

# Journal of the House

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**Thursday, March 17, 2011**

At nine o'clock and thirty minutes in the forenoon the Speaker called the House to order.

## **Devotional Exercises**

Devotional exercises were conducted by Rep. Johannah Donovan and Rep. Kevin Christie.

## **Bill Recommitted**

### **H. 101**

House bill, entitled

An act relating to voting requirements in common ownership communities

Was taken up, and pending the question, Shall the bill be read the third time? **Rep. Bouchard of Colchester** moved to recommit the bill to General, Housing and Military Affairs, which was agreed to.

## **Third Reading; Bill Passed**

### **H. 11**

House bill, entitled

An act relating to the discharge of pharmaceutical waste to state waters

Was taken up, read the third time and passed.

## **Bill Amended, Read Third Time and Passed**

### **H. 66**

House bill, entitled

An act relating to the illegal taking of trophy big game animals

Was taken up and pending third reading of the bill, **Rep. Munger of South Burlington** moved to amend the bill as follows:

First: In Sec. 2, 10 V.S.A. § 4518, in the second sentence, by striking the words “~~60~~ 120 days” where they appear and inserting in lieu thereof “60 days”

Second: by striking Sec. 5 in its entirety and inserting in lieu thereof the following:

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**Sec. 5. EFFECTIVE DATES**

(a) This section and Secs. 3 (hunting and fishing license; armed forces; nonresident) and 4 (hunting and fishing license; armed forces; resident) of this act shall take effect on July 1, 2011.

(b) Secs. 1 (restitution values for wildlife violation) and 2 (big game violation penalties) shall take effect on July 1, 2012.

Which was agreed to. Thereupon, the bill was read the third time and passed.

**Third Reading; Bill Passed****H. 431**

House bill, entitled

An act relating to extending the implementation date of certain employment-related disclosure requirements

Was taken up, read the third time and passed.

**Bill Amended; Consideration Interrupted by Recess****H. 287**

**Rep. Botzow of Pownal**, for the committee on Commerce and Economic Development, to which had been referred House bill, entitled

An act relating to job creation and economic development

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

\* \* \* Incentive Grants; VEGI \* \* \*

**Sec. 1. VERMONT BUSINESS PARTNER INCENTIVE**

(a) Definitions. In this section:

(1) "Eligible new employer" means a person:

(A) who has been in business for three or more years and is domiciled in a state other than Vermont;

(B) who has an existing supplier or vendor relationship with the recruiting qualified taxpayer;

(C) who establishes a new business location within Vermont and hires five or more new full-time employees; and

(D) who does not control and who is not controlled by the recruiting qualified taxpayer. For purposes of this subdivision (D), “control,” including the term “controlled by,” means:

(i) having the power, directly or indirectly, to elect or remove a majority of the members of the other governing body of a person through the ownership of voting shares or interests, by contract, or otherwise; or

(ii) being subject to a majority of the risk of loss from the person’s activities or entitled to receive a majority of the person’s residual returns.

(2) “Full-time employee” means an individual who works at least 35 hours per week at a Vermont business location and is paid a qualified wage.

(3) “Qualified taxpayer” means a person doing business in Vermont that is registered with the Vermont secretary of state, is current with all payments and filings required by the Vermont departments of taxes and of labor, and has a valid workers’ compensation policy.

(4) “Qualified wage” means compensation that meets or exceeds the prevailing wage and benefit levels for the region and sector, as determined by the commissioner of labor.

(5) “Secretary” means the secretary of commerce and community development.

(b) Amount and availability of incentive.

(1) A qualified taxpayer and an eligible new employer shall each be entitled to an incentive equal to \$500.00 for each full-time employee of an eligible new employer hired on or before December 31, 2012, as certified by the secretary, not to exceed \$5,000.00 per recipient per year.

(2) A qualified taxpayer and an eligible new employer may claim an incentive by filing with the agency of commerce and community development, on a form created by the secretary for that purpose, one year after the date the eligible new employer established its qualifying Vermont business location, as certified by the secretary.

(3) The secretary may in his or her discretion reduce to three the minimum number of employees required of a relocating eligible new employer if the compensation paid to one or more of the new employees exceeds by at least 20 percent the qualified wage for the position.

Sec. 2. Sec. 3(c) of No. 184 of the Acts of the 2005 Adj. Sess. (2006) is amended to read:

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

Sec. 3. 32 V.S.A. § 5930a(c)(1) is amended to read:

(1) The enterprise should create new, full-time jobs to be filled by individuals who are Vermont residents. The new jobs shall not include jobs or employees transferred from an existing business in the state, or replacements for vacant or terminated positions in the applicant's business. The new jobs include those that exceed the applicant's average annual employment level in Vermont during the two preceding ~~five~~ years, unless the council determines that the enterprise will establish a significant new line of business and create new jobs in the new line of business that were not part of the enterprise prior to filing its application for incentives with the council. The enterprise should provide opportunities that increase income, reduce unemployment, and reduce facility vacancy rates. Preference should be given to projects that enhance economic activity in areas of the state with the highest levels of unemployment and the lowest levels of economic activity.

Sec. 4. 32 V.S.A. § 5930b(a)(24) is amended to read:

(24) "Wage threshold" means the minimum annualized Vermont gross wages and salaries paid, as determined by the council, but not less than 60 percent above the Vermont minimum wage at the time of application, in order for a new job to be a qualifying job under this section, unless the council determines that, based on a certification by the secretary of commerce and community development, the enterprise would create new jobs in a county of Vermont with an average unemployment rate that exceeds the average statewide unemployment rate for the most recently reported three-month period prior to the date of application.

Sec. 5. 32 V.S.A. § 5930b(e) is amended to read:

(e) Reporting. By May 1, 2008 and by May 1 each year thereafter, the council and the department of taxes shall file a joint report on the employment growth incentives authorized by this section with the chairs of the house committee on ways and means, the house committee on commerce and economic development, the senate committee on finance, the senate committee on economic development, housing and general affairs, the house and senate committees on appropriations, and the joint fiscal committee of the general

assembly and provide notice of the report to the members of those committees. The joint report shall contain the total authorized award amount of incentives granted during the preceding year, amounts actually earned and paid from inception of the program to the date of the report, including the date and amount of the award, the expected calendar year or years in which the award will be exercised, whether the award is currently available, the date the award will expire, ~~and~~ the amount and date of all incentives exercised, and any waiver of the wage threshold requirements granted pursuant to subdivision (a)(24) of this section. The joint report shall also include information on recipient performance in the year in which the incentives were applied, including the number of applications for the incentive, the number of approved applicants who complied with all their requirements for the incentive, the aggregate number of new jobs created, the aggregate payroll of those jobs and the identity of businesses whose applications were approved. The council and department shall use measures to protect proprietary financial information, such as reporting information in an aggregate form.

Sec. 6. SCIENCE, TECHNOLOGY, ENGINEERING, AND  
MATHEMATICS (STEM) INCENTIVE PROGRAM

(a) In this section:

(1) “Accredited institution” means an educational institution that is accredited by a regional accrediting association or by one of the specialized accrediting agencies recognized by the United States secretary of education.

(2) “Qualified new employee” means a person who:

(A) is hired by a qualified employer for a STEM position on or before December 31, 2012;

(B) graduated from an accredited institution with an associate’s degree or higher not more than 18 months before the date of hire; and

(C) is paid annual compensation of not less than \$50,000.00, including the value of benefits.

(3) “Qualified employer” means a person doing business in Vermont that is registered with the Vermont secretary of state, is current with all payments and filings required by the Vermont departments of taxes and of labor, and has a valid workers’ compensation policy.

(4) “Secretary” means the secretary of commerce and community development.

(5) “STEM position” means an employment position in the field of science, technology, engineering, or mathematics that requires, as determined by the secretary in his or her discretion, a high level of scientific or mathematical knowledge and skill. The term shall not include a position of academic instruction with a college or university.

(6) “Student loan” means debt incurred for the purpose of paying tuition and expenses at an accredited institution, excluding any debt or other financial assistance provided by a family member, relative, or other private person.

(b)(1) A qualified new employee who is hired by and remains in a STEM position with one or more qualified employers for a period of not less than five years shall be eligible for an incentive to pay a qualified student loan in the amount of \$1,500.00 per year for five years.

(2) A qualified new employee shall notify the secretary of his or her initial employment in a STEM position within 30 days of the date of hire and shall provide the secretary an annual notice of employment in a STEM position in each of the five years thereafter.

(3) Following receipt of an annual notice of employment in a STEM position and verification of employment with one or more qualified employers, the secretary shall deliver an incentive to the qualified new employee pursuant to subdivision (1) of this subsection.

(4) The secretary shall award up to a maximum of \$75,000.00 per year for incentives in accordance with this section.

(c) The secretary shall design and make available on the agency of commerce and community development website:

(1) any forms necessary for a new employee to apply for an incentive available under this section; and

(2) a list of STEM positions for which a new employee may be eligible for an incentive under this section.

#### Sec. 7. LONG-TERM UNEMPLOYED HIRING INCENTIVE

(a) In this section:

(1) “New full-time employment” means employment by a qualified employer in a permanent position at least 35 hours each week in the year for which an incentive is claimed at a compensation of not less than the average wage for the corresponding economic sector in the county of the state as determined by the Vermont department of labor.

(2) “Qualified employer” means a person doing business in Vermont that is registered with the Vermont secretary of state, is current with all payments and filings required by the Vermont departments of taxes and of labor, and has a valid workers’ compensation policy.

(3) “Qualified long-term unemployed Vermonter” means a legal resident of Vermont who collected unemployment insurance benefits in the state of Vermont for five months or more or whose collection of unemployment insurance benefits has expired within 30 days of the date of new employment with a qualified employer and who was hired through a referral from the Vermont department of labor.

(b) A qualified employer who hires a qualified long-term unemployed Vermonter on or before December 31, 2012 shall be eligible to receive a hiring incentive one year after the employee’s date of hire in the amount of \$500.00, not to exceed \$5,000.00 per year per employer.

(c) The commissioner of labor shall administer payment of incentives consistent with this section and shall develop:

(1) an application form for qualified employers; and

(2) a process for verifying compliance with the eligibility requirements of the program.

Sec. 8. [RESERVED]

Sec. 9. [RESERVED]

\* \* \* Labor; Workforce Training \* \* \*

Sec. 10. 10 V.S.A. § 531 is amended to read:

§ 531. ~~EMPLOYMENT TRAINING~~ VERMONT TRAINING PROGRAM

(a) The secretary of commerce and community development may issue performance-based grants to any employer, consortium of employers, or ~~contract with~~ providers of training, either individuals or organizations, as necessary, to conduct training under the following circumstances:

\* \* \*

(b) The secretary of commerce and community development shall find in the grant ~~or contract~~ that:

(1) the employer’s new or expanded facility will enhance employment opportunities for Vermont residents;

(2) the existing labor force within the state will probably be unable to provide the employer with sufficient numbers of employees with suitable training and experience; ~~and~~

(3) the employer provides its employees with at least three of the following:

(A) health care benefits with 50 percent or more of the premium paid by the employer;

(B) dental assistance;

(C) paid vacation and holidays;

(D) child care;

(E) other extraordinary employee benefits; ~~and~~

(F) retirement benefits; and

(4) the training is directly related to the employment responsibilities of the trainee.

(c) The employer promises as a condition of the grant to:

(1) employ new persons at a wage which, at the completion of the training program, is two times the prevailing state or federal minimum wage, whichever is greater, reduced by the value of any existing health benefit package up to a limit of ~~30~~ 35 percent of the gross program wage, or for existing employees, to increase the wage to two times the prevailing state and federal minimum wage, whichever is greater, reduced by the value of any existing health benefit package up to a limit of ~~20~~ 25 percent of the gross program wage, upon completion of training; provided, however, that in areas defined by the secretary of commerce and community development in which the secretary finds that the rate of unemployment is ~~50 percent~~ greater than the average for the state, the wage rate under this subsection may be set by the secretary at a rate no less than one and one-half times the federal or state minimum wage, whichever is greater;

\* \* \*

(4) survey a reasonable sample of employees, on a form prepared by the secretary of commerce and community development for that purpose, upon completion of training in a manner described in the grant agreement; and

(5) submit a customer satisfaction report to the secretary of commerce and community development, on a form prepared by the secretary for that purpose, no more than 30 days from the last day of the training program.



(d) In issuing a grant ~~or entering a contract~~ for the conduct of training under this section, the secretary of commerce and community development shall:

(1) first consult with: the commissioner of education regarding vocational-technical education; the commissioner of labor regarding apprenticeship programs, on-the-job training programs, and recruiting through Vermont Job Service and available federal training funds; the commissioner for children and families regarding welfare to work priorities; and the University of Vermont and the Vermont state colleges;

(2) disburse grant funds only for training hours that have been successfully completed by employees; and

(3) use funds under this section only to supplement training efforts of employers and not to replace or supplant training efforts of employers.

\* \* \*

(h) The secretary may designate the commissioner of economic, housing and community development to carry out his or her powers and duties under this chapter.

~~(i) (1) Program Outcomes. The joint fiscal office shall prepare a training program performance report based on the following information submitted to it by the Vermont training program, which is to be collected from each participating employer and then aggregated:~~

~~(A) The number of full time employees six months prior to the training and six months after its completion.~~

~~(B) For all existing employees, the median hourly wages prior to and after the training.~~

~~(C) The number of "new hires," "upgrades," and "crossovers" deemed eligible for the waivers authorized by statute and the median wages paid to employees in each category upon completion.~~

~~(D) A list and description of the benefits required under subdivision (c)(3) of this section for all affected employees, including the number of employees that receive each type of benefit.~~

~~(E) The number of employers allowed to pay reduced wages in high unemployment areas of the state, along with the number of affected workers and their median wage.~~

~~(2) Upon request by the secretary of commerce and community development, participating employers shall provide the information necessary~~

~~to conduct the performance report required by this subsection. The secretary, in turn, shall provide such information to the joint fiscal office in a manner agreed upon by the secretary and the joint fiscal office. The secretary and the joint fiscal office shall take measures to ensure that company specific data and information remain confidential and are not publicly disclosed except in aggregate form. The secretary shall submit to the joint fiscal office any program outcomes, measurement standards, or other evaluative approaches in use by the training program.~~

~~(3) The joint fiscal office shall review the information collected pursuant to subdivisions (1) and (2) of this subsection and prepare a training program performance report with recommendations relative to the program. The joint fiscal office shall submit its first training program performance report on or before January 15, 2011, to the senate committee on economic development, housing and general affairs and the house committee on commerce and economic development. A second performance report shall be submitted on or before January 15, 2016. In addition to the information evaluated pursuant to subdivision (1) of this subsection, the second report shall include recommendations as to the following:~~

~~(A) whether the outcomes achieved by the program are sufficient to warrant its continued existence.~~

~~(B) whether training program outcomes can be improved by legislative or administrative changes.~~

~~(C) whether continued program performance reports are warranted and, if so, at what frequency and at what level of review.~~

~~(4) The joint fiscal office may contract with a consultant to conduct the performance reports required by this subsection. Costs incurred in preparing each report shall be reimbursed from the training program fund up to \$15,000.00.~~

#### Program Outcomes.

(1) On or before January 15, 2012, the agency of commerce and community development, in coordination with the workforce development council and the department of labor and in periodic consultation with the joint fiscal office, shall develop a common set of benchmarks and performance measures for the training program established in this section and the workforce education and training fund established in section 543 of this title.

(2) On or before January 15, 2014, the joint fiscal office shall prepare a performance report using the benchmarks and performance measures created pursuant to subdivision (1) of this subsection. The fiscal office shall submit its

report to the senate committee on economic development, housing and general affairs and the house committee on commerce and economic development.

(3) The secretary shall use information gathered pursuant to this subsection and the survey results and customer satisfaction reports submitted pursuant to subdivision (c)(4) of this section to evaluate the program and make necessary changes that fall within the secretary's authority or, if beyond the scope of the secretary's authority, to recommend necessary changes to the appropriate committees of the general assembly.

\* \* \*

(k) Annually on or before January 15, the secretary shall submit a report to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs summarizing all active and completed contracts and grants, the types of training activities provided, the number of employees served and, the average wage by employer and addressing any waivers granted.

Sec. 11. 10 V.S.A. § 544 is added to read:

§ 544. VERMONT INTERNSHIP PROGRAM

(a)(1) The department of labor shall develop and implement a statewide Vermont Internship Program for Vermonters who are in high school or in college and for those who are recent graduates of 18 months or less.

(2) The program shall serve as a single portal for coordinating and providing funding to public and private entities for internship programs that match Vermont employers with students from public and private secondary schools, regional technical centers, the Community High School of Vermont, and colleges.

(3) Funding awarded through the Vermont Internship Program may be used to administer an internship program and to provide students with a stipend during the internship, based on need. Funds may be made only to programs or projects that do all the following:

(A) do not replace or supplant existing positions;

(B) create real workplace expectations and consequences;

(C) provide a process that measures progress toward mastery of skills, attitude, behavior, and sense of responsibility required for success in that workplace;

(D) are designed to motivate and educate secondary and postsecondary students through work-based learning opportunities with Vermont employers that are likely to lead to real employment;

(E) include mechanisms that promote employer involvement with secondary and postsecondary students and curriculum and the delivery of education at the participating schools;

(F) involve Vermont employers or interns who are Vermont residents; and

(G) offer students a continuum of learning, experience, and relationships with employers that will make it financially possible and attractive for graduates to continue to work and live in Vermont.

(4) For the purposes of this section, “internship” means a learning experience working with an employer where the intern may, but does not necessarily, receive academic credit, financial remuneration, a stipend, or any combination of these.

(b) The department of labor, in collaboration with the agency of agriculture, food and markets, the department of education and state-funded post-secondary educational institutions, the workforce development council, and other state agencies and departments that have workforce development and training monies, shall:

(1) identify new and existing funding sources that may be allocated to the Vermont internship program;

(2) collect data and establish program goals and quantifiable performance measures for internship programs funded through the Vermont internship program;

(3) develop or enhance a website that will connect students and graduates with internship opportunities with Vermont employers;

(4) engage appropriate agencies and departments of the state in the internship program to expand internship opportunities with state government and with entities awarded state contracts; and

(5) work with other public and private entities to develop and enhance internship programs, opportunities, and activities throughout the state.

Sec. 12. IMPLEMENTATION OF THE VERMONT INTERNSHIP  
PROGRAM; WORKERS' COMPENSATION

(a)(1) Program costs in fiscal year 2012 for the Vermont Internship Program created in 10 V.S.A. § 544 shall be funded through an appropriation from the next generation initiative fund established in 16 V.S.A. § 2887.

(2) Funding in subsequent years shall be recommended by the department of labor, in collaboration with the agency of agriculture, food and markets, the department of education and state-funded post-secondary educational institutions, the workforce development council, and other state agencies and departments that have workforce development and training monies.

(b)(1) The state shall make available workers' compensation coverage to an intern participating in the Vermont Internship Program if coverage is required by federal or state law and the participant would not otherwise be covered by an employer's workers' compensation policy.

(2) The state shall be considered a single entity solely for purposes of purchasing a single workers' compensation insurance policy providing coverage to intern participants.

(3) This subsection is intended strictly to permit the state to provide workers' compensation coverage, and the state shall not be considered the employer of an intern participant for any other purpose.

Sec. 13. 10 V.S.A. § 543(f) is amended to read:

(f) Awards. Based on guidelines set by the council, the commissioners of labor and of education shall jointly make awards to the following:

\* \* \*

~~(2) Vermont Internship Program. Public and private entities for internship programs that match Vermont employers with students from public and private secondary schools, regional technical centers, the Community High School of Vermont, and colleges. For the purposes of this section, "internship" means a learning experience working with an employer where the intern may, but does not necessarily receive academic credit, financial remuneration, a stipend, or any combination of these. Awards under this subdivision may be used to fund the cost of administering an internship program and to provide students with a stipend during the internship, based on need. Awards may be made only to programs or projects that do all the following:~~

~~(A) do not replace or supplant existing positions;~~

~~(B) create real workplace expectations and consequences;~~

~~(C) provide a process that measures progress toward mastery of skills, attitude, behavior, and sense of responsibility required for success in that workplace;~~

~~(D) are designed to motivate and educate secondary and postsecondary students through work-based learning opportunities with Vermont employers that are likely to lead to real employment;~~

~~(E) include mechanisms that promote employer involvement with secondary and postsecondary students and curriculum and the delivery of education at the participating schools;~~

~~(F) involve Vermont employers or interns who are Vermont residents;~~  
and

~~(G) offer students a continuum of learning, experience, and relationships with employers that will make it financially possible and attractive for graduates to continue to work and live in Vermont. Funding for eligible internship programs and activities under the Vermont Internship Program established in section 544 of this section.~~

Sec. 14. [RESERVED]

\* \* \* Entrepreneurship; Creative Economy \* \* \*

Sec. 15. 3 V.S.A. § 2471c is added read:

§ 2471c. OFFICE OF CREATIVE ECONOMY

(a) The office of creative economy is created within the agency of commerce and community development in order to build upon the years of work and energy around creative economy initiatives in Vermont. The office shall provide business, networking, and technical support to enterprises involved with the creative economy, primarily focused on but not limited to such areas as film, new media, software development, and innovative commercial goods. The office shall work in collaboration with Vermont's private and public sectors to raise the profile and economic productivity of these activities.

(b) The office shall be administered by a director appointed by the secretary pursuant to section 2454 of this title and shall be supervised by the commissioner of the department of economic, housing and community development.

Sec. 16. REPEAL

10 V.S.A. chapter 26 (Vermont film corporation; Vermont film production incentive program) is repealed.

Sec. 17. RESERVED

Sec. 18. 11A V.S.A. § 8.20 is amended to read:

§ 8.20. MEETINGS

(a) The board of directors may hold regular or special meetings, as defined in subdivision 1.40(26) of this title, in or outside this state.

(b) The board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication, including an electronic, telecommunications, and video- or audio-conferencing conference telephone call, by which all directors participating may simultaneously or sequentially communicate with each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

Sec. 19. 11B V.S.A. § 8.20 is amended to read:

§ 8.20. REGULAR AND SPECIAL MEETINGS

(a) If the time and place of a directors' meeting is fixed by the bylaws or the board, the meeting is a regular meeting. All other meetings are special meetings.

(b) A board of directors may hold regular or special meetings in or out of this state.

(c) Unless the articles of incorporation or bylaws provide otherwise, a board may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication, including an electronic, telecommunications, and video- or audio-conferencing conference telephone call, by which all directors participating may simultaneously or sequentially communicate with each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

\* \* \* Finance; Access to Capital \* \* \*

Sec. 20. 8 V.S.A. § 12603 is amended to read:

§ 12603. MERCHANT BANKS

\* \* \*

(f) The minimum amount of initial capital for a merchant bank is ~~\$10,000,000.00~~ \$1,000,000.00, all of which ~~at least \$5,000,000.00~~ shall be common stock or equity interest in the merchant bank. ~~The balance may be composed of qualifying subordinated or similar debt~~ A merchant bank may use

qualified subordinated debt or senior debt as part of its capital structure above \$1,000,000.00, provided that the amount of subordinated debt or senior debt used as capital above \$1,000,000.00 is not greater than the amount of common stock or equity interest used as capital above \$1,000,000.00. The commissioner, in his or her discretion, may increase the minimum capital required for a merchant bank.

\* \* \*

(m) Any acquisition or change in control of ~~five~~ ten percent or more of the common stock or equity interests in a merchant bank shall be subject to the prior approval by the commissioner. The acquiring person shall file an application with the commissioner for approval. The application shall be subject to the provisions of subchapter 7 of chapter 201 of this title.

(n) The commissioner ~~may~~ shall examine the merchant bank and any person who controls it to the extent necessary to determine the soundness and viability of the merchant bank in the same manner as required by subchapter 5 of chapter 201 of this title.

(o) A merchant bank shall include on all its advertising a prominent disclosure that deposits are not accepted by a merchant bank.

(p) For purposes of this section, “control” means that a person:

(1) directly, indirectly, or acting through another person owns, controls, or has power to vote ten percent or more of any class of equity interest of the merchant bank;

(2) controls in any manner the election of a majority of the directors of the merchant bank; or

(3) directly or indirectly exercises a controlling influence over the management or policies of the merchant bank.

Sec. 21. 10 V.S.A. chapter 3 is added to read:

### CHAPTER 3. EB-5 INVESTMENT

#### § 21. EB-5 ENTERPRISE FUND

(a) An EB-5 enterprise fund is created for the operation of the state of Vermont EB-5 visa regional development center. The fund shall consist of revenues derived from fees charged by the agency of commerce and community development pursuant to subsection (c) of this section, any interest earned by the fund, and all sums which are from time to time appropriated for the support of the regional development center and its operations.



(b) The receipt and expenditure of moneys from the enterprise fund shall be under the supervision of the secretary of commerce and community development. The secretary 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 administration, the house committees on commerce and on ways and means, and the senate committees on finance and on economic development, housing and general affairs.

(c) Notwithstanding 32 V.S.A. chapter 7, subchapter 6, the secretary of commerce and community development is authorized to impose an administrative fee for services provided by the agency to investors in administering the state of Vermont EB-5 visa regional development center.

Sec. 22. [RESERVED]

Sec. 23. [RESERVED]

\* \* \* Housing and Development \* \* \*

Sec. 24. 24 V.S.A. § 2793d is amended to read:

§ 2793d. DESIGNATION OF VERMONT NEIGHBORHOODS

(a) A The Vermont downtown development board may designate a Vermont neighborhood in a municipality that has a duly adopted and approved plan and a planning process that is confirmed in accordance with section 4350 of this title, has adopted zoning bylaws and subdivision regulations in accordance with section 4442 of this title, and has a designated downtown district, a designated village center, a designated new town center, or a designated growth center served by municipal sewer infrastructure or a community or alternative wastewater system approved by the agency of natural resources, is authorized to apply for designation of a Vermont neighborhood. An application for designation may be made by a municipality or by a landowner who meets the criteria under subsection (f) of this section. A municipal decision to apply for designation shall be made by the municipal legislative body after at least one duly warned public hearing. An application by a municipality or a landowner shall be made after at least one duly warned public hearing by the legislative body. If the application is submitted by a landowner, the public hearing shall be a joint public hearing of the municipal legislative body and the appropriate municipal panel, and shall be held concurrently with the local permitting process. Designation is possible in two different situations:

(1) Per se approval. If a municipality or landowner submits an application in compliance with this subsection for a designated Vermont neighborhood that would have boundaries that are entirely within the

boundaries of a designated downtown district, designated village center, designated new town center, or designated growth center, the downtown board shall issue the designation.

(2) Designation by downtown board in towns without growth centers. If an application is submitted in compliance with this subsection by a municipality or a landowner in a municipality that does not have a designated growth center and proposes to create a Vermont neighborhood that has boundaries that include land that is not within its designated downtown, village center, or new town center, the downtown board shall consider the application. This application may be for approval of one or more Vermont neighborhoods that are outside but contiguous to a designated downtown district, village center, or new town center. The application for designation shall include a map of the boundaries of the proposed Vermont neighborhood, including the property outside but contiguous to a designated downtown district, village center, or new town center and verification that the municipality or landowner has notified the regional planning commission and the regional development corporation of its application for this designation.

\* \* \*

(f) If a municipality has not adopted either the minimum density requirements or design standards set out in subdivision (c)(5) of this section in its zoning bylaw, a landowner within a proposed Vermont neighborhood may apply to the downtown board for designation of a Vermont neighborhood that meets the standards set out in subdivision (c)(5) of this section by submitting:

(1) a copy of the plans and necessary municipal permits obtained for a project; and

(2) a letter of support for the project issued to the landowner from the municipality within 30 days of the effective date of a final municipal permit.

Sec. 25. 27A V.S.A. § 1-209 is amended to read:

§ 1-209. SMALL CONDOMINIUMS; EXCEPTION

~~A condominium that will contain no more than 12 units and is not subject to any development rights, unless the declaration provides that the entire act is applicable, shall not be subject to subsection Subsection 2-101(b), subdivisions 2-109(b)(2) and (11), subsection 2-109(g), section 2-115, and Article 4 of this title shall not apply to a condominium if the declaration:~~

(1) creates fewer than ten units; and

(2) restricts ownership of a unit to entities that are controlled by, affiliated with, or managed by the declarant.

## Sec. 26. REPEAL

Sec. 12 of No. 155 of the Acts of the 2009 Adj. Sess. (2010) (repeal of 27A V.S.A. § 1-209, effective January 1, 2012) is repealed.

## Sec. 27. [RESERVED]

## Sec. 28. [RESERVED]

\* \* \* Economic Development Planning \* \* \*

Sec. 29. 3 V.S.A. § 2293 is amended to read:

## § 2293. DEVELOPMENT CABINET

(a) Legislative purpose. The general assembly deems it prudent to establish a permanent and formal mechanism to assure collaboration and consultation among state agencies and departments, in order to support and encourage Vermont's economic development, while at the same time conserving and promoting Vermont's traditional settlement patterns, its working and rural landscape, its strong communities, and its healthy environment, all in a manner set forth in this section.

(b) Development cabinet. A development cabinet is created, to consist of the secretaries of the agencies of administration, of natural resources, of commerce and community affairs, ~~and~~ of transportation, and ~~the secretary of the agency~~ of agriculture, food and markets. The governor or the governor's designee shall chair the development cabinet. The development cabinet shall advise the governor on how best to implement the purposes of this section, and shall recommend changes as appropriate to improve implementation of those purposes. The development cabinet may establish interagency work groups to support its mission, drawing membership from any agency or department of state government.

(c) All state agencies that have programs or take actions affecting land use, including those identified under 3 V.S.A. chapter 67, shall, through or in conjunction with the members of the development cabinet:

- (1) Support conservation of working lands and open spaces.
- (2) Strengthen agricultural and forest product economies, and encourage the diversification of these industries.
- (3) Develop and implement plans to educate the public by encouraging discussion at the local level about the impacts of poorly designed growth, and support local efforts to enhance and encourage development and economic growth in the state's existing towns and villages.

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(4) Administer tax credits, loans, and grants for water, sewer, housing, schools, transportation, and other community or industrial infrastructure, in a manner consistent with the purposes of this section.

(5) To the extent possible, endeavor to make the expenditure of state appropriations consistent with the purposes of this section.

(6) Encourage development in, and work to revitalize, land and buildings in existing village and urban centers, including “brownfields,” housing stock, and vacant or underutilized development zones. Each agency is to set meaningful and quantifiable benchmarks.

(7) Encourage communities to approve settlement patterns based on maintaining the state’s compact villages, open spaces, working landscapes, and rural countryside.

(8) Encourage relatively intensive residential development close to resources such as schools, shops, and community centers and make infrastructure investments to support this pattern.

(9) Support recreational opportunities that build on Vermont’s outstanding natural resources, and encourage public access for activities such as boating, hiking, fishing, skiing, hunting, and snowmobiling. Support and work collaboratively to make possible sound development and well-planned growth in existing recreational infrastructure.

(10) Provide means and opportunity for downtown housing for mixed social and income groups in each community.

~~(11) Report annually to the governor and the legislature, through the chair of the development cabinet and the secretary of administration, on the effectiveness and impact of this section on the state’s economic growth and land use development and the activities of the council of regional commissions.~~

(12) Encourage timely and efficient processing of permit applications affecting land use, including 10 V.S.A. chapter 151 and the subdivision regulations adopted under 18 V.S.A. § 1218, in order to encourage the development of affordable housing and small business expansion, while protecting Vermont’s natural resources.

(13) Participate in creating a long-term economic development plan, including making available the members of any agency or department of state government as necessary and appropriate to support the mission of an interagency work group established under subsection (b) of this section.

(d)(1) Pursuant to the recommendations of the oversight panel on economic development created in Section G6 of No. 146 of the Acts of the 2009 Adj. Sess. (2010), the development cabinet shall create an interagency work group as provided in subsection (b) of this section with the secretary of commerce and community development serving as its chair.

(2) The mission of the work group shall be to develop a long-term economic development plan for the state, which shall identify goals and recommend actions to be taken over ten years, and which shall be consistent with the four goals of economic development identified in 10 V.S.A. § 3 and the outcomes for economic development identified in Sec. 8 of No. 68 of the Acts of the 2009 Adj. Sess. (2010).

(e)(1) On or before January 15, 2014, and every two years thereafter, the development cabinet or its workgroup shall complete a long-term economic development plan as required under subsection (d) of this section and recommend it to the governor.

(2) Commencing with the plan due on or before January 15, 2016, the development cabinet or its workgroup may elect only to prepare and recommend to the governor an update of the long-term economic development plan.

(3) Administrative support for the economic development planning efforts of the development cabinet or its workgroup shall be provided by the agency of commerce and community development.

~~(d)~~(f) Limitations. This cabinet is strictly an information gathering and coordinating cabinet and confers no additional enforcement powers.

Sec. 30. 24 V.S.A. chapter 117 is amended to read:

CHAPTER 117. MUNICIPAL AND REGIONAL PLANNING  
AND DEVELOPMENT

\* \* \*

§ 4345a. DUTIES OF REGIONAL PLANNING COMMISSIONS

A regional planning commission created under this chapter shall:

\* \* \*

(9) At least once every ~~eight~~ five years, review the compatibility of municipal plans, and if the regional planning commission finds that growth in a municipality without an approved plan is adversely affecting an adjoining municipality, it shall notify the legislative body of both municipalities of that fact and shall urge that the municipal planning be undertaken to mitigate those

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adverse effects. If, within six months of receipt of this notice, the municipality creating the adverse effects does not have an approved municipal plan, the regional commission shall adopt appropriate amendments to the regional plan as it may deem appropriate to mitigate those adverse effects.

\* \* \*

§ 4348a. ELEMENTS OF A REGIONAL PLAN

(a) A regional plan shall be consistent with the goals established in section 4302 of this title and shall include but need not be limited to the following:

\* \* \*

(10) An economic development element that describes present economic conditions and the location, type, and scale of desired economic development, and identifies policies, projects, and programs necessary to foster economic growth.

\* \* \*

§ 4348b. READOPTION OF REGIONAL PLANS

(a) Unless they are readopted, all regional plans, including all prior amendments, shall expire every ~~eight~~ five years.

(b)(1) A regional plan that has expired or is about to expire may be readopted as provided under section 4348 of this title for the adoption of a regional plan or amendment. Prior to any readoption, the regional planning commission shall ~~review and update the information on which the plan is based, and shall consider this information in evaluating the continuing applicability of the regional plan~~ prepare an assessment report which shall be a part of the readopted regional plan and shall detail the continuing applicability of the regional plan. The assessment report shall include:

(A) the extent to which the plan has been implemented since adoption or readoption;

(B) an evaluation of the goals and policies and any amendments necessary due to changing conditions of the region;

(C) an evaluation of the land use element and any amendments necessary to reflect changes in land use within the region or changes to regional goals and policies;

(D) priorities for implementation in the next five years; and

(E) updates to information and data necessary to support goals and policies.

(2) The readopted plan shall remain in effect for the ensuing ~~eight~~ five years unless earlier readopted.

(c) Upon the expiration of a regional plan under this section, the regional plan shall be of no further effect in any other proceeding.

\* \* \*

§ 4350. REVIEW AND CONSULTATION REGARDING MUNICIPAL  
PLANNING EFFORT

(a) ~~A~~ As provided in subdivisions 4345a(8) and (9) of this chapter, a regional planning commission shall consult with its municipalities with respect to the municipalities' planning efforts, ascertaining the municipalities' needs as individual municipalities and as neighbors in a region, assessing the compatibility of municipal plans, and identifying the assistance that ought to be provided by the regional planning commission. As a part of this consultation, the regional planning commission, after public notice, shall review the planning process of its member municipalities at least twice during a eight-year period, or more frequently on request of the municipality, and shall so confirm when a municipality:

(1) is engaged in a continuing planning process that, within a reasonable time, will result in a plan which is consistent with the goals contained in section 4302 of this title; and

(2) is maintaining its efforts to provide local funds for municipal and regional planning purposes.

~~(b)(4)~~ As part of the consultation process, the commission shall consider whether a municipality has adopted a plan. In order to obtain or retain confirmation of the planning process ~~after January 1, 1996~~, a municipality must have an approved plan. A regional planning commission shall review and approve plans and plan amendments of its member municipalities, when approval is requested and warranted. Each review shall include a public hearing which is noticed at least 15 days in advance by posting in the office of the municipal clerk and at least one public place within the municipality and by publication in a newspaper or newspapers of general publication in the region affected. The commission shall approve a plan if it finds that the plan:

~~(A)~~(1) is consistent with the goals established in section 4302 of this title;

~~(B)~~(2) is compatible with its regional plan;

~~(C)~~(3) is compatible with approved plans of other municipalities in the region; and

~~(D)~~(4) contains all the elements included in subdivisions 4382(a)(1)-(10) of this title.

~~(2) Prior to January 1, 1996, if a plan contains all the elements required by subdivisions 4382(a)(1)-(10) and is submitted to the regional planning commission for approval but is not approved, it shall be conditionally approved.~~

(c) A commission shall give approval or disapproval to a municipal plan or amendment within two months of its receipt following a final hearing held pursuant to section 4385 of this title. The fact that the plan is approved after the deadline shall not invalidate the plan. If the commission disapproves the plan or amendment, it shall state its reasons in writing and, if appropriate, suggest acceptable modifications. Submissions for approval that follow a disapproval shall receive approval or disapproval within 45 days.

(d) The commission shall file any adopted plan or amendment with the department of economic, housing and community development within two weeks of receipt from the municipality. Failure on the part of the commission to file the plan shall not invalidate the plan.

(e) During the period of time when a municipal planning process is confirmed:

(1) The municipality's plan will not be subject to review by the commissioner of department of economic, housing and community development under section 4351 of this title.

(2) State agency plans adopted under chapter 67 of Title 3 shall be compatible with the municipality's approved plan. ~~This provision shall not apply to plans that are conditionally approved under this chapter.~~

(3) The municipality may levy impact fees on new development within its borders, according to the provisions of chapter 131 of this title.

(4) The municipality shall be eligible to receive additional funds from the municipal and regional planning fund.

(f) Confirmation and approval decisions under this section shall be made by majority vote of the commissioners representing municipalities, in accordance with the bylaws of the regional planning commission.

\* \* \*

§ 4382. THE PLAN FOR A MUNICIPALITY



(a) A plan for a municipality may be consistent with the goals established in section 4302 of this title and compatible with approved plans of other municipalities in the region and with the regional plan and shall include the following:

\* \* \*

(11) An economic development element that describes present economic conditions and the location, type, and scale of desired economic development, and identifies policies, projects, and programs necessary to foster economic growth.

\* \* \*

#### § 4387. READOPTION OF PLANS

(a) All plans, including all prior amendments, shall expire every five years unless they are readopted according to the procedures in ~~section~~ sections 4384 and 4385 of this title.

~~(b)~~(1) A municipality may readopt any plan that has expired or is about to expire. Prior to any readoption, the planning commission shall ~~review and update the information on which the plan is based, and shall consider this information in evaluating the continuing applicability of the plan~~ prepare an assessment report which shall be a part of the readopted municipal plan and shall detail the continuing applicability of the municipal plan. The assessment report shall include:

(A) the extent to which the plan has been implemented since adoption or readoption;

(B) an evaluation of the goals and policies and any amendments necessary due to changing conditions of the municipality;

(C) an evaluation of the land use element and any amendments necessary to reflect changes in land use within the municipality or changes to municipal goals and policies;

(D) priorities for implementation in the next five years; and

(E) updates to information and data necessary to support goals and policies.

(2) The readopted plan shall remain in effect for the ensuing five years unless earlier readopted. A municipality may amend any section of a plan at any time within five years prior to expiration in light of new developments and changed conditions affecting the municipality.

(c) Upon the expiration of a plan, all bylaws ~~and~~, capital budgets, and programs then in effect shall remain in effect, but shall not be amended until a plan is in effect.

(d) The fact that a plan has not been approved shall not make it inapplicable, except as specifically provided by this chapter. Bylaws, capital budgets, and programs shall remain in effect, even if the plan has not been approved.

\* \* \*

### Sec. 31. REGIONAL DEVELOPMENT CABINETS

(a) The regional planning commission and any regional development corporation providing services within the regional planning commission region shall convene regular meetings of a "regional development cabinet," which shall include representation from the leadership of state and local providers of services within the region in the areas of planning, economic development, workforce training, utilities and physical infrastructure, transportation, and any other service areas as appropriate.

(b) Each regional development cabinet, in coordination with the agency of commerce and community development and municipal leaders as necessary, shall develop regional priorities to coordinate streamlined and efficient delivery of services, and to enable local, regional, and state agencies to better focus resources.

Secs. 32-34. [RESERVED]

\* \* \* Agriculture; Vermont Sustainable Jobs Fund \* \* \*

Sec. 35. 10 V.S.A. § 328 is amended to read:

### § 328. CREATION OF THE SUSTAINABLE JOBS FUND PROGRAM

\* \* \*

~~(c)(1) Notwithstanding the provisions of subdivision 216(14) of this title, the authority may contribute not more than \$1,000,000.00 to the capital of the corporation formed under this section, and the board of directors of the corporation formed under this section shall consist of three members of the authority designated by the authority, the secretary of commerce and community development, and seven members who are not officials or employees of a governmental agency appointed by the governor, with the advice and consent of the senate, for terms of five years, except that the governor shall stagger initial appointments so that the terms of no more than two members expire during a calendar year.~~

(A) the secretary of commerce and community development or his or her designee;

(B) the secretary of agriculture, food and markets or his or her designee;

(C) a director appointed by the governor; and

(D) eight independent directors, no more than two of whom shall be state government employees or officials, and who shall be selected as vacancies occur by vote of the existing directors from a list of names offered by a nominating committee of the board created for that purpose.

(2)(A) Each independent director shall serve a term of three years or until his or her earlier resignation.

(B) A director may be reappointed, but no independent director and no director appointed by the governor shall serve for more than three terms.

(C) The director appointed by the governor shall serve at the pleasure of the governor and may be removed at any time with or without cause.

(3) A director of the board who is or is appointed by a state government official or employee shall not be eligible to hold the position of chair, vice chair, secretary, or treasurer of the board.

\* \* \*

Sec. 36. VERMONT SUSTAINABLE JOBS FUND BOARD OF  
DIRECTORS; TRANSITION

Notwithstanding any other provision of law to the contrary, and notwithstanding any provision of the articles of incorporation or the bylaws of the corporation:

(1) The chair, vice chair, and secretary of the Vermont sustainable jobs fund board of directors as of January 1, 2011 shall constitute an initial nominating committee charged with appointing eight independent directors who shall take office on July 1, 2011.

(2) The initial nominating committee shall appoint each independent director to serve a term of one, two, or three years. Independent director terms shall be staggered so that the terms of no more than three members expire during a calendar year.

(3) The terms of the directors in office on the date of passage of this act shall expire on July 1, 2011.

Sec. 37. REPEAL

Secs. G18 and G19 of No. 146 of the Acts of the 2009 Adj. Sess. (2010) are repealed.

Sec. 38. Sec. G28 of No. 146 of the Acts of the 2009 Adj. Sess. (2010) is amended to read:

Sec. G28. EFFECTIVE DATES

Secs. G1 through G28 of this act (economic development) shall take effect upon passage, ~~except that Secs. G18 and G19 (Vermont sustainable jobs~~

~~(A) Secs. G18 and G19 (Vermont sustainable job fund program) shall take effect upon the cessation of state funding to the program from the general fund.~~

Sec. 39. 6 V.S.A. § 20 is amended to read:

§ 20. VERMONT LARGE ANIMAL VETERINARIAN EDUCATIONAL  
LOAN REPAYMENT FUND

(a) There is created a special fund to be known as the Vermont large animal veterinarian educational loan repayment fund that shall be used for the purpose of ensuring a stable and adequate supply of large animal veterinarians ~~throughout in regions of the state as determined by the secretary.~~ The fund shall be established and held separate and apart from any other funds or monies of the state and shall be used and administered exclusively for the purpose of this section. The money in the fund shall be invested in the same manner as permitted for investment of funds belonging to the state or held in the treasury.

\* \* \*

Sec. 40. 6 V.S.A. chapter 207 is amended to read:

CHAPTER 207. ~~STATE AGENCIES AND STATE FUNDED INSTITUTIONS TO PURCHASE~~ PROMOTION AND MARKETING OF VERMONT FOODS AND PRODUCTS

\* \* \*

§ 4602. GOOD AGRICULTURAL PRACTICES GRANT PROGRAM

(a) A good agricultural practices grant program (GAP) is established in the agency of agriculture, food and markets for the purpose of providing matching grant funds to agricultural producers whose markets require them to obtain or maintain GAP certification.

(b) The secretary may award matching grants for capital upgrades that will support Vermont agricultural producers in obtaining GAP certification. The

amount of matching funds required by an applicant for a GAP certification grant shall be determined by the secretary.

(c) An applicant may receive no more than 10 percent of the total funds appropriated for the program in a fiscal year.

Sec. 41. 6 V.S.A. § 3319 is added to read:

§ 3319. SKILLED MEAT CUTTER APPRENTICESHIP PROGRAM

(a) A skilled meat cutter apprenticeship program is established in the agency of agriculture, food and markets for the purpose of issuing a competitively awarded grant to develop, in consultation with slaughterhouse operators, meat processors, chefs, livestock farmers, and others, an apprenticeship or certificate program or both for the occupation of skilled meat cutter.

(b) The secretary shall make a single grant to the successful applicant for the creation and administration of an employment-based learning program with classroom and on-the-job training components.

Sec. 42. 6 V.S.A. § 4724 is added to chapter 211 to read:

§ 4724. LOCAL FOODS COORDINATOR

(a) The position of local food coordinator is established in the agency of agriculture, food and markets for the purpose of assisting Vermont producers to increase their access to commercial markets and institutions, including schools, state and municipal governments, and hospitals.

(b) The duties of the local foods coordinator shall include:

(1) working with institutions, distributors, producers, commercial markets, and others to create matchmaking opportunities that increase the number of Vermont institutions that purchase foods grown or produced in Vermont;

(2) coordinating funding and providing support to the farm-to-school and farm-to-institutions programs within the agency of agriculture, food and markets, and coordinating with interested parties to create matchmaking opportunities that increase participation in those programs;

(3) working with the department of buildings and general services to encourage the enrollment of state employees in a local community supported agriculture (CSA) organization; and

(4) providing technical support to local communities with their food security efforts.

(c) For purposes of this section, and notwithstanding 29 V.S.A. § 5, the commissioner of buildings and general services and the agency of agriculture, food and markets may authorize the advertisement or solicitation on state property of one or more local CSA organizations, subject to reasonable restrictions collaboratively adopted by the commissioner and the secretary on the time, manner, and location of such advertisements or solicitations, in order to encourage and enable state employees to enroll in a CSA.

#### Sec. 43. FARM-TO-PLATE INVESTMENT PROGRAM

##### IMPLEMENTATION

(a)(1) The agency of agriculture, food and markets shall coordinate with the Vermont sustainable jobs fund program established under 10 V.S.A. § 328, stakeholders, and other interested parties, including the agriculture development board, to implement actions necessary to fulfill the goals of the farm-to-plate investment program as established under 10 V.S.A. § 330.

(2) The actions shall be guided by, but not limited to, the strategies outlined in the farm-to-plate strategic plan.

(3) The agency shall develop and maintain a report of the actions undertaken to achieve the goals of the farm-to-plate investment program and the farm-to-plate strategic plan.

(b) The secretary of agriculture, food and markets may contract with a third party to assist the agency with implementation of the program, to track those activities over time, and to develop a report on the progress of the program.

Secs. 44-49. [RESERVED]

#### Sec. 50. REPORTING

On or before January 15, 2012, the agency of commerce and community development shall coordinate with each agency, department, or outside entity charged with oversight or implementation of a program or policy change in this act and submit in its annual report to the house committees on commerce and economic development and on agriculture, and to the senate committees on economic development, housing and general affairs and on agriculture:

(1) a performance analysis of each program or policy change following passage of this act; and

(2) recommendations for future actions in light of performance relative to the intended outcomes for each program or policy change.

#### Sec. 51. EFFECTIVE DATE

This act shall take effect on passage.

**Rep. Condon of Colchester** for the committee on Ways and Means recommended that the report of the committee on Commerce and Economic Development be amended as follows:

First: In Sec. 21, in 10 V.S.A. § 21(c), following the word “fee” by inserting “, not to exceed \$2,500.00.”

Second: By adding a Sec. 22 to read:

Sec. 22. EB-5 ENTERPRISE FUND FEE

On or before January 15, 2012, the secretary of commerce and community development shall submit a memorandum to the house committee on ways and means and the senate committee on finance concerning the performance of the EB-5 enterprise fund, including the number of projects and investors served, the amount of the fees imposed and collected, and recommendations concerning the EB-5 enterprise fund and the appropriate fee structure for the program.

Third: By striking Sec. 50 in its entirety and adding a new Sec. 50 to read:

Sec. 50. REPORTING

On or before January 15, 2012, the agency of commerce and community development shall coordinate with each agency, department, or outside entity charged with oversight or implementation of a program or policy change in this act and submit in its annual report to the house committees on commerce and economic development and on agriculture, and to the senate committees on economic development, housing and general affairs and on agriculture:

(1) a performance analysis of each program or policy change following passage of this act;

(2) an analysis of the number of private sector jobs created as a result of each program or policy in this act that has a direct financial impact to the state;

(3) an analysis of each program or policy in this act and the proportion of opportunities distributed to each gender; and

(4) recommendations for future actions in light of performance relative to the intended outcomes for each program or policy change.

**Rep. Manwaring of Wilmington,** for the committee on Appropriations recommended that the report of the committee on Commerce and Economic Development be amended as follows:

First: In Sec 1, by striking subdivision (b)(1) in its entirety and inserting a new subdivision (b)(1) to read:

(1) A qualified taxpayer and an eligible new employer shall each be eligible to receive an incentive equal to \$500.00 for each full-time employee of an eligible new employer hired on or before December 31, 2012. Incentive awards shall be made in the order in which they are claimed, as determined by the secretary in his or her discretion, not to exceed \$5,000.00 per recipient per year, and not to exceed a total program cap of \$50,000.00.

Second: In Sec. 6, by striking subdivision (b)(4) in its entirety and inserting in lieu thereof a new subdivision (b)(4) to read:

(4) The secretary shall award up to a maximum of \$75,000.00 per year for incentives in accordance with this section, which shall be made in the order in which they are claimed, as determined by the secretary in his or her discretion, and not to exceed a total program cap of \$375,000.00.

Third: In Sec. 7, by striking subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read:

(b) A qualified employer who hires a qualified long-term unemployed Vermonter on or before December 31, 2012 shall be eligible to receive a hiring incentive one year after the employee's date of hire in the amount of \$500.00 per employee. Incentive awards shall be made in the order in which they are claimed, as determined by the commissioner in his or her discretion, not to exceed \$5,000.00 per recipient per year, and not to exceed a total program cap of \$25,000.00.

Fourth: By adding a Sec. 49 to read:

#### Sec. 49. APPROPRIATIONS AND ALLOCATIONS

(a) Appropriations. In fiscal year 2012:

(1) The amount of \$25,000.00 is appropriated from the general fund to the department of labor for the long-term unemployed hiring incentive in Sec. 7 of this act.

(2) The amount of \$500,000.00 is appropriated from the general fund to the agency of agriculture, food and markets as follows:

(A) \$100,000.00 for the good agricultural practices grant program in Sec. 40 of this act.

(B) \$25,000.00 for the skilled meat cutter apprenticeship program in Sec. 41 of this act.

(C) \$125,000.00 for one full-time position of local foods coordinator and the activities associated with his or her position under 6 V.S.A. § 4724 in Sec. 42 of this act.



(D) \$100,000.00 for implementation of the farm-to-plate investment program in Sec. 43 of this act.

(E) \$75,000.00 for competitive matching grants for the farm-to-school program established in 6 V.S.A. § 4721.

(F) \$50,000.00 for competitive matching grants to increase slaughterhouse and meat processing facility capacity.

(G) \$25,000.00 for travel funds for agency personnel to participate in the legislative process for the federal farm bill.

(b) Allocations. In fiscal year 2012:

(1) From the next generation initiative fund:

(A) An amount up to \$350,000.00 shall be allocated to the Vermont internship program in Secs. 11–13 of this act.

(B) The amount of \$30,000.00 shall be allocated to the Vermont large animal veterinarian educational loan repayment fund in Sec. 39 of this act.

(C) The amount of \$57,500.00 shall be allocated to the agency of commerce and community development for the science, technology, engineering, and mathematics (STEM) incentive program in Sec. 6 of this act.

(2) Of the funds appropriated to the agency of commerce and community development the amount of \$100,000.00 shall be allocated for the office of creative economy in Secs. 15–16 of this act.

Fifth: By striking Sec. 51 in its entirety and inserting in lieu thereof a new Sec. 51 to read:

Sec. 51. EFFECTIVE DATE

This act shall take effect on passage, except that:

(1) Sec. 1 (Vermont business partner incentive) shall take effect July 1, 2011.

(2) Notwithstanding any other provision of law, no program funds shall be expended or allocated prior to July 1, 2011.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committees on Ways and Means and Appropriations were agreed to.

Pending the question, Shall the bill be amended as recommended by the committee on Commerce and Economic Development, as amended? **Rep. Krebs of South Hero** moved to amend the report of the committee on Commerce and Economic Development, as amended, as follows:

In Sec. 6, in subdivision (a)(1), following “accredited by”, by inserting “ABET, Inc.,” and by inserting a comma following “association”

Which was agreed to.

Pending the question, Shall the bill be amended as recommended by the committee on Commerce and Economic Development, as amended?

### Recess

At eleven o'clock and forty minutes in the forenoon, the Speaker declared a recess until four o'clock in the afternoon.

At four o'clock in the afternoon, the Speaker called the House to order.

### Consideration Resumed; Third Reading Ordered

#### H. 287

Consideration resumed on House bill, entitled

An act relating to job creation and economic development;

The recurring question, Shall the bill be amended as recommended by the committee on Commerce and Economic Development, as amended, was agreed to.

Pending the question, Shall the bill be read a third time? **Rep. Jewett of Ripton** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the bill be read a third time? was decided in the affirmative. Yeas, 122. Nays, 13.

Those who voted in the affirmative are:

Acinapura of Brandon	Burke of Brattleboro	Corcoran of Bennington
Ancel of Calais	Buxton of Royalton	Courcelle of Rutland City
Andrews of Rutland City	Campion of Bennington	Crawford of Burke
Atkins of Winooski	Cheney of Norwich	Dakin of Chester
Bartholomew of Hartland	Christie of Hartford	Davis of Washington
Batchelor of Derby	Clarkson of Woodstock	Deen of Westminster
Bissonnette of Winooski	Condon of Colchester	Devereux of Mount Holly
Bohi of Hartford	Conquest of Newbury	Dickinson of St. Albans
Botzow of Pownal	Consejo of Sheldon	Town
Branagan of Georgia	Copeland-Hanzas of	Donovan of Burlington
Browning of Arlington	Bradford	Edwards of Brattleboro

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Ellis of Waterbury	Larson of Burlington	Perley of Enosburgh
Emmons of Springfield	Lawrence of Lyndon	Poirier of Barre City
Evans of Essex	Lenes of Shelburne	Potter of Clarendon
Fagan of Rutland City	Leriche of Hardwick	Pugh of South Burlington
Fisher of Lincoln	Lewis of Berlin	Ralston of Middlebury
Font-Russell of Rutland City	Lewis of Derby	Reis of St. Johnsbury
Frank of Underhill	Lippert of Hinesburg	Savage of Swanton
French of Shrewsbury	Lorber of Burlington	Shand of Weathersfield
French of Randolph	Macaig of Williston	Sharpe of Bristol
Gilbert of Fairfax	Malcolm of Pawlet	Shaw of Pittsford
Grad of Moretown	Manwaring of Wilmington	Smith of New Haven
Greshin of Warren	Marcotte of Coventry	South of St. Johnsbury
Haas of Rochester	Marek of Newfane	Spengler of Colchester
Head of South Burlington	Martin of Springfield	Stevens of Waterbury
Heath of Westford	Martin of Wolcott	Stevens of Shoreham
Higley of Lowell	McAllister of Highgate	Strong of Albany
Hooper of Montpelier	McFaun of Barre Town	Stuart of Brattleboro
Howard of Cambridge	McNeil of Rutland Town	Taylor of Barre City
Howrigan of Fairfield	Miller of Shaftsbury	Till of Jericho
Hubert of Milton	Mook of Bennington	Toll of Danville
Jewett of Ripton	Moran of Wardsboro	Townsend of Randolph
Johnson of South Hero	Morrissey of Bennington	Trieber of Rockingham
Johnson of Canaan	Mrowicki of Putney	Waite-Simpson of Essex
Kitzmiller of Montpelier	Munger of South Burlington	Webb of Shelburne
Klein of East Montpelier	Myers of Essex	Wilson of Manchester
Koch of Barre Town	Nuovo of Middlebury	Wizowaty of Burlington
Krebs of South Hero	O'Brien of Richmond	Woodward of Johnson
Kupersmith of South Burlington	Olsen of Jamaica	Wright of Burlington *
Lanpher of Vergennes	Partridge of Windham	Yantachka of Charlotte
Larocque of Barnet	Pearce of Richford	Young of Albany
	Pearson of Burlington	

Those who voted in the negative are:

Bouchard of Colchester	Donahue of Northfield *	Peaslee of Guildhall
Burditt of West Rutland	Eckhardt of Chittenden	Scheuermann of Stowe
Canfield of Fair Haven	Hebert of Vernon	Turner of Milton *
Degree of St. Albans City	Helm of Fair Haven	
Donaghy of Poultney	Komline of Dorset	

Those members absent with leave of the House and not voting are:

Aswad of Burlington	Kilmartin of Newport City	Ram of Burlington
Brennan of Colchester	Masland of Thetford	Sweaney of Windsor
Clark of Vergennes	McCullough of Williston	Weston of Burlington
Jerman of Essex	Mitchell of Barnard	Winters of Williamstown
Keenan of St. Albans City	Peltz of Woodbury	

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**Rep. Donahue of Northfield** explained her vote as follows:

“Mr. Speaker:

I voted no. A half million in new money that appeared from no where? I, for one, want to know what we are trading off in our budget before deciding on priorities.”

**Rep. Turner of Milton** explained his vote as follows:

“Mr. Speaker:

While this bill does extend the VEGI program and changes the merchant banks are positive, this is not a jobs bill.

Vermont small businesses have been pleading for meaningful initiatives that would help the private sector invest and grow jobs. Issues like lowering taxes ensuring low cost reliable energy and reforming our strict regulatory system.

The number of private sector jobs that are expected to be created is unknown, while we again grow government jobs.”

**Rep. Wright of Burlington** explained his vote as follows:

“Mr. Speaker:

I voted yes because there are a couple of important provisions in H. 287. However, in every campaign last year the biggest issue was jobs, jobs, jobs!

This bill was called “job creation and economic development” but it does little to actually create jobs and it’s a tepid response at best in regards to economic development.”

#### **Message from the Senate No. 24**

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Mr. Speaker:

I am directed to inform the House that:

The Senate has on its part passed Senate bill of the following title:

**S. 16.** An act relating to confidentiality of cases accepted by the court diversion project.

In the passage of which the concurrence of the House is requested.

The Senate has considered House proposal of amendment to Joint Senate Resolution of the following title:

**J.R.S. 20.** Joint resolution providing for a Joint Assembly to vote on the retention of a Chief Justice and four Justices of the Supreme Court, three Judges of the Superior Court, and seven Judges of the District Court.

And has adopted the same in concurrence with further proposal of amendment in the adoption of which the concurrence of the House is requested.

**Bill Amended; Third Reading Ordered**

**H. 264**

**Rep. Lippert of Hinesburg**, for the committee on Judiciary, to which had been referred House bill, entitled

An act relating to driving while intoxicated and to forfeiture and registration of motor vehicles

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. PURPOSE

This act is intended to help prevent the harm caused to Vermonters and their families and friends by persons who repeatedly operate motor vehicles while under the influence of alcohol or other drugs. The list of Vermonters who have died or been injured because of persons who repeatedly operate motor vehicles while under the influence of alcohol or other drugs is far too long. It includes both the victims of recent high profile cases, such as Nick Fournier and Kaye Borneman, as well as others whose deaths and injuries may have received less public notice. All of these people are and were equally precious. This act cannot now help them, but it is intended to use lessons learned from these losses to create new approaches to help prevent the needless and heartrending harm suffered by the victims, living and dead, of those who drive under the influence.

\* \* \* Registration, licensing, and insurance \* \* \*

Sec. 2. 23 V.S.A. § 303 is amended to read:

§ 303. APPLICATION REQUIRED

\* \* \*

(b) An application for registration may be refused by the commissioner if it is not accompanied by proof of payment of the use tax imposed by ~~section~~ Section 4481 of the Internal Revenue Code of 1986 in such form as may be prescribed by the Secretary of the Treasury or in another form acceptable to the commissioner in the case of vehicles which are subject to the tax.

(c)(1) The commissioner shall refuse an application for registration of a vehicle with a single registrant or revoke the registration of a vehicle with a single registrant if the applicant's or registrant's license or learner's permit is suspended or revoked in any jurisdiction.

(2) The commissioner shall not approve an application for a transfer of title to a motor vehicle if the transferor's license or learner's permit is suspended or revoked in any jurisdiction and the transferor is named as a transferee or new owner on the application.

Sec. 3. 23 V.S.A. § 800 is amended to read:

§ 800. MAINTENANCE OF FINANCIAL RESPONSIBILITY

(a) No owner or operator of a motor vehicle required to be licensed shall operate or permit the operation of the vehicle upon the highways of the state without having in effect an automobile liability policy or bond in the amounts of at least \$25,000.00 for one person and \$50,000.00 for two or more persons killed or injured and \$10,000.00 for damages to property in any one accident. In lieu thereof, evidence of self-insurance in the amount of \$115,000.00 must be filed with the commissioner of motor vehicles. Such financial responsibility shall be maintained and evidenced in a form prescribed by the commissioner. The commissioner may require that evidence of financial responsibility be produced before motor vehicle inspections are performed pursuant to the requirements of section 1222 of this title.

(b) A person who violates this section shall be assessed a civil penalty of not more than ~~\$100.00~~ \$500.00, and such violation shall be a traffic violation within the meaning of chapter 24 of this title.

Sec. 4. DEPARTMENT OF MOTOR VEHICLES PROCEDURES

On or before January 15, 2012, the department of motor vehicles shall:

(1) configure its computer system so that it is able to accept notice directly from insurance companies that a person's motor vehicle insurance policy has been cancelled; and

(2) develop a system which, when a person applies for a license to operate a motor vehicle, alerts the department that the person's license is suspended in another jurisdiction.

\*\*\* Permitting Unlicensed or Impaired Person to Operate \*\*\*

Sec. 5. 23 V.S.A. § 1130 is amended to read:

§ 1130. PERMITTING UNLICENSED OR IMPAIRED PERSON TO OPERATE

(a) No person shall knowingly employ, as operator of a motor vehicle, another person as an operator of a motor vehicle knowing that the other person is not licensed as provided in this title.

(b) No person shall knowingly permit a motor vehicle owned by him or her or under his or her control to be operated by a another person who if the person who owns or controls the vehicle knows that the other person has no legal right to do so, or in violation of a provision of this title operate the vehicle.

(c) No person shall permit a motor vehicle owned by him or her or under his or her control to be operated by another person if the person who owns or controls the vehicle has actual or constructive knowledge that the operator is:

(1) under the influence of intoxicating liquor; or

(2) under the influence of any other drug or under the combined influence of alcohol and any other drug to a degree which renders the person incapable of driving safely.

(d)(1) A person who violates subsection (c) of this section shall be fined not more than \$1,000.00 or imprisoned for not more than six months, or both.

(2) If the death or if serious bodily injury as defined in 13 V.S.A. § 1021(2) results to any person other than the operator from a violation of subsection (c) of this section, the person convicted of the violation shall be fined not more than \$5,000.00 or imprisoned not more than two years, or both. The provisions of this subdivision do not limit or restrict prosecutions for manslaughter.

(e) In a prosecution under this section, the defendant may raise as an affirmative defense to be proven by a preponderance of the evidence that the unlicensed person obtained permission from the defendant to operate the motor vehicle by placing the defendant under duress or subjecting the defendant to coercion.

\* \* \* DUI penalties and alternative sanctions \* \* \*

Sec. 6. 23 V.S.A. § 1210 is amended to read:

§ 1210. PENALTIES

\* \* \*

(d) ~~Third or subsequent~~ offense. A person convicted of violating section 1201 of this title who has ~~twice~~ previously been convicted two times of a violation of that section shall be fined not more than \$2,500.00 or imprisoned not more than five years, or both. ~~At least 400 hours of community service shall be performed, or~~ 100 consecutive hours of the sentence of imprisonment shall be served and may not be suspended or deferred or served as a supervised sentence, except that credit for a sentence of imprisonment may be received for time served in a residential alcohol facility pursuant to sentence if the program is successfully completed. The court may impose a sentence that does not include a term of imprisonment or that does not require that the 100 hours of imprisonment be served consecutively only if the court makes written findings on the record that such a sentence will serve the interests of justice and public safety.

(e)(1) Fourth or subsequent offense. A person convicted of violating section 1201 of this title who has previously been convicted three times of a violation of that section shall be fined not more than \$5,000.00 or imprisoned not more than ten years, or both. At least 200 consecutive hours of the sentence of imprisonment shall be served and may not be suspended or deferred or served as a supervised sentence, except that credit for a sentence of imprisonment may be received for time served in a residential alcohol facility pursuant to sentence if the program is successfully completed. The court shall not impose a sentence that does not include a term of imprisonment unless the court makes written findings on the record that there are compelling reasons why such a sentence will serve the interests of justice and public safety.

(2) The department of corrections shall provide appropriate alcohol and substance abuse therapy to any person convicted of a violation of this subsection.

~~(e)(1)~~(f)(1) Death resulting. If the death of any person results from a violation of section 1201 of this title, the person convicted of the violation shall be fined not more than \$10,000.00 or imprisoned not less than one year nor more than 15 years, or both. The provisions of this subsection do not limit or restrict prosecutions for manslaughter.

(2) If the death of more than one person results from a violation of section 1201 of this title, the operator may be convicted of a separate violation of this subdivision for each decedent.

(3)(A) If the death of any person results from a violation of section 1201 of this title and the person convicted of the violation has previously been convicted two times of a violation of that section, a sentence ordered pursuant to this subsection shall, except as provided in subdivision (B) of this



subdivision (3), include at least a five-year term of imprisonment. The five-year minimum term of imprisonment required by this subdivision shall be served and may not be suspended, deferred, or served as a supervised sentence. The defendant shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the five-year term of imprisonment.

(B) Notwithstanding subdivision (A) of this subdivision (3), if the death of any person results from a violation of section 1201 of this title and the person convicted of the violation has previously been convicted two times of a violation of that section, the court may impose a sentence that does not include a term of imprisonment or which includes a term of imprisonment of less than five years if the court makes written findings on the record that such a sentence will serve the interests of justice and public safety.

~~(f)(1)~~(g)(1) Injury resulting. If serious bodily injury, as defined in 13 V.S.A. § 1021(2), results to any person other than the operator from a violation of section 1201 of this title, the person convicted of the violation shall be fined not more than \$5,000.00, or imprisoned not more than 15 years, or both.

(2) If serious bodily injury as defined in 13 V.S.A. § 1021(2) results to more than one person other than the operator from a violation of section 1201 of this title, the operator may be convicted of a separate violation of this subdivision for each person injured.

(3)(A) If serious bodily injury as defined in 13 V.S.A. § 1021(2) results to any person other than the operator from a violation of section 1201 of this title and the person convicted of the violation has previously been convicted two times of a violation of section 1201, a sentence ordered pursuant to this subsection shall, except as provided in subdivision (B) of this subdivision (3), include at least a five-year term of imprisonment. The five-year minimum term of imprisonment required by this subdivision shall be served and may not be suspended, deferred, or served as a supervised sentence. The defendant shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the five-year term of imprisonment.

(B) Notwithstanding subdivision (A) of this subdivision (3), if serious bodily injury as defined in 13 V.S.A. § 1021(2) results to any person other than the operator from a violation of section 1201 of this title and the person convicted of the violation has previously been convicted two times of a violation of section 1201, the court may impose a sentence that does not include a term of imprisonment or which includes a term of imprisonment of less than five years if the court makes written findings on the record that such a sentence will serve the interests of justice and public safety.

~~(g)~~(h) Determination of fines. In determining appropriate fines under this section the court may take into account the total cost to a defendant of alcohol screening, participation in the alcohol and driving education program and therapy and the income of the defendant.

~~(h)~~(i) A person convicted of violating section 1201 of this title shall be assessed a surcharge of \$60.00, which shall be added to any fine imposed by the court. The court shall collect and transfer such surcharge to the department of health for deposit in the health department's laboratory services special fund.

~~(i)~~(j) A person convicted of violating section 1201 of this title shall be assessed a surcharge of \$50.00, which shall be added to any fine or surcharge imposed by the court. The court shall collect and transfer the surcharge assessed under this subsection to the office of defender general for deposit in the public defender special fund specifying the source of the monies being deposited. The collection procedures described in 13 V.S.A. § 5240 shall be utilized in the collection of this surcharge.

~~(j)~~(k) A person convicted of violating section 1201 of this title shall be assessed a surcharge of \$50.00, which shall be added to any fine or surcharge imposed by the court. The court shall collect and transfer the surcharge assessed under this subsection to be credited to the DUI enforcement fund. The collection procedures described in 13 V.S.A. § 5240 shall be utilized in the collection of this surcharge.

#### Sec. 7. COMPREHENSIVE SYSTEM TO REDUCE REPEAT DUI

##### OFFENSES; DEPARTMENTS OF MOTOR VEHICLES, PUBLIC SAFETY, AND CORRECTIONS

On or before January 15, 2012, the departments of motor vehicles, public safety, and corrections shall jointly report to the house and senate committees on judiciary a plan for implementation of a comprehensive system of penalties, alternative sanctions, and treatment to reduce the number of persons with repeat offenses of operating motor vehicles while under the influence of alcohol or other drugs. The system may include, among other measures, the following:

(1) a mandatory sobriety program for repeat DUI offenders similar to South Dakota's "24/7 Sobriety Program;"

(2) increased penalties for operating a vehicle with an alcohol concentration substantially greater than the legal limit;

(3) lowering the legally permissible alcohol concentration for operating a motor vehicle by persons who have previously been convicted of operating a motor vehicle while under the influence of alcohol or other drugs;

(4) enhanced use of ignition interlock devices;

(5) mandatory alcohol and drug counseling and treatment for persons convicted of operating a motor vehicle while under the influence of alcohol or other drugs;

(6) establishment of a secure facility for housing and treatment of persons convicted of operating a motor vehicle while under the influence of alcohol or drugs; and

(7) the circumstances under which the operator of a motor vehicle may be required to submit to a blood test to determine whether he or she has been operating the vehicle while under the influence of a drug other than alcohol.

\* \* \* Detention of operator; forfeiture and immobilization of vehicle \* \* \*

Sec. 8. 23 V.S.A. § 1212 is amended to read:

§ 1212. CONDITIONS OF RELEASE AND PAROLE; ARREST UPON VIOLATION

\* \* \*

(d) A law enforcement officer or a corrections officer who observes a person violating a condition of parole requiring that the person not operate a motor vehicle may promptly arrest the person for violating the condition and may detain the person pursuant to 28 V.S.A. § 551. The officer may immobilize the vehicle and shall immediately notify the parole board of the suspected violation. If the parole board determines pursuant to 28 V.S.A. § 552 that a parole violation has occurred, the board shall notify the state's attorney in the county where the violation occurred, who may institute forfeiture proceedings against the vehicle under section 1213c of this title.

Sec. 9. 23 V.S.A. § 1213b is amended to read:

§ 1213b. FORFEITURE OF VEHICLE

At the time of sentencing after a third or subsequent conviction under section 1201 of this title or after a conviction under subdivision 1130(c)(2) of this title, or upon a determination by the parole board that a person has violated a condition of parole requiring that the person not operate a motor vehicle, the court may, upon motion of the state and in addition to any penalty imposed by law and after notice and hearing, order the motor vehicle operated by the

defendant or parolee at the time of the offense forfeited and sold as provided in section 1213c of this title.

The bill, having appeared on the Calendar one day for notice, was taken up read the second time, report of the committee on Judiciary agreed to.

Pending the question, Shall the bill be read a third time? **Rep. Savage of Swanton** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the bill be read a third time? was decided in the affirmative. Yeas, 136. Nays, 0.

Those who voted in the affirmative are:

Acinapura of Brandon	Donaghy of Poultney	Krebs of South Hero
Ancel of Calais	Donahue of Northfield	Kupersmith of South Burlington
Andrews of Rutland City	Donovan of Burlington	Lanpher of Vergennes
Atkins of Winooski	Eckhardt of Chittenden	Larocque of Barnet
Bartholomew of Hartland	Edwards of Brattleboro	Larson of Burlington
Batchelor of Derby	Ellis of Waterbury	Lawrence of Lyndon
Bissonnette of Winooski	Emmons of Springfield	Lenes of Shelburne
Bohi of Hartford	Evans of Essex	Leriche of Hardwick
Botzow of Pownal	Fagan of Rutland City	Lewis of Berlin
Bouchard of Colchester	Font-Russell of Rutland City	Lewis of Derby
Branagan of Georgia	Frank of Underhill	Lippert of Hinesburg
Browning of Arlington	French of Shrewsbury	Lorber of Burlington
Burditt of West Rutland	French of Randolph	Macaig of Williston
Burke of Brattleboro	Gilbert of Fairfax	Malcolm of Pawlet
Buxton of Royalton	Grad of Moretown	Manwaring of Wilmington
Campion of Bennington	Greshin of Warren	Marcotte of Coventry
Canfield of Fair Haven	Haas of Rochester	Marek of Newfane
Cheney of Norwich	Head of South Burlington	Martin of Springfield
Christie of Hartford	Heath of Westford	Martin of Wolcott
Clarkson of Woodstock	Hebert of Vernon	McAllister of Highgate
Condon of Colchester	Helm of Fair Haven	McFaun of Barre Town
Conquest of Newbury	Higley of Lowell	McNeil of Rutland Town
Consejo of Sheldon *	Hooper of Montpelier	Miller of Shaftsbury
Copeland-Hanzas of Bradford	Howard of Cambridge	Mook of Bennington
Corcoran of Bennington	Howrigan of Fairfield	Moran of Wardsboro
Courcelle of Rutland City	Hubert of Milton	Morrissey of Bennington
Crawford of Burke	Jewett of Ripton	Mrowicki of Putney
Dakin of Chester	Johnson of South Hero	Munger of South Burlington
Davis of Washington	Johnson of Canaan	Myers of Essex
Deen of Westminster	Keenan of St. Albans City	Nuovo of Middlebury
Degree of St. Albans City	Kilmartin of Newport City	O'Brien of Richmond
Devereux of Mount Holly	Kitzmiller of Montpelier *	Olsen of Jamaica
Dickinson of St. Albans Town	Klein of East Montpelier	Partridge of Windham
	Koch of Barre Town	Pearce of Richford
	Komline of Dorset	

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Pearson of Burlington	Shaw of Pittsford	Trieber of Rockingham
Peaslee of Guildhall	Smith of New Haven	Turner of Milton
Perley of Enosburgh	South of St. Johnsbury	Waite-Simpson of Essex
Poirier of Barre City	Spengler of Colchester	Webb of Shelburne
Potter of Clarendon	Stevens of Waterbury	Wilson of Manchester
Pugh of South Burlington	Stevens of Shoreham	Wizowaty of Burlington
Ralston of Middlebury	Strong of Albany	Woodward of Johnson
Reis of St. Johnsbury	Stuart of Brattleboro	Wright of Burlington
Savage of Swanton	Taylor of Barre City	Yantachka of Charlotte
Scheuermann of Stowe	Till of Jericho	Young of Albany
Shand of Weathersfield	Toll of Danville	
Sharpe of Bristol	Townsend of Randolph	

Those who voted in the negative are: none

Those members absent with leave of the House and not voting are:

Aswad of Burlington	Masland of Thetford	Sweaney of Windsor
Brennan of Colchester	McCullough of Williston	Weston of Burlington
Clark of Vergennes	Mitchell of Barnard	Winters of Williamstown
Fisher of Lincoln	Peltz of Woodbury	
Jerman of Essex	Ram of Burlington	

**Rep. Consejo of Sheldon** explained his vote as follows:

“Mr. Speaker:

We are finally sending a clear message to those that choose to drive while they are intoxicated. It is very sad that this effort would not bring us back all the innocent victims of drunk drivers. It will however, help in reducing the odds that any of us would have their life tragically altered in a senseless way. Nick Fournier, this new law is in your memory.”

**Rep. Kitzmiller of Montpelier** explained his vote as follows:

“Mr. Speaker:

In 1981, my father was killed by a drunk driver. It was that driver’s third DUI wreck within a decade. The judge sentenced that driver to one night in jail, on the grounds that he had a family to feed.

I am proud to support this bill!”

### **Bill Read Second Time; Third Reading Ordered**

#### **H. 430**

**Rep. Campion of Bennington** spoke for the committee on Education.

House bill entitled

An act relating to providing mentoring support for new principals and technical center directors

Having appeared on the Calendar one day for notice, was taken up, read the second time and third reading ordered.

**Bill Read Second Time; Consideration Interrupted by Recess**

**H. 41**

**Rep. Moran of Wardsboro**, for the committee on General, Housing and Military Affairs, to which had been referred House bill, entitled

An act relating to requiring employment breaks

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 21 V.S.A. § 304 is amended to read:

§ 304. EMPLOYMENT CONDITIONS; EMPLOYMENT BREAKS

(a) An employer shall ~~provide an~~ offer each employee with paid or unpaid breaks from work totaling at least 30 minutes during each six hours of work to assure that employees have reasonable opportunities during work periods to eat and to use toilet facilities in order to protect the health and hygiene of the employee to eat, rest, and use toilet facilities. If the break from work would pose a threat to property, life, public safety, or public health, the employer may offer a shorter break or reschedule the time that the break may be taken.

(b) An employer may adopt an employment break policy more generous than that provided by this section.

(c) Nothing in this section shall be construed to diminish an employer's obligation to comply with any collective bargaining agreement or any employment benefit program or plan that provides greater break rights than the rights provided by this section. A collective bargaining agreement or employment benefit program or plan may not diminish the rights provided by this section.

(d) An employer shall not retaliate or discriminate against an employee for asserting the employee's rights provided by this section.

(e) An employee who is aggrieved by a violation of this section may bring a civil action for equitable and other appropriate relief, including reinstatement, civil damages in the amount of three times the employee's hourly wage multiplied by the number of hours of break time that the employee was denied, costs, and reasonable attorney's fees. No action may be

brought pursuant to this subsection unless the employee has affirmatively requested, and been denied, the work break period allowed by this section.

(f) An employer who violates this section may be assessed an administrative penalty of up to \$100.00 for each violation not to exceed \$1,000.00 in any 30-day period. A complaint shall be brought to the department within 60 days of an alleged violation.

Sec. 2. 21 V.S.A. § 303 is amended to read:

§ 303. PENALTY; JUDICIAL BUREAU

Any employer who violates the provisions of ~~this subchapter~~ section 305 of this title shall be assessed a civil penalty of not more than \$100.00 for each and every violation.

The bill, having appeared on the Calendar one day for notice, was taken up and read the second time.

Pending the question, Shall the House amend the bill as recommended by the committee on General, Housing and Military Affairs?

**Recess**

At five o'clock and forty minutes in the afternoon, the Speaker declared a recess until the fall of the gavel.

At six o'clock and thirty minutes in the evening., the Speaker called the House to order.

**Consideration Resumed;  
Bill Amended and Third Reading Ordered**

**H. 41**

Consideration resumed on House bill, entitled

An act relating to requiring employment breaks;

**Rep. Moran of Wardsboro** moved to amend the report of the committee on General, Housing and Military Affairs, as follows:

In Sec. 1, 21 V.S.A. § 304, in subsection (a) by adding a third sentence to read "This section does not apply to any place of employment where the nature of the work done by the employees allows them frequent breaks during the day."

Which was agreed to.

Pending the question, Shall the bill be amended as recommended by the committee on General, Housing and Military Affairs, as amended? **Rep.**

**Lippert of Hinesburg**, moved to amend the report of the committee on Housing, General and Military Affairs, as amended, as follows:

First: In Sec. 1, 21 V.S.A. § 304, in subsection (e), in the first sentence, by striking out “in the amount of three times the employee’s hourly wage multiplied by the number of hours of break time that the employee was denied”

Second: In Sec. 2, 21 V.S.A. § 303 by striking out “section 305 of this title” and inserting in lieu thereof “section 301 or 305 of this title”

Which was agreed to.

Pending the question, Shall the bill be amended as recommended by the committee on General, Housing and Military Affairs, as amended? **Rep. Olsen of Jamaica** moved to amend the report of the committee on General, Housing and Military Affairs, as amended, as follows:

By striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. STUDY

(a) The department of labor shall conduct a study of whether employees are being denied reasonable opportunities for employment breaks under 21 V.S.A. § 304, and to make a determination as to whether the problem is significant enough to warrant a change in the law.

(b) The department shall report its findings and any recommendations to the house committee on general, housing and military affairs and the senate committee on economic development, housing and general affairs by March 17, 2012.

Which was disagreed to on a Division vote. Yeas, 42. Nays, 64.

Thereupon, the report of the committee on General, Housing and Military Affairs, as amended, was agreed to.

Pending the question, Shall the bill be read a third time? **Rep. Turner of Milton** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the bill be read a third time? Was decided in the affirmative. Yeas, 78. Nays, 56.

Those who voted in the affirmative are:

Ancel of Calais	Botzow of Pownal	Cheney of Norwich
Andrews of Rutland City	Burke of Brattleboro	Christie of Hartford
Bartholomew of Hartland	Buxton of Royalton *	Clarkson of Woodstock
Bohi of Hartford	Campion of Bennington	



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Copeland-Hanzas of Bradford	Jewett of Ripton	Munger of South Burlington
Courcelle of Rutland City	Johnson of South Hero	Nuovo of Middlebury
Dakin of Chester	Keenan of St. Albans City	O'Brien of Richmond
Davis of Washington	Kitzmiller of Montpelier	Partridge of Windham
Deen of Westminster	Klein of East Montpelier	Pearson of Burlington
Donovan of Burlington	Kupersmith of South Burlington	Poirier of Barre City
Edwards of Brattleboro	Lanpher of Vergennes	Pugh of South Burlington
Ellis of Waterbury	Larson of Burlington	Ram of Burlington
Emmons of Springfield	Lenes of Shelburne	Shand of Weathersfield
Fisher of Lincoln	Leriche of Hardwick	Sharpe of Bristol
Font-Russell of Rutland City	Lippert of Hinesburg	South of St. Johnsbury
Frank of Underhill	Lorber of Burlington	Spengler of Colchester
French of Shrewsbury	Macaig of Williston	Stevens of Waterbury *
French of Randolph	Malcolm of Pawlet	Stuart of Brattleboro
Gilbert of Fairfax	Manwaring of Wilmington	Taylor of Barre City
Grad of Moretown	Marek of Newfane	Till of Jericho
Haas of Rochester	Martin of Springfield	Trieber of Rockingham
Head of South Burlington	Martin of Wolcott	Waite-Simpson of Essex
Heath of Westford	Miller of Shaftsbury	Webb of Shelburne *
Hooper of Montpelier	Mook of Bennington	Wizowaty of Burlington
Howrigan of Fairfield	Moran of Wardsboro	Woodward of Burlington
Jerman of Essex	Mrowicki of Putney	Yantachka of Charlotte
		Young of Albany

Those who voted in the negative are:

Acinapura of Brandon	Fagan of Rutland City	Morrissey of Bennington
Batchelor of Derby	Greshin of Warren	Myers of Essex
Bouchard of Colchester	Hebert of Vernon	Olsen of Jamaica
Branagan of Georgia	Helm of Fair Haven	Pearce of Richford
Browning of Arlington	Higley of Lowell	Peaslee of Guildhall
Burditt of West Rutland	Howard of Cambridge	Perley of Enosburgh
Canfield of Fair Haven	Hubert of Milton	Potter of Clarendon
Condon of Colchester	Johnson of Canaan	Ralston of Middlebury
Conquest of Newbury	Kilmartin of Newport City	Savage of Swanton
Corcoran of Bennington	Koch of Barre Town	Scheuermann of Stowe
Crawford of Burke	Komline of Dorset	Shaw of Pittsford
Degree of St. Albans City	Krebs of South Hero	Smith of New Haven
Devereux of Mount Holly	Larocque of Barnet	Stevens of Shoreham
Dickinson of St. Albans Town	Lawrence of Lyndon	Strong of Albany
Donaghy of Poultney	Lewis of Berlin	Toll of Danville
Donahue of Northfield	Lewis of Derby *	Townsend of Randolph
Eckhardt of Chittenden	Marcotte of Coventry	Turner of Milton
Evans of Essex	McAllister of Highgate	Wilson of Manchester
	McNeil of Rutland Town	Wright of Burlington

Those members absent with leave of the House and not voting are:

Aswad of Burlington	Bissonnette of Winooski	Clark of Vergennes
Atkins of Winooski	Brennan of Colchester	Consejo of Sheldon

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Masland of Thetford  
McCullough of Williston  
McFaun of Barre Town

Mitchell of Barnard  
Peltz of Woodbury  
Reis of St. Johnsbury

Sweaney of Windsor  
Weston of Burlington  
Winters of Williamstown

**Rep. Buxton of Royalton** explained her vote as follows:

“Mr. Speaker:

I support this bill because it protects workers from losing their job or risking their health because of unreasonable business practices. For the vast majority of Vermont employers and employees this bill will not apply. We should applaud those businesses for implementing workers rights policies – without waiting for the government to pass a law. But for the very few who might benefit from the protection this law provides – I’m proud to demonstrate my support.”

**Rep. Degree of St. Albans City** explained his vote as follows:

“Mr. Speaker:

By putting a time limit on how long an employee has for breaks this bill inadvertently gives the employers the legal ability to deny reasonable requests for breaks which current law allow for. This bill is a step in the wrong direction and does exactly the opposite of what it tries to accomplish.”

**Rep. Lewis of Derby** explained his vote as follows:

“Mr. Speaker:

I’m having a hard time accepting that this issue of breaks is a problem. When you gotta go you gotta go or the problem will be solved and probably will not happen again.”

**Rep. Stevens of Waterbury** explained his vote as follows:

“Mr. Speaker:

While we celebrate and support our growing business world and try to give them the tools to create more jobs, we must remember that those jobs are filled by our neighbors and family. It is our role in a democracy to protect those with the quietest voices. This bill is a very small step in that direction and most businesses do the right thing.”

**Rep. Webb of Shelburne** explained her vote as follows:

“Mr. Speaker:

I had initially planned to vote against this bill because I was concerned that this placed undue control over reasonable employers. I came to realize

that only an unreasonable employer would restrict someone from using the bathroom for six hours.”

**Committee Relieved of Consideration  
and Bill Committed to Other Committee**

**H. 302**

**Rep. Botzow of Pownal** moved that the committee on Education be relieved of House bill, entitled

An act relating to assigning responsibilities regarding information security to the department of information and innovation

And that the bill be committed to the committee on Commerce and Economic Development, which was agreed to.

**Adjournment**

At eight o'clock and eighteen minutes in the evening, on motion of **Rep. Turner of Milton**, the House adjourned until tomorrow at nine o'clock and thirty minutes in the forenoon.