.

Sec. 21. 28 V.S.A. § 102(b)(16) is amended to read:

(16) With the approval of the secretary of human services, to accept federal grants made available through federal crime bill legislation, provided that the commissioner shall report the receipt of a grant under this subdivision to the chairs of the senate house committee on corrections and institutions; and the house senate committee on corrections and institutions; and the joint fiscal committee.

Sec. 22. 28 V.S.A. § 104 is amended to read:

§ 104. NOTIFICATION OF COMMUNITY PLACEMENTS

\* \* \*

(e) The commissioner of corrections shall annually, by January 15, report to the house committee on corrections and institutions and the senate committees committee on institutions and on judiciary on the implementation of this section during the previous 12 months.

Sec. 23. 28 V.S.A. § 452 is amended to read:

§ 452. OFFICIAL SEAL; RECORDS; ANNUAL REPORT

\* \* \*

(c) ~~At the close of each fiscal year, the board shall submit to the governor and to the general assembly a report of its work with statistical and other data, including research studies which it may conduct of sentencing, parole or related functions. [Repealed.]~~

Sec. 24. 29 V.S.A. § 152(a) is amended to read:

(a) The commissioner of buildings and general services, in addition to the duties expressly set forth elsewhere by law, shall have the authority to:

\* \* \*

(23) With the approval of the secretary of administration, transfer during any fiscal year to the department of buildings and general services for use only for major maintenance within the ~~Capitol Complex~~ capitol complex in Montpelier, any unexpended balances of funds appropriated in any capital construction act for any executive or judicial branch project, excluding any appropriations for state grant-in-aid programs, which is completed or substantially completed as determined by the commissioner. On or before January 15 of each year, the commissioner shall report to the house ~~and senate committees~~ committee on corrections and institutions and the senate committee on institutions regarding:

(A) all transfers and expenditures made pursuant to this subdivision; and

(B) the unexpended balance of projects completed for two or more years.

\* \* \*

(25) Transfer any unexpended project balances from previous capital construction acts for the purpose of emergency projects not authorized in a capital construction act in an amount not to exceed \$100,000.00; provided the

commissioner shall send timely written notice of such expenditures to the chairs of the house ~~and senate committees on~~ committee on corrections and institutions ~~and the senate committee on institutions.~~

\* \* \*

(33) Accept grants of funds, equipment, and services from any source, including federal appropriations, for the installation, operation, implementation, or maintenance of energy conservation measures or improvements at state buildings, provided that the commissioner shall report receipt of a grant under this subdivision to the chairs of the ~~senate~~ house committee on corrections and institutions, ~~and the house~~ senate committee on corrections and institutions, ~~and the joint fiscal committee.~~

\* \* \*

Sec. 25. 29 V.S.A. § 160(e) is amended to read:

(e) The commissioner of buildings and general services shall supervise the receipt and expenditure of moneys comprising the property management revolving fund, subject to the provisions of this section. He or she shall maintain accurate and complete records of all such receipts and expenditures, and shall make an annual report on the condition of the fund to the ~~secretary of administration~~ house committee on corrections and institutions and the senate committee on institutions. All balances remaining at the end of a fiscal year shall be carried over to the following year.

Sec. 26. 29 V.S.A. § 172 is amended to read:

#### § 172. CAPITOL COMPLEX SECURITY

The commissioner of buildings and general services shall be responsible for all security operations pertaining to the lands and structures within the capitol complex, except the interior of the state house and the space occupied by the supreme court, which is provided for in section 171 of this title. ~~Biennially, the commissioner shall, in cooperation with the sergeant at arms and the supreme court, develop and present a capitol complex security budget recommendation to the house and senate committees on appropriations and on institutions.~~

Sec. 27. 30 V.S.A. § 21(e) is amended to read:

(e) On or before January 15, 2011, and annually thereafter, the agency of natural resources shall report to the senate and house committees on natural resources and energy, ~~the senate committee on finance, and the house committee on ways and means~~ the total amount of expenses allocated under this section during the previous fiscal year. The report shall include the name of each applicant or public service company to whom expenses were allocated and the amount allocated to each applicant or company.

Sec. 28. 30 V.S.A. § 24 is amended to read:

§ 24. PAYMENTS FROM SPECIAL FUNDS; BIENNIAL REPORT

All payments from the special fund for the maintenance of the engineering and accounting forces and from the public service reserve fund shall be dispensed from the state treasury only upon warrants issued by the commissioner of finance and management after receipt of proper statements describing services rendered and expenses incurred. A complete, detailed, and full accounting of all receipts from the taxes assessed in sections 22 and 23 of this title and all disbursements from the special fund for the maintenance of the engineering and accounting force and from the public service reserve fund shall be contained in the department's biennial report to the general assembly. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this section.

Sec. 29. 30 V.S.A. § 8071 is amended to read:

§ 8071. QUARTERLY AND ANNUAL REPORTS; AUDIT

\* \* \*

(c) Quarterly Reports. Within 30 days of the end of each quarter, the authority shall, in addition to any other reports required under this section, submit a report of its activities for the preceding quarter to the ~~secretary of administration~~ house committee on corrections and institutions and the senate committee on institutions which shall include the following:

\* \* \*

(d) The authority shall include in the annual report required under subsection (a) of this section a summary of all the information quarterly reported to the ~~secretary of administration~~ house committee on corrections and institutions and the senate committee on institutions under subsection (c) of this section, as well as a summary of any and all instances in which service providers that have entered into contracts or binding commitments with the authority have materially defaulted, been unable to fulfill their commitments, or have requested or been granted relief from contractual or binding commitments.

Sec. 30. 31 V.S.A. § 612 is amended to read:

§ 612. ~~REPORTS~~ AUDITS

~~The commission shall make an annual report to the governor on or before the 1st day of February of each year with an account of revenues received and disbursements made.~~ The commission shall procure an audit report of the activities of each track for every calendar year by the 1st day of February

following, prepared by a firm of certified public accountants which is not employed by the licensee.

Sec. 31. 32 V.S.A. § 110 is amended to read:

§ 110. REPORTS

(a) The treasurer shall prepare and submit, consistent with 2 V.S.A. § 20(a), reports on the following subjects:

(1) The Vermont higher education endowment trust fund, pursuant to 16 V.S.A. § 2885(e).

(2) ~~The firefighters' survivors benefit expendable trust fund, pursuant to 20 V.S.A. § 3175(b).~~ [Repealed.]

(3) The trust investment account, pursuant to subdivision 434(a)(5) of this title.

(4) ~~Charges for credit card usage by agency, department, or the judiciary, pursuant to subsection 583(f) of this title.~~ [Repealed.]

(5) [Repealed.]

\* \* \*

Sec. 32. 32 V.S.A. § 434(a)(5) is amended to read:

(5) Annually, the treasurer shall prepare a report to the general assembly house committee on ways and means and the senate committee on finance on the financial activity of the trust investment account.

Sec. 33. 32 V.S.A. § 584(c) is amended to read:

(c) All program balances at the end of the fiscal year shall be carried forward and shall not revert to the general fund. Interest earned shall remain in the program. ~~The treasurer's annual financial report to the governor and the general assembly shall contain an accounting of receipts, disbursements, and earnings of the state sponsored affinity card program.~~

Sec. 34. 32 V.S.A. § 1010(e) is amended to read:

(e) The governor may authorize per diem compensation and expense reimbursement in accordance with this section for members of boards and commissions, including temporary study commissions, created by executive order. ~~By January 15 of each year, the secretary of administration shall report to the general assembly a list of all such boards and commissions that are authorized to receive per diem compensation.~~

Sec. 35. 32 V.S.A. § 5922(f) is amended to read:



(f) A qualified person who claims and is awarded tax credits under this section shall report, on a form approved by the commissioner of taxes, such person's qualified payroll expenses as of July 1, 1996. No credits shall be available for taxable years beginning on or after January 1, 2007, unless the general assembly specifically authorizes the allowance of credits under this section for taxable years 2007 and after. The department of economic, housing and community development shall evaluate ~~and report to the house committee on commerce and the house committee on ways and means and the senate committee on finance on an annual basis~~ the effectiveness of the financial services development tax credit. ~~This brief report shall include an update on the financial services industry in Vermont, including the number of new jobs, new companies, payroll growth, and the amount of credit claimed.~~

Sec. 36. 32 V.S.A. § 5930z(g) is amended to read:

(g) On a regular basis, the department shall notify the ~~treasurer and the clean energy development board~~ house and senate committees on natural resources and energy of solar energy tax credits claimed pursuant to this section, and the board shall cause to be transferred from the clean energy development fund to the general fund an amount equal to the amount of solar energy tax credits as and when the credits are claimed.

Sec. 37. 33 V.S.A. § 601(d) is amended to read:

(d) The commissioner of corrections and the commissioner for children and families shall be responsible for maintaining and providing staffing for the center ~~and shall report every two years to the corrections oversight committee on the accomplishments of the center.~~

Sec. 38. Sec. 13(c) of No. 58 of the Acts of 1997 is amended to read:

(c) The ~~Department~~ department shall report to the ~~General Assembly~~ house committee on general, housing and military affairs, the senate committee on economic development, housing and general affairs, and the tobacco evaluation and review board annually on January 15 the methodology and results of compliance tests conducted during the previous year.

Sec. 39. Sec. 96 of No. 49 of the Acts of 1999 is amended to read:

Sec. 96. VERMONT ECONOMIC PROGRESS COUNCIL; REPORTING

The Vermont Economic Progress Council shall provide a report of all economic advancement tax incentives awarded pursuant to 32 V.S.A. chapter 151, subchapter 11E of chapter 151 of Title 32 to the ~~Senate Committee~~ senate committees on Finance finance and on economic development, housing and general affairs and the ~~House Committee~~ house committees on Ways and Means ways and means and on commerce and

economic development. The reports of incentives granted shall be made in a timely manner as soon possible following the granting of the incentives.

Sec. 40. Sec. 12 of No. 66 of the Acts of 2003 is amended to read:

Sec. 12. AUTHORITY TO CHARGE

(a) The commissioner of finance and management is authorized to charge departments for recurrent VISION processing errors, and such charges shall be deposited into the financial management internal service fund. Prior to any such charge, the department of finance and management shall develop and establish a schedule of charges with an appeal and forgiveness process. ~~Annually, by September 1, the department of finance and management shall submit to the joint fiscal committee a report on rates established and charges made during the prior fiscal year.~~

Sec. 41. Sec. 255(a)(7)(B) of No. 71 of the Acts of 2005 is amended to read:

(B) \$1,039,000 to the office of Vermont health access to fund the Vermont Blueprint for Health: The Chronic Care Initiative. The goals of the initiative are to: (1) implement a statewide system of care that enables Vermonters with, and at risk for, chronic disease to lead healthier lives; (2) develop a system of care that is financially sustainable; and (3) forge a public-private partnership to develop and sustain the new system of care. ~~On or before January 1, 2006, and annually thereafter, the director of the office of Vermont health access, in consultation with the commissioner of health, shall file a report with the general assembly detailing progress made in reaching these three goals.~~

Sec. 42. Sec. 7 of No. 154 of the Acts of the 2005 Adj. Sess. (2006) is amended to read:

Sec. 7. AGENCY OF NATURAL RESOURCES ORPHAN STORMWATER SYSTEM ANNUAL REPORT

Annually, by no later than January 15, the agency of natural resources shall submit a report to the house committee on ~~fish, wildlife and water resources, the senate committee on natural resources and energy, the house and senate committees on~~ corrections and institutions, and the ~~house and senate committees~~ committee on appropriations institutions regarding implementation by the agency of the orphan stormwater system construction, renovation, or repair program under 10 V.S.A. § 1264c. The report shall include:

\* \* \*

Sec. 43. Sec. 4 of No. 192 of the Acts of the 2005 Adj. Sess. (2006), as amended by Sec. 2a of No. 1 of the Acts of 2009, is further amended to read:

Sec. 4. SEXUAL VIOLENCE PREVENTION TASK FORCE

\* \* \*

(c) ~~On or before January 15, 2007, and on or before January 15 for seven years thereafter, the task force shall report on its activities during the preceding year to the house and senate committees on education and judiciary. The task force shall cease to exist after it files the report due on January 15, 2014.~~

Sec. 44. Sec. 6(a)(4) of No. 46 of the Acts of 2007, as amended by Sec. 8 of No. 54 of the Acts of 2009, is amended to read:

(4) issuing an annual report to the ~~governor and the general assembly~~ house committee on commerce and economic development and the senate committee on economic development, housing and general affairs on or before December 1, which shall include a systematic evaluation of the accomplishments of the system and the participating agencies and institutions and all the following:

\* \* \*

Sec. 45. Sec. 78a of No. 65 of the Acts of 2007 is amended to read:

Sec. 78a. MEMORIAL GARDEN; LOAN

(a) The executive director of the center for crime victims services may lend up to \$100,000, without interest, from the crime victims' restitution special fund, created pursuant to 13 V.S.A. § 5363, to the memorial garden special account which can be used to provide funding to the department of buildings and general services for the purpose of constructing the courage-in-bloom memorial garden at the designated site between ~~10-12~~ 10-12 Baldwin Street. The center for crime victims services shall repay the loan in annual installments made over a period not to exceed five years. The repayment of the loan is anticipated to come from fundraising by the center for crime victims services. ~~The center shall report annually to the state treasurer on the payments and receivables related to the loan.~~

Sec. 46. Sec. 170 of No. 65 of the Acts of 2007 is amended to read:

Sec. 170. UNEXPECTED COST OF PERSONNEL; LOAN

(a) The executive director of the center for crime victims services shall lend up to \$300,000, without interest, from the crime victims' restitution special fund, created pursuant to 13 V.S.A. § 5363, to a school district to pay for a budget deficit that arose solely from the unexpected cost of paying for additional personnel who were needed purely because of extraordinary circumstances resulting in the loss of life of school personnel on school grounds, if the district's loan request is approved by the commissioner of education. The district shall fully repay the loan in installments made over a period not to exceed five years. ~~The center shall report annually to the state treasurer on the payments and receivables related to the loan.~~

Sec. 47. Sec. 18(f) of No. 179 of the Acts of the 2007 Adj. Sess. (2008) is amended to read:

(f) The joint fiscal office and the ~~office~~ department of finance and management shall jointly document the impact of the policies and provisions of this act on corrections costs and shall report their findings to the ~~general assembly~~ house committee on corrections and institutions and the senate committee on institutions on or before January 15, 2010, and in January of each year for five years thereafter.

Sec. 48. Sec. 30(b) of No. 200 of the Acts of the 2007 Adj. Sess. (2008) is amended to read:

(b) Each receipt of a grant or gift authorized by this section shall be reported by the commissioner of the department receiving the funds to the chairs of the ~~senate~~ house committee on corrections and institutions and the ~~house~~ senate committee on ~~corrections and institutions~~ and to the joint fiscal committee.

Sec. 49. Sec. 20 of No. 161 of the Acts of 2010 is amended to read:

Sec. 20. VERMONT CENTER FOR CRIME VICTIM SERVICES

The sum of \$50,000 is appropriated to the Vermont Center for Crime Victim Services for Americans with Disabilities Act improvements at domestic violence shelters. Annually, on or before December 1, the Vermont Center for Crime Victim Services shall file with the ~~commissioner of buildings and general services~~ house committee on corrections and institutions and the senate committee on institutions a report which details the status of the improvements funded in whole or in part by state capital appropriations.

Total Appropriation – Section 20 \$50,000

Sec. 50. Sec. E.321.1(a) of No. 63 of the Acts of 2011 is amended to read:

(a) The agency of human services shall develop a baseline to measure results of the investment in the emergency shelter grants and case management to assist the homeless population. These measurements shall include homelessness prevention outcome measures for the clients served by the investment. The outcomes shall be reported annually to the house committees on appropriations and on human services and ~~the~~ senate committees on appropriations and on health and welfare during the department's budget testimony.

Sec. 51. REPEAL

(a) The following sections of Title 3 are repealed:

(1) § 21(c) (report on status of sexual assault victim program);

(2) § 631(c)(2) (assessment of the status of alignment between chronic care management programs provided to state employees through the health coverage benefit and the Vermont Blueprint for Health strategic plan);

(3) § 924(a) (detail of work done by labor relations board in hearing and deciding cases);

(4) § 3026(d) (findings and recommendations relating to improving the effectiveness of state and local health, human services, and education programs); and

(5) § 3085b(h) (findings of commission on Alzheimer's disease during preceding year regarding community recognition and understanding of Alzheimer's disease and dementia-related disorders).

(b) 6 V.S.A. § 4828(d) (report on performance of and results achieved by providing capital assistance to custom applicators and farms for new or innovative manure injection equipment) is repealed.

(c) The following sections of Title 10 are repealed:

(1) § 328(e) (grant application and proposed work plan of sustainable jobs fund program);

(2) § 2612(c) (report on activities of Vermont Youth Conservation Corps, Inc.); and

(3) § 7116(d)(5) (report on the collection and recycling of mercury-containing thermostats).

(d) 13 V.S.A. § 5452(b) (report on Vermont sentencing commission activities; recommendations) is repealed.

(e) 15 V.S.A. § 1172(c) (Vermont council on domestic violence report) is repealed.

(f) The following sections of Title 16 are repealed:

(1) § 113 (report on activities of council on the arts);

(2) § 1709 (report to professional educator standards board: licensure and endorsements; complaints; accounting); and

(3) § 2805 (report on income from lease of mountaintop communication sites).

(g) 18 V.S.A. § 104b(e) (status report of the program for grants to comprehensive community health and wellness projects) is repealed.

(h) 19 V.S.A. § 2501(b) (report on scenic roads) is repealed.

(i) The following sections of Title 20 are repealed:

- (1) § 1883(b) (copy of law enforcement overall strategic plan); and
- (2) § 3175(b) (report on status of the emergency personnel survivors benefit special fund).
- (j) 21 V.S.A. § 497b(b) (report on activities of Vermont governor's committee on employment of people with disabilities) is repealed.
- (k) 29 V.S.A. § 924 (report on degree of voluntary compliance of vendors regarding code of conduct for contractors who supply apparel, footwear, or textiles to the state) is repealed.
- (l) The following sections of Title 30 are repealed:
- (1) § 211(b) (quarterly report of purchases and resales of electric energy); and
- (2) § 218(c)(5) (annual report on the implementation and effectiveness of the telephone lifeline service).
- (m) The following sections of Title 32 are repealed:
- (1) § 583(e) (report on bank charges, service fees, and fees charged to consumers related to credit card transactions according to credit card usage by agency, department, or the judiciary); and
- (2) § 8557(b) (report on status of Vermont fire service training).
- (n) 33 V.S.A. § 1901(a)(3) (notification of proposed rules filed regarding Medicaid changes) is repealed.
- (o) The following sections of the Acts of the 1999 Adj. Sess. (2000) are repealed:
- (1) Sec. 111a(d) of No. 152 (report on family partnership programs); and
- (2) Sec. 269(a)(4) of No. 152 (report of all space-, custodial- and occupancy-related charges).
- (p) Sec. 123c(e) of No. 63 of the Acts of 2001 (report on progress in implementing federally qualified health centers) is repealed.
- (q) The following sections of the Acts of 2005 are repealed:
- (1) Sec. 1(b)(2)(A) of No. 56, as amended by Sec. 112a of No. 65 of the Acts of 2007 (report on Medicaid waivers); and
- (2) Sec. 26 of No. 72 (accounting of the revenue raised by the aquatic nuisance sticker program).

(r) The following sections of the Acts of 2007 are repealed:

(1) Sec. 22a of No. 80 (report on amounts paid by the state in connection with any litigation challenging the validity of this act relating to increasing transparency of prescription drug pricing and information); and

(2) Sec. 13 of No. 82 (report on cost drivers of education spending).

(s) The following sections of the Acts of 2009 are repealed:

(1) Sec. 31(f)(2) of No. 43 (report on progress toward completing a facility and developing a residential recovery program); and

(2) [Deleted.]

(t) Sec. H.55 of No. 1 of the Acts of the 2009 Spec. Sess. (report on income reported to date by businesses electing to be taxed as digital businesses) is repealed.

(u) Sec. 3(d) of No. 148 of the Acts of the 2009 Adj. Sess. (2010) (report on progress of transition of payment of milk hauling costs to purchasers) is repealed.

(v) The requirement for the January 1 annual report in Resolution No. R-207 of 2003 of the expenditures by the state and local school districts made in order to comply with the No Child Left Behind (NCLB) Act is repealed.

Sec. 52. EFFECTIVE DATE

This act shall take effect on passage.

## **NEW BUSINESS**

### **Third Reading**

#### **H. 78.**

An act relating to wages for laid-off employees.

#### **H. 524.**

An act relating to the regulation of professions and occupations.

#### **H. 699.**

An act relating to scrap metal processors.

#### **H. 788.**

An act relating to approval of amendments to the charter of the town of Richmond.

**H. 790.**

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

**House Proposal of Amendment**

**S. 93**

An act relating to labeling maple products.

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

\* \* \* Labeling of Maple Products \* \* \*

Sec. 1. FINDINGS

The general assembly finds and declares that for the purposes of the maple products labeling part of this act:

(1) Maple syrup production capacity has increased significantly in recent years.

(2) There is increased interest in maple syrup that is certified for food safety.

(3) The Vermont sugaring industry has requested the creation of a voluntary certification program.

Sec. 2. 6 V.S.A. § 488a is added to read:

§ 488a. VOLUNTARY CERTIFICATION

The secretary may establish by rule a voluntary program for maple syrup production certification which shall be made available upon the request of a person engaged in producing maple syrup or maple products, a dealer, or a processor. The secretary may obtain from the person engaged in producing maple syrup or maple products, the dealer, or the processor reimbursement for the cost of the inspection certification incurred by the agency. The reimbursement fee charged for certification shall be reasonably proportionate to the cost of performing the inspection.

\* \* \* Vermont's Working Landscape \* \* \*

Sec. 3. 6 V.S.A. chapter 207 is amended to read:

**CHAPTER 207. PROMOTION AND MARKETING OF VERMONT  
FOODS AND PRODUCTS**

Subchapter 1. Agricultural Practices and Production

\* \* \*



Subchapter 2. The Vermont Working Lands Enterprise Program

§ 4603. LEGISLATIVE FINDINGS

The general assembly finds:

(1) The report issued by the Council on the Future of Vermont indicates that over 97 percent of Vermonters polled endorsed the value of the “working landscape” as key to our future.

(2) Vermont’s unique agricultural and forest assets—its working landscape—are crucial to the state’s economy, communities, character, and culture. These assets provide jobs, food and fiber, energy, security, tourism and recreational opportunities, and a sense of well-being. They contribute to Vermont’s reputation for quality, resilience, and self-reliance.

(3) Human activity involving Vermont’s agricultural and forestland has been integral to the development of Vermont’s economy, culture, and image. Sustainable land use will need to balance economic development demands with the other services the land provides, many of which have economic benefits beyond the agriculture and forest product sectors. Some of these benefits include clean air and water, recreational opportunities, ecosystem restoration, scenic vistas, and wildlife habitat.

(4) The agriculture and forest product sectors are similar and share many of the same challenges. There are potential benefits to be realized by the joining of these sectors in development planning and coordination, making policy decisions, and leveraging economic opportunities.

(5) The agriculture and forest product sectors provide renewable and harvestable products that form the basis of Vermont’s land-based economy. The conversion of these raw commodities into value-added products within our borders represents further economic and employment opportunities.

(6) Vermont is in the midst of an agricultural renaissance and is at the forefront of the local foods movement. The success has been due to the efforts of skilled and dedicated farmers, creative entrepreneurs, and the strategic investment of private and public funds.

(7) State investment in a given industry or economic sector is often essential to stimulate and attract additional private and philanthropic investment. The combination of public, private, and foundation support can create enterprise opportunities that any one of them alone cannot. Grants issued as a result of No. 52 of the Acts of 2011 helped create jobs and economic activity in the agricultural sector. They also leveraged private and foundation investments.

(8) Vermont’s land-based economy has proven to be a driver for Vermont’s ongoing economic recovery.

(9) Value-added and specialty Vermont products are a growing source of revenue for Vermont's agricultural producers, many of whom have benefited from the existing infrastructure requirements of commodity producers. Both export and instate markets are necessary options for the agriculture and forest product sectors' economic development.

(10) The Vermont brand is highly regarded both nationally and internationally. Forest management is seen as crop management by those active in the forest product industry. An actively managed forest is a healthy and productive one.

(11) Vermont's agriculture and forest product sectors have not been perceived or treated as businesses by the traditional business and lending communities. They often lack available capital and financial package options that match their stage of development.

(12) Financial service and workforce development programs need to be customized to meet the unique needs of Vermont's agriculture and forest product sectors. Landowner education and labor skills training are also important for future productive management of forestlands.

(13) Scale is an important determining factor for the successful development of businesses that utilize Vermont's agriculture and forest products. Other limiting factors include labor and transportation costs, support services, resource base, and the regulatory environment.

(14) Workers' compensation, health care, energy costs, and regulatory requirements are a major concern to the agriculture and forest product sectors. For example, workers' compensation premiums for loggers may run as high as 48 percent of each dollar of wages.

(15) The amount of land in Vermont is finite, and part of its community and economic value is tied to the way it is used. Farmland and forestland that are developed for other uses affect the future viability of remaining farms and forest enterprises.

(16) A forestland owner is often not the person actively engaged in the business of land management, such as planning, harvesting, or marketing the raw product, whereas in agricultural operations, the farmer often owns both the land and the business. Many farm operations have woodlots that have traditionally been used for syrup, timber, and firewood production.

(17) Vermonters' perception of and support for local wood and forest products is not at the same level as it is for local food. Public outreach and education efforts need to be created to address the public's perception of actively managed working lands and the people who perpetuate them. Over the last decade, consumers of wood products have become more interested in

production and management methods, certification programs, and the source of the raw materials.

(18) Vermont's forest products industry has been in decline for many years, in part due to rising costs, a poor housing market, and a lack of manufacturing. The total value of the forest product industry has dropped from \$1.8 billion to \$1.3 billion since 2007. If wood chips were priced at the equivalent BTU replacement value of oil, they would command a higher price. The number of active sawmills has also declined to fewer than 20 today.

(19) The average age of Vermont's farmers and loggers is over 55 years and the average age of forestland owners is over 65. Attention needs to be brought to efforts that will ensure intergenerational succession and lower those averages. Economically viable farm and forest-based operations are critical to that goal. "Legacy" skills such as farming and logging are disappearing, as the children of those making a living from those skills often aspire to different employment opportunities.

(20) Access to land is a challenge for many, especially younger, people who want the opportunity to make a living from productive use of the land. Farm and forestland ownership is often out of reach for young people who do not have some sort of assistance.

(21) The Vermont forest product sector contains approximately 7,000 jobs, and approximately 57,000 jobs are in Vermont's food system.

(22) Regulations for forest product enterprises need to reflect a balance between economic development and responsible land use practices. There is a need to assess regulations involving the primary processing and transportation elements of the forest product sector.

(23) Seventy-six percent of Vermont's 4.5 million acres is forested, 84 percent of which is privately owned. Sustainable management of state-owned forestlands represents an opportunity for private sector forest businesses.

(24) Forest product sector representatives have identified needs for their industry including market development, additional secondary processing facilities, lower energy and transportation costs, and capital for growth enterprises as well as research and development for new and improved value-added products that make use of Vermont's forest resources. Factors such as health care, labor, and energy policies in Canada contribute to the northward flow of Vermont logs. Research is needed in order to develop strategies that will help keep Vermont's forest product sector competitive.

(25) Vermont's use value appraisal (current use) program is critically important to every component of Vermont's agriculture and forest product

sectors. It also helps keep Vermont forestland productive and healthy through the requirement of active forest management plans.

(26) Dairy enterprises remain Vermont's leading source of agricultural revenues, with an estimated annual economic impact of over \$2 billion or approximately 75 percent of total gross agricultural output.

(27) Recent grants and educational programs have started to address the lack of slaughter and meat-processing facilities in the state; however, there continues to be a strong need to further these efforts.

#### § 4604. LEGISLATIVE INTENT

It is the intent of the general assembly in adopting this subchapter to:

(1) stimulate a concerted economic development effort on behalf of Vermont's agriculture and forest product sectors by systematically advancing entrepreneurship, business development, and job creation;

(2) recognize and build on the similarities and unique qualities of Vermont's agriculture and forest product sectors;

(3) increase the value of Vermont's raw and value-added products through the development of in-state and export markets;

(4) attract a new generation of entrepreneurs to Vermont's farm, food system, forest, and value-added chain by facilitating more affordable access to the working landscape;

(5) provide assistance to agricultural and forest product businesses in navigating the regulatory process;

(6) use Vermont's brand recognition and reputation as a national leader in food systems development, innovative entrepreneurship, and as a "green" state to leverage economic development and opportunity in the agriculture and forest product sectors;

(7) promote the benefits of Vermont's working lands, from the economic value of raw and value-added products to the public value of ecological stability, land stewardship, recreational opportunities, and quality of life;

(8) increase the amount of state investment in working lands enterprises, particularly when it leverages private and philanthropic funds; and

(9) support the people and businesses that depend on Vermont's renewable land-based resources and the sustainable and productive use of the land by coordinating and integrating financial products and programs.

§ 4605. VERMONT WORKING LANDS ENTERPRISE FUND

There is created a special fund in the state treasury to be known as the “Vermont working lands enterprise fund.” Notwithstanding any contrary provisions of 32 V.S.A. chapter 7, subchapter 5:

(1) the fund shall be administered and the monies of the funds shall be expended by the Vermont working lands enterprise board created in section 4606 of this title;

(2) the fund shall be composed of moneys from time to time appropriated to the fund by the general assembly or received from any other source, private or public, approved by the board, and unexpended balances and any earnings shall remain in the fund from year to year; and

(3) the board shall make expenditures from the fund consistent with the duties and authority of the board established by section 4607 of this title.

§ 4606. VERMONT WORKING LANDS ENTERPRISE BOARD

(a) Creation and purpose. There is created a Vermont working lands enterprise board, which for administrative purposes shall be attached to the agency of agriculture, food and markets. The board shall:

(1) serve as a driving force for working lands enterprise development in Vermont;

(2) systematically advance entrepreneurship, business development, and job creation in the agricultural and forest product sectors by:

(A) supporting development of new land-based and value-added businesses;

(B) supporting the expansion of existing businesses and potentially high-growth enterprises;

(C) providing infrastructure investments that will support cluster development and spur business success and rural prosperity;

(D) acting as a clearinghouse of support for innovation and growth in the food, farm, forest product and biomass energy sectors including:

(i) regulatory issues;

(ii) financial and investment opportunities; and

(iii) technical assistance services;

(E) supporting outreach and communication of enterprise opportunities;

(3) evaluate quality and breadth of workforce development, technical assistance, and investment service programs to the agriculture and forest product service sectors;

(4) target financial products that are in line with infrastructure investment priorities;

(5) establish and evaluate criteria and benchmarks of investments and actions; and

(6) solicit appropriate perspectives and information from experts.

(b) Organization of board. The board shall be composed of the following members:

(1) the secretary of agriculture, food and markets or designee, who shall serve as chair;

(2) the secretary of commerce and community development or designee;

(3) the commissioner of forests, parks and recreation or designee;

(4) eleven members appointed by the Vermont agriculture and forest products development board as follows:

(A) four members each representing one of the four highest-grossing agricultural commodities produced in Vermont as determined on the basis of annual gross cash sales;

(B) three members representing the forest products industry; and

(C) four members each representing one of the following four sectors:

(i) energy;

(ii) workforce development;

(iii) private capital; and

(iv) distribution and marketing;

(5) two members, one appointed by each of the two largest membership-based agricultural organizations in Vermont;

(6) the following three members, who shall serve as ex officio, non-voting members:

(A) the manager of the Vermont economic development authority or designee;

(B) the executive director of the Vermont sustainable jobs fund or designee; and

(C) the executive director of the Vermont housing conservation board or designee.

(c) Members appointed pursuant to subdivisions (b)(4) and (b)(5) of this section shall serve a term of three years or until his or her earlier resignation or removal for cause by a two-thirds vote of the sitting members of the board. A vacancy shall be filled by the appointing authority for the remainder of the unexpired term. A member shall not serve more than three consecutive three-year terms.

(d) The board may elect officers, establish one or more committees or subcommittees, and adopt such procedural rules as it shall determine necessary and appropriate to perform its work.

(e) A majority of the sitting members shall constitute a quorum, and action taken by the board may be authorized by a majority of the members present and voting at any regular or special meeting at which a quorum is present.

(f) Private-sector members shall be entitled to per diem compensation authorized under 32 V.S.A. § 1010 for each day spent in the performance of their duties, and each member shall be reimbursed from the fund for his or her actual and necessary expenses incurred in carrying out his or her duties.

#### § 4607. POWERS AND DUTIES OF THE VERMONT WORKING LANDS ENTERPRISE BOARD

The Vermont working lands enterprise board shall have the authority:

(1) to establish an application process and eligibility criteria for awarding grants, loans, incentives, and other investment in agricultural and forestry enterprises and in food and forest systems;

(2) to award grants and loans and to recommend incentives that support the purposes of the board under subsection 4606(a) of this title;

(3) to develop application criteria that will encourage individuals and enterprises that have not availed themselves of these opportunities in the past to apply for such grants, loans, and incentives;

(4) to give priority for awarding grants, loans, and incentives to applicants who have not recently received the same from the state or a state-funded entity;

(5) to establish formal public-private partnerships, coordinate the joint provision of investment and services with public or private entities, and enter into performance contracts with one or more persons in order to provide investment and services to agricultural and forestry enterprises, including:

(A) technical assistance and product research services;

(B) marketing assistance, market development, and business and financial planning;

(C) organizational, regulatory, and development assistance; and

(D) feasibility studies of facilities or capital investments to optimize construction and other cost efficiencies;

(6) to identify workforce needs and programs in order to develop training and incentive opportunities for the agriculture and forest product sectors;

(7) to identify strategic statewide infrastructure and investment priorities considering:

(A) leveraging opportunities;

(B) economic clusters;

(C) return-on-investment analysis; and

(D) other considerations the board determines appropriate;

(8) to pursue and accept grants or other funding from any public or private source and to administer such grants or funding consistent with their terms;

(9) to promote the products and services it provides to as many people and land-based enterprises as possible;

(10) to use the services and staff of the agency of agriculture, food and markets to assist in the performance of the board's duties, with the concurrence of the secretary of agriculture, food and markets; and

(11) to contract for support, technical, or other professional services necessary to perform its duties pursuant to this section.

#### Sec. 4. INITIAL APPOINTMENTS TO VERMONT WORKING LANDS ENTERPRISE BOARD

Notwithstanding any provision of law to the contrary:

(1) the initial members of the Vermont working lands enterprise board to be appointed pursuant to 6 V.S.A. § 4606(b)(4)–(5) shall be appointed as follows:

(A) of the eleven members of the board appointed by the Vermont agriculture and forest products development board:

(i) four members shall be appointed to an initial term of one year;

(ii) four members shall be appointed to an initial term of two years; and



(iii) three members shall be appointed to an initial term of three years; and

(B) of the two members appointed by the two largest membership-based agricultural organizations in Vermont:

(i) the member representing the organization with the largest membership shall be appointed for an initial term of two years; and

(ii) the member representing the organization with the second largest membership shall be appointed for an initial term of three years; and

(2) the initial one-year and two-year member terms authorized in subdivisions (1)(A) and (1)(B) of this section shall not qualify as a full-term for purposes of the three-term limit established in 6 V.S.A. § 4606(c).

Sec. 5. REPEAL

6 V.S.A. chapter 162, subchapter 1 (Vermont agricultural innovation center) is repealed.

Sec. 6. 6 V.S.A. § 2966 is amended to read:

§ 2966. AGRICULTURAL AND FOREST PRODUCTS DEVELOPMENT BOARD; ORGANIZATION; DUTIES AND AUTHORITY

(a) Purpose. The purpose of this section is to create a permanent Vermont agricultural and forest products development board that is authorized and empowered as the state's primary agricultural and forest products development entity.

(1) The board is charged with:

(A) optimizing the agricultural and forestry use of Vermont lands and other agricultural resources;

\* \* \*

(2) The board shall:

(A) review existing strategies and plans and develop, ~~implement~~, and continually update a comprehensive statewide plan to guide and encourage agricultural and forest products development and new and expanded markets for agricultural and forest products;

(B) advise and make recommendations to the secretaries of relevant state agencies, the governor, the director of the state experiment station, the University of Vermont extension service, and the general assembly on the adoption and amendment of laws, regulations, and governmental policies that affect agricultural development, land use, access to capital, the economic

opportunities provided by Vermont agriculture and forest products, and the well-being of the people of Vermont;

(C) monitor and report on Vermont's progress in achieving the agricultural economic development goals identified by the board; ~~and~~

(D) balance the needs of production methods with the opportunities to market products that enhance Vermont agriculture and forest products; and

(E) prepare a comprehensive report, in consultation with the agency of agriculture, food and markets, indicating the progress made by the working lands enterprise board with regard to all activities authorized by this section. The report shall be presented to the senate and house committees on agriculture, 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.

(b) Board created. The Vermont agricultural and forest products development board is hereby created. The exercise by the board of the powers conferred upon it in this section constitutes the performance of essential governmental functions.

(c) Powers and duties. The board shall have the authority and duty to:

\* \* \*

(5) obtain information from other planning entities, including the ~~farm to plate~~ farm to plate investment program;

\* \* \*

(d) Comprehensive agricultural and forest products economic development plan.

(1) Using information available from previous and ongoing agricultural and forest products development planning efforts, such as the ~~farm to plate~~ farm to plate investment program's strategic plan, and the board's own data and assumptions, the board shall develop and implement a comprehensive agricultural and forest products economic development plan for the state of Vermont. The plan shall include, at minimum, the following:

(A) an assessment of the current status of agriculture and forestry in Vermont;

(B) current and projected workforce composition and needs;

(C) a profile of emerging business and industry sectors projected to present future agricultural and forest products economic development opportunities, and a cost-benefit analysis of strategies and resources necessary to capitalize on these opportunities;

(D) a profile of current components of physical and social infrastructure affecting agricultural and forest products economic development;

(E) a profile of government-sponsored programs, agricultural and forest products economic development resources, and financial incentives designed to promote and support agricultural and forest products economic development, and a cost-benefit analysis of continued support, expansion, or abandonment of these programs, resources, and incentives;

(F) the use of the Vermont brand to further agricultural and forest products economic development;

\* \* \*

(2) Based on its research and analysis, the board shall establish in the plan a set of clear strategies with defined and measurable outcomes for agricultural and forest products economic development, the purpose of which shall be to guide long-term agricultural and forest products economic development policymaking and planning.

\* \* \*

(4) The board shall conduct a periodic review and revision of the comprehensive agricultural and forest products economic development plan as often as is necessary in its discretion, but at minimum every five years, to ensure the plan remains current, relevant, and effective for guiding and evaluating agricultural and forest products economic development policy.

\* \* \*

(e) Annual report. The board shall make available a report, at least annually, to the administration, the house committee on agriculture, the senate committee on agriculture, the house committee on commerce and economic development, the senate committee on economic development, housing and general affairs, and the people of Vermont on the state's progress toward attaining the goals and outcomes identified in the comprehensive agricultural and forest products economic development plan.

(f) Composition of board.

(1) The board shall be composed of ~~12~~ 16 members. In making appointments to the board pursuant to this section, the governor, the speaker of the house, and the president pro tempore of the senate shall coordinate their selections to ensure, to the greatest extent possible, that the board members selected by them reflect the following qualities:

(A) proven leadership in a broad range of efforts and activities to promote and improve the Vermont agricultural and forest products economy and the quality of life of Vermonters;

(B) demonstrated innovation, creativity, collaboration, pragmatism, and willingness to make long-term commitments of time, energy, and effort;

(C) geographic, gender, ethnic, social, political, and economic diversity;

(D) diversity of agricultural and forest products enterprise location, size, and sector of the for-profit agricultural and forest products business community members; and

(E) diversity of interest of the nonprofit or nongovernmental organization community members.

(2) Members of the board shall include the following:

(A) ~~four~~ five members appointed by the governor:

(i) a person with expertise in rural economic development issues;

(ii) an employee of a Vermont postsecondary institution experienced in researching issues related to agriculture;

(iii) a person familiar with the agricultural tourism industry; ~~and~~

(iv) an agricultural lender; and

(v) a person with expertise and professional experience in forest products manufacturing.

(B) ~~four~~ six members appointed by the speaker of the house of representatives:

(i) a person who produces an agricultural commodity other than dairy products;

(ii) a person who creates a value-added product using ingredients substantially produced on Vermont farms;

(iii) a person with expertise in sales and marketing; ~~and~~

(iv) a person representing the feed, seed, fertilizer, or equipment enterprises;

(v) a forester; and

(vi) a sawmill operator.

(C) ~~four~~ five members appointed by the committee on committees of the senate:

(i) a representative of Vermont's dairy industry who is also a dairy farmer;

(ii) a person with expertise in land planning and conservation efforts that support Vermont's working landscape;

(iii) a representative from a Vermont agricultural advocacy organization; ~~and~~

(iv) a person with experience in providing youth with educational opportunities enhancing understanding of agriculture; and

(v) a logger.

(3) The secretary of agriculture, food and markets or his or her designee shall be a nonvoting, ex officio member. The secretary may provide staff support from the agency of agriculture, food and markets as resources permit.

(4) The secretary of commerce and community development or his or her designee shall be a nonvoting, ex officio member.

\* \* \*

#### Sec. 7. APPROPRIATIONS

(a) The amount of \$1,700,000.00 is appropriated from the general fund to the Vermont working lands enterprise fund established in 6 V.S.A. § 4605 in the amounts and for the purposes as follow:

(1) \$550,000.00 for enterprise grants to entrepreneurs, including grants to leverage private capital, jump-start new businesses, help beginning farmers access land, and support diversification projects that add value to farm and forest commodities. This initial sum is intended to fund an enterprise grant pilot program, and it is the intent of the general assembly to commit additional investment in subsequent years upon demonstration of success of the program.

(2) \$350,000.00 for wraparound services to growth companies, including technical assistance, business planning, financial packaging, and other services required by companies ready to transition to the next stage of growth. This initial sum is intended to fund a growth company services pilot program, and it is the intent of the general assembly to commit additional investment in subsequent years upon demonstration of success of the program.

(3) \$800,000.00 for state infrastructure investments, including investment in private and nonprofit sectors for creative diversification projects, value-added manufacturing, processing, storage, distribution, and collaborative ventures. This initial sum is intended to fund an infrastructure investment pilot program, and it is the intent of the general assembly to commit additional investment in subsequent years upon demonstration of success of the program.

(b) The amount of \$382,400.00 is appropriated from the general fund to the agency of agriculture, food and markets to provide funding for support staff, including a wraparound services advisor and regulatory ombudsman, and for

fiscal management and operations costs. The agency shall utilize the funds appropriated to perform its full duties to the Vermont working lands enterprise board.

#### Sec. 8. EFFECTIVE DATE

This act shall take effect on passage, except that Sec. 5 (repeal of agriculture innovation center) shall take effect on March 31, 2013.

and that after passage, the title of the bill be amended to read: “An act relating to miscellaneous agricultural subjects”

### **House Proposal of Amendment**

#### **S. 95**

An act relating to exemptions for newspaper deliverers from the unemployment statutes; relieving an employer’s experience rating record of charges; studying the receipt of unemployment compensation between academic terms; allowing school employees to be paid wages over the course of a year; and requiring employers to furnish required work apparel.

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. FINDINGS

The general assembly finds that:

(1) Studies on middle and low income households have found that most indebted families go into debt to pay for basic expenses, such as groceries, utilities, child care, and health care. A study has shown that families with medical debt had 43 percent more credit card debt than those without medical debt.

(2) Employer surveys conducted by the Society of Human Resources Management suggest that over the last 15 years, employers’ use of credit reports in the hiring process has increased from a practice used by fewer than one in five employers in 1996 to six of every 10 employers in 2010.

(3) Social science research thus far has shown that information contained in a credit report has no correlation to job performance. The Palmer-Koppes study conducted in 2004 found that those employees who were late on payments were more likely to be associated with a positive job performance.

(4) Further, there is no common standard among employers as to how to interpret credit reports, which reinforces the fact that credit reports do not provide meaningful insight into a candidate’s character, responsibility, or prospective job performance.

(5) The Equal Employment Opportunity Commission has stated that: “Inquiry into an applicant’s current or past assets, liabilities, or credit rating . . . generally should be avoided because they tend to impact more adversely on minorities and females.”

Sec. 2. 21 V.S.A. § 495i is added to read:

§ 495i. EMPLOYMENT BASED ON CREDIT INFORMATION; PROHIBITIONS

(a) For purposes of this section:

(1) “Confidential financial information” means sensitive financial information of commercial value that a customer or client of the employer gives explicit authorization for the employer to obtain, process, and store and that the employer entrusts only to managers or employees as a necessary function of their job duties.

(2) “Credit history” means information obtained from a third party, whether or not contained in a credit report, that reflects or pertains to an individual’s prior or current:

(A) borrowing or repaying behavior, including the accumulation, payment, or discharge of financial obligations; or

(B) financial condition or ability to meet financial obligations, including debts owed, payment history, savings or checking account balances, or savings or checking account numbers.

(3) “Credit report” has the same meaning as in 9 V.S.A. § 2480(a).

(b) An employer shall not:

(1) Fail or refuse to hire or recruit; discharge; or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment because of the individual’s credit report or credit history.

(2) Inquire about an applicant or employee’s credit report or credit history.

(c)(1) An employer is exempt from the provisions of subsection (b) of this section if one or more of the following conditions are met:

(A) The information is required by state or federal law or regulation.

(B) The position of employment involves access to confidential financial information.

(C) The employer is a financial institution as defined in 8 V.S.A. § 11101(32) or a credit union as defined in 8 V.S.A. § 30101(5).

(D) The position of employment is that of a law enforcement officer as defined in 20 V.S.A. § 2358, emergency medical personnel as defined in 24 V.S.A. § 2651(6), or a firefighter as defined in 20 V.S.A. § 3151(3).

(E) The position of employment requires a financial fiduciary responsibility to the employer or a client of the employer, including the authority to issue payments, collect debts, transfer money, or enter into contracts.

(F) The employer can demonstrate that the information is a valid and reliable predictor of employee performance in the specific position of employment.

(G) The position of employment involves access to an employer's payroll information.

(2) An employer that is exempt from the provisions of subsection (b) of this section may not use an employee's or applicant's credit report or history as the sole factor in decisions regarding employment, compensation, or a term, condition, or privilege of employment.

(d) If an employer seeks to obtain or act upon an employee's or applicant's credit report or credit history pursuant to subsection (c) of this section that contains information about the employee's or applicant's credit score, credit account balances, payment history, savings or checking account balances, or savings or checking account numbers, the employer shall:

(1) Obtain the employee's or applicant's written consent each time the employer seeks to obtain the employee's or applicant's credit report.

(2) Disclose in writing to the employee or applicant the employer's reasons for accessing the credit report, and if an adverse employment action is taken based upon the credit report, disclose the reasons for the action in writing. The employee or applicant has the right to contest the accuracy of the credit report or credit history.

(3) Ensure that none of the costs associated with obtaining an employee's or an applicant's credit report or credit history are passed on to the employee or applicant.

(4) Ensure that the information in the employee's or applicant's credit report or credit history is kept confidential and, if the employment is terminated or the applicant is not hired by the employer, provide the employee or applicant with the credit report or have the credit report destroyed in a secure manner which ensures the confidentiality of the information in the report.

(e) An employer shall not discharge or in any other manner discriminate against an employee or applicant who has filed a complaint of unlawful



employment practices in violation of this section or who has cooperated with the attorney general or a state's attorney in an investigation of such practices or who is about to lodge a complaint or cooperate in an investigation or because the employer believes that the employee or applicant may lodge a complaint or cooperate in an investigation.

(f) Notwithstanding subsection (c) of this section, an employer shall not seek or act upon credit reports or credit histories in a manner that results in adverse employment discrimination prohibited by federal or state law, including section 495 of this title and Title VII of the Civil Rights Act of 1964.

(g) This section shall apply only to employers, employees, and applicants for employment and only to employment-related decisions based on a person's credit history or credit report. It shall not affect the rights of any person, including financial lenders or investors, to obtain credit reports pursuant to other law.

Sec. 3. 21 V.S.A. § 342 is amended to read:

§ 342. WEEKLY PAYMENT OF WAGES

(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) A school district employee may elect in writing to have a set amount or set percentage of his or her after-tax wages withheld by the school district in a district-held bank account each pay period. The percentage or amount withheld shall be determined by the employee. At the option of the employee, the school district shall disburse the funds to the employee in either a single payment at the time the employee receives his or her final paycheck of the school year, or in equal weekly or biweekly sums beginning at the end of the school year. The school district shall disburse funds from the account in any sum as requested by the employee and, at the end of the school year or at the employee's option over the course of the period between the current and next school year, or upon separation from employment, shall remit to the employee any remaining funds, including interest earnings, held in the account. For employees within a bargaining unit organized pursuant to either chapter 22 of

this title or 16 V.S.A. chapter 57, the school district shall implement this election in a manner consistent with the provisions of this subdivision and as determined through negotiations under those chapters. For employees not within a bargaining unit, the school district shall, in a manner consistent with this subdivision, determine the manner in which to implement this subdivision.

\* \* \*

Sec. 4. 21 V.S.A. § 496a is added to read:

§ 496a. STATE FUNDS; UNION ORGANIZING

On an annual basis, an employer that is the recipient of a grant of state funds in a single grant of more than \$1,001.00 shall certify to the state that none of the funds will be used to interfere with or restrain the exercise of an employee's rights with respect to unionization and upon request shall provide records to the secretary of administration which attest to such certification.

and that after passage the title of the bill be amended to read: "An act relating to employment decisions based on credit information, allowing school employees to be paid wages over the course of a year, and union organizing"

**House Proposal of Amendment**

**S. 99**

An act relating to supporting mobile home ownership, strengthening mobile home parks and preserving affordable housing.

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. FINDINGS AND PURPOSE

The general assembly finds:

(1) The damage resulting throughout Vermont from both the 2011 spring flooding and from Tropical Storm Irene had a devastating impact in many areas on mobile homes and mobile home parks.

(2) Given that mobile homes represent one of few available affordable housing options in the state, these storms caused significant hardship for many lower and middle income Vermonters whose homes were damaged or destroyed.

(3) Given the economic costs endured by mobile home owners, it is appropriate at this time to consider increasing the affordable housing tax credit and exempting the purchase of mobile homes from sales and use tax, local option sales tax, and property transfer tax when such homes are purchased to replace homes destroyed by recent flooding and natural disasters.

(4) During the course of exploring the issues surrounding the impacts of these disasters, it is apparent that mobile home owners and mobile home park owners face unique economic pressures, and more assistance should be focused to facilitate the availability and ownership of modern, safe, mobile homes and the availability of suitable lots, and to facilitate the sale of parks to residents or nonprofit entities in order to preserve affordability and availability of housing.

(5) It is the purpose of this act to focus state, municipal, and private resources on assisting mobile home owners recovering from the storms, and on ensuring that in the long term, Vermonters have an adequate supply of safe, affordable housing.

Sec. 2. 10 V.S.A. chapter 153 is amended to read:

## CHAPTER 153. MOBILE HOME PARKS

### § 6201. DEFINITIONS

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

(1) “Mobile home” means:

(A) a structure or type of manufactured home, including the plumbing, heating, air-conditioning, and electrical systems contained in the structure, that is:

(i) built on a permanent chassis ~~and is;~~

(ii) designed to be used as a dwelling with or without a permanent foundation, ~~includes plumbing, heating, cooling, and electrical systems, and is: when connected to the required utilities;~~

~~(A)~~(iii) transportable in one or more sections; and

~~(B)~~(iv)(I) at least eight feet wide ~~or~~, 40 feet long, or when erected has at least 320 square feet; or

(II) if the structure was constructed prior to June 15, 1976, at least eight feet wide or 32 feet long; or

~~(C)~~(B) any structure that meets all the requirements of this subdivision (1) except ~~for~~ the size requirements, and for which the manufacturer voluntarily files a certification required by the U.S. Department of Housing and Urban Development and complies with the construction and safety standards established under Title 42 of the U.S. Code.

\* \* \*

~~(4) “Commission” means the advisory commission on manufactured homes, established under section 6202 of this title. [Repealed.]~~

\* \* \*

(8) "Department" means the ~~department of housing and community affairs~~ department of economic, housing and community development.

(9) "Good faith" means honesty in fact and the observance of reasonable standards and fair dealing, such that each party shall respond promptly and fairly to offers from the other party.

(10) ~~[Expired.]~~ "Lot rent" means a charge assessed on a mobile home park resident for the occupancy of a mobile home lot, but does not include charges permitted under section 6238 of this title.

(11) "Commissioner" means the commissioner of ~~housing and community affairs~~ economic, housing and community development.

\* \* \*

#### § 6231. RULES

(a) [Deleted.]

(b) The department may adopt rules to carry out the provisions of ~~sections 6236-6243~~ of this title chapter.

(c) A mobile home park that has been closed pursuant to section 6237a of this title and reduced to no more than two occupied leased lots, shall be required, if the number of occupied leased lots subsequently is increased to more than two, to obtain all state land use and environmental permits required for a mobile home park that has been established or expanded after May 31, 1970.

#### § 6236. LEASE TERMS; MOBILE HOME PARKS

\* \* \*

(e) All mobile home lot leases shall contain the following:

\* \* \*

(3) Notice that the park owner shall not discriminate for reasons of race, religious creed, color, sex, sexual orientation, gender identity, marital status, ~~handicap~~ disability, ~~or~~ national origin, or because a person is a recipient of public assistance.

(4) Notice that the park owner shall not discriminate based on age or the presence of one or more minor children in the household, except as permitted under 9 V.S.A. § 4503(b) and (c). If age restrictions exist in all or part of a park, the specific restrictions and geographic sections in which restrictions apply shall be documented in the lease.

\* \* \*

§ 6237. EVICTIONS

(a) A leaseholder may be evicted only for nonpayment of rent or for a substantial violation of the lease terms of the mobile home park, or if there is a change in use of the park land or parts thereof or a termination of the mobile home park, and only in accordance with the following procedure:

\* \* \*

(4) A substantial violation of the lease terms, other than an uncured nonpayment of rent, will be insufficient to support a judgment of eviction unless the proceeding is commenced within 60 days of the last alleged violation. A substantial violation of the lease terms based upon criminal activity will be insufficient to support a judgment of eviction unless the proceeding is commenced no later than 60 days after arraignment.

\* \* \*

§ 6237a. MOBILE HOME PARK CLOSURES

\* \* \*

(b) Prior to issuing a closure notice pursuant to subsection (a) of this section, a park owner shall first ~~notify all mobile home owners of the park owner's~~ issue a notice of intent to sell in accordance with section 6242 of this title that discloses the potential closure of the park. However, if the park owner sends a notice of closure to the residents and leaseholders without first providing the mobile home owners with a notice of ~~sale~~ intent to sell under section 6242 that discloses the potential closure of the park, then the park owner must retain ownership of the land for five years after the date the closure notice was provided. If required, the park owner shall record the notice of the five-year restriction in the land records of the municipality in which the park is located. The park owner may apply to the commissioner for relief from the notice and holding requirements of this subsection if the commissioner determines that strict compliance is likely to cause undue hardship to the park owner or the leaseholders, or both. This relief shall not be unreasonably withheld.

\* \* \*

(d) A park owner who gives notice of intent to sell pursuant to section 6242 of this title shall not give notice of closure until after:

(1) At least 45 days after giving notice of intent to sell.

(2) If applicable, the commissioner receives notice from the mobile home owners and the park owner that negotiations have ended following the ~~90-day~~ 120-day negotiation period provided in subdivision 6242(c)(1) of this title.

\* \* \*

§ 6242. MOBILE HOME OWNERS' RIGHT TO NOTIFICATION PRIOR PARK SALE

(a) Content of notice. A park owner shall give to each mobile home owner and to the commissioner of the department of economic, housing and community affairs development notice by certified mail, return receipt requested, of his or her intention to sell the mobile home park. Nothing herein shall be construed to restrict the price at which the park owner offers the park for sale. The notice shall state all the following:

(1) That the park owner intends to sell the park.

(2) The price, terms, and conditions under which the park owner offers the park for sale.

(3) A list of the affected mobile home owners and the number of leaseholds held by each.

(4) The status of compliance with applicable statutes, regulations and permits, to the park owner's best knowledge, and the reasons for any noncompliance.

(5) That for 45 days following the notice the park owner shall not make a final unconditional acceptance of an offer to purchase the park and that if within the 45 days the park owner receives notice pursuant to subsection (c) of this section that a majority of the mobile home owners intend to consider purchase of the park, the park owner shall not make a final unconditional acceptance of an offer to purchase the park for an additional ~~90~~ 120 days, starting from the 46th day following notice, except one from a group representing a majority of the mobile home owners or from a nonprofit corporation approved by a majority of the mobile home owners.

(b) Resident intent to negotiate; timetable. The mobile home owners shall have 45 days following notice under subsection (a) of this section in which to determine whether they intend to consider purchase of the park through a group representing a majority of the mobile home owners or a nonprofit corporation approved by a majority of the mobile home owners. A majority of the mobile home owners shall be determined by one vote per leasehold and no mobile home owner shall have more than three votes or 30 percent of the aggregate park vote, whichever is less. During this 45-day period, the park owner shall not accept a final unconditional offer to purchase the park.

(c) Response to notice; required action. If the park owner receives no notice from the mobile home owners during the 45-day period or if the mobile home owners notify the park owner that they do not intend to consider purchase of the park, the park owner has no further restrictions regarding sale

of the park pursuant to this section. If during the 45-day period, the park owner receives notice in writing that a majority of the mobile home owners intend to consider purchase of the park then the park owner shall do all the following:

(1) Not accept a final unconditional offer to purchase from a party other than leaseholders for ~~90~~ 120 days following the 45-day period, a total of ~~135~~ 165 days following the notice from the leaseholders.

(2) Negotiate in good faith with the group representing a majority of the mobile home owners or a nonprofit corporation approved by a majority of the mobile home owners concerning purchase of the park.

(3) Consider any offer to purchase from a group representing a majority of the mobile home owners or from a nonprofit corporation approved by a majority of the mobile home owners.

\* \* \*

~~(f) No additional notice pursuant to subsection (a) of this section shall be required if the sale is in compliance with either of the following:~~

~~(1) The park owner completes a sale of the park within one year from the expiration of the 45 day period following the date of the notice and the sale price is either of the following:~~

~~(A) No less than the price for which the park was offered for sale pursuant to subsection (a) of this section.~~

~~(B) Substantially higher than the final written offer from a group representing a majority of the mobile home owners or a nonprofit corporation approved by a majority of the mobile home owners.~~

~~(2) The park owner has entered into a binding purchase and sale agreement with a group representing a majority of the mobile home owners or a nonprofit corporation approved by a majority of the mobile home owners with a closing date later than one year from the date of the notice. Requirement for new notice of intent to sell.~~

(1) Subject to subdivision (2) of this subsection, a notice of intent to sell issued pursuant to subsection (a) of this section shall be valid:

(A) for a period of one year from the expiration of the 45-day period following the date of the notice; or

(B) if the park owner has entered into a binding purchase and sale agreement with a group representing a majority of the mobile home owners or a nonprofit corporation approved by a majority of the mobile home owners within one year from the expiration of the 45-day period following the date of

the notice until the completion of the sale of the park under the agreement or the expiration of the agreement, whichever is sooner.

(2) During the period in which a notice of intent to sell is valid, a park owner shall provide a new notice of intent to sell, consistent with the requirements of subsection (a) of this section, prior to making an offer to sell the park or accepting an offer to purchase the park that is either more than five percent below the price for which the park was initially offered for sale or less than five percent above the final written offer from a group representing a majority of the mobile home owners or a nonprofit corporation approved by a majority of the mobile home owners.

\* \* \*

#### § 6245. ILLEGAL EVICTIONS

(a) No park owner may ~~wilfully~~ willfully cause, directly or indirectly, the interruption or termination of any utility service to a mobile home except for temporary interruptions for necessary repairs.

(b) No park owner may directly or indirectly deny a leaseholder access to and possession of ~~a mobile home~~ the leaseholder's leased premises, except through proper judicial process.

(c) No park owner may directly or indirectly deny a leaseholder access to and possession of the leaseholder's ~~rented or leased~~ mobile home and personal property, except through proper judicial process.

\* \* \*

#### § 6251. MOBILE HOME LOT RENT INCREASE; NOTICE; MEETING

(a) A mobile home park owner shall provide written notification on a form provided by the department to the commissioner and all the affected mobile home park leaseholders of any lot rent increase no later than 60 days before the effective date of the proposed increase. The notice shall include all the following:

(1) The amount of the proposed lot rent increase, including any amount of the increase that is attributable to a surcharge for any capital improvements of the mobile home park pursuant to subsection (b) of this section, the estimated cost, ~~which includes interest~~, of the capital improvements, and the proposed duration of the surcharge prorated in 12-month increments sufficient to recover the estimated cost of the capital improvements.

(2) The effective date of the increase.

(3) A copy of the mobile home park leaseholder's rights pursuant to this section and sections 6252 and 6253 of this title.



(4) ~~[Deleted.]~~ The percentage of increase from the current base lot rent.

\* \* \*

§ 6254. REGISTRATION OF MOBILE HOME PARKS; REPORT

(a) No later than September 1 each year, each park owner shall register with the department on a form provided by the department. The form shall include the following information:

\* \* \*

(8) The lot rent to be charged for each lot as ~~of the preceding~~ scheduled for October 1 of that year, and the effective date of that lot rent charge.

\* \* \*

Sec. 3. 10 V.S.A. § 6249 is amended to read:

§ 6249. SALE OF ABANDONED MOBILE HOME

\* \* \*

(c) When a verified complaint is filed under this section, the clerk of the superior court shall set a hearing on the complaint before a superior judge. The hearing shall be held at least ~~30~~ 15 days but no later than ~~45~~ 30 days after the filing of the complaint.

(d) Within ~~40~~ five days after filing the verified complaint, the park owner shall post a copy of the verified complaint and order for hearing on the mobile home and send a copy of the verified complaint and order for hearing, by certified mail, return receipt requested, to the mobile home owner's last known mailing address; to the last resident of the mobile home at the resident's last known mailing address; to each person identified in the verified complaint; and to the town clerk of the town in which the mobile home is located.

(e) The park owner shall publish the verified complaint and order for hearing in a newspaper of general circulation in the town where the mobile home is located. The notice shall be published ~~twice, at least ten days apart, with the second notice to be published~~ no later than five calendar days before the date of hearing.

\* \* \*

(h) If the court finds that the park owner has complied with subsection (g) of this section, the court shall enter an order approving the sale of the mobile home at a public auction to be held within ~~30~~ 15 days of the date of the order. The mobile home park owner shall send the order by first class mail to the mobile home owner and all lien holders of record. The order shall require all the following:

(1) That the sale shall be conducted by the person identified in the verified complaint or some other person approved by the court.

(2) That notice of the sale be published in a newspaper of general circulation in the town where the mobile home is located and sent by first class mail to the mobile home owner, the mobile home park owner and all lien holders of record. The notice of sale shall be published ~~three times, at least five days apart with the last publication being~~ no later than five calendar days before the date of sale.

(3) That the terms of sale provide for conveyance of the mobile home, together with any security deposit held by the park owner, by uniform mobile home bill of sale executed on behalf of the mobile home owner pursuant to the order of the court by the person authorized by the court, in "as is" condition, free and clear of all liens and other encumbrances of record.

(4) A minimum bid established by the court sufficient to cover the total costs listed in subdivisions (7)(A)-(D) of this subsection. The mobile home shall be sold to the highest bidder over the minimum bid set by the court.

(5) The successful bidder shall make full payment at the auction if the bid does not exceed \$2,000.00. If the bid exceeds \$2,000.00, the successful bidder shall provide a nonrefundable deposit at the time of the auction of at least \$2,000.00 or 25 percent of the bid, whichever is greater, and shall make full payment within three working days after the auction.

(6) A successful bidder, if other than the park owner, shall remove the mobile home from the park within five working days after the auction unless the park owner permits removal of the mobile home at a later date.

(7) The person who conducted the public sale shall report to the court the results of the sale, the proposed distribution of the proceeds of the sale, and the bank in which any excess proceeds are deposited and shall send a copy of the report to the mobile home owner, the park owner and all lien holders of record by certified mail, return receipt requested, within three working days after the sale. Anyone claiming impropriety in the conduct of the sale may file an objection with the court within ~~12~~ seven days after the sale. The filing of an objection shall not invalidate the sale or delay transfer of ownership of the abandoned mobile home. If an objection is filed and if the court finds impropriety in the conduct of the sale, the court may order distribution of the proceeds of the sale as is fair, taking into account the impropriety. If no objection is filed with the court, on the ~~15th~~ eighth day after the sale, the proceeds shall be distributed as follows:

\* \* \*

\* \* \* DEHCD Study and Planning \* \* \*

Sec. 4. DEHCD STUDIES; LONG-RANGE PLANNING FOR THE VIABILITY AND DISASTER RESILIENCY OF MOBILE HOME OWNERSHIP AND PARKS

(a) The department of economic, housing and community development shall, in collaboration with other organizations and interested stakeholders, and as funding from FEMA and other sources allows develop a plan for the future viability and disaster resiliency of mobile home ownership and parks.

(b) The plan shall:

(1) With input from the agency of natural resources, identify parks vulnerable to natural hazards such as flooding and develop a strategy for improving their safety and resiliency through education, emergency planning, mitigation measures, reconfiguration, and relocation.

(2) Identify barriers to mobile home ownership including the availability of financing and mortgage insurance and recommend methods for the state to assist, including coordinating with USDA Rural Development to extend its pilot program under the section 502 direct loan and guarantee loan programs and working with public, private, and nonprofit entities to develop solutions.

(3) Address the potential loss of mobile home parks and affordability due to sale, closure, or natural disaster by recommending actions to encourage resident or nonprofit purchase and ownership and the creation of new mobile home parks or lots through technical assistance and planning guidance to municipalities and developers.

(4) Working in collaboration with the Vermont housing and conservation board and any additional public or private funding entities, assess other housing designs as alternatives to mobile homes that are affordable when all related costs such as siting, water and sewer, and energy use are taken into consideration.

(5) Address and propose recommendations on the most effective mechanisms for ensuring adequate maintenance, repair, and safety of private roads and of public spaces within a mobile home park.

Sec. 5. 20 V.S.A. § 2731(k) is added to read:

(k) Building codes. Pursuant to his or her authority under this section, the commissioner of public safety shall:

(1) Develop and maintain on the department website a graphic chart or grid depicting categories of construction, including new construction, major rehabilitation, change of use, and additions, and the respective building codes that apply to each category.

(2) Whenever practicable and appropriate, offer the opportunity to construction and design professionals to participate in division of fire safety staff training.

(3) Update building codes on three-year cycles, consistent with codes developed by code-writing authorities, to keep pace with technology, products, and design.

(4) Create a publicly accessible database of decisions that are decided on appeal to the commissioner.

Sec. 6. 9 V.S.A. § 4503 is amended to read:

§ 4503. UNFAIR HOUSING PRACTICES

(a) It shall be unlawful for any person:

\* \* \*

(11) To fail to comply with provisions or rules pertaining to covered multifamily dwellings, as defined in ~~21 V.S.A. § 271, pursuant to chapter 4 of Title 21~~ 20 V.S.A. § 2900(4) and pursuant to 20 V.S.A. chapter 174.

(12) To discriminate in land use decisions or in the permitting of housing because of race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin, disability, the presence of one or more minor children, income, or because of the receipt of public assistance, except as otherwise provided by law.

\* \* \*

Sec. 7. 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:

(1) Equal treatment of housing and required provisions for affordable housing.

(A) No bylaw nor its application by an appropriate municipal panel under this chapter shall have the effect of excluding housing that meets the needs of the population as determined in the housing element of its municipal plan as required under subdivision 4382(a)(10) of this title or the effect of discriminating in the permitting of housing as specified in 9 V.S.A. § 4503.

\* \* \*

\* \* \* Allocation of Rental Housing Subsidies by State Entities (VSHA) \* \* \*

Sec. 8. ADMINISTRATION OF RENTAL HOUSING SUBSIDIES;  
FINDINGS AND PURPOSE

The general assembly finds:

(1) Administration of rental housing subsidies in Vermont, including federal housing funds, is a public and essential governmental function to be focused primarily on assuring safe and decent housing for low and moderate income persons without undue regard for the generation of profit or surplus.

(2) In recent years, private entities, including nominally private entities controlled by public jurisdictions from other states, have sought contracts to administer allocations of federal rental subsidies throughout the United States.

(3) To the maximum extent permitted by applicable law, it is the purpose of Sec. 9 of this act to limit the administrative control of federal rental subsidies to state of Vermont public bodies.

Sec. 9. 24 V.S.A. § 4005(e) is added to read:

(e) Notwithstanding any provision of law, no person, domestic or foreign, shall be authorized to administer allocations of money under 42 U.S.C.A. § 1437a or 1437f or other federal statute authorizing rental subsidies for the benefit of persons of low or moderate income, except:

(1) a subcontractor of the state authority; or

(2) a state public body authorized by law to administer such allocations.

\* \* \* Expedited Removal of Mobile Home by Municipality \* \* \*

Sec. 10. 9 V.S.A. § 2608 is added to read:

§ 2608. MUNICIPAL ACTION FOR SALE OF ABANDONED MOBILE HOME

(a) In the alternative to the process for foreclosure of a tax lien on a mobile home pursuant to 32 V.S.A. chapter 133, a municipality shall have the authority to commence an action to sell at public auction an abandoned mobile home located within the municipality pursuant to this section.

(b) A municipality shall file a verified complaint in the civil division of the superior court for the county in which the municipality is located, which shall be entitled "In re: Abandoned Mobile Home of [name of owner]," and shall include the following information:

(1) The physical location and address of the mobile home.

(2) The name and last known mailing address of the owner of the mobile home.

(3) A description of the mobile home, including make, model, and serial number, if available.

(4) The names and addresses of creditors, holders of housing subsidy covenants, or others having an interest in the mobile home based on liens or notices of record in the municipality offices or the office of the secretary of state.

(5) The facts supporting the claim that the mobile home has been abandoned.

(6) The name of a person disinterested in the mobile home or of a municipality employee who will be responsible for the sale of the mobile home at a public auction.

(7) A statement of the amount of taxes, fees, and other charges due or which will become due to the municipality.

(8) If the mobile home is located on leased land, the name and address of the landowner.

(c) A municipality may request an order approving transfer of a mobile home which is unfit for human habitation to the municipality without a public sale by filing a verified complaint containing the information required in subsection (a) of this section and the facts supporting the claim that the mobile home is unfit for human habitation.

(d) When a verified complaint is filed under this section, the clerk of the civil division of the superior court shall set a hearing to be held at least 15 days but no later than 30 days after the filing of the complaint.

(e) Within five days after filing the verified complaint, the municipality shall post a copy of the verified complaint and order for hearing on the mobile home and send a copy of the verified complaint and order for hearing by certified mail, return receipt requested, to the mobile home owner's last known mailing address, to the landowner if the mobile home is located on leased land, and to all lien-holders of record.

(f) The municipality shall publish the verified complaint and order for hearing in a newspaper of general circulation in the municipality where the mobile home is located. The notice shall be published no later than five calendar days before the date of hearing.

(g) If prior to or at the hearing any lien-holder certifies to the court that the lien-holder has paid to the municipality all taxes, charges, and fees due the municipality and will commence or has commenced proceedings to enforce the lien and will continue to pay municipal taxes, charges, and fees during the proceedings under this section, the court shall, upon confirmation of the

representations of the lien-holder, stay the action under this section pending completion of the lien-holder's action.

(h) At the hearing, the municipality shall prove ownership of the mobile home; abandonment of the mobile home; the amount of taxes, fees, and other charges due the municipality; and the amount of attorney fees claimed. The municipality shall also prove compliance with the notice requirements of subsections (e) and (f) of this section. Whether a mobile home is abandoned shall be a question of fact determined by the court.

(i) If the court finds that the municipality has complied with subsection (h) of this section, the court shall enter an order approving the sale of the mobile home at a public auction to be held within 15 days of the date of the order. The municipality shall send the order by first-class mail to the mobile home owner, to the landowner if the mobile home is located on leased land, and to all lien-holders of record. The order shall require all the following:

(1) That the sale shall be conducted by the person identified in the verified complaint or some other person approved by the court.

(2) That notice of the sale shall be published in a newspaper of general circulation in the municipality where the mobile home is located and sent by first-class mail to the mobile home owner, to the landowner if the mobile home is located on leased land, and to all lien-holders of record. The notice of sale shall be published no later than three calendar days before the date of sale.

(3) That the terms of sale provide for conveyance of the mobile home by real estate deed or by uniform mobile home bill of sale, as appropriate under this chapter, executed on behalf of the mobile home owner pursuant to the order of the court by the person authorized by the court, in "as is" condition, and free and clear of all liens and other encumbrances of record.

(4) A minimum bid established by the court sufficient to cover the total costs listed in subdivisions (7)(A)–(D) of this subsection. The mobile home shall be sold to the highest bidder over the minimum bid set by the court; provided, however, that if no bid meets or exceeds the minimum bid set by the court, the court shall order transfer of the mobile home to the municipality upon payment of costs due to the person who conducted the sale.

(5) The successful bidder, if other than the municipality:

(A) shall make full payment at the auction if the bid does not exceed \$2,000.00; or

(B) if the bid exceeds \$2,000.00, shall provide a nonrefundable deposit at the time of the auction of at least \$2,000.00 or 25 percent of the bid, whichever is greater, and shall make full payment within three working days after the auction.

(6) A successful bidder, if other than the municipality, shall remove the mobile home from its current location within five working days after the auction unless the municipality permits the mobile home to remain on the site or permits removal of the mobile home at a later date. If the mobile home is located on leased land, the mobile home shall be removed within five days unless the landowner grants permission to the successful bidder, including the municipality, for the mobile home to remain on the leased land.

(7) The person who conducted the public sale shall report to the court the results of the sale, the proposed distribution of the proceeds of the sale, and the bank in which any excess proceeds are deposited and shall send a copy of the report to the mobile home owner, the municipality, the landowner if the mobile home is located on leased land, and all lien-holders of record by certified mail, return receipt requested, within three working days after the sale. Anyone claiming impropriety in the conduct of the sale may file an objection with the court within seven days after the sale. The filing of an objection shall not invalidate the sale or delay transfer of ownership of the abandoned mobile home. If an objection is filed and if the court finds impropriety in the conduct of the sale, the court may order distribution of the proceeds of the sale as is fair, taking into account the impropriety. If no objection is filed with the court, on the eighth day after the sale, the proceeds shall be distributed as follows:

(A) To the person conducting the sale for costs of the sale.

(B) To the municipality for court costs, publication and mailing costs, and attorney fees incurred in connection with the action in an amount approved by the court.

(C) To the municipality for taxes, penalties, and interest owed in an amount approved by the court.

(D) To the landowner for unpaid lot rent if the mobile home is located on leased land.

(E) The balance to a bank account in the name of the mobile home municipality as trustee, for the benefit of the mobile home owner and lien-holders of record, to be distributed pursuant to further order of the court.

(j) Notwithstanding provisions of this section and 10 V.S.A. § 6249 (sale of abandoned mobile home by park owner) to the contrary, if an action is commenced by a municipality pursuant to this section and by a mobile home park owner pursuant to 10 V.S.A. § 6249 for the sale of the same abandoned mobile home within 30 days of one another, the court shall consolidate the cases and shall distribute the proceeds of a sale as follows:

(1) To the person conducting the sale for costs of the sale.



(2) To the municipality and the park owner equitably in the discretion of the court:

(A) for court costs, publication and mailing costs, and attorney fees incurred in connection with the action in an amount approved by the court;

(B) for taxes, penalties, and interest owed the municipality in an amount approved by the court; and

(C) for rent and other charges owed to the park owner in an amount approved by the court.

(3) The balance to a bank account in the name of the mobile home municipality as trustee for the benefit of the mobile home owner and lien-holders of record, to be distributed pursuant to further order of the court.

(k) If a municipality requests an order approving transfer of a mobile home to the municipality without a public sale, the court shall approve that order if it finds that the municipality has complied with subsection (h) of this section and has proved that the mobile home is unfit for human habitation. In determining whether a mobile home is unfit for human habitation, the court shall consider whether the mobile home:

(1) contains functioning appliances and plumbing fixtures;

(2) contains safe and functioning electrical fixtures and wiring;

(3) contains a safe and functioning heating system;

(4) contains a weather-tight exterior closure;

(5) is structurally sound;

(6) is reasonably free of trash, debris, filth, and pests.

Sec. 11. 9 V.S.A. § 4462 is amended to read:

§ 4462. ABANDONMENT; UNCLAIMED PROPERTY

\* \* \*

(d) Any personal property remaining in the dwelling unit or leased premises after the tenant has vacated may be disposed of by the landlord without notice or liability to the tenant or owner of the personal property, provided that one of the following has occurred:

(1) The tenant provided actual notice to the landlord that the tenant has vacated the dwelling unit ~~or~~ leased premises, or mobile home lot.

(2) The tenant has vacated the dwelling unit ~~or~~ leased premises, or mobile home lot at the end of the rental agreement.

(3) Fourteen calendar days have expired following the execution of a writ of possession pursuant to 10 V.S.A. chapter 153, 11 V.S.A. chapter 14, or 12 V.S.A. chapter 169.

## Sec. 12. PRIORITIES FOR MOBILE HOME INVESTMENTS

In the event that sources of funding are available for investments in securing mobile home infrastructure, expanding affordable ownership opportunities, and other activities consistent with the goals and purposes of this act, it is the intent of the general assembly to invest in the following priorities:

(1) Investment in the department of economic, housing and community development:

(A) for one or more grants to the Champlain Valley Office of Economic Opportunity to increase its ability to provide start-up and ongoing technical assistance to mobile home park residents interested in cooperative ownership of their parks.

(B) to increase department staff for long-range planning for the preservation and replacement of mobile home parks noticed for sale or closure or damaged by flooding.

(2) Investment in the Vermont housing and conservation board's project feasibility fund to conduct financial feasibility and infrastructure needs analyses of mobile home parks noticed for sale or closure or damaged by flooding.

(3) Investment in the department of economic, housing and community development to develop and implement with the Champlain Housing Trust, the Central Vermont Community Land Trust, Gilman Housing Trust, NeighborWorks of Western Vermont, Windham & Windsor Housing Trust, and other stakeholders a program to help finance the purchase, repair, refinance, and replacement of up to 100 individual mobile homes. The general assembly further recommends that the department coordinate with the Champlain Housing Trust and other stakeholders to secure additional grant capital to help fund the program from a variety of public and private sources.

(4) Investment in the department of economic, housing and community development to fund the following activities related to mobile home parks that will be maintained as affordable housing for low-income Vermonters on a perpetual basis:

(A) the purchase of mobile home parks, including purchase by resident-owned cooperatives;

(B) infrastructure improvements; and

(C) disaster recovery, including relocation or replacement of mobile home parks damaged by flooding.

Sec. 13. DELAY OF LOAN REPAYMENTS DUE TO TROPICAL STORM IRENE

Due to the damage caused by Tropical Storm Irene at the Tri-Parks mobile home parks, the substantial amount of monies necessary for repairs, and the unavailability of additional monies to both make the repairs and make loan payments, the repayment start dates for State Revolving Loans RF1-104 and RF3-163 are hereby delayed by two years until June 1, 2014, without any penalty or additional costs or fees. Subject to any applicable limitations of federal law, the secretary of natural resources shall have the authority to offer similar repayment modifications to other mobile home parks that suffered damage from Tropical Storm Irene.

Sec. 14. 26 V.S.A. § 894 is amended to read:

§ 894. ENERGIZING INSTALLATIONS; REENERGIZING AFTER EMERGENCY DISCONNECTION

(a) A new electrical installation in or on a complex structure; or an electrical installation used for the testing or construction of a complex structure shall not be connected or caused to be connected, to a source of electrical energy unless prior to ~~such~~ connection, either a temporary or a permanent energizing permit is issued for that installation by the commissioner or an electrical inspector.

(b) An existing electrical installation in any structure, including a single-family owner-occupied freestanding residence, that was disconnected as the result of an emergency that affects the internal electrical circuits shall not be reconnected to a source of electrical energy until the electrical installation has been inspected and determined to be safe by a licensed journeyman or licensed master electrician.

(c) This section shall not be construed to limit or interfere with a contractor's right to receive payment for electrical work for which a certificate of completion has been granted.

Sec. 15. 26 V.S.A. § 904(a) is amended to read:

(a) To be eligible for licensure as a type-S journeyman an applicant shall:

(1) complete an accredited training and experience program recognized by the board; or

(2) have had training and experience, within or without this state, acceptable to the board; and

(3) pass an examination to the satisfaction of the board in one or more of the following fields:

- (A) Automatic gas or oil heating;
- (B) Outdoor advertising;
- (C) Refrigeration or air conditioning;
- (D) Appliance and motor repairs;
- (E) Well pumps;
- (F) Farm equipment;
- (G) Renewable energy systems for one- and two-family dwellings;
- (H) Any miscellaneous specified area of specialized competence.

Sec. 16. 26 V.S.A. § 910 is amended to read:

§ 910. LICENSE NOT REQUIRED

A license shall not be required for the following types of work:

(1) Any electrical work, including construction, installation, operation, maintenance, and repair of electrical installations in, on, or about equipment or premises, which are owned or leased by the operator of any industrial or manufacturing plant, if the work is done under the supervision of an electrical engineer or master electrician in the employ of the operator;

(2) Installation in laboratories of exposed electrical wiring for experimental purposes only;

(3) Any electrical work by ~~an~~ the owner ~~or his or her regular employees and any unpaid assistants in the owner's owner-occupied,~~ freestanding single unit residence, ~~in~~ and outbuildings accessory to ~~such~~ the freestanding single unit residence or any structure on owner-occupied farms;

(4) Electrical installations performed as a part of a training project of a vocational school or other educational institution. However, the installation shall be inspected if the building in which the installation is made, is to be used as a "complex structure";

(5) Electrical work performed by an electrician's helper under the direct supervision of a person who holds an appropriate license issued under this chapter;

(6) ~~Any electrical work in a building used for dwelling or residential purposes which contains no more than two dwelling units.~~

(7) Installation of solar electric modules and racking on complex structures to the point of connection to field-fabricated wiring and erection of net metered wind turbines.

#### Sec. 17. EFFECTIVE DATE; TRANSITIONAL PROVISIONS

(a) This act shall take effect on passage.

(b) In order to provide time for the electrical licensing board to develop and conduct a test for a type-S journeyman's license for renewable energy installation and for renewable energy installers to complete the licensing requirements, a license shall not be required for renewable energy installations until 12 months after the electrical licensing board adopts the test and licensing procedure.

### House Proposal of Amendment

#### S. 226

An act relating to combating illegal diversion of prescription opiates and increasing treatment resources for opiate addiction.

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

First: By striking out Sec. 1 in its entirety

Second: In Sec. 5, 18 V.S.A. § 4253, in subsection (c), by striking out "his or her firearms for drugs and the person who trades his or her drugs for firearms" and inserting in lieu thereof a firearm for a drug and the person who trades a drug for a firearm

Third: In Sec. 7, in subdivision (b)(7), after "state's attorneys" by striking "and sheriffs"

Fourth: In Sec. 7, by adding a subdivision (b)(10) to read:

(10) A representative from the Vermont office of the attorney general.

Fifth: By adding Secs. 9a–d to read:

Sec. 9a. 13 V.S.A. § 2561 is amended to read:

#### § 2561. PENALTY FOR RECEIVING STOLEN PROPERTY; VENUE

(a) A person who is a dealer in property who knowingly or recklessly buys, receives, sells, possesses unless with the intent to restore to the owner, or aids in the concealment of stolen property, knowing or believing the property to be stolen without the intent to restore the property to the rightful owner shall be punished the same as for the stealing of such the property. A prosecution under this section may be brought where the stolen item is recovered or in the location where it was stolen.

~~(b) A person who buys, receives, sells, possesses unless with the intent to restore to the owner, or aids in the concealment of stolen property, knowing the same to be stolen, shall be punished the same as for the stealing of such property.~~

~~(c) A buyer, receiver, seller, possessor, or concealer under subsection (a) or (b) of this section may be prosecuted and punished in the criminal division of the superior court in the unit where the person stealing the property might be prosecuted, although such property is bought, received, or concealed in another county or unit.~~

Sec. 9b. 9 V.S.A. § 3865 is amended to read:

§ 3865. PAWNBROKER'S RECORD BOOK RECORDS OF A PAWNBROKER OR SECONDHAND PRECIOUS METAL AND JEWELRY DEALER

(a) A pawnbroker or secondhand precious metal and jewelry dealer shall keep a book in which shall be fairly written in the English language, at the time of making a loan, an account and description of the goods, articles or things pawned or pledged, the amount of money loaned thereon, the time of pledging the same, the rate of interest to be paid on such loan, and the name and residence of the person pawning or pledging such property the following records together for each transaction:

(1) a legible statement written at the time of the transaction describing the items pawned, pledged, or purchased, the amount of money lent or paid thereon, the time of the transaction, and the rate of interest to be paid on the loan;

(2) a legible statement of the name and current address of the person pawning, pledging, or selling the items;

(3) a photograph of the items which are the subject of the transaction; and

(4) a photocopy of a government-issued identification card issued to the person pawning, pledging, or selling the items. If the person does not have a government-issued identification card, the pawnbroker or dealer shall take and retain a photograph of the person's face.

(b) At all reasonable times, such book the records required under subsection (a) of this section shall be open to the inspection of the town or city authorities, all courts, the chief of police, or of any person who is duly authorized in writing for that purpose by such authority, court or chief of police and who exhibits such written authority to such pawnbroker law enforcement.

(c) As used in this section, “secondhand precious metal and jewelry dealer” means a person in the business of purchasing used precious metal and jewelry for resale.

Sec. 9c. 9 V.S.A. § 3872 is added to read:

§ 3872. SECONDHAND DEALERS; RETENTION OF GOODS

(a) A pawnbroker or secondhand dealer shall retain pawned, pledged, or purchased property for no fewer than five days before offering it for resale.

(b) As used in this section, “secondhand dealer” means a person in the business of purchasing used goods for resale.

Sec. 9d. REPORT

(a) The department of public safety shall study the feasibility of establishing a stolen property database which would contain identifying information about property that has been identified as being stolen. The study shall include the consideration of the following:

(1) what information should be contained in the database;

(2) who would have access to the database and under what circumstances;

(3) what types of property would be required to be in the database; and

(4) whether the database should be accessible by merchants for the purpose of determining whether particular property had been stolen.

(b) The department shall report its findings to the house and senate committees on judiciary together with any recommendations for legislative action on or before December 15, 2012.

Sixth: in Sec. 9, by striking out subsection (a) in its entirety and striking the designation “(b)”

**PROPOSAL OF AMENDMENT TO HOUSE PROPOSAL OF  
AMENDMENT TO H. S. 226 TO BE OFFERED BY SENATOR SEARS**

Senator Sears moves that the Senate concur in the House proposal of amendment with a proposal of amendment as follows

By striking out Secs. 9a–d in their entirety.

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

**H. 485**

An act relating to establishing universal recycling of solid waste

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

First: In Sec. 2, 10 V.S.A. § 6604, by striking subdivision (a)(1)(B) in its entirety and by relettering the subsequent subdivisions of subsection (a) to be alphabetically correct

and in subdivision (b)(2)(C), by striking “and extended producer responsibility legislation” where it appears

Second: In Sec. 4, 10 V.S.A. § 6605, in subsection (j), in the lead-in language, after “the collection of” and before “solid waste” by striking “municipal”

and in subdivision (j)(3), by striking “2016” where it appears and inserting in lieu thereof “2017”

Third: In Sec. 6, 10 V.S.A. § 6605k, in subsection (b), in the lead-in language, after “that is willing to accept the” and before “shall:” by striking “materials” and inserting in lieu thereof “food residuals”

And in subdivision (b)(1), after “may be disposed of in” and before “solid waste” by striking “municipal”

and in subdivision (c)(5), by striking “2018” where it appears and inserting in lieu thereof “2020”

Fourth: In Sec. 8, 10 V.S.A. § 6607a, in subdivision (g)(1), in the lead-in language, after “offers the collection of” and before “solid waste” by striking “municipal”

and in subdivision (g)(1)(A), by striking “2014” where it appears and inserting in lieu thereof “2015”

and in subdivision (g)(1)(B), by striking “2015” where it appears and inserting in lieu thereof “2016”

and in subdivision (g)(1)(C), by striking “2016” where it appears and inserting in lieu thereof “2017”

and in subsection (h), in the last sentence, by striking “organic waste” where it appears and inserting in lieu thereof “food residuals”

Fifth: In Sec. 10, 10 V.S.A. § 6621a, in subsection (a), in the lead-in language, after “dispose of the following materials in” and before “solid waste” by striking “municipal”

and in subdivision (a)(9), by striking “2014” where it appears and inserting in lieu thereof “2015”

and in subdivision (a)(10), by striking “2015” where it appears and inserting in lieu thereof “2016”



and in subdivision (a)(11), by striking “2018” where it appears and inserting in lieu thereof “2020”

Sixth: In Sec. 12, subdivision (a)(1)(B), after “(B)” and before “an analysis of the quantities” by inserting “to the extent possible,”

and in subdivision (a)(2)(A), after “solid waste management system for the state, including” and before “the cost to consumers” by inserting “to the extent possible,”

and by striking subdivisions (a)(2)(C) and (D) in its entirety and inserting in lieu thereof the following:

(C) An estimate of the costs, cost savings, increased efficiencies, and economic opportunities attendant to the diversion of solid waste categories;

and by striking subdivision (a)(3)(C) in its entirety

Seventh: By striking Sec. 17 (ANR report on plastic bags) in its entirety

Eighth: In Sec. 18, in the first full sentence, by striking “January 15, 2013” where it appears and inserting in lieu thereof “November 1, 2013”

Ninth: In Sec. 19, 10 V.S.A. § 8003(a), in subdivision (23), after “implementation of a” and before “solid waste implementation plan” by striking “municipal”

Tenth: In Sec. 20, 10 V.S.A § 8503, in subsection (g), by striking “a municipal solid waste implementation plan” where it appears and inserting in lieu thereof “a solid waste implementation plan for a municipality”

#### **PROPOSAL OF AMENDMENT TO H. 485 TO BE OFFERED BY SENATOR LYONS**

Senator Lyons moves that the Senate concur in the House proposal of amendment with further proposal of amendment as follows:

First: In Sec. 2, 10 V.S.A. § 6604, in subdivision (a)(1), by adding a new subdivision (B) to read:

~~(ii)~~(B) materials management, which furthers the development of products that will generate less waste;

and by relettering the subsequent subdivisions of subdivision (a)(1) to be alphabetically correct

Second: In Sec. 12 (ANR report on solid waste), in subdivision (a)(1)(A) by striking out “and” after the semicolon and in subdivision (a)(1)(B), by striking out the period and inserting in lieu thereof ; and and by adding subdivision (a)(1)(C) to read:

(C) an analysis of the effectiveness of the existing, statutory beverage container deposit and return requirements and the effectiveness of the existing, statutory requirements in 10 V.S.A. chapters 164 (mercury management), 164A (collection and disposal of mercury containing lamps), and 166 (collection and recycling of electronic devices) in achieving the priorities and goals established by the state solid waste management plan.

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

#### **H. 523**

An act relating to revising the state highway condemnation law

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

First: In Sec. 2, in subdivisions 503(d)(7) and 511(a)(3), by striking “30” each place it appears and inserting in lieu thereof 90

Second: In Sec. 2, by striking subsection 505(d) in its entirety and inserting in lieu thereof a new subsection (d) to read:

(d) Litigation expenses.

(1) If the court finds a proposed taking to be unlawful, or if the agency abandons the condemnation proceeding other than under a settlement, the court shall dismiss the complaint and 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.

(2) If the court issues a judgment of condemnation that substantially reduces the scope of the agency’s proposed taking, the court shall award the property owner a share of his or her costs and reasonable litigation expenses that is proportional to the reduction in the proposed taking.

### **House Proposal of Amendment**

#### **J.R.S. 54**

Joint resolution approving a land exchange in Alburgh and a lease with Camp Downer, Inc.

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

*Whereas*, pursuant to 10 V.S.A. § 2606(b), the general assembly may adopt a resolution authorizing the commissioner of forests, parks and recreation to exchange or lease certain lands that are under the jurisdiction of the commissioner, and

*Whereas*, the general assembly has reviewed the proposed transactions and considers them to be in the best interest of the state, *now therefore be it*

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

That the General Assembly authorizes the commissioner of forests, parks and recreation to:

First: Enter into an exchange of a portion of Alburgh Dunes State Park in the Town of Alburgh with the South Alburgh Cemetery Association, Inc. for up to 44 +/- acres to be added to Alburgh Dunes State Park in the town of Alburgh that is of equivalent or greater value to the state. Any exchange of state park land with the South Alburgh Cemetery Association, Inc. shall be contingent on the following: (1) an archeological assessment shall be conducted on the state park land parcel to be exchanged and shall include an investigation to determine if there are any human remains or other archeological artifacts on the parcel; (2) the commissioner of forests, parks and recreation shall consult with the commissioner of economic, housing and community development to determine if the archeological assessment meets the legal criteria to be funded by the unmarked burial sites special fund established in 18 V.S.A. § 5212b and, if it does meet the legal criteria, to also determine if sufficient money is available in the fund for this purpose; (3) the land exchange shall have the support of the selectboard of the town of Alburgh; (4) an independent appraiser shall determine the value of the parcels for exchange; (5) The Nature Conservancy and the Vermont Housing and Conservation Board as coholders shall approve the land exchange; (6) the South Alburgh Cemetery Association, Inc. shall be responsible for any and all costs associated with the exchange, including appraisal, survey, permitting, and legal costs except for any costs that may be paid for from the unmarked burial sites special fund; (7) the parcel conveyed to the state in exchange for the state parcel conveyed to the South Alburgh Cemetery Association, Inc. shall be placed under the control and jurisdiction of the department of forests, parks and recreation; and (8) the conservation easement shall be amended to reflect this land exchange.

Second: Enter into an exchange of a portion of Coolidge State Forest in the town of Plymouth to Markowski Excavation for a 78-acre parcel of land to be added to Arthur Davis Wildlife Management Area, also in the town of Plymouth. Any exchange of state forestland with Markowski Excavation shall not exempt Markowski Excavation from satisfying any permit requirements, and the exchange shall be contingent on the following: (1) Markowski Excavation shall receive the initial approval of the town of Plymouth; (2) the department of forests, parks and recreation and Markowski Excavation shall enter into an agreement for the department to obtain crushed stone from Markowski Excavation, at a discount or no cost, for an agreed-upon time

period and, if there is a cost to the state, the crushed stone shall be purchased with funds appropriated for such purposes by the general assembly; (3) Markowski Excavation shall provide a permanent easement to the state across its already owned parcel, and the state shall retain a permanent access easement across the parcel of land to be conveyed to Markowski Excavation; (4) the parcel conveyed to Markowski Excavation shall be configured to provide the minimum acreage that the agency of natural resources deems necessary for Markowski Excavation's purpose and shall not include any land that, in the opinion of the agency of natural resources, is an important wildlife habitat or is a parcel of land that contains an ecological or other significant natural resource or represents a significant outdoor recreation value; (5) the value of the exchange parcel shall be determined by an independent appraiser; (6) any and all associated costs of the exchange, including appraisals, survey, permitting, and legal work shall be borne by Markowski Excavation. In the event that the 78-acre parcel within Arthur Davis Wildlife Management Area is unavailable for exchange purposes, the commissioner is authorized to sell a portion of Coolidge State Forest to Markowski Excavation at its appraised value, subject to the above conditions, and may negotiate for other consideration that would benefit the state. Notwithstanding the provisions of 29 V.S.A. § 104, the net proceeds from any sale of state forestland shall be deposited with the state treasurer to be held in the department of forests, parks and recreation's land acquisitions account and used by the department for land acquisition.

Third: Amend the lease with Camp Downer, Inc. at Downer State Forest in Sharon to provide for two additional ten-year renewal periods.

and after adoption of the resolution the title shall be amended to read: "Joint resolution approving land exchanges in Alburgh and Plymouth and a lease with Camp Downer, Inc."

## **NOTICE CALENDAR**

### **Second Reading**

#### **Favorable**

#### **H. 784.**

An act relating to approval of the adoption and codification of the charter of the town of Williamstown.

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

(Committee vote: 4-0-0)

**H. 786.**

An act relating to approval of amendments to the charter of the town of Windsor.

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

(Committee vote: 4-0-0)

**H. 787.**

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

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

(Committee vote: 4-0-0)

**Favorable with Proposal of Amendment**

**H. 290.**

An act relating to adult protective services.

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

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

**Sec. 1. ADULT PROTECTIVE SERVICES REPORTS**

(a) Beginning September 15, 2012 and by the 15th day of each month thereafter through September 2014, the commissioner of disabilities, aging, and independent living shall provide the information described in subsection (b) of this section to the general assembly. When the general assembly is in session, the commissioner shall provide the information to the house committees on human services and on judiciary and to the senate committees on health and welfare and on judiciary. When the general assembly is not in session, the commissioner shall provide the information to the chairs of the committees of jurisdiction, the health access oversight committee, and the office of legislative council.

(b) The commissioner shall provide the following information relating to the department's adult protective services activities during the preceding calendar month and for the calendar year to date:

- (1) The number of:
- (A) unduplicated intakes.
  - (B) cases open and under investigation.
  - (C) cases in which there was no personal contact with the alleged victim.
- (2) The number of times a reporter was not contacted by the department within 48 hours after making a report.
- (3) The number of cases that were not investigated pursuant to 33 V.S.A. § 6906 because:
- (A) the alleged victim did not meet the statutory definition of a vulnerable adult.
  - (B) the allegation did not meet the statutory definition of abuse, neglect, or exploitation.
  - (C) the report was based on self-neglect.
  - (D) the report was based on “resident on resident” abuse.
- (4) Of the cases not investigated pursuant to 33 V.S.A. § 6906 because the alleged victim did not meet the statutory definition of a vulnerable adult, whether any involved an alleged victim who was a resident of a facility, as defined in 33 V.S.A. § 6902(14)(A); a resident of a psychiatric hospital, as defined in 33 V.S.A. § 6902(14)(B); or receiving personal care services, as defined in 33 V.S.A. § 6902(14)(C).
- (5) Of the cases not investigated pursuant to 33 V.S.A. § 6906 because the report was based on self-neglect, the services to which the reporter was referred.
- (6) Reasons other than those listed in subdivision (2) for which a case was not investigated pursuant to 33 V.S.A. § 6906, such as no allegation of mistreatment, and the number of reports in each category.
- (7) The number of cases in which there was no contact with the alleged victim or the reporter after the initial screening.
- (8) The number of substantiations, pending substantiations, unsubstantiations, and completed investigations.
- (9) For cases in which a decision was made not to investigate, the number of times the required letters were not sent to the victim or the reporter within five business days.

(10) For cases in which an investigation was completed, the number of times the required letters were not sent to the alleged victim, reporter, or alleged perpetrator within five business days.

(11) The length of time between when:

(A) the department received a report and when a decision was made regarding whether or not to investigate.

(B) the department received a report and when the investigator contacted the alleged victim.

(C) the department received a report and when the investigation was completed.

(12) As of the last day of the month, the number of permanent full-time equivalent employees and vacancies, the number of temporary full-time equivalent employees and vacancies, the position titles of all employees and vacant positions, and the employees' caseloads.

(13) The number of:

(A) cases that resulted in a written coordinated treatment plan pursuant to 33 V.S.A. § 6907(a), protective services as defined in 33 V.S.A. § 6902(9), or a plan of care as defined in 33 V.S.A. § 6902(8).

(B) individuals put on the abuse and neglect registry as a result of a substantiation.

(C) referrals to law enforcement agencies.

(D) times a penalty was imposed pursuant to 33 V.S.A. § 6913.

(E) actions for intermediate sanctions brought pursuant to 33 V.S.A. § 7111.

(c) Beginning in September 2013, the commissioner shall also include in each monthly report all of the information described in subsection (b) of this section for the same month of the preceding calendar year in order to allow for year-to-year comparison.

## Sec. 2. DATA ANALYSIS

The secretary of human services and the commissioner of disabilities, aging, and independent living shall examine the accuracy and consistency of the August 2012 data provided to the chairs of the committees of jurisdiction, the health access oversight committee, and the office of legislative council pursuant to Sec. 1 of this act. The secretary and commissioner shall submit a report to the chairs of the committees of jurisdiction, the health access oversight committee, and the office of legislative council by September 30.

2012 summarizing their findings regarding the accuracy of the data and the extent to which the data are internally consistent.

### Sec. 3. ADULT PROTECTIVE SERVICES EVALUATION

(a) The secretary of human services and the commissioner of disabilities, aging, and independent living shall jointly issue a request for proposals to conduct an independent evaluation of the adult protective services provided by the department of disabilities, aging, and independent living's division of licensing and protection.

(b) The evaluation shall examine:

- (1) the effectiveness of the adult protective services provided;
- (2) the division's responsiveness to complaints;
- (3) the appropriateness of the level of investigation into complaints;
- (4) the adequacy of training for adult protective services staff;
- (5) the ability of vulnerable adults to access adult protective services;
- (6) the division's rules, protocols, and practices for prioritizing, responding to, and investigating complaints;
- (7) the sufficiency of adult protective services staffing levels in the division;
- (8) the number of reports, substantiations, and reversals by the commissioner or the human services board;
- (9) the role that the division does or should play in assessing and providing emergency protective services to vulnerable adults;
- (10) best practices from other states that would improve the division's ability to protect vulnerable adults from abuse and exploitation;
- (11) the scope and effectiveness of current adult protective services public education efforts;
- (12) public perception of and satisfaction with adult protective services;
- (13) the relationship between the units of survey and certification and adult protective services in the division of licensing and protection in the department of disabilities, aging, and independent living with respect to investigations of abuse, exploitation, and neglect; and
- (14) such other areas as the entity conducting the evaluation deems appropriate.

(c) No later than March 1, 2013, the entity conducting the evaluation shall provide an interim report regarding its work to date to the house committees on



human services and on judiciary and the senate committees on health and welfare and on judiciary. No later than October 1, 2013, the entity conducting the evaluation shall provide the final report of its findings and recommendations to the chairs of the house committees on human services and on judiciary and the senate committees on health and welfare and on judiciary, to the health access oversight committee, and to the office of legislative council.

(d) The secretary of human services and the commissioner of disabilities, aging, and independent living shall report, upon request, on the status of the contract and the evaluation to the chairs of the house committees on human services and on judiciary and the senate committees on health and welfare and on judiciary and to the health access oversight committee.

#### Sec. 4. TRANSFER

A transfer of up to \$75,000.00 for the contract for the adult protective services evaluation required by Sec. 3 of this act is authorized from the department of Vermont health access long-term care program or the department of disabilities, aging, and independent living to the secretary of human services.

#### Sec. 5. REPEAL

Sec. 12 of No. 79 of the Acts of 2005 (adult protective services annual report) is repealed.

#### Sec. 6. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 4-0-1)

(For House amendments, see House Journal for April 21, 2012, page 1035.)

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

#### **H. 506**

An act relating to vinous beverages

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

By adding Secs. 8, 9, and 10 to read:

Sec. 8. 7 V.S.A. § 101 is amended to read:

§ 101. COMPOSITION OF DEPARTMENT; COMMISSIONER OF LIQUOR CONTROL; LIQUOR CONTROL BOARD

(a) The department of liquor control, created by ~~section 3~~ V.S.A. § 212 of ~~Title 3~~, shall include the commissioner of liquor control and the liquor control board.

(b) The liquor control board shall consist of ~~three~~ five persons, not more than ~~two~~ three members of which shall belong to the same political party. Biennially, with the advice and consent of the senate, the governor shall appoint a person as a member of such board for ~~the term of six years~~ a staggered five-year term, whose term of office shall commence on February 1 of the year in which such appointment is made. The governor shall biennially designate a member of such board to be its ~~chairman~~ chair.

#### Sec. 9. TRANSITIONAL PROVISIONS

Of the two new member positions on the liquor control board, the governor shall appoint one member for a three-year term and one member for a five-year term.

#### Sec. 10. EFFECTIVE DATE

This section and Secs. 8 and 9 of this act shall take effect on passage.

### **House Proposal of Amendment**

#### **H. 751**

An act relating to jurisdiction of delinquency proceedings.

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

By adding a new Sec. 6 to read as follows:

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

#### **§ 5225. PRELIMINARY HEARING; RISK ASSESSMENT**

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

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

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

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

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

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

and by renumbering the remaining sections to be numerically correct.

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

#### **H. 778**

An act relating to structured settlements

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

By striking out all after the enacting clause in the Senate proposal of amendment and inserting in lieu thereof the following:

Sec. 1. 9 V.S.A. chapter 63, subchapter 5 is added to read:

#### Subchapter 5. Transfers of Structured Settlements

#### § 2480AA. LEGISLATIVE INTENT; PUBLIC POLICY

Structured settlement agreements, which provide for payments to a person over a period of time, are often used in the settlement of actions such as personal injury or medical claims and serve a number of valid purposes, including protection of persons from economic victimization and assuring a person's ability to provide for his or her future needs and obligations. It is the policy of this state that such agreements, which have often been approved by a court, should not be set aside lightly or without good reason.

#### § 2480BB. DEFINITIONS

In this subchapter:

(1) "Annuity issuer" means an insurer that has issued a contract to fund periodic payments under a structured settlement.

(2) “Dependents” include a payee’s spouse and minor children and all other persons for whom the payee is legally obligated to provide support, including alimony.

(3) “Discounted present value” means the present value of future payments determined by discounting such payments to the present using the most recently published Applicable Federal Rate for determining the present value of an annuity, as issued by the United States Internal Revenue Service.

(4) “Gross advance amount” means the sum payable to the payee or for the payee’s account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions to be made from such consideration.

(5) “Independent professional advice” means advice of an attorney, certified public accountant, actuary, or other licensed professional adviser meeting all of the following requirements:

(A) The advisor is engaged by the payee to render advice concerning the legal, tax, or financial implications of a structured settlement or a transfer of structured settlement payment rights;

(B) The adviser’s compensation for rendering independent professional advice is not affected by occurrence or lack of occurrence of a settlement transfer; and

(C) A particular adviser is not referred to the payee by the transferee or its agent, except that the transferee may refer the payee to a lawyer referral service or agency operated by a state or local bar association.

(6) “Interested parties” means, with respect to any structured settlement, the payee, any beneficiary irrevocably designated under the annuity contract to receive payments following the payee’s death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations relating to the structured settlement payment rights which are the subject of the proposed transfer.

(7) “Net advance amount” means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under subdivision 2480cc(5) of this title.

(8) “Payee” means an individual who is receiving tax-free payments under a structured settlement and proposes to make a transfer of payment rights thereunder.

(9) “Periodic payments” includes both recurring payments and scheduled future lump sum payments.

(10) “Qualified assignment agreement” means an agreement providing for a qualified assignment within the meaning of section 130 of the United States Internal Revenue Code, United States Code Title 26, as amended from time to time.

(11) “Settled claim” means the original tort claim resolved by a structured settlement.

(12) “Structured settlement” means an arrangement for periodic payment of damages for personal injuries or sickness established by settlement or judgment in resolution of a tort claim but does not refer to periodic payments in settlement of a workers’ compensation claim.

(13) “Structured settlement agreement” means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement.

(14) “Structured settlement obligor” means, with respect to any structured settlement, the party that has the continuing obligation to make periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement.

(15) “Structured settlement payment rights” means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, where:

(A) the payee is domiciled in this state; or

(B) the structured settlement agreement was approved by a court in this state.

(16) “Terms of the structured settlement” include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement and any order or other approval of any court or other government authority that authorized or approved such structured settlement.

(17) “Transfer” means any sale, assignment, pledge, hypothecation, or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration.

(18) “Transfer agreement” means the agreement providing for a transfer of structured settlement payment rights.

(19) “Transfer expenses” means all expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the gross advance amount, including, without limitation, court filing fees, attorney’s fees, escrow fees, lien recordation fees, judgment and lien search fees, finders’ fees, commissions, and other payments to a broker or other intermediary.

(20) “Transferee” means a party acquiring or proposing to acquire structured settlement payment rights through a transfer.

§ 2480CC. REQUIRED DISCLOSURES TO PAYEE

Not less than ten days prior to the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement in bold type in a size no smaller than 14 points setting forth:

(1) the amounts and due dates of the structured settlement payments to be transferred;

(2) the aggregate amount of such payments;

(3) the discounted present value of the payments to be transferred, which shall be identified as the “calculation of current value of the transferred structured settlement payments under federal standards for valuing annuities,” and the amount of the applicable federal rate used in calculating such discounted present value;

(4) the gross advance amount and the annual discount rate, compounded monthly, used to determine such figure;

(5) an itemized listing of all applicable transfer expenses, other than attorneys’ fees and related disbursements payable by the payee in connection with the transferee’s application for approval of the transfer, and the transferee’s best estimate of the amount of any such fees and disbursements;

(6) the net advance amount;

(7) the amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee, as well as a description of any other financial penalties the payee might incur with the transferee as a result of such a breach; and

(8) a statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, at any time before the date on which a court enters a final order approving the transfer agreement

§ 2480DD. APPROVAL OF TRANSFERS OF STRUCTURED SETTLEMENT PAYMENT RIGHTS

(a) No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order based on express findings by such court that:

(1) the transfer is in the best interest of the payee taking into account the welfare and support of the payee's dependents, considering all relevant factors, including:

(A) the payee's maturity, responsibility, and ability to understand the financial terms and consequences of the transfer;

(B) the payee's capacity to meet his or her financial obligations, including the potential need for future medical treatment;

(C) the need, purpose, or reason for the transfer; and

(D) whether the transfer is fair and reasonable, considering the discount rate used to calculate the gross advance amount, the fees and expenses imposed on the payee, and whether the payee obtained more than one quote for the same or a substantially similar transfer.

(2)(A) the payee has been advised in writing by the transferee to seek independent professional advice regarding the financial advisability of the transfer and the other financial options available to the payee and

(B)(i) that the payee has in fact received such advice; or

(ii) that such advice is unnecessary for good cause shown.

(3) the transfer does not contravene any applicable statute or the order of any court or other government authority.

(b) Any agreement to transfer future payments arising under a workers' compensation claim is prohibited.

(c) At the hearing on the transfer, if the payee has waived in writing the opportunity to seek and receive independent professional advice regarding the transfer, the court may, in its sole discretion, continue the hearing and require the payee to seek independent professional advice if the court determines that obtaining such advice should be required based on the circumstances of the payee or the terms of the transaction. If the court determines that independent professional advice should be required, the court may order that the costs incurred by a payee for independent professional advice be paid by the transferee, the payee, or another party.

#### § 2480EE. EFFECTS OF TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS

Following a transfer of structured settlement payment rights under this subchapter:

(1) The structured settlement obligor and the annuity issuer shall, as to all parties except the transferee, be discharged and released from any and all liability for the transferred payments;

(2) The transferee shall be liable to the structured settlement obligor and the annuity issuer:

(A) if the transfer contravenes the terms of the structured settlement for any taxes incurred by such parties as a consequence of the transfer; and

(B) for any other liabilities or costs, including reasonable costs and attorney's fees, arising from compliance by such parties with the order of the court or arising as a consequence of the transferee's failure to comply with this subchapter;

(3) Neither the annuity issuer nor the structured settlement obligor may be required to divide any periodic payment between the payee and any transferee or assignee or between two or more transferees or assignees; and

(4) Any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this subchapter.

#### § 2480FF. PROCEDURE FOR APPROVAL OF TRANSFERS

(a) An application under this subchapter for approval of a transfer of structured settlement payment rights shall be made by the transferee and may be brought in the superior court, civil division, of the county in which the payee resides or in which the structured settlement obligor or the annuity issuer maintains its principal place of business or in any court that approved the structured settlement agreement.

(b) Not less than 20 days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under section 2480dd of this title, the transferee shall file with the court and serve on all interested parties a notice of the proposed transfer and the application for its authorization, including with such notice:

(1) a copy of any court order approving the settlement;

(2) a written description of the underlying basis for the settlement;

(3) a copy of the transferee's application;

(4) a copy of the transfer agreement;

(5) a copy of the disclosure statement required under section 2481n of this title;

(6) a listing of each of the payee's dependents, together with each dependent's age;

(7) a statement setting forth whether, to the best of the transferee's knowledge after making a reasonable inquiry to the payee, the structured settlement obligor, and the annuity issuer, there have been any previous



transfers or applications for transfer of any structured settlement payment rights of the payee and giving details of all such transfers or applications for transfer;

(8) if available to the transferee after making a good faith request of the payee, the structured settlement obligor and the annuity issuer, the following documents, which shall be filed under seal:

(A) a copy of the annuity contract;

(B) a copy of any qualified assignment agreement;

(C) a copy of the underlying structured settlement agreement;

(9) either a certification from an independent professional advisor establishing that the advisor has given advice to the payee on the financial advisability of the transfer and the other financial options available to the payee or a written request that the court determine that such advice is unnecessary pursuant to subdivision 2480dd(a)(2) of this title; and

(10) notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed, which shall be not less than 15 days after service of the transferee's notice, in order to be considered by the court.

(c) The transferee shall file a copy of the application with the attorney general's office and a copy of the application and the payee's social security number with the office of child support, the department of taxes, and the department of financial regulation. The offices and departments receiving copies pursuant to this section shall permit the copies to be filed electronically.

(d) The payee shall attend the hearing unless attendance is excused for good cause.

#### § 2480GG. GENERAL PROVISIONS; CONSTRUCTION

(a) The provisions of this subchapter may not be waived by any payee.

(b) Any transfer agreement entered into on or after the effective date of this subchapter by a payee who resides in this state shall provide that disputes under such transfer agreement, including any claim that the payee has breached the agreement, shall be determined in and under the laws of this state. No such transfer agreement shall authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

(c) No transfer of structured settlement payment rights shall extend to any payments that are life-contingent unless, prior to the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for:

(1) periodically confirming the payee's survival; and

(2) giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.

(d) No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee or any assignee based on any failure of such transfer to satisfy the conditions of this subchapter.

(e) Nothing contained in this subchapter shall be construed to authorize any transfer of structured settlement payment rights in contravention of any law or to imply that any transfer under a transfer agreement entered into prior to the effective date of this subchapter is valid or invalid.

(f) Compliance with the requirements set forth in section 2480cc of this title and fulfillment of the conditions set forth in section 2480dd of this title shall be solely the responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer shall bear any responsibility for or any liability arising from noncompliance with such requirements or failure to fulfill such conditions.

Sec. 2. 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. 3. 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. 4. 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. 5. 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. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

**Report of Committee of Conference**

**H. 770.**

An act relating to the state's transportation program.

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. 770. An act relating to the state's transportation program.**

Respectfully reports that it has met and considered the same and recommends that the Senate recede from its proposal of amendment and that the bill be amended by striking out all after the enacting clause and by inserting in lieu thereof the following:

Sec. 1. TRANSPORTATION PROGRAM

(a) The state's proposed fiscal year 2013 transportation program appended to the agency of transportation's proposed fiscal year 2013 budget, as amended by this act, is adopted to the extent federal, state, and local funds are available.

(b) As used in this act, unless otherwise indicated:

(1) "Agency" means the agency of transportation.

(2) "Secretary" means the secretary of transportation.

(3) The table heading "As Proposed" means the transportation program referenced in subsection (a) of this section; the table heading "As Amended" means the amendments as made by this act; the table heading "Change" means the difference obtained by subtracting the "As Proposed" figure from the "As Amended" figure; and the term "change" or "changes" in the text refers to the project- and program-specific amendments, the aggregate sum of which equals the net "Change" in the applicable table heading.

(4) "TIB funds" or "TIB" refers to monies deposited in the transportation infrastructure bond fund in accordance with 19 V.S.A. § 11f.

\* \* \* Program Development Funding Sources \* \* \*

Sec. 2. PROGRAM DEVELOPMENT – FUNDING

Spending authority in program development is modified as follows:

(1) Among eligible projects selected in the secretary's discretion, the secretary shall reduce project spending authority in the total amount of \$502,437.00 in transportation funds and \$25,000.00 in federal funds, and increase project spending authority in the total amount of \$484,745.00 in TIB funds.

\* \* \* Program Development – Paving \* \* \*

Sec. 3. PORTABLE HOT MIX PLANT

(a) A new project is added to the development and evaluation list of the program development – paving program within the fiscal year 2013 transportation program for the acquisition of a portable hot mix plant.

(b) As soon as practicable, the secretary shall study the feasibility and evaluate the costs and benefits of acquiring a portable hot mix plant, and necessary associated equipment, for use on paving projects throughout the state.

(c) Prior to expending funds other than development and evaluation funds on the portable hot mix plant project pursuant to 19 V.S.A. § 10g(h), the secretary shall notify the house and senate committees on transportation if the general assembly is in session, and if not in session, the joint transportation oversight committee.

\* \* \* Program Development – Roadway \* \* \*

Sec. 4. PROGRAM DEVELOPMENT – ROADWAY

(a) The following project is added to the development and evaluation list of the program development – roadway program within the fiscal year 2012 transportation program:

CIRC Alternatives – Phase 1 Alternative Projects.

(b) In light of the destruction caused by Tropical Storm Irene to the village of Waterbury, and the plans to reconstruct portions of the Waterbury Complex in the village, the agency of transportation shall review existing plans for the Waterbury – Reconstruct Main Street project (FEGC F 013-4(13)) as soon as is practicable:

(1) to ensure that project infrastructure will be resilient in the event of future flooding;

(2) to ensure, if feasible, that construction of the project is coordinated with Waterbury Complex reconstruction activities so as to minimize disruption to and impacts on residents and road users, and to maximize potential cost savings; and

(3) to determine whether the project plans need to be updated in light of the damage caused by Tropical Storm Irene and the planned configuration of the Waterbury Complex.

\*\*\* Program Development – State Highway Bridge \*\*\*

Sec. 5. PROGRAM DEVELOPMENT – STATE HIGHWAY BRIDGE

(a) The STP SCTT(1) – Townshend – State-owned Historic Sites – Scott Covered Bridge project is added to the fiscal year 2013 transportation program – program development – state highway bridge development and evaluation (D&E) list.

(b) Funds may be expended on the project as necessary from authorized statewide – state highway bridges D&E spending, provided the expenditure does not delay other programmed D&E expenditures.

\*\*\* Vermont Local Roads \*\*\*

Sec. 6. TOWN HIGHWAY VERMONT LOCAL ROADS

Authorized spending on the Vermont local roads program is amended to read:

<u>FY13</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
Grants	375,000	400,000	25,000
Total	375,000	400,000	25,000
<u>Sources of funds</u>			
State	235,000	235,000	0
Federal	140,000	165,000	25,000
Total	375,000	400,000	25,000

\*\*\* State Aid for Federal and Nonfederal Disasters \*\*\*

Sec. 7. STATE AID FOR NONFEDERAL DISASTERS

<u>FY13</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
Grants	4,750,000	1,150,000	-3,600,000
Total	4,750,000	1,150,000	-3,600,000

Sources of funds

State	1,550,000	1,150,000	-400,000
Federal	3,200,000	0	-3,200,000
Total	4,750,000	1,150,000	-3,600,000

Sec. 8. STATE AID FOR FEDERAL DISASTERS

<u>FY13</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
Grants	0	3,600,000	3,600,000
Total	0	3,600,000	3,600,000

Sources of funds

State	0	400,000	400,000
Federal	0	3,200,000	3,200,000
Total	0	3,600,000	3,600,000

Sec. 9. TOWN HIGHWAY STRUCTURES

Authorized spending on the town highway structures program is amended to read:

<u>FY13</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
Grants	5,833,500	6,333,500	500,000
Total	5,833,500	6,333,500	500,000

Sources of funds

State	5,833,500	6,333,500	500,000
Federal	0	0	0
Total	5,833,500	6,333,500	500,000

Sec. 10. TOWN HIGHWAY AID

(a) Authorized spending on the town highway aid program is amended to read:

<u>FY13</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
Grants	26,482,744	25,982,744	-500,000
Total	26,482,744	25,982,744	-500,000

Sources of funds

State	26,482,744	25,982,744	-500,000
Federal	0	0	0

Total	26,482,744	25,982,744	-500,000
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(b) The secretary shall review the permissible uses of general state aid for town highways under 19 V.S.A. § 306(a), and shall report back to the house and senate committees on transportation by January 15, 2013, with any recommendations for further specifying the permissible uses, and overseeing the use, of general state aid for town highways.

\* \* \* Rail \* \* \*

Sec. 11. RAIL

The following modifications are made to the rail program:

(1) The “Rutland–Burlington crossings project” is renamed the “Rutland–Burlington rail and crossings project,” and the scope of the project is amended to include the installation of continuously welded rail.

(2) Spending authority for the Pittsford Bridge 219 project (HPP ABRB(9)) is amended to read:

<u>FY13</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
PE	0	0	0
Construction	6,600,000	1,500,000	-5,100,000
Total	6,600,000	1,500,000	-5,100,000

Sources of funds

State	0	0	0
TIB	1,320,000	300,000	-1,020,000
Federal	5,280,000	1,200,000	-4,080,000
Local	0	0	0
Total	6,600,000	1,500,000	-5,100,000

(3) Spending authority for the Rutland–Burlington rail and crossings project is amended to read:

<u>FY13</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
PE	600,000	600,000	0
Construction	900,000	6,000,000	5,100,000
Total	1,500,000	6,600,000	5,100,000

Sources of funds

State	300,000	300,000	0
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TIB	0	1,020,000	1,020,000
Federal	1,200,000	5,280,000	4,080,000
Local	0	0	0
Total	1,500,000	6,600,000	5,100,000

Sec. 12. RUTLAND–BURLINGTON RAIL AND CROSSINGS PROJECT

The “Rutland–Burlington rail and crossings project” is added to the fiscal year 2012 transportation program – rail program. The project includes the installation of continuously welded rail and the reconstruction of several rail-highway grade crossings along the Vermont Railway line between Rutland and Burlington.

Sec. 13. PURCHASE OF RAIL BRIDGE INSPECTION VEHICLE

(a) A new project is added to the fiscal year 2012 and 2013 transportation program – rail programs for the purchase of a servi-lift rail bridge inspection vehicle (“inspection vehicle”).

(b) Notwithstanding the authorized program spending within the fiscal year 2012 and 2013 transportation program – rail programs, the secretary is authorized to purchase an inspection vehicle using any federal grant funds received for its purchase.

(c) If a federal grant for the purchase of the inspection vehicle is not received or is not pending, notwithstanding the authorized project or activity spending within the fiscal year 2012 and 2013 transportation program – rail programs, the secretary is authorized to use up to a total of \$500,000.00 in transportation funds appropriated to the rail program for the purchase of the inspection vehicle, provided that the purchase does not delay the work schedule of a project or activity programmed in the fiscal year 2012 or 2013 rail programs.

(d) The agency shall promptly report any action taken under the authority granted in subsection (b) or (c) of this section to the joint fiscal office and to the house and senate committees on transportation when the general assembly is in session and, when the general assembly is not in session, to the joint transportation oversight committee.

Sec. 14. ANTICIPATION OF FEDERAL RECEIPTS – RAIL PROGRAM

As authorized by 32 V.S.A. § 510, the secretary, with the prior approval of the commissioner of finance and management, may anticipate federal receipts into the transportation – rail program.

\* \* \* Transportation Buildings \* \* \*

Sec. 15. TRANSPORTATION BUILDINGS

The following modifications are made to the transportation buildings program:

(1) Spending authority for the Mendon District 3/Southwest Regional Construction Office Building project is amended to read:

<u>FY13</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
PE	50,000	0	-50,000
Construction	150,000	0	-150,000
Total	200,000	0	-200,000

Sources of funds

State	200,000	0	-200,000
TIB	0	0	0
Federal	0	0	0
Local	0	0	0
Total	200,000	0	-200,000

(2) Spending authority for the Statewide – Brine-Making Facilities project is amended to read:

<u>FY13</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
PE	3,000	3,000	0
Construction	0	80,000	80,000
Total	3,000	83,000	80,000

Sources of funds

State	3,000	83,000	80,000
TIB	0	0	0
Federal	0	0	0
Local	0	0	0
Total	3,000	83,000	80,000

(3) Spending authority for the Middlebury – Design, Permit, and Construct 1–Bay Addition project is amended to read:

<u>FY13</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
PE	5,000	0	-5,000
Construction	175,000	0	-175,000
Total	180,000	0	-180,000
<u>Sources of funds</u>			
State	180,000	0	-180,000
TIB	0	0	0
Federal	0	0	0
Local	0	0	0
Total	180,000	0	-180,000

Sec. 16. VTRANS TRAINING CENTER FACILITY

(a) The “VTrans Learning Campus” project within the fiscal year 2013 transportation buildings program is renamed the “VTrans Training Center” project, and the scope of the project is amended to read, “Renovation of existing materials & research building for use by the VTrans Training Center and the traffic research section.”

(b) The agency shall rename the VTrans Learning Campus program to be the VTrans Training Center program.

(c) After the effective date of this act, the agency shall:

(1) continue to pursue the acquisition or construction of a facility, not located in a flood hazard area, that is suitable to satisfy the agency’s long-term objectives for the VTrans Training Center program; and

(2) create a plan for the development of a VTrans Training Center facility that will satisfy the long-term objectives of the program.

\*\*\* Public Transit \*\*\*

Sec. 17. PUBLIC TRANSIT

The scope of the Public Transit – Statewide Capital project is amended to include the construction of transit facilities.

Sec. 18. 24 V.S.A. § 5094 is added to read:

§ 5094. POWERS OF SECRETARY OF TRANSPORTATION

On behalf of the state and to carry out the purposes of this chapter and 19 V.S.A. § 10f, the secretary of transportation may:

(1) Execute and file an application with the Federal Transit Administration for federal assistance authorized by Titles 23 and 49 of the United States Code or other federal law.

(2) Execute and file certifications, assurances, or other documents the Federal Transit Administration may require before awarding a federal assistance grant or cooperative agreement.

(3) Execute grant and cooperative agreements with the Federal Transit Administration.

\* \* \* Fiscal Year 2013 Transportation Infrastructure Bonds \* \* \*

Sec. 19. AUTHORITY TO ISSUE TRANSPORTATION INFRASTRUCTURE BONDS

Pursuant to 32 V.S.A. § 972, the state treasurer is authorized to issue transportation infrastructure bonds up to a total amount of \$11,500,000.00 for the purpose of funding:

(1) the spending authorized in Sec. 20 of this act;

(2) a debt service reserve to support the successful issuance of transportation infrastructure bonds; and

(3) the cost of preparing, issuing, and marketing the bonds as authorized under 32 V.S.A. § 975.

Sec. 20. TRANSPORTATION INFRASTRUCTURE BONDS; SPENDING AUTHORITY

The amount of \$10,000,000.00 from the issuance of transportation infrastructure bonds is authorized for expenditure in fiscal year 2013 on eligible projects as defined in 32 V.S.A. § 972(d) in the state's fiscal year 2013 transportation program as follows:

(1) \$9,000,000.00 on projects in program development.

(2) \$1,000,000.00 on projects in the town highway bridge program.

\* \* \* Agency of Transportation Positions \* \* \*

Sec. 21. AGENCY OF TRANSPORTATION POSITIONS

(a) The agency may establish 17 new limited service positions related to the response to Tropical Storm Irene and the spring 2011 flooding. This authority shall expire on June 30, 2014, and the positions shall terminate by June 30, 2014.

(b) The establishment of three new permanent classified positions is authorized in the agency of transportation – rail program.

(c) The establishment of three new permanent classified positions is authorized in the agency of transportation – program development program.

(d) The positions authorized in this section are not subject to the restriction in Sec. A.108 of No. 63 of the Acts of 2011, and are in addition to the positions authorized in Sec. 87(e) of No. 75 of the Acts of the 2011 Adj. Sess. (2012).

\* \* \* Central Garage \* \* \*

#### Sec. 22. TRANSFER TO CENTRAL GARAGE FUND

Notwithstanding 19 V.S.A. § 13(c), in fiscal year 2013, the amount of \$1,120,000.00 is transferred from the transportation fund to the central garage fund created in 19 V.S.A. § 13.

\* \* \* Relinquishment of State Highway Segment to Municipal Control \* \* \*

#### Sec. 23. RELINQUISHMENT OF VERMONT ROUTE 207 EXTENSION IN THE TOWN OF ST. ALBANS

(a) Pursuant to 19 V.S.A. § 15(2), the general assembly approves the secretary of transportation to enter into an agreement with the town of St. Albans to relinquish to the town's jurisdiction a segment of state highway right-of-way in the town of St. Albans which has not been constructed to be a traveled road, and which was to be known as the Vermont Route 207 Extension. This authority shall expire on June 30, 2022. The segment authorized to be relinquished measures approximately 1.7 acres, is approximately 160 feet in width, and starts at a point 200 feet west of the intersection of the U.S. Route 7/Vermont Route 207 centerline of highway project S0297(2), and continues westerly for 463 feet.

(b) Following relinquishment, the former state highway segment shall become a town highway and shall retain its limited access designation under 19 V.S.A. chapter 17 (limited access facilities).

(c) Following relinquishment, the state of Vermont shall retain ownership of the underlying fee interest in the former state highway segment. The town of St. Albans shall not sell or abandon any portion of the relinquishment area or allow any encroachments within the relinquishment area without the written permission of the agency of transportation.

\* \* \* Enhancement Grant Program Priorities \* \* \*

Sec. 24. ENHANCEMENT GRANT PROGRAM PRIORITIES

In addition to the priorities for salt and sand shed projects and bicycle or pedestrian facility projects specified in 19 V.S.A. § 38(g), in evaluating applications for enhancement grants in fiscal years 2013, 2014, and 2015, the transportation enhancement grant committee shall give preferential weighting to projects involving a municipality implementing eligible environmental mitigation projects under a river corridor plan that has been adopted by the agency of natural resources as part of a basin plan, under a municipal plan adopted pursuant to 24 V.S.A. § 4385, or under a mitigation plan adopted by the municipality and approved by the Federal Emergency Management Agency. The degree of preferential weighting afforded shall be in the complete discretion of the transportation enhancement grant committee.

\* \* \* State Aid for Town Highways \* \* \*

Sec. 25. 19 V.S.A. § 306(e) and (f) are amended to read:

(e) State aid for town highway structures.

(1) There shall be an annual appropriation for grants to municipalities for maintenance, ~~(including actions to extend life expectancy)~~ and for construction of bridges, ~~and culverts, and~~ for maintenance and construction of other structures, including causeways and retaining walls, intended to preserve the integrity of the traveled portion of class 1, 2, and 3 town highways; and for alternatives that eliminate the need for a bridge, culvert, or other structure, such as the construction or reconstruction of a highway, the purchase of parcels of land that would be landlocked by closure of a bridge, the payment of damages for loss of highway access, and the substitution of other means of access.

(2) Each fiscal year, the agency shall approve qualifying projects with a total estimated state share cost of \$5,833,500.00 at a minimum as new grants. The agency's proposed appropriation for the program shall take into account the estimated amount of qualifying invoices submitted to the agency with respect to project grants approved in prior years but not yet completed as well as with respect to new project grants to be approved in the fiscal year. In a given fiscal year, should expenditures in the town highway structures program exceed the amount appropriated, the agency shall advise the governor of the need to request a supplemental appropriation from the general assembly to fund the additional project cost, provided that the agency has previously committed to completing those projects.

(3) Funds received as grants for state aid for town highway structures may be used by a municipality to satisfy a portion of the matching requirements for federal earmarks, subject to subsection 309b(c) of this title.

(f) ~~{Deleted.}~~ State aid for federal disasters.

(1) Towns receiving assistance under the Federal Highway Administration's emergency relief program for federal-aid highways shall be eligible for state aid when a nonfederal match is required. Eligibility for aid under this subsection shall be subject to the following criteria:

(A) Towns shall be responsible for up to 10 percent of the total eligible project costs.

(B) For towns that have adopted road and bridge standards, eligibility for reimbursement for repair or replacement of infrastructure shall be to those standards. For towns that have not adopted these standards, eligibility for reimbursement for repair or replacement of infrastructure shall be limited to the specifications of the infrastructure that preexisted the emergency event; however, the repair or replacement shall be to standards approved by the agency.

(C) Such additional criteria as may be adopted by the agency through rulemaking under 3 V.S.A. chapter 25.

(2) Notwithstanding 32 V.S.A. § 706 and the limits on authorized program spending in an approved transportation program, the secretary may transfer appropriations between the program created in this subsection and the state aid for nonfederal disasters program created in subsection (d) of this section.

\* \* \* Town Highway Bridges; Local Match \* \* \*

Sec. 26. 19 V.S.A. § 309a is amended to read:

§ 309a. LOCAL HIGHWAY WORK; UNIFORM LOCAL SHARE; EXCEPTIONS

(a) Except as provided in subsection (b) or (c) of this section or in sections 309b and 309c of this title, in any case of highway or bridge construction in which a federal/state/local or state/local funding match is authorized, the municipality's share shall be ten percent of the project costs.

(b) This section shall not apply to:

(1) any project phase, preliminary engineering, right of way acquisition or construction, which was included in the transportation construction program submitted by the agency in February 1987 and approved by the general assembly in Act No. 91 of the Acts of 1987 any bridge replacement project in the town highway bridge program during the construction of which the

municipality closes the bridge and does not construct a temporary bridge for the duration of the project, in which event the local match shall cover five percent of the project costs; or

(2) any project phase for which a municipality already has provided for payment of its share by issuing bonds or funding a reserve established under a capital improvement plan; or

(3) any project on a town highway for which the general assembly has authorized a different federal/state/local funding match; and any project which serves an “economic growth center” as defined in 23 U.S.C. § 143, and for which the general assembly has authorized a different federal/state/local funding match;

(4) any project involving a bridge, including the approaches to a bridge, that extends between this state and an adjacent state;

(5) any bridge or roadway project involving a local financial share in which the municipality, after its review of the conceptual project plans, chooses not to proceed with the proposed project; in such circumstances, the agency shall pay 100 percent of the project costs incurred through the date it receives such notification from the municipality;

(6) any project where, by the mutual agreement of the municipality and agency, rehabilitation of an existing bridge is the preferred alternative, in which case the agency shall use the appropriate combination of state and federal funding to pay either 95 percent of the cost of rehabilitation, or 97.5 percent if the municipality closes the bridge and does not construct a temporary bridge for the duration of the project; or

(7) any project or portion of a project involving a structure that is part of the historic bridge program, where the agency shall use the appropriate combination of state and federal funding to pay 100 percent of the cost of rehabilitation.

\* \* \*

\* \* \* Tendering Payment in Condemnation Matters \* \* \*

Sec. 27. 19 V.S.A. § 512 is amended to read:

§ 512. ORDER FIXING COMPENSATION; INVERSE CONDEMNATION; RELOCATION ASSISTANCE

(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, 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 award to each person entitled. If an interested person has not provided the agency identification information necessary to process payment of the award, or if an interested person refuses an offer of payment, payment shall be deemed to be tendered for the purposes of this subsection when the agency pays the award into an escrow account that is accessible by the interested person upon his or her providing any necessary identification information. 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.

\* \* \*

\* \* \* Van Pool Program within State Infrastructure Bank \* \* \*

Sec. 28. REPEAL

10 V.S.A. § 280g(a)(10) and (d) (state infrastructure bank van pool loan program) are repealed.

\* \* \* Elimination, Modification, and Retention of Reports \* \* \*

Sec. 29. ELIMINATION OF REPORTS

10 V.S.A. § 445(b) (report regarding expenditures and income relating to Vermont trails system); 19 V.S.A. § 10g(d)(1) (analysis of state's commitment to transportation projects); 19 V.S.A. § 10g(d)(2) (agency's plan to bring resources and cost into balance); 19 V.S.A. § 317(f) (report regarding the classification, number, and location of historic bridges); 32 V.S.A. § 706(4) (report of transfers of appropriations to cover federally reimbursable construction projects); and Sec. 50 of No. 175 of the Acts of the 2005 Adj. Sess. (2006), as amended by Sec. 61 of No. 164 of the Acts of the 2007 Adj. Sess. (2008) (report on general condition of town assets in the bridge and culvert database), are repealed.

Sec. 30. 19 V.S.A. § 12b(d) is amended to read:

(d)(1) In coordination with the regular meetings of the joint fiscal committee in ~~mid-July, mid-September, and~~ mid-November, the secretary shall prepare a report on the status of the state's transportation finances and transportation programs. If a meeting of the committee is not convened on the scheduled dates of the joint fiscal committee meetings, the secretary in advance shall transmit the report electronically to the joint fiscal office for distribution to committee members. The report shall ~~include a report on list contract bid awards versus project estimates and a detailed report on~~ and all known or projected cost overruns, project savings, and funding availability

from delayed projects; ~~and the agency's actions taken or planned to cover the cost overruns and to reallocate the project savings and delayed project funds~~ with respect to:

(A) all paving projects other than statewide maintenance programs; and

(B) all projects in the roadway, state bridge, interstate bridge, or town bridge programs with authorized spending in the fiscal year of \$500,000.00 or more with a cost overrun equal to 20 percent or more of the authorized spending or generating project savings or delayed project available funding equal to 20 percent or more of the authorized spending.

~~(2) In addition, with respect to the July meeting of the joint fiscal committee, the secretary's report~~ The report required under subdivision (1) of this subsection also shall describe the agency's actions taken or planned to cover the cost overruns and to reallocate the project savings and delayed project funds, and shall discuss the agency's plans to adjust spending to any changes in the consensus forecast for transportation fund revenues.

(3) If and when applicable, the secretary shall submit electronically to the joint fiscal office for distribution to members of the joint transportation oversight committee a report summarizing any plans or actions taken to delay project schedules as a result of:

(A) a generalized increase in bids relative to project estimates;

(B) changes in the consensus revenue forecast of the transportation fund or transportation infrastructure bond fund; or

(C) changes in the availability of federal funds.

Sec. 31. 23 V.S.A. § 304b(a) is amended to read:

(a) The commissioner shall, upon application, issue conservation registration plates for use only on vehicles registered at the pleasure car rate ~~and~~ on trucks registered for less than 26,001 pounds, ~~and~~ on vehicles registered to state agencies under section 376 of this title ~~and, but~~ excluding vehicles registered under the International Registration Plan. Plates so acquired shall be mounted on the front and rear of the vehicle. The commissioner of motor vehicles and the commissioner of fish and wildlife shall determine the graphic design of the special plates in a manner which serves to enhance the public awareness of the state's interest in restoring and protecting its wildlife and major watershed areas. The commissioner of motor vehicles and the commissioner of fish and wildlife may alter the graphic design of these special plates provided that plates in use at the time of a design alteration shall remain valid subject to the operator's payment of the annual registration fee. Applicants shall apply on forms prescribed by the

commissioner and shall pay an initial fee of \$23.00 in addition to the annual fee for registration. In following years, in addition to the annual registration fee, the holder of a conservation plate shall pay a renewal fee of \$23.00. The commissioner ~~shall~~ may adopt rules under 3 V.S.A. chapter 25 to implement the provisions of this subsection. ~~The commissioner of motor vehicles and the commissioner of fish and wildlife shall annually submit to the members of the house committees on transportation and fish, wildlife and water resources, and the members of the senate committees on transportation and natural resources and energy a report detailing, over a three year period, the revenue generated, the number of new conservation plates sold and the number of renewals, and recommendations for program enhancements.~~

Sec. 32. 24 V.S.A. § 5083(b) is amended to read:

(b) ~~The public transit advisory council~~ agency of transportation shall annually evaluate ~~existing services based on the goals established in subsection (a) of this section.~~ Proposals proposals for new public transit service shall be evaluated submitted by providers in response to a notice of funding availability, by examining feasibility studies submitted by providers. These The feasibility studies shall address criteria set forth in the most recent public transit policy plan ~~of January 15, 2000.~~

Sec. 33. 19 V.S.A. § 42 is added to read:

#### § 42. REPORTS PRESERVED

Notwithstanding 2 V.S.A. § 20(d), the reports or reporting requirements of sections 7(k), 10b(d), 10c(k), 10c(l), 10e(c), 10g, 11f(i), 12a, 12b(d), and 38(e)(2) of this title shall be preserved absent specific action by the general assembly repealing the reports or reporting requirements.

Sec. 34. 24 V.S.A. § 5092 is amended to read:

#### § 5092. REPORTS

The agency of transportation, in cooperation with the public transit advisory council, shall develop an annual report of financial and performance data of all public transit systems that receive operating subsidies in any form from the state or federal government, including but not limited to subsidies related to the elders and persons with disabilities transportation program for service and capital equipment. Financial and performance data on the elders and persons with disabilities transportation program shall be a separate category in the report. The report shall be modeled on the Federal Transit Administration's national transit database program with such modifications as appropriate for the various services and guidance found in the most current state policy plan. The report shall describe any action taken by the agency pursuant to contractual authority to terminate funding for routes or to request service

changes for failure to meet performance standards. ~~The report agency shall be available deliver the report~~ to the general assembly by January 15 of each year. Notwithstanding 2 V.S.A. § 20(d), this annual report shall be produced indefinitely absent specific action by the general assembly repealing the report.

\* \* \* Technical Corrections \* \* \*

Sec. 35. 5 V.S.A. § 3403 is amended to read:

§ 3403. ACQUISITION AND MODERNIZATION

(a) The agency of transportation, as agent for the state, and with the specific prior approval of the general assembly, is authorized to acquire by purchase or condemnation, after the approval of the ~~Interstate Commerce Commission~~ Surface Transportation Board, if necessary, any portion or portions of the line of any railroad directly affecting the state, including rails and ties, rights-of-way, land, buildings, appurtenances, and other facilities required for the operation of the line or to facilitate its sale or lease for continued operation. This action may be taken in concert with another state or states as necessary to insure continued railroad service in this state.

\* \* \*

Sec. 36. 5 V.S.A. § 3404 is amended to read:

§ 3404. RIGHT OF FIRST REFUSAL

(a) All railroad operating properties within the state offered for sale by a railroad, other than to another railroad for continued operation, shall also be offered to the state of Vermont. The offer shall be made in writing and shall be sent by certified mail to the agency. The offer shall include a map and a description of the property, the price, if available, a description of the present and past railroad use of the property, and any terms, reservations, or conditions the railroad proposes to include as part of the sale. Within 365 days, less any period of time that has elapsed because of the pendency of abandonment proceedings before the ~~Interstate Commerce Commission~~ Surface Transportation Board or the imposition of public use conditions under 49 U.S.C. § 10905, the agency shall accept or reject the offer. If the agency either rejects or fails to accept the offer in a timely manner, the state's preferential right under this section shall terminate, but in no event shall the railroad offer to sell the property, or any portion of it, to any other person on terms more favorable than the final terms offered to the agency.

\* \* \*

\* \* \* Copies of Municipal Reports\* \* \*

Sec. 37. 24 V.S.A. § 1173 is amended to read:

§ 1173. TOWN OR VILLAGE REPORTS

The clerk of a municipality shall supply annually each library in such municipality with two copies of the municipal report, upon its publication. The clerk shall also mail to the state library two copies thereof, and one copy each to the secretary of state, commissioner of taxes, ~~highway board~~, state board of health, commissioner for children and families, commissioner of Vermont health access, auditor of accounts, and board of education. Officers making these reports shall supply the clerk of the municipality with the printed copies necessary for him or her to comply with the provisions of this section and section 1174 of this title.

\* \* \* Transportation Funding and Expenditures \* \* \*

Sec. 38. TRAFFIC SAFETY ENFORCEMENT COSTS

The joint fiscal office, in consultation with the commissioner of public safety or designee, shall analyze and estimate the costs incurred by the state in enforcing the state's traffic safety laws, and study how these state police costs could be apportioned between the general fund and the transportation fund. The joint fiscal office shall submit a report of its findings to the joint transportation oversight committee and the joint fiscal committee prior to the joint fiscal committee's November 2012 meeting.

Sec. 39. ALTERNATIVE FUEL VEHICLES; USER PAY PRINCIPLE

The secretary of transportation or designee, in consultation with the joint fiscal office and the commissioner of motor vehicles, commissioner of taxes, and commissioner of public service or their designees, shall analyze options for user fees and fee collection mechanisms for motor vehicles that use energy sources not currently taxed so as to contribute to the transportation fund. The secretary shall submit a report of his or her findings, and of options for user fees and fee collection mechanisms, to the joint transportation oversight committee and the joint fiscal committee prior to the joint fiscal committee's November 2012 meeting.

Sec. 40. COMMITTEE ON TRANSPORTATION FUNDING

(a) Findings.

(1) Annual gasoline and diesel tax revenues are currently at the same level generated in 1999–2000, while vehicle miles traveled and consequent wear and tear on the state's highway system has increased by 13.2 percent.

(2) As fuel efficiency continues to improve and vehicles using fuel sources not taxed so as to contribute to the transportation fund become more

common, the gap between the payments collected from system users and the wear and tear users impose on the system will continue to grow.

(3) New revenue sources and consistent revenue streams will be needed to sustain Vermont's transportation infrastructure and support economic prosperity.

(b) Composition of committee. A committee on transportation funding is established, composed of the following members:

(1) the secretary of transportation or designee, who shall serve as chair;

(2) the commissioner of motor vehicles or designee;

(3) one member appointed by the senate committee on committees;

(4) one member appointed by the speaker of the house;

(5) one member designated by the Vermont League of Cities and Towns;

(6) one member designated by the Vermont Association of Planning and Development Agencies, Inc.; and

(7) one member designated by the James M. Jeffords Center for Policy Research.

(c) Purpose and charge. The committee shall:

(1) estimate transportation and TIB fund revenues over the next five years, taking into account motor vehicle fuel efficiency mandates and trends, and identify and analyze factors likely to impact transportation and TIB fund revenues and transportation infrastructure spending in the future;

(2) estimate the gap between costs and projected revenues over the next five years (the "five-year funding gap") based on the cost of maintaining the state's existing infrastructure, and under any other cost scenario the committee deems appropriate;

(3) evaluate potential new state revenue sources, including a vehicle miles traveled tax, and how existing state revenue sources could optimally be modified to address the five-year and longer term expected transportation funding gaps. The committee shall estimate the amount of funds that would be generated from each new and modified revenue source, and identify implementation structures, requirements, and challenges.

(d) The secretary of transportation shall call the first meeting of the committee by June 15, 2012. The committee shall deliver a written report of its findings, and of any legislative options for consideration, to the house and senate committees on transportation by January 15, 2013. The committee shall terminate on January 15, 2013.

(e) Assistance. Upon the request of the committee, the agency may contract with consultants to provide expert assistance to the committee. Any consultant fees shall be paid out of the transportation – policy and planning appropriation. Upon request, the committee shall receive administrative support from the agency of transportation and assistance from the joint fiscal office, the office of legislative council, and any unit of the executive branch the committee deems appropriate.

(f) For attendance at a meeting when the general assembly is not in session, legislative members of the committee shall be entitled to compensation for services and reimbursement of expenses as provided under 2 V.S.A. § 406(a). Other committee members who are not otherwise compensated or reimbursed by their employer shall be entitled to per diem compensation and reimbursement for expenses under 32 V.S.A. § 1010. Funds disbursed under this subsection shall be paid out of the transportation – policy and planning appropriation.

\* \* \* Vermont Strong Motor Vehicle Plates \* \* \*

Sec. 41. VERMONT STRONG MOTOR VEHICLE PLATES

The agency is authorized to expend up to \$12,000.00 from the central garage appropriation for the purchase of Vermont Strong motor vehicle plates for installation on agency vehicles in conformance with No. 71 of the Acts of the 2011 Adj. Sess. (2012).

\* \* \* Natural Gas-Powered Motor Vehicles; Tax Proceeds \* \* \*

Sec. 42. 32 V.S.A. § 9741 is amended to read:

§ 9741. SALES NOT COVERED

Retail sales and use of the following shall be exempt from the tax on retail sales imposed under section 9771 of this title and the use tax imposed under section 9773 of this title.

\* \* \*

(7) Sales of motor fuels taxed or exempted under 23 V.S.A. chapter 28 of Title 23; provided, however, that aviation jet fuel and natural gas used to propel a motor vehicle shall be taxed under this chapter with the proceeds to be allocated to the transportation fund in accordance with 19 V.S.A. § 11.

\* \* \*

Sec. 43. 19 V.S.A. § 11 is amended to read:

§ 11. TRANSPORTATION FUND

The transportation fund shall be comprised of the following:

\* \* \*

(4) moneys received from the sales and use tax on aviation jet fuel and on natural gas used to propel a motor vehicle under 32 V.S.A. chapter 233;

\* \* \*

Sec. 44. 23 V.S.A. § 3101 is amended to read:

§ 3101. DEFINITIONS

(a) The term “distributor” as used in this subchapter shall mean a person, firm, or corporation who imports or causes to be imported gasoline or other motor fuel for use, distribution, or sale within the state, or any person, firm, or corporation who produces, refines, manufactures, or compounds gasoline or other motor fuel within the state for use, distribution, or sale. ~~Kerosene, diesel oil, and aircraft jet fuel shall not be considered to be motor fuel under this subchapter.~~

~~(b)~~ When a person receives motor fuel in circumstances which preclude the collection of the tax from the distributor by reason of the provisions of the constitution and laws of the United States, and shall thereafter ~~sell~~ sells or ~~use~~ uses the motor fuel in the state in a manner and under circumstances as may subject the sale to the taxing power of the state, the person shall be considered a distributor and shall make the same reports, pay the same taxes, and be subject to all provisions of this subchapter relating to distributors of motor fuel.

~~(e)~~(b) “Dealer” means any person who sells or delivers motor fuel into the fuel supply tanks of motor vehicles owned or operated by others.

(c) As used in this subchapter, “gasoline or other motor fuel” or “motor fuel” shall not include kerosene, diesel oil, aircraft jet fuel, or natural gas in any form.

(d) “Motor vehicle” means any self-propelled vehicle using motor fuel on the public highways and registered or required to be registered for operation on these highways.

\* \* \* State Highway Closures \* \* \*

Sec. 45. 19 V.S.A. § 43 is added to read:

§ 43. STATE HIGHWAY CLOSURES

(a) Before the planned closure of a state highway, the agency shall convene a regional public meeting for the purpose of listening to public concerns. The agency shall consult with other state agencies and departments, regional chambers of commerce, regional planning commissions, local legislative bodies, emergency medical service organizations, school officials, and area



businesses to develop mitigation strategies to reduce the impact of the planned closure on the local and regional economies.

(b) In developing mitigation strategies, the agency shall consider the need to provide a level of safety for the traveling public comparable to that available on the segment of state highway affected by the planned closure. If the agency finds town highways unsuitable for a signed detour, the agency will advise local legislative bodies of the reasons for its determination.

\* \* \* Plaque Honoring Richard W. Hube Jr. \* \* \*

Sec. 46. PLAQUE ON VERMONT ROUTE 30 BRIDGE

(a) Prior to or as soon as possible after the reopening of bridge #30 on Vermont Route 30 in the town of Jamaica, the agency of transportation shall install commemorative plaques on both sides of the bridge that read:

“Richard W. Hube Jr. Memorial Bridge

Vermont State Representative, 1999–2009

In recognition of his service and dedication to the people of Vermont”

(b) The plaques and their placement shall conform to the Federal Highway Administration’s Manual on Uniform Traffic Control Devices.

\* \* \* Approval of Acquisitions and Transfers of Property \* \* \*

Sec. 47. 19 V.S.A. § 26 is amended to read:

§ 26. PURCHASE AND SALE OF PROPERTY

(a)(1) Subject to subsection (b) of this section:

(A) The agency may purchase or lease any land, taking conveyance in the name of the state, when land is needed in connection with the layout, construction, repair, and maintenance of any state highway, or the reconstruction of the highway.

(B) The agency may acquire or construct buildings necessary for use in connection with this work.

(C) When any of the land or the buildings acquired or the buildings constructed become no longer necessary for these purposes, the agency may sell or lease the property.

(2) The proceeds from any sale or lease shall be deposited in the transportation fund and, unless otherwise required by federal law or regulation, shall be credited to transportation buildings to be used for transportation building projects previously authorized by the general assembly.

(b) An acquisition or transfer or the construction under this section of property or rights in property with an appraised or other estimated value of \$500,000.00 or above, or the acquisition or transfer of an option to acquire property with an appraised or other estimated value of \$500,000.00 or above, shall be made with the specific prior approval of the general assembly of the acquisition, transfer, or construction and its terms or, if the general assembly is not in session, with the specific prior approval of the joint transportation oversight committee. The requirement of this subsection shall not apply, however, if the general assembly has approved a specific project described in the annual transportation program and the scope of the project includes the acquisition or transfer of property.

Sec. 48. 5 V.S.A. § 204 is amended to read:

§ 204. POWERS OF AGENCY GENERALLY

(a) To carry out the purposes of this part, the transportation agency shall have power, subject to subsection (b) of this section:

(1) to contract in the name of the state with individuals, firms, or corporations, with officials of a town, city, or village, with officials of a group of either or both of such governmental units, with officials of another state, or with officials or agencies of the federal government to carry out the purposes of this part;

(2) to receive, manage, use, or expend, for purposes directed by the donor, gifts, grants, or contributions of any name or nature made to the state for the promotion or development of aeronautics or for aeronautics facilities;

(3) to operate, manage, use, exchange, lease, or otherwise deal with or dispose of, in whole or in part, land and rights in land acquired in the name of the state by purchase, gift, or otherwise, under authorization of this part, and to charge reasonable fees for such use or the use of landing areas, parking areas, buildings, and other facilities, or for services rendered. Moneys received from the fees shall be paid into the state treasury and credited to the transportation fund;

(4) to acquire on behalf of the state, acting either alone or with local governmental units or the federal government, by purchase or by the exercise of the right of eminent domain, property, easements, or other rights in property needed to carry out the purposes of this part. In taking property, easements, or rights in property located in this state, the right of eminent domain shall be exercised in the manner and subject to the limitations provided for in 19 V.S.A. chapter 5, except as otherwise provided in chapter 15, subchapter 2 of this part.

(b) An acquisition or transfer under this section of property or rights in property with an appraised or other estimated value of \$500,000.00 or above, or of an option to acquire property with an appraised or other estimated value of \$500,000.00 or above, shall be made with the specific prior approval of the general assembly of the acquisition or transfer and its terms or, if the general assembly is not in session, with the specific prior approval of the joint transportation oversight committee. The requirement of this subsection shall not apply, however, if the general assembly has approved a specific project described in the annual transportation program and the scope of the project includes the acquisition or transfer of property.

Sec. 49. 5 V.S.A. § 3002 is amended to read:

§ 3002. POWERS OF AGENCY

(a) To carry out the purposes of 19 V.S.A. § 10e, the agency of transportation may, subject to subsection (b) of this section:

(1) Contract in the name of the state with federal agencies, the National Railroad Passenger Corporation (Amtrak), railroads, municipalities, adjacent states, or other responsible persons to carry out the purposes of this chapter.

(2) Receive, manage, use, or expend, for the purposes of this chapter, federal and state funds appropriated to the agency for the promotion or development of intercity rail passenger service or for intercity rail passenger service facilities.

(3) Operate, manage, use, exchange, lease, or otherwise deal with or dispose of, in whole or in part, land and rights in land acquired in the name of the state under authorization of this chapter, and to charge reasonable fees for such use or the use of land, buildings, and other facilities, or for services rendered. Moneys received from the fees shall be credited to the transportation fund.

(4) Acquire on behalf of the state, acting either alone or with municipalities or the federal government, land and rights in land needed to carry out the purposes of this chapter.

(b) An acquisition or transfer under this section of property or rights in property with an appraised or other estimated value of \$500,000.00 or above, or of an option to acquire property with an appraised or other estimated value of \$500,000.00 or above, shall be made with the specific prior approval of the general assembly of the acquisition or transfer and its terms or, if the general assembly is not in session, with the specific prior approval of the joint transportation oversight committee. The requirement of this subsection shall not apply, however, if the general assembly has approved a specific project

described in the annual transportation program and the scope of the project includes the acquisition or transfer of property.

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

Sec. 50. EFFECTIVE DATES

(a) This section and Secs. 3 (portable hot mix plant), 4 (program development – roadway), 12 (Rutland–Burlington rail and crossings project), 13 (purchase of rail bridge inspection vehicle), 14 (anticipation of federal receipts – rail program), 16 (VTrans training center facility), 18 (powers of secretary of transportation), 19 (authority to issue transportation infrastructure bonds), 21 (agency of transportation positions), 25 (state aid for town highways), 37 (copies of municipal reports), 38 (traffic safety enforcement cost study), 39 (alternative fuel vehicles; user pay study), 40 (committee on transportation funding), and 41 (Vermont Strong plates) of this act shall take effect on passage. The authority granted by Sec. 25(f) of this act (state aid for federal disasters) shall be retroactive to March 1, 2011.

(b) Secs. 42–44 of this act shall take effect on July 1, 2013.

(c) Sec. 27 (tendering payment in condemnation matters) of this act shall take effect on July 2, 2012, if H.523 (introduced on January 11, 2012) as passed by the house and senate does not become law on or before July 1, 2012. If H.523 becomes law on or before July 1, 2012, Sec. 27 shall not take effect.

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

*RICHARD T. MAZZA  
M. JANE KITCHEL  
RICHARD A. WESTMAN*

*Committee on the part of the Senate*

*PATRICK M. BRENNAN  
DAVID E. POTTER  
TIMOTHY R. CORCORAN*

*Committee on the part of the House*

**ORDERED TO LIE**

**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?

## 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)