Journal of the Senate

MONDAY, APRIL 30, 2012

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the House No. 67

A message was received from the House of Representatives by Mr. William M. MaGill, its First Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has considered Senate proposals of amendment to House bill of the following title:

H. 730. An act relating to miscellaneous consumer protection laws.

And has refused to concur therein and asks for a Committee of Conference upon the disagreeing votes of the two Houses;

And the Speaker appointed as members of such Committee on the part of the House:

Rep. Marcotte of Coventry
Rep. Botzow of Pownal
Rep. Shand of Weathersfield

Message from the House No. 68

A message was received from the House of Representatives by Mr. William M. MaGill, its First Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has considered the report of the Committee of Conference upon the disagreeing votes of the two Houses on House bill of the following title:

H. 789. An act relating to reapportioning the final representative districts of the House of Representatives.

And has adopted the same on its part.

Committee Relieved of Further Consideration; Bill Committed

H. 533.

On motion of Senator Campbell, the Committee on Rules was relieved of further consideration of House bill entitled:

An act relating to insurance business transfers,

and the bill was committed to the Committee on Finance.

Committee Relieved of Further Consideration; Bill Committed

H. 790.

On motion of Senator Campbell, the Committee on Rules was relieved of further consideration of House bill entitled:

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

and the bill was committed to the Committee on Government Operations.

Bill Referred

House bill of the following title was read the first time and referred:

H. 718.

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

To the Committee on Rules.

Joint Senate Resolution Adopted on the Part of the Senate

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senators Carris and Mullin,

J.R.S. 61. Joint resolution relating to weekend adournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Thursday, May 3, 2012, or, Friday, May 4, 2012, it be to meet again no later than Tuesday, May 8, 2012.

Bill Passed in Concurrence with Proposal of Amendment; Rules Suspended; Bill Messaged

H. 747.

House bill of the following title was read the third time and passed in concurrence with proposal of amendment:

An act relating to cigarette manufacturers.

Thereupon, on motion of Senator Campbell, the rules were suspended and the bill was ordered messaged to the House forthwith.

Proposal of Amendment; Third Reading Ordered

H. 577.

Senator Brock, for the Committee on Natural Resources and Energy, to which was referred House bill entitled:

An act relating to public water systems.

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

Sec. 5. 10 V.S.A. § 1973 is amended to read:

§ 1973. PERMITS

* * *

(j)(1) When an applicant for a permit under this section proposes a water supply or wastewater system with isolation distances that extend onto property other than the property for which the permit is sought, the permit applicant shall send ~~a copy of the complete permit application~~ by certified mail, on a form provided by the secretary, a notice of an intent to file a permit application, including ~~any plans~~ the site plan that accurately depicts all isolation distances, to any landowner affected by the proposed isolation distances ~~no later than~~ at least seven calendar days prior to the date that the permit application is submitted to the secretary.

(2) If, during the course of the secretary's review of an application for a permit under this section, the location of a water supply or wastewater system permit is revised and the isolation distances of the revised system extend onto property other than the property for which the permit is sought, the permit applicant shall ~~provide~~ send by certified mail a copy of any revised plan to any landowner affected by the isolation distances.

(3) If, after a permit has been issued under this section, a water supply or wastewater system is not installed according to the permitted plan and the record drawings submitted under subsection (e) of this section indicate that the isolation distances of the ~~as-built~~ system as constructed extend onto property other than the property on which the ~~as-built~~ system is located, the permittee shall ~~provide~~ send by certified mail a notification form provided by the secretary with a copy of the record drawings showing all isolation distances to any landowner affected by the isolation distances.

(4) A permit applicant or permittee subject to the requirements of subdivisions (1) through (3) of this subsection shall certify to the secretary that the ~~notice~~ notices and information required by this subsection have been sent to affected landowners and shall include in the certification the name and address of all affected landowners. If the secretary approves a permit application under this section, the permit shall not be issued to a permit applicant subject to the requirements of ~~subdivisions~~ subdivision ~~(1) and~~ (2) of this subsection until seven calendar days after the permit applicant certifies to the secretary that the notice required under this subsection has been sent to affected landowners.

Sec. 6. EFFECTIVE DATE

(a) This section and Secs. 1 (combined sewer overflows; awards), 2 (public water systems permits), 3 (repeal of temporary permits for public water systems), and 4 (awards from special environmental revolving loan fund) of this act shall take effect on July 1, 2012.

(b) Sec. 5 (notice of isolation distances) shall take effect on September 1, 2012.

And that after passage the title of the bill be amended to read:

An act relating to public water systems and potable water supply and wastewater system isolation distances.

And that the bill ought to pass in concurrence with such adoption of amendment.

Senator Nitka, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Natural Resources and Energy.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the proposal of amendment was agreed to, and third reading of the bill was ordered.

Third Reading Ordered

H. 679.

Senator MacDonald, for the Committee on Finance, to which was referred House bill entitled:

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

Reported that the bill ought to pass in concurrence.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered.

Proposal of Amendment; Third Reading Ordered

H. 600.

Senator White, for the Committee on Judiciary, to which was referred House bill entitled:

An act relating to mandatory mediation in foreclosure proceedings.

Reported recommending that the Senate propose to the House to amend the bill as follows:

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

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

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

Sec. 7. EFFECTIVE DATES

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

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

And that the bill ought to pass in concurrence with such proposal of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the proposals of amendment were collectively agreed to.

Thereupon, the question, Shall the bill be read a third time?, Senator Campbell moved that the Senate propose to the House that the bill be amended by adding a new section to be numbered Sec. 4a to read as follows:

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

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

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as moved by Senator Campbell?, Senator Campbell, requested and was granted leave to withdraw the proposal of amendment.

Thereupon, third reading of the bill was ordered.

Message from the House No. 69

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has considered bills originating in the Senate of the following titles:

S. 95. An act relating to exemptions for newspaper deliverers from the unemployment statutes; relieving an employer's experience rating record of charges; studying the receipt of unemployment compensation between academic terms; allowing school employees to be paid wages over the course of a year; and requiring employers to furnish required work apparel.

S. 99. An act relating to supporting mobile home ownership, strengthening mobile home parks and preserving affordable housing.

And has passed the same in concurrence with proposals of amendment in the adoption of which the concurrence of the Senate is requested.

The House has considered joint resolution originating in the Senate of the following title:

J.R.S. 54. Joint resolution approving a land exchange in Alburgh and a lease with Camp Downer, Inc.

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

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

H. 485. An act relating to establishing universal recycling of solid waste.

And has severally concurred therein with a further proposal of amendment thereto, in the adoption of which the concurrence of the Senate is requested.

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

H. 523. An act relating to revising the state highway condemnation law.

And has severally concurred therein with a further proposal of amendment thereto, in the adoption of which the concurrence of the Senate is requested.

Proposal of Amendment; Third Reading Ordered

H. 753.

Senator Mullin, for the Committee on Education, to which was referred House bill entitled:

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

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

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

Sec. 2. SCHOOL DISTRICT MERGER INCENTIVE PROGRAM

* * *

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

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

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

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

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

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

Sec. 3. REPEAL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) the transition facilitation grant available under Sec. 6 of this act; and

(2) a one-time grant of $100,000.00 from the education fund for the purposes of reducing taxes in the affected towns during fiscal year 2014.

Sec. 8. SUPERVISORY UNION SIZE AND STRUCTURE

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

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

(2) consider structural elements, such as:

(A) management models;

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

(C) special education services;

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

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

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

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

(H) ownership of real and personal property;

(I) ability to borrow money; and

(J) alignment of curricula and calendars;

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

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

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

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

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

(a) From the education fund, the commissioner of education shall reimburse up to $20,000.00 of fees paid by a study committee established under 16 V.S.A. § 706 for legal and other consulting services necessary to

analyze the advisability of creating a union school district or a unified union school district and to prepare the report required by 16 V.S.A. § 706b.

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

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

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

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

Sec. 10. REPEAL

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

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

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

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

(2) $150,000.00.

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

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

(2) An interstate, union, or unified union school district, including a RED, that expands by merging with one or more additional school districts is not eligible to receive a grant under this section if the original merged district

received a transition facilitation grant under this section, Act 153, or Sec. 168a of No. 122 of the Acts of the 2003 Adj. Sess. (2004), as amended by Sec. 23 of No. 66 of the Acts of 2007, as further amended by Sec. 5 of No. 153 of the Acts of the 2009 Adj. Sess. (2010), and as repealed by Sec. 10 of this act.

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

Sec. 12. APPLICABILITY; JOINT CONTRACT SCHOOL

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

* * * Incentives; Regional Education Districts * * *

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

Sec. 4. VOLUNTARY SCHOOL DISTRICT MERGER; INCENTIVES

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

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

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

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

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

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

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

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

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

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

* * *

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

* * *

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

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

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

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

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

(B) $150,000.00.

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

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

* * * Interstate School Districts * * *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 17. MODIFIED UNIFIED UNION SCHOOL DISTRICT

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

(1)(A) if all local elementary school districts in the member towns of an existing union high school or union middle school-high school district ("union high school district") vote whether to establish a unified union school district providing prekindergarten or kindergarten through grade 12, and

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The study committee shall transmit the report to the commissioner who shall submit the report with his or her recommendations to the state board of education. That board after notice to the study committee and after giving the committee an opportunity to be heard shall consider the report and the commissioner's recommendations, and decide whether the formation of such union school district will be for the best interest of the state, the students, and the school districts proposed to be members of the union. The board may request the commissioner and the study committee to make further investigation and may consider any other information deemed by it to be

pertinent. If, after due consideration and any further meetings as it may deem necessary, the board finds that the formation of the proposed union school district is in the best interests of the state, the students, and the school districts, it shall approve the report submitted by the committee, together with any amendments, as a final report of the study committee, and shall give notice of its action to the committee. The chair of the study committee shall file a copy of the final report with the town clerk of each proposed member district at least 20 days prior to the vote to establish the union.

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

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

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

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

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

* * * Special Education; Transition to Employment by Supervisory Unions * * *

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

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

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

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

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

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

* * * Appropriation * * *

Sec. 22. APPROPRIATION

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

* * * Excess Spending Provisions * * *

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

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

* * *

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

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

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

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

* * *

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

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

§ 5053a. EMPLOYEES OF A SUPERVISORY UNION

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

(b) A transferred employee from a participating school district shall remain an employee of the school district solely for the purpose of employer

participation and employee membership in the system regardless of whether the supervisory union is a participant in the system on the date of transition. The membership and benefits of the transferred employee shall not be impaired or reduced by either negotiations with the supervisory union or school district under 21 V.S.A. chapter 22 or otherwise.

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

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

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

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

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

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

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

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

Sec. 26. TRANSITION; NEWLY MERGED DISTRICTS

(a) If two or more districts merge to form a union school district pursuant to 16 V.S.A. chapter 11, subchapter 4, or a regional education district pursuant to No. 153 of the Acts of the 2009 Adj. Sess. (2010) ("the new district") prior to the date on which employees covered by the municipal employees' retirement system provisions of 24 V.S.A. chapter 125 ("the system") transitioned from employment solely by a school district to employment,

wholly or in part, by a supervisory union pursuant to 16 V.S.A. § 261a(a)(6) or (8)(E) as amended on June 3, 2010 ("the transition date"), then:

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

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

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

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

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

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

* * * Effective Dates * * *

Sec. 27. EFFECTIVE DATES

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

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

And that the bill ought to pass in concurrence with such proposal of amendment.

Senator Starr, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Education.

Thereupon, the bill was read the second time by title only pursuant to Rule 43.

Thereupon, pending the question, Shall the Senate propose to the House that the bill be amended as proposed by the Committee on Education?, Senator Mullin, on behalf of the Committee on Education, moved to amend the proposal of amendment of the Committee on Education, as follows:

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

Second: In Sec. 26 by adding a new subsection to be subsection (d) to read:

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

Which was agreed to.

Thereupon, the pending question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Education, as amended?, was decided in the affirmative.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Hartwell and Sears moved that the Senate propose to the House to amend the bill after Sec. 23, by inserting a new section to be Sec. 23a to read as follows:

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

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

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

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

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as proposed by Senators Hartwell and Sears?, Senator Sears, requested and was granted leave to withdraw the proposal of amendment.

Thereupon, third reading of the bill was ordered.

House Proposal of Amendment Concurred In

S. 89.

House proposal of amendment to Senate bill entitled:

An act relating to Medicaid for Working Persons with Disabilities.

Was taken up.

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

Sec. 1. ANALYSIS OF COSTS AND SAVINGS

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

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

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

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

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

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

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

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

(b) No later than January 15, 2013, the secretary of human services shall report to the house committees on human services and on appropriations and the senate committees on health and welfare and on appropriations the results

of the analysis conducted pursuant to subsection (a) of this section, as well as recommendations about whether and how to pursue any or all of the options described in subdivisions (a)(1) through (7) of this section.

Sec. 2. SPOUSAL INCOME DISREGARD; RULEMAKING

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

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

Sec. 3. DEVELOPMENTAL DISABILITY SERVICES

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

Sec. 4. ORGAN AND TISSUE DONATION

(a) Subject to available resources, the commissioner of health shall undertake such actions as are necessary and appropriate, in his or her discretion, to coordinate the efforts of public and private entities involved with the donation and transplantation of human organs and tissues in Vermont and to increase organ and tissue donation rates.

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

Sec. 5. ORGAN AND TISSUE DONATION WORKING GROUP

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

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

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

(2) the commissioner of motor vehicles or designee;

(3) a representative of the Vermont Medical Society;

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

(5) other interested stakeholders.

(c) The working group shall develop recommendations regarding:

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

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

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

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

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

(e) The working group shall report its findings and recommendations to the house committees on human services, on health care, and on transportation and the senate committees on health and welfare and on transportation, and to the governor, by January 15, 2013, after which time the working group shall cease to exist. The report shall include a recommendation about whether the department of health should establish an ongoing advisory council on organ and tissue donation.

Sec. 6. EFFECTIVE DATE

This act shall take effect on passage.

And that after passage the title of the bill be amended to read:

An act relating to organ and tissue donation and Medicaid for Working Persons with Disabilities.

Thereupon, the question, Shall the Senate concur in the House proposal of amendment?, was decided in the affirmative.

Rules Suspended; House Proposal of Amendment Concurred In

S. 148.

Appearing on the Calendar for notice, on motion of Senator Campbell, the rules were suspended and House proposal of amendment to bill entitled:

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

Was taken up for immediate consideration.

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

Sec. 1. FINDINGS

The general assembly finds:

(1) The existing policy of the state of Vermont is to promote development and use of renewable energy projects, including hydroelectric projects.

(2) Additional capacity exists for development of hydroelectric projects in Vermont, with estimates ranging from 25 megawatts (MW) to 434 MW. The Comprehensive Energy Plan issued in December 2011 by the department of public service (DPS) states in Sec. 5.8.2.1.1:

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

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

(4) Most hydroelectric projects require approval from the Federal Energy Regulatory Commission (FERC). The length and cost of the process of obtaining a FERC approval do not vary significantly with the capacity of the

hydroelectric project. However, the ability of a hydroelectric project to absorb this cost decreases as the capacity of the project grows smaller.

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

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

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

(B) Conduit exemptions for generating capacities of 15 MW or less for nonmunicipal and 40 MW or less for a municipal project. The conduit must have been constructed primarily for purposes other than power production and be located entirely on nonfederal lands. In this context, "conduit" refers to a human-made water conveyance (e.g., an irrigation canal).

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

(8) In Vermont:

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

(B) The main agency engaged in environmental regulation is the agency of natural resources (ANR), the duties and expertise of which include science-based analysis of the impacts of projects on water quality, fish, and wildlife. When a FERC license or exemption is sought for a hydroelectric project in Vermont, ANR reviews the project and determines whether to issue

a certification under the Clean Water Act, 33 U.S.C. § 1341, that the project will not violate water quality standards adopted under that act.

Sec. 2. MEMORANDUM OF UNDERSTANDING; SMALL HYDROELECTRIC PROJECTS

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

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

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

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

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

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

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

Thereupon, the question, Shall the Senate concur in the House proposal of amendment?, was decided in the affirmative.

Message from the House No. 70

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has considered a bill originating in the Senate of the following title:

S. 226. An act relating to combating illegal diversion of prescription opiates and increasing treatment resources for opiate addiction.

And has passed the same in concurrence with proposal of amendment in the adoption of which the concurrence of the Senate is requested.

Consideration Resumed; Consideration Postponed

H. 78.

Consideration was resumed on House bill entitled:

An act relating to wages for laid-off employees.

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as proposed by the Committee on Economic Development, Housing and General Affairs?, on motion of Senator Flory action on the bill was postponed until the next legislative day.

Bill Ordered to Lie

S. 204.

Senate bill entitled:

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

Was taken up.

Thereupon, pending the question, Shall the bill be amended as recommended by the Committee on Finance?, on motion of Senator Campbell, the bill was ordered to lie.

Senate Proposal of Amendment Receded From

H. 759.

House request that the Senate recede from its proposal of amendment to House bill entitled:

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

Was taken up.

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

Which was agreed to.

House Proposals of Amendment Concurred In

S. 136.

House proposals of amendment to Senate bill entitled:

An act relating to vocational rehabilitation.

Were taken up.

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

First: By striking Sec. 2 and inserting in lieu thereof a new Sec. 2 to read:

Sec. 2. STUDY

(a) The department of labor in consultation with the department of disabilities, aging, and independent living and other interested parties including vocational rehabilitation counselors shall study the following:

(1) what performance standards should apply to vocational rehabilitation counselors;

(2) whether the department of disabilities, aging, and independent living should be allowed to provide workers' compensation vocational rehabilitation services and charge the fees for those services to insurance companies and whether providing services to state employees would represent a conflict of interest;

(3) whether injured workers receiving vocational rehabilitation services are receiving those services in a timely manner; and

(4) whether the current vocational rehabilitation screening process is effective and whether entities other than the department of disabilities, aging, and independent living should be permitted to provide screening to avoid conflicts of interest.

(b) The department of labor shall report its findings as well as any recommendations by January 15, 2013, to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs.

Second: By adding a Sec. 3 to read:

Sec. 3. 21 V.S.A. § 601 is amended to read:

§ 601. DEFINITIONS

Unless the context otherwise requires, words and phrases used in this chapter shall be construed as follows:

* * *

(2) "Child" includes a stepchild, adopted child, posthumous child, grandchild, and ~~an acknowledged illegitimate~~ a child for whom parentage has been established pursuant to 15 V.S.A. chapter 5, but does not include a married child unless the child is a dependent.

* * *

Thereupon, the question, Shall the Senate concur in the House proposals of amendment?, was decided in the affirmative.

Rules Suspended; House Proposal of Amendment Not Concurred In; Committee of Conference Requested

S. 113.

Appearing on the Calendar for notice, on motion of Senator Campbell, the rules were suspended and House proposal of amendment to Senate bill entitled:

An act relating to prevention, identification, and reporting of child abuse and neglect at independent schools.

Was taken up for immediate consideration.

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

First: In Sec. 2, 33 V.S.A. § 4913(a), in the first sentence, in the phrase "and any other individual who is regularly employed by a school district" by striking out the word "regularly"

Second: In Sec. 2, 33 V.S.A. § 4913(a), in the first sentence, by striking out the words "for five or more hours per week during the school year"

Third: In Sec. 2, 33 V.S.A. § 4913(a), after the first sentence, by inserting a new sentence to read: "Notwithstanding 12 V.S.A. § 1614, an individual providing information or instruction to students as part of comprehensive health education under 16 V.S.A. § 131(11) who, as a direct result of interaction with or observation of a student in that context, has reasonable cause to believe that a child has been abused or neglected shall report or cause a report to be made in accordance with the provisions of section 4914 of this title within 24 hours."

Fourth: By striking out Sec. 3 in its entirety and inserting in lieu thereof nine new sections to be Secs. 3–11 to read:

* * * Educational Opportunities Working Group * * *

Sec. 3. EDUCATIONAL OPPORTUNITIES WORKING GROUP

(a) There is created a working group to review and evaluate how Vermont's current education system spends education dollars in a way that promotes high quality, equitable educational opportunities for students throughout the state. Using a facilitated process, the working group shall identify the data needed to fulfill its charge, the availability of the data, and the process by which it will obtain the data.

(b) The working group shall be composed of:

(1) one member of the house appointed by the speaker of the house;

(2) one member of the senate appointed by the committee on committees;

(3) one member of the administration appointed by the governor; and

(4) three members of the public, one each appointed by the governor, the speaker, and the committee on committees.

(c) The office of legislative council, the joint fiscal office, the office of finance and management, and the departments of education, of information and innovation, and of taxes shall assist the working group to identify the data required for its examination of the issues outlined in this section.

(d) Appointments pursuant to subsection (b) of this section shall be made by June 1, 2012. The office of legislative council shall convene the first meeting of the working group by July 1, 2012, at which meeting the members shall elect a chair and design the facilitated process to guide the group's work.

(e) By December 15, 2012, the working group shall report to the house and senate committees on education its findings and recommendations for the design of further studies and implementation strategies.

(f) The working group may meet no more than six times during the 2012–2013 interim. For attendance at meetings during adjournment of the general assembly, members of the committee shall be entitled to compensation and reimbursement for expenses as provided in 2 V.S.A. § 406. Members of the public shall be reimbursed at the per diem rate set in 32 V.S.A. § 1010.

(g) The committee may spend up to $30,000.00 by using funds appropriated to the legislature for fiscal year 2013 to hire experts to assist it to establish a work plan and conduct its evaluations.

* * * Kindergarten Education * * *

Sec. 4. 16 V.S.A. § 821 is amended to read:

§ 821. SCHOOL DISTRICT TO MAINTAIN PUBLIC ELEMENTARY SCHOOLS OR PAY TUITION

(a) Elementary school. Each school district shall ~~provide, furnish, and~~ maintain one or more approved schools within the district in which elementary education for its resident pupils in kindergarten through grade six is provided unless:

(1) ~~The~~ the electorate authorizes the school board to provide for the elementary education of the pupils ~~residing in the district~~ by paying tuition in accordance with law to one or more public elementary schools in one or more school districts~~.~~;

(2) ~~The~~ the school district is organized to provide only high school education for its pupils~~.~~; or

(3) ~~Otherwise provided for by~~ the general assembly provides otherwise.

(b) ~~Kindergarten program. Each school district shall provide public kindergarten education within the district. However, a school district may pay tuition for the kindergarten education of its pupils:~~

~~(1) at one or more public schools under subdivision (a)(1) of this section; or~~

~~(2) if the electorate authorizes the school board to pay tuition to one or more approved independent schools or independent schools meeting school quality standards, but only if the school district did not operate a kindergarten on September 1, 1984, and has not done so afterward.~~ [Repealed.]

(c) Notwithstanding subsection (a) of this section, without previous authorization by the electorate, a school board ~~without previous authorization by the electorate~~ in a district that operates an elementary school may pay tuition for elementary pupils who reside near a public elementary school in an adjacent district upon request of the pupil's parent or guardian, if in the board's

judgment the pupil's education can be more conveniently furnished there due to geographic considerations. Within 30 days of the board's decision, a parent or guardian who is dissatisfied with the decision of the board under this subsection may request a determination by the commissioner, who shall have authority to direct the school board to pay all, some, or none of the pupil's tuition and whose decision shall be final.

(d) Notwithstanding ~~subsection (a)~~ subdivision (a)(1) of this section, the electorate of a school district that does not maintain an elementary school may grant general authority to the school board to pay tuition for an elementary pupil at an approved independent elementary school or an independent school meeting school quality standards pursuant to sections 823 and 828 of this chapter upon notice given by the pupil's parent or legal guardian before April 15 for the next academic year.

* * * Harassment, Hazing, and Bullying * * *

Sec. 5. REPEAL

16 V.S.A. § 565 (harassment and hazing prevention policies) is repealed.

Sec. 6. 16 V.S.A. chapter 9, subchapter 5 is added to read:

Subchapter 5. Harassment, Hazing, and Bullying

§ 570. HARASSMENT, HAZING, AND BULLYING PREVENTION POLICIES

(a) State policy. It is the policy of the state of Vermont that all Vermont educational institutions provide safe, orderly, civil, and positive learning environments. Harassment, hazing, and bullying have no place and will not be tolerated in Vermont schools. No Vermont student should feel threatened or be discriminated against while enrolled in a Vermont school.

(b) Prevention policies. Each school board shall develop, adopt, ensure the enforcement of and make available in the manner described under subdivision 563(1) of this title harassment, hazing, and bullying prevention policies that shall be at least as stringent as model policies developed by the commissioner. Any school board that fails to adopt one or more of these policies shall be presumed to have adopted the most current model policy or policies published by the commissioner.

(c) Notice. Annually, prior to the commencement of curricular and cocurricular activities, the school board shall provide notice of the policy and procedures developed under this subchapter to students, custodial parents or guardians of students, and staff members, including reference to the consequences of misbehavior contained in the plan required by section 1161a of this title. Notice to students shall be in age-appropriate language and should

include examples of harassment, hazing, and bullying. At a minimum, this notice shall appear in any publication that sets forth the comprehensive rules, procedures, and standards of conduct for the school. The school board shall use its discretion in developing and initiating age-appropriate programs to inform students about the substance of the policy and procedures in order to help prevent harassment, hazing, and bullying. School boards are encouraged to foster opportunities for conversations between and among students regarding tolerance and respect.

(d) Duties of the commissioner. The commissioner shall:

(1) develop and, from time to time, update model harassment, hazing, and bullying prevention policies; and

(2) establish an advisory council to review and coordinate school and statewide activities relating to the prevention of and response to harassment, hazing, and bullying. The council shall report annually in January to the state board and the house and senate committees on education. The council shall include:

(A) the executive director of the Vermont Principals' Association or designee;

(B) the executive director of the Vermont School Boards Association or designee;

(C) the executive director of the Vermont Superintendents Association or designee;

(D) the president of the Vermont-National Education Association or designee;

(E) the executive director of the Vermont Human Rights Commission or designee;

(F) the executive director of the Vermont Independent Schools Association or designee; and

(G) other members selected by the commissioner.

(e) Definitions. In this subchapter:

(1) "Educational institution" and "school" mean a public school or an approved or recognized independent school as defined in section 11 of this title.

(2) "Harassment," "hazing," and "bullying" have the same meanings as in subdivisions 11(a)(26), (30), and (32) of this title.

(3) "Organization," "pledging," and "student" have the same meanings as in subdivisions 140a(2), (3), and (4) of this title.

(4) "School board" means the board of directors or other governing body of an educational institution when referring to an independent school.

§ 570a. HARASSMENT

(a) Policies and plan. The harassment prevention policy required by section 570 of this title and its plan for implementation shall include:

(1) A statement that harassment, as defined in subdivision 11(a)(26) of this title, is prohibited and may constitute a violation of the public accommodations act as more fully described in section 14 of this title.

(2) Consequences and appropriate remedial action for staff or students who commit harassment. At all stages of the investigation and determination process, school officials are encouraged to make available to complainants alternative dispute resolution methods, such as mediation, for resolving complaints.

(3) A procedure that directs students, staff, parents, and guardians how to report violations and file complaints.

(4) A description of the circumstances under which harassment may be reported to a law enforcement agency.

(5) A procedure for investigating reports of violations and complaints. The procedure shall provide that, unless special circumstances are present and documented by the school officials, an investigation is initiated no later than one school day from the filing of a complaint and the investigation and determination by school officials are concluded no later than five school days from the filing of the complaint with a person designated to receive complaints under subdivision (7) of this section. All internal reviews of the school's initial determination, including the issuance of a final decision, shall, unless special circumstances are present and documented by the school officials, be completed within 30 days after the review is requested.

(6) A description of how the school board will ensure that teachers and other staff members receive training in preventing, recognizing, and responding to harassment.

(7) Annual designation of two or more people at each school campus to receive complaints and a procedure for publicizing those people's availability.

(8) A procedure for publicizing the availability of the Vermont human rights commission and the federal Department of Education's Office of Civil

Rights and other appropriate state and federal agencies to receive complaints of harassment.

(9) A statement that acts of retaliation for the reporting of harassment or for cooperating in an investigation of harassment are unlawful pursuant to 9 V.S.A. § 4503.

(b) Independent review.

(1) A student who desires independent review under this subsection because the student is either dissatisfied with the final determination of the school officials as to whether harassment occurred or believes that, although a final determination was made that harassment occurred, the school's response was inadequate to correct the problem shall make such request in writing to the headmaster or superintendent of schools. Upon such request, the headmaster or superintendent shall initiate an independent review by a neutral person selected from a list developed jointly by the commissioner of education and the human rights commission and maintained by the commissioner. Individuals shall be placed on the list on the basis of their objectivity, knowledge of harassment issues, and relevant experience.

(2) The independent review shall proceed expeditiously and shall consist of an interview of the student and the relevant school officials and review of written materials involving the complaint maintained by the school or others.

(3) Upon the conclusion of the review, the reviewer shall advise the student and the school officials as to the sufficiency of the school's investigation, its determination, the steps taken by the school to correct any harassment found to have occurred, and any future steps the school should take. The reviewer shall advise the student of other remedies that may be available if the student remains dissatisfied and, if appropriate, may recommend mediation or other alternative dispute resolution.

(4) The independent reviewer shall be considered an agent of the school for the purpose of being able to review confidential student records.

(5) The costs of the independent review shall be borne by the public school district or independent school.

(6) Nothing in this subsection shall prohibit the school board from requesting an independent review at any stage of the process.

(7) Evidence of conduct or statements made in connection with an independent review shall not be admissible in any court proceeding. This subdivision shall not require exclusion of any evidence otherwise obtainable from independent sources merely because it is presented in the course of an independent review.

(8) The commissioner may adopt rules implementing this subsection.

§ 570b. HAZING

The hazing prevention policy required by section 570 of this title and its plan for implementation shall include:

(1) A statement that hazing, as defined in subdivision 11(a)(30) of this title, is prohibited and may be subject to civil penalties pursuant to subchapter 9 of chapter 1 of this title.

(2) A procedure that directs students, staff, parents, and guardians how to report violations and file complaints.

(3) A procedure for investigating reports of violations and complaints.

(4) A description of the circumstances under which hazing may be reported to a law enforcement agency.

(5) Appropriate penalties or sanctions or both for organizations that or individuals who engage in hazing and revocation or suspension of an organization's permission to operate or exist within the institution's purview if that organization knowingly permits, authorizes, or condones hazing.

(6) A description of how the school board will ensure that teachers and other staff members receive training in preventing, recognizing, and responding to hazing.

(7) Annual designation of two or more people at each school campus to receive complaints and a procedure for publicizing those people's availability.

§ 570c. BULLYING

The bullying prevention policy required by section 570 of this title and its plan for implementation shall include:

(1) A statement that bullying, as defined in subdivision 11(a)(32) of this title, is prohibited.

(2) A procedure that directs students, staff, parents, and guardians how to report violations and file complaints.

(3) A procedure for investigating reports of violations and complaints.

(4) A description of the circumstances under which bullying may be reported to a law enforcement agency.

(5) Consequences and appropriate remedial action for students who commit bullying.

(6) A description of how the school board will ensure that teachers and other staff members receive training in preventing, recognizing, and responding to bullying.

(7) Annual designation of two or more people at each school campus to receive complaints and a procedure both for publicizing the availability of those people and clarifying that their designation does not preclude a student from bringing a complaint to any adult in the building.

Sec. 7. IMPLEMENTATION

School boards shall adopt and implement bullying prevention policies as required by Sec. 6 of this act no later than January 1, 2013.

* * * Prekindergarten-16 Council; Afterschool Programs * * *

Sec. 8. 16 V.S.A. § 2905(b) is amended to read:

(b) The council shall be composed of:

* * *

(15) a member of the senate, who shall be selected by the committee on committees and shall serve until the beginning of the biennium immediately after the one in which the member is appointed; ~~and~~

(16) a member of the faculty of the Vermont State Colleges, the University of Vermont, or a Vermont independent college selected by United Professions AFT Vermont, Inc.; and

(17) a representative of after-school, summer, and expanded learning programs selected by the Vermont Center for Afterschool Excellence.

* * * Regional Technical Center School Districts;

Unorganized Towns, Grants, and Gores * * *

Sec. 9. 16 V.S.A. § 1572(b)(1) is amended to read:

(1) The makeup of the governing board. At least 60 percent of the board members shall be elected by direct vote of the voters, or chosen from member school district boards by the member school district boards, or a combination of the two. If the board is to have additional members, who may constitute up to 40 percent of the board, the additional members shall be appointed by the elected and chosen members from member school district boards for the purpose of acquiring expertise in areas they consider desirable. The appointed members may be selected from nominations submitted by the regional workforce investment board or other workforce organizations, or may be chosen without nomination by an organization. Notwithstanding any provision of law to the contrary, a resident of an unorganized town, grant, or gore that

sits within the regional technical center school district who is otherwise eligible to vote under 17 V.S.A. § 2121 may vote for the board members and may be elected to or appointed as a member of the governing board;

* * * Designated Schools; Tuition * * *

Sec. 10. 16 V.S.A. § 827(e) is amended to read:

(e) Notwithstanding any other provision of law to the contrary:

(1) the school districts of Pawlet, Rupert, and Wells may designate a public high school located in New York as the public high school of the district pursuant to the provisions of this section; ~~and~~

(2) unless otherwise directed by an affirmative vote of the school district, when the Wells board approves parental requests to pay tuition to a nondesignated approved independent or public school, the board shall pay tuition in an amount not to exceed the base education amount as determined under section 4011 of this title for the fiscal year in which tuition is being paid; and

(3) unless otherwise directed by an affirmative vote of the school district, when the Strafford board approves a parental request to pay tuition to a nondesignated approved independent or public school, the board shall pay tuition to the nondesignated school pursuant to section 824 of this title for the year in which the pupil is enrolled; provided, however, that it shall not pay tuition in an amount that exceeds the tuition paid to the designated school for the same academic year.

* * * Effective Date * * *

Sec. 11. EFFECTIVE DATE

This act shall take effect on passage; provided, however, Sec. 10 shall apply to enrollment in the 2012–2013 academic year and after.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, on motion of Senator Mullin, the Senate refused to concur in the House proposal of amendment and requested a Committee of Conference.

Rules Suspended; House Proposal of Amendment Not Concurred In

S. 152.

Appearing on the Calendar for notice, on motion of Senator Campbell, the rules were suspended and House proposal of amendment to Senate bill entitled:

An act relating to the definition of line of duty in the workers' compensation statutes.

Was taken up for immediate consideration.

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

Sec. 1. 14 V.S.A. § 1205 is amended to read:

§ 1205. CLASSIFICATION OF CLAIMS

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

(1) costs and expenses of administration;

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

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

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

* * *

Sec. 2. 21 V.S.A. § 342 is amended to read:

§ 342. WEEKLY PAYMENT OF WAGES

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

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

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

and opportunity for hearing under this section shall be in accordance with 3 V.S.A. chapter 25.

* * *

Sec. 3. 21 V.S.A. § 348 is added to read:

§ 348. RETALIATION PROHIBITED

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

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

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

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

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

Sec. 4. 21 V.S.A. § 397 is added to read:

§ 397. RETALIATION PROHIBITED

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

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

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

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

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

Sec. 5. 21 V.S.A. § 398 is added to read:

§ 398. NOTICE TO PERSONS RECEIVING REMUNERATION AS AN INDEPENDENT CONTRACTOR

(a) Every employer shall post in a prominent and accessible place on the site where work is performed a legible statement, provided by the commissioner, that describes the responsibility of independent contractors to pay taxes required by state and federal law, the rights of employees to workers' compensation, unemployment benefits, minimum wage, overtime and other federal and state workplace protections, and the protections against retaliation and the penalties in this title if the independent contractor does not properly classify an individual as an employee. This notice shall also contain contact information for individuals to file complaints or inquire with the commissioner about employment classification status. This information shall be provided in English or other languages required by the commissioner. If the posted statement is displayed outside it shall be constructed of materials capable of withstanding adverse weather conditions.

(b) Within 30 days of the effective date of this section, the commissioner shall create the notice described in subsection (a) of this section and post the notice on the department's website for downloading by hiring entities.

(c) Employers who violate this section shall be subject to an administrative penalty of up to $100.00 per violation.

Sec. 6. 21 V.S.A. § 603 is amended to read:

§ 603. WITNESSES, OATHS, BOOKS, PAPERS, RECORDS

(a) So far as it is necessary in his or her examinations~~,~~ or investigations and in the determination of matters within his or her jurisdiction, the commissioner shall have power to subpoena witnesses, administer oaths, and to demand the production of books, papers, records, and documents for his or her examination. Additionally, the commissioner or designee may, upon presenting appropriate credentials, at reasonable times and without disrupting critical business operations enter and inspect any place of business or employment, question any employees, and investigate any facts, conditions, or matters necessary and material to the administration of this chapter. The employer shall make the employees available to the department on the day of inspection by the commissioner. The commissioner or designee shall inform the employer of his or her right to refuse entry. If entry is refused, the commissioner may apply to the civil division of the superior court for an order to enforce the rights given the commissioner under this section.

* * *

Sec. 7. 21 V.S.A. § 692 is amended to read:

§ 692. PENALTIES; FAILURE TO INSURE; STOP WORK ORDERS

* * *

(b) Stop-work orders. If an employer fails to comply with the provisions of section 687 of this title after investigation by the commissioner, the commissioner shall issue an emergency order to that employer to stop work until the employer has secured workers' compensation insurance. If the commissioner determines that issuing a stop-work order would immediately threaten the safety or health of the public, the commissioner may permit work to continue until the immediate threat to public safety or health is removed. The commissioner shall document the reasons for permitting work to continue, and the document shall be available to the public. In addition, the employer shall be assessed an administrative penalty of not more than $250.00 for every day that the employer fails to secure workers' compensation coverage after the commissioner issues an order to obtain insurance and may also be assessed an administrative penalty of not more than $250.00 for each employee for every day that the employer fails to secure workers' compensation coverage as required in section 687 of this title. When a stop-work order is issued, the commissioner shall post a notice at a conspicuous place on the work site of the employer informing the employees that their employer failed to comply with the provisions of section 687 of this title and that work at the work site has been ordered to cease until workers' compensation insurance is secured. An employer that fails to comply with a stop-work order may be enjoined from employing individuals in employment as defined in this chapter, upon complaint of the commissioner in the civil division of the superior court. The stop-work order shall be rescinded as soon as the commissioner determines that the employer is in compliance with section 687 of this title. An employer against whom a stop-work order has been issued, or who has not been in compliance with section 687 of this title, unless the commissioner determines that the failure to comply was inadvertent or excusable is prohibited from contracting, directly or indirectly, with the state or any of its subdivisions for a period of up to three years following the date of the issuance of the stop-work order, as determined by the commissioner in consultation with the commissioner of buildings and general services or the secretary of transportation~~, as appropriate~~. ~~Either the secretary or the commissioner, as appropriate, shall be consulted in any contest of the prohibition of the employer from contracting with the state or its subdivisions~~ The consultation may be informal and shall occur within ten days of a referral by the commissioner. The outcome of the referral shall be documented.

* * *

Sec. 7a. 8 V.S.A. § 3661 is amended to read:

§ 3661. CEASE AND DESIST POWERS; PROSECUTIONS AND PENALTIES

* * *

(c) An employer who makes a false statement or representation that results in a lower workers' compensation premium, after notice and opportunity for hearing before the commissioner, may be assessed an administrative penalty of not more than $20,000.00 in addition to any other appropriate penalty. In addition, an employer found to have violated this section is prohibited from contracting, directly or indirectly, with the state or any of its subdivisions for up to three years following the date the employer was found to have made a false statement or misrepresentation, as determined by the commissioner in consultation with the commissioner of buildings and general services or the secretary of transportation~~, as appropriate. Either the secretary or the commissioner, as appropriate, shall be consulted in any appeal relating to prohibiting the employer from contracting with the state or its subdivisions~~. The consultation may be informal and shall occur within ten days of a referral by the commissioner. The outcome of the referral shall be documented.

* * *

Sec. 7b. 21 V.S.A. § 1314a is amended to read:

§ 1314a. QUARTERLY WAGE REPORTING; MISCLASSIFICATION; PENALTIES

* * *

(f)(1) Any employing unit or employer that fails to:

(A) File any report required by this section shall be subject to a penalty of $100.00 for each report not received by the prescribed due dates.

(B) Properly classify an individual regarding the status of employment is subject to a penalty of not more than $5,000.00 for each improperly classified employee. In addition, an employer found to have violated this section is prohibited from contracting, directly or indirectly, with the state or any of its subdivisions for up to three years following the date the employer was found to have failed to properly classify, as determined by the commissioner in consultation with the commissioner of buildings and general services or the secretary of transportation~~, as appropriate. Either the secretary or the commissioner, as appropriate, shall be consulted in any appeal relating to prohibiting the employer from contracting with the state or its subdivisions~~. The consultation may be informal and shall occur within ten days of a referral by the commissioner. The outcome of the referral shall be documented.

* * *

Sec. 8. 21 V.S.A. § 708 is amended to read:

§ 708. PENALTY FOR FALSE REPRESENTATION

(a) Action by the commissioner of labor. A person who ~~willfully~~ purposefully makes a false statement or representation, ~~for the purpose of obtaining~~ to obtain any benefit or payment under the provisions of this chapter, either for herself or himself or for any other person, after notice and opportunity for hearing, may be assessed an administrative penalty of not more than $20,000.00, and shall forfeit all or a portion of any right to compensation under the provisions of this chapter, as determined to be appropriate by the commissioner after a determination by the commissioner that the person has ~~willfully~~ made a false statement or representation of a material fact. In addition, an employer found to have violated this section is prohibited from contracting, directly or indirectly, with the state or any of its subdivisions for up to three years following the date the employer was found to have made a false statement or misrepresentation of a material fact, as determined by the commissioner in consultation with the commissioner of buildings and general services or the secretary of transportation~~, as appropriate. Either the secretary or the commissioner, as appropriate, shall be consulted in any contest relating to the prohibition of the employer from contracting with the state or its subdivisions~~. The consultation may be informal and shall occur within ten days of a referral by the commissioner. The outcome of the referral shall be documented.

(b) ~~When~~ In addition to penalties assessed pursuant to subsection (a) of this section, when the department of labor has sufficient reason to believe that an employer has made a false statement or representation for the purpose of obtaining a lower workers' compensation premium, the department shall refer the alleged violation to the commissioner of banking, insurance, securities, and health care administration for the commissioner's consideration of enforcement pursuant to 8 V.S.A. § 3661(c).

* * *

Sec. 9. 21 V.S.A. § 1101 is amended to read:

§ 1101. APPRENTICESHIP DIVISION AND COUNCIL

The apprenticeship division and state apprenticeship council, hereinafter referred to as the "council," shall be located within the department of labor. The commissioner of labor shall supervise the work of the division, and shall be the chair of the council. The council shall consist of ~~10~~ 12 members, four ex officio members and ~~six~~ eight members who shall be appointed by the governor. Of the ex officio members, one shall be the commissioner of labor,

or designee, one shall be the commissioner of public safety, or designee, one shall be the commissioner of education or designee, and one shall be the director of the apprenticeship division who shall act as secretary of the council without vote. The council shall be composed of persons familiar with apprenticeable occupations. Of the ~~appointive~~ appointed members, three shall be individuals who ~~on account of previous vocation, employment, occupation, or affiliation can be classed as~~ represent employers ~~and three~~, three shall be individuals who ~~on account of previous vocation, employment, occupation, or affiliation can be classed as employees~~ represent employees or employee organizations, and two shall be members of the public. Appointment of the employer and the employee members shall be made for the term of three years except the employer and employee members first appointed shall be appointed for the term of one, two, and three years respectively. The governor shall annually designate one member of the council as chair. Each member of the council who is not a salaried official or employee of the state shall be entitled to compensation and expenses as provided in 32 V.S.A. § 1010.

Sec. 10. 21 V.S.A. § 1301a is amended to read:

§ 1301a. DEPARTMENT OF LABOR; COMPOSITION

The department of labor, created by ~~section~~ 3 V.S.A. § 212 ~~of Title 3~~, shall consist of a commissioner of labor, the Vermont employment security board, the Vermont workforce development division, the economic and labor market information division, the workforce development council, the unemployment insurance and wages division, and the workers' compensation and safety division. The chair of the employment security board shall be the commissioner of labor ex officio. The deputy commissioner of labor or a designee chosen by the commissioner may serve as chair in the absence of the commissioner as the commissioner's designee.

Sec. 11. 21 V.S.A. § 1307 is amended to read:

§ 1307. COMMISSIONER OF LABOR, DUTIES AND POWERS OF

The commissioner of labor shall administer this chapter. The commissioner may employ such persons, make such expenditures, require such reports, make such investigations and take such other action as he or she considers necessary or suitable to that end. In the discharge of his or her duties imposed by this chapter, the commissioner may administer oaths, take depositions, certify to official acts and subpoena witnesses and compel the production of books, papers, correspondence, memoranda, and other records necessary and material to the administration of this chapter. Additionally, the commissioner or designee may, upon presenting appropriate credentials, at reasonable times and without disrupting critical business operations enter and inspect any place of business or employment, question any employees, and investigate any facts,

conditions, or matters necessary and material to the administration of this chapter. The employer shall make the employees available to the department on the day of inspection by the commissioner. The commissioner or designee shall inform the employer of his or her right to refuse entry. If entry is refused, the commissioner may apply to the civil division of the superior court for an order to enforce the rights given the commissioner under this section.

Sec. 12. 21 V.S.A. § 1347 is amended to read:

§ 1347. NONDISCLOSURE OR MISREPRESENTATION

* * *

(c) The person liable under this section shall repay such amount to the commissioner for the fund. In addition to the repayment, if the commissioner finds that a person intentionally misrepresented or failed to disclose a material fact with respect to his or her claim for benefits, the person shall pay an additional penalty of 15 percent of the amount of the overpaid benefits. Such amount may be collectible by civil action in a Vermont district or superior court, in the name of the commissioner. ~~No action shall be commenced for the collection of such amount more than five years after the date of such determination under this section or the final decision confirming the liability of such person on an appeal from such determination.~~

(d) In any case in which under this section a person is liable to repay any amount to the commissioner for the fund, the commissioner may withhold, in whole or in part, any future benefits payable to such person, and credit such withheld benefits against the amount due from such person until it is repaid in full, less any penalties assessed under subsection (c) of this section. ~~No benefits shall be withheld after five years from the date of such determination or the date of the final decision confirming the liability of such person on an appeal from such determination.~~

(e) In addition to the foregoing, when it is found by the commissioner that a person intentionally misrepresented or failed to disclose a material fact with respect to his or her claim for benefits and in the event the person is not prosecuted under section 1368 of this title and penalty provided in section 1373 of this title is not imposed, the person shall be disqualified and shall not be entitled to receive benefits to which he or she would otherwise be entitled after the determination for such number of weeks not exceeding 26 as the commissioner shall deem just~~, provided, however, that no benefits shall be denied to a claimant because of such determination after three years from the date thereof or the date of final decision on an appeal from such determination~~. The notice of determination shall also specify the period of disqualification imposed hereunder.

* * *

Sec. 13. 21 V.S.A. § 1451 is amended to read:

§ 1451. DEFINITIONS

For the purpose of this subchapter:

(1) "Affected unit" means a specific plan, department, shift, or other definable unit consisting of not less than five employees to which an approved short-time compensation plan applies.

(2) "Short-time compensation" or "STC" means the unemployment benefits payable to employees in an affected unit under an approved short-time compensation plan as distinguished from the unemployment benefits otherwise payable under the conventional unemployment compensation provisions of this chapter.

(3) "Short-time compensation plan" means a plan of an employer under which there is a reduction in the number of hours worked by employees of an affected unit rather than temporary layoffs. The term "temporary layoffs" for this purpose means the total separation of one or more workers in the affected unit for an indefinite period expected to last for more than two months but not more than six months.

(4) "Short-time compensation employer" means an employer who has one or more employees covered by an approved "Short-Time Compensation Plan." ~~Both employers with experience rating records and employers who make payments in lieu of tax contributions to the UI Trust Fund may become short time compensation employers.~~ "Short-time compensation employer" includes an employer with experience-rating records and an employer who makes payments in lieu of tax contributions to the unemployment compensation trust fund and that meets the following:

(A) Has five or more employees covered by an approved short-time compensation plan.

(B) Is not delinquent in the payment of contributions or reimbursement, or in the reporting of wages.

(C) Is not a negative balance employer. For the purposes of this section, a negative balance employer is an employer who has for three or more consecutive calendar years prior to applying for the STC plan paid more in unemployment benefits to its employees than it has contributed to its unemployment insurance account. In the event that an employer has been a negative balance employer for three consecutive years, the employer shall be ineligible for participation unless the commissioner grants a waiver based upon extenuating economic conditions or other good cause.

(5) "Usual weekly hours of work" means the normal hours of work for full-time and regular part-time employees in the affected unit when that unit is operating on its normally full-time basis but not less than 30 hours and not to exceed 40 hours and not including overtime.

(6) "Unemployment compensation" means the unemployment benefits payable under this chapter other than short-time compensation and includes any amounts payable pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(7) "Fringe benefits" means benefits, including health insurance, retirement benefits, paid vacations and holidays, sick leave, and similar benefits that are incidents of employment.

(8) "Intermittent employment" means employment that is not continuous but may consist of intervals of weekly work and intervals of no weekly work.

(9) "Seasonal employment" means employment with an employer who experiences at least a 20-percent difference between its highest level of employment during a particular season and its lowest level of employment during the off-season in each of the previous three years as reported to the department, or employment with an employer on a temporary basis during a particular season.

Sec. 14. 21 V.S.A. § 1452 is amended to read:

§ 1452. CRITERIA FOR APPROVAL

An employer wishing to participate in an STC program shall submit a department of labor electronic application or a signed written short-time compensation plan to the commissioner for approval. The commissioner may approve an STC plan only if the following criteria are met:

(1) the plan identifies the specified affected units to which it applies;

(2) the employees in the affected unit or units are identified by name, Social Security number, and by any other information required by the commissioner;

(3) the plan ~~specifies any impact on~~ outlines to the commissioner the extent to which fringe benefits, including health insurance, of employees participating in the plan may be reduced, which shall be factored into the evaluation of the business plan for resolving the conditions that led to the need for the STC plan;

(4) the usual total weekly hours of work for employees in the affected unit or units are reduced by not less than 20 percent and not more than 50 percent;

(5) the plan certifies that the aggregate reduction in work hours is in lieu of temporary total layoffs of one or more workers which would have resulted in an equivalent reduction in work hours and which the commissioner finds would have caused an equivalent dollar amount to be payable in unemployment compensation;

(6) the plan certifies that the STC employer will notify the department within 24 hours after any layoff of an employee, at which time the commissioner shall have the right to terminate the STC plan;

(7) the identified workweek reduction is applied consistently throughout the duration of the plan unless otherwise approved by the department;

~~(6)~~(8) the plan applies to at least 10 percent of the employees in the affected unit, and when ~~applicable~~ determined to be applicable by the commissioner applies to all affected employees of the unit equally;

~~(7)~~(9) the plan will not subsidize seasonal employers during the off-season, nor subsidize employers who have traditionally used part-time employees or intermittent employment;

~~(8)~~(10) the employer agrees to maintain records relative to the plan for a period of three years and furnish reports relating to the proper conduct of the plan and agrees to allow the commissioner or his or her authorized representatives access to all records necessary to verify the plan prior to approval and, after approval, to monitor and evaluate application of the plan;

~~(9)~~(11) the plan certifies that the collective bargaining agent or agents for the employees, if any, have agreed to participate in the program. If there is no bargaining unit, the employer specifies how he or she will notify the employees in the affected group and work with them to implement the program once the plan is approved; and

~~(10)~~(12) in addition to subdivisions (1) through ~~(9)~~(11) of this section, the commissioner shall take into account any other factors which may be pertinent to the approval and proper implementation of the plan.

Sec. 15. 21 V.S.A. § 1453 is amended to read:

§ 1453. APPROVAL OR REJECTION; RESUBMISSION

The commissioner shall approve or reject a plan in writing within 30 days of its receipt, and in the case of rejection shall state the reasons therefor. The reasons for rejection shall be final and nonappealable, but the employer shall

be allowed to submit another plan for approval, that addresses the reasons that led to the rejection of the original plan.

Sec. 16. 21 V.S.A. § 1454 is amended to read:

§ 1454. EFFECTIVE DATE; DURATION

A plan shall be effective on the date specified in the plan or on a date mutually agreed upon by the employer and the commissioner. It shall expire at the end of the sixth full calendar month after its effective date or on the date specified in the plan if such date is earlier; provided, that the plan is not previously revoked by the commissioner; or on the effective date of any transfer of ownership of the legal business entity. If a plan is revoked or terminated by the commissioner, it shall terminate on the date specified in the commissioner's written order of revocation. No employer shall be eligible for a short-time compensation plan that results in an employee receiving benefits in excess of 26 times the amount of regular unemployment benefits payable to such individual for a week of total unemployment.

Sec. 17. 21 V.S.A. § 1458 is amended to read:

§ 1458. SHORT-TIME COMPENSATION BENEFITS

* * *

(f)(1) If an individual works in the same week for both the short-time employer and another employer and his or her combined hours of work for both employers are equal to or greater than 81 percent of the usual hours of work with the short-time employer, he or she shall not be entitled to benefits under these short-time provisions or the unemployment compensation provisions.

(2) If an individual works in the same week for both the short-time employer and another employer and his or her combined hours of work for both employers are equal to or less than 80 percent of the usual hours of work for the short-time employer, the benefit amount payable for that week shall be the weekly unemployment compensation amount reduced by the same percentage that the combined hours are of the usual hours of work. A week for which benefits are paid under this provision shall count as a week of short-time compensation.

(3) An individual who does not work during a week for the short-time employer, and is otherwise eligible, shall be paid his or her full weekly unemployment compensation benefit amount under the provisions of the regular unemployment compensation program. Such a week shall not be counted as a week for which short-time compensation benefits were received.

(4) An individual who does not work the short-time employer's identified workweek reduction hours as certified by the application due to the use of paid vacation or personal time shall be paid benefits for the week under the partial unemployment compensation provisions of the regular unemployment compensation program.

~~(4)~~(5) An individual who does not work for the short-time employer during a week but works for another employer and is otherwise eligible, shall be paid benefits for that week under the partial unemployment compensation provisions of the regular UI program. Such a week shall not be counted as a week with respect to which STC benefits were received.

Sec. 18. 33 V.S.A. § 4110 is amended to read:

§ 4110. EMPLOYER OBLIGATIONS

* * *

(c) As used in this section:

(1) "Employee" ~~means~~:

(A) means an individual who is an employee within the meaning of chapter 24 of the Internal Revenue Code of 1986; and

(B) does not include an employee of a federal or state agency performing intelligence or counterintelligence functions, if the head of such agency has determined that reporting pursuant to this section with respect to the employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(2) "Employer" has the meaning given such term in Section 3401(d) of the Internal Revenue Code of 1986 and includes any governmental entity and any labor organization.

(3) "First date of employment" is the first day services are performed for compensation as a new hire.

(4) "New hire" means an employee ~~for whom a W-4 filing is required and whose wages have not been reported by the filing employer to the department of labor during the last reporting quarter~~ who:

(A) has not previously been employed by the employer; or

(B) was previously employed by the employer but has been separated from that employment for at least 60 consecutive days.

Sec. 18a. COMPLIANCE WITH UNITED STATES DEPARTMENT OF LABOR

In the event that the United States secretary of labor determines that any provision of the short-time compensation program (21 V.S.A. chapter 19, subchapter 3) is not in conformance with 26 U.S.C. § 3306(v) as added by the federal Layoff Prevention Act of 2012, the provision shall be unenforceable.

Sec. 19. 21 V.S.A. § 1340a is added to read:

§ 1340a. SELF-EMPLOYMENT ASSISTANCE PROGRAM

(a) The commissioner may establish a pilot project for a self-employment assistance project based on the criteria outlined in this section for a period of up to two years, provided that it conforms to state and federal unemployment law. The commissioner may terminate the pilot program with approval of the secretary of administration and notice to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs in the event that it presents unintended adverse consequences to the unemployment trust fund. The commissioner may allow up to 20 participants per year, and each individual may participate for up to 26 weeks as determined by the commissioner.

(b) For purposes of this section:

(1) "Full-time basis" means that the individual is devoting such amount of time as is determined by the commissioner to be necessary to establish a business which will serve as a full-time occupation for that individual.

(2) "Regular benefits" has the same meaning as in subdivision 1421(5) of this title.

(3) "Self-employment assistance activities" means activities approved by the commissioner in which an individual participates for the purpose of establishing a business and becoming self-employed, including entrepreneurial training, business counseling, and technical assistance.

(4) "Self-employment assistance allowance" means an allowance payable in lieu of regular benefits from the unemployment compensation fund to an individual who meets the requirements of this section until such time as the employee's net income is determined by the commissioner, in consultation with the business advisor, to be at least 150 percent of his or her regular weekly benefit for a period of six consecutive weeks.

(5) "Self-employment assistance program" means a program under which an individual who meets the requirements of subsection (e) of this section is eligible to receive an allowance in lieu of regular benefits for the

purpose of assisting that individual in establishing a business and becoming self-employed.

(c) The weekly amount of the self-employment assistance allowance payable to an individual shall be equal to the weekly benefit amount for regular benefits otherwise payable under this title.

(d) The maximum amount of the self-employment assistance allowances paid under this section may not exceed the maximum amount of benefits established under section 1340 of this title with respect to any benefit year.

(e)(1) An individual may receive a self-employment assistance allowance if that individual:

(A) is eligible to receive regular benefits or would be eligible to receive regular benefits except for the requirements described in subdivisions (A) and (B) of subdivision (2) of this subsection;

(B) is identified by a worker profiling system as an individual likely to exhaust regular benefits;

(C) has been accepted into a program approved by the commissioner that will provide self-employment assistance activities, including regular counseling and direction from a business advisor;

(D) is actively engaged in a full-time basis in activities, which may include training, related to establishing a business and becoming self-employed; and

(E) has filed a weekly claim for the self-employment assistance allowance and provided the information the commissioner prescribes.

(2) A self-employment allowance shall be payable to an individual at the same interval, on the same terms, and subject to the same conditions as regular benefits under this chapter, except:

(A) the requirements of section 1343 of this title, relating to availability for work, efforts to secure work, and refusal to accept work, are not applicable to the individual;

(B) the individual is not considered to be self-employed pursuant to subdivision 1301(24) of this title;

(C) an individual who meets the requirements of this section shall be considered to be unemployed under section 1338 of this title; and

(D) an individual who fails to participate in self-employment assistance activities or who fails to engage actively on a full-time basis in activities, including training, relating to the establishment of a business and

becoming self-employed shall be disqualified from receiving an allowance for the week the failure occurs.

(f) The commissioner may approve not more than 20 persons each year during this pilot project to participate in this program and shall ensure that the aggregate number of individuals receiving a self-employment assistance allowance at any time does not exceed five percent of the number of individuals receiving regular benefits at that time.

(g) The self-employment assistance allowance shall not be charged to an employer in accordance with section 1325 of this title.

(h) The commissioner may adopt rules to implement this section.

(i) If the commissioner establishes a pilot project for self-employment assistance, the commissioner shall report on the progress of the project to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs by January 15 of the year following the start of the project.

Sec. 20. 21 V.S.A. § 601 is amended to read:

§ 601. DEFINITIONS

Unless the context otherwise requires, words and phrases used in this chapter shall be construed as follows:

* * *

(12) "Public employment" means the following:

* * *

(K) other municipal workers, including volunteer firefighters and rescue and ambulance ~~squads~~ services while acting ~~in the line of duty~~ in any capacity under the direction and control of the fire department or rescue or ambulance service, after the governing officials of such municipal body so vote;

* * *

(L) members of any regularly organized private volunteer fire department while acting in ~~the line of duty~~ any capacity under the direction and control of the fire department after election by the organization to have its members covered by this chapter;

(M) members of any regularly organized private volunteer rescue or ambulance ~~squad~~ service while acting in ~~the line of duty~~ any capacity under the direction and control of the rescue or ambulance service after election by the organization to have its members covered by this chapter;

* * *

Sec. 21. 21 V.S.A. chapter 23 is added to read:

CHAPTER 23. SOLE CONTRACTOR AUTHORIZATION PROCESS

§ 1801. PURPOSE

(a) An individual who seeks to work as the sole operator of his or her own business and who can meet the standards and criteria set forth in this chapter may voluntarily request an authorization by the department of labor allowing him or her to operate independently and without the benefits and protections afforded employees under chapters 9 and 17 of this title when working within the scope of the sole contractor authorization.

(b) The sole contractor authorization is limited to activities that are within the scope of the certification applied for by the individual. If an authorized sole contractor engages in activities outside the scope of the authorization, the sole contractor shall be presumed to be the statutory employee of the hiring entity.

(c) This chapter is not intended to change the existing laws governing employees and employers. The chapter applies only to individuals that have received a sole contractor authorization.

(d) Nothing in this chapter shall prohibit an individual from working as an independent contractor without the sole contractor authorization, provided the individual meets the test for an independent contractor under law.

§ 1802. DEFINITIONS

For purposes of this chapter:

(1) "Commissioner" means the commissioner of labor or designee.

(2) "Department" means the department of labor.

(3) "Hiring entity" means any person hiring an authorized sole contractor to perform work.

(4) "Sole contractor" means an individual who is approved by the authorization process established in section 1806 of this chapter. A sole contractor may be an individual, a single-member limited liability company, or a single shareholder corporation.

(5) "Sole contractor authorization review board" means the board established pursuant to this chapter that is responsible for reviewing applications from individuals seeking sole contractor status.

§ 1803. SOLE CONTRACTOR CRITERIA

(a) The authorization review board shall determine if an individual is eligible for sole contractor status. An individual operating an existing business or starting a new business and seeking authorization shall provide the board with information demonstrating that he or she meets the sole contractor criteria. The applicant shall provide:

(1) A sworn statement from the individual seeking authorization affirming that he or she has not been coerced into falsely claiming to be a sole contractor.

(2) Possession of a federal employer identification number (FEIN) that is used for federal tax reporting purposes.

(3) Possession of a Social Security number or a work visa.

(4) Proof of registration with the Vermont secretary of state, either as a single individual with a trade name or as a single member LLC or single shareholder corporation.

(5) An affidavit attesting that he or she is and will be free to control and direct his or her work, hours of work, and the means and manner of the performance of such work, subject only to the broad framework of the project goals and completion date.

(6) An affidavit attesting that he or she has no employees or assistants and will not have any employees or assistants as a sole contractor, whether paid or unpaid, and does not engage in any joint ventures or associations with other sole contractors to perform work.

(7) Demonstrates that he or she is in good standing regarding any outstanding child support or taxes.

(b) The applicant shall provide additional information reasonably required by the panel demonstrating that he or she meets the sole contractor criteria, which may include:

(1) A demonstrated history of having his or her own business, including evidence of tax returns, recurring business expenditures such as equipment purchases, shop rent, or charge accounts for supplies which establish that he or she is customarily engaged in an established trade or business.

(2) Proof that he or she works for multiple employers in the course of his or her business.

(3) Proof of past work, including written contracts or agreements, invoices, or competitive bids, on a per-job basis.

(4) Proof that he or she is fully and solely responsible for the work produced, possesses his or her own tools, equipment, and instruments of trade, and normally provides materials and supplies necessary to complete the work.

§ 1804. PRESUMPTION OF STATUS

(a) An individual who is authorized pursuant to this chapter shall not be presumed to be an employee when operating under the provisions of this chapter, and the entity hiring the sole contractor shall not be considered the statutory employer of the sole contractor. Notwithstanding this presumption, if the sole contractor is working for the employer or a subcontractor in a capacity that does not qualify as an individual sole contractor, then all statutory provisions relating to unemployment, workers' compensation, wage and hour provisions, and employment practices shall apply.

(b) A hiring entity shall not hire multiple sole authorized contractors to do the same work on a project or at a job site.

§ 1805. COMPOSITION OF BOARD

An authorization review board is hereby established consisting of 11 members, five of whom shall represent labor to be appointed by the governor, five of whom shall represent business to be appointed by the governor, and one who shall be an employee of the department appointed by the commissioner. Nominations for members for the review board shall be solicited from organizations representing employer organizations, trade associations, and employee organizations and from the commissioner of labor, as well as from a public notice conducted by the department of labor. The review board members appointed by the governor shall be appointed for a term of two years, with no member serving more than three consecutive terms.

§ 1806. BOARD REVIEW PROCESS

(a) Representatives from the board shall meet weekly in three-member panels at the direction of the commissioner, consisting of one member each representing labor and business and the department representative. The members of the panels shall rotate weekly.

(b) The board shall meet to review pending applications and may schedule in-person reviews with individuals seeking authorization. The board shall review documentation and information and take testimony from the applicants. The board's decision to grant authorization shall be based on the criteria established in this chapter. If additional information is necessary to render a decision, the applicant will be given sufficient time to submit such information. Once the board determines that it has sufficient information, it shall make a recommendation to the commissioner. The commissioner shall review the recommendation and make a decision within ten days. If additional

information is needed, the commissioner may remand for additional information, which shall be provided to the commissioner within 14 days. The commissioner shall issue a decision based on the additional information within five days of its receipt. The failure to render a decision within the prescribed time limits shall not result in an individual receiving authorization.

§ 1807. APPEAL

An applicant may appeal a decision of the commissioner to the supreme court within 30 days of the date of the decision.

§ 1808. INFORMATION AND EDUCATION

(a) The commissioner of labor in consultation with the authorization review board shall conduct a comprehensive information and education campaign regarding the provisions of this chapter for a period of not less than 12 months upon instituting this authorization process and shall continue to provide regular information to the labor and business communities about the authorization program and the issues of misclassification and miscoding.

(b) The commissioner shall create and maintain an on-line sole contractor registry listing the names of currently authorized sole contractors and the names of individuals that had previously been certified.

(c) The department shall provide all employers notice and information of the provisions relating to sole contractor authorization and hiring. The department shall establish a simple method for employers utilizing sole contractors to acknowledge receipt of the information, including by electronic means. An employer shall not hire a sole contractor until acknowledging receipt of the information with the department. An employer hiring a sole contractor shall make the acknowledgment annually.

§ 1809. INVESTIGATION AND ENFORCEMENT

(a) The commissioner is authorized to investigate and enforce the provisions of this chapter, including whether a sole contractor or a hiring entity is in compliance with the provisions of this title, including workers' compensation, unemployment insurance compensation, wage and hour laws, and employment practices.

(b) Upon request, a sole contractor shall provide the department with books, records, or other documentation or evidence establishing his or her qualifications to be a sole contractor and evidence that all work performed as a sole contractor is performed in accordance with this chapter.

(c) Any person or entity found to have engaged in misrepresentation or fraudulent activities in relation to this chapter shall be listed on the department's website and debarment list.

§ 1810. PENALTIES

(a) A person who purposefully makes a false statement or representation to obtain or assist another to obtain sole contractor status may, after notice and opportunity for hearing, be assessed an administrative penalty of up to $5,000.00 and may lose the authorization for up to two years.

(b) A sole contractor who violates the terms and conditions of his or her authorization may, after notice and opportunity for hearing, be assessed an administrative penalty of up to $5,000.00 and may lose the authorization for up to one year.

(c) Any person or entity who coerces an employee or prospective employee into becoming a sole contractor for the purpose of avoiding its obligations under this title or Title 32 may, after notice and opportunity for hearing, be assessed an administrative penalty of up to $5,000.00.

(d) An administrative penalty issued pursuant to this section may be in addition to other penalties authorized by chapters 9 and 17 of this title.

(e) Administrative hearings shall be conducted in accordance with the Administrative Procedure Act, 3 V.S.A. § 801 et seq. Appeals from penalty assessment determinations shall be to the Vermont supreme court.

§ 1811. FEES AND COSTS

(a) The application fee for a sole contractor authorization shall be $100.00, which shall be deposited into the sole contractor registry special fund. The authorization shall be valid for two years and may be renewed for subsequent two-year periods upon reapplication and payment of the fee. The department shall utilize the funds to administer the sole contractor program, including for the purpose of providing a per diem and mileage reimbursement for review board members.

(b) The commissioner is authorized to hire and employ one limited service position for a term of three years for program administration. The program shall be funded by the fees collected pursuant to this chapter and supplemented by the general fund when fees do not cover the full costs of the position and program administration.

(c) There is created a sole contractor registry special fund pursuant to 32 V.S.A. chapter 7, subchapter 5, to be expended by the commissioner consistent with the provisions of this section.

§ 1812. RULEMAKING

The commissioner may adopt rules to implement the provisions of this chapter.

Sec. 22. 31 V.S.A. § 722 is amended to read:

§ 722. CERTIFICATE OF OPERATION

(a) An amusement ride may not be operated in this state unless the secretary of state has issued a certificate of operation to the owner or operator.

(b) The secretary of state shall issue a "certificate of operation" no later than 15 days before the amusement ride is first operated in the state, if the owner or operator submits all the following:

(1) Certificate of insurance in the amount of not less than $1,000,000.00 which insures both the owner and the operator against liability for injury to persons and property arising out of the use or operation of the amusement ride.

(2) Payment of a fee in the amount of $100.00.

(3) Documentation that the owner has complied with 21 V.S.A. § 687. Upon receiving the documentation, the secretary of state shall forward a copy of the documentation to the department of labor.

(c) The certificate of operation shall be valid for one year from the date of issue, provided that the owner remains in compliance with the requirements of subsection (b) of this section.

(d) A copy of the certificate of operation shall be posted on or near each amusement ride covered by the certificate and shall be in full public view at all times during the operation of the ride.

Sec. 23. INTERAGENCY AND DEPARTMENTAL TASK FORCE

(a) The agency of administration shall create an interagency and departmental task force to coordinate efforts to combat misclassification of workers and to ensure enforcement of all related laws and regulations. The task force shall be overseen by the department of labor and include the secretaries, commissioners, or designees of the following:

(1) The agency of administration.

(2) The agency of transportation.

(3) The department of buildings and general services.

(4) The department of labor.

(5) The department of financial regulation.

(6) The agency of human services.

(7) The department of taxes.

(8) The office of attorney general.

(9) The department of liquor control.

(10) Any other state licensing agency as determined by the commissioner of labor.

(b) The task force shall meet at least six times per year.

(c) The agency of administration shall enter into a memorandum of understanding with all state agencies to facilitate the coordination and investigation of misclassification and miscoding of workers, including, unless prohibited by state or federal law, the sharing of information concerning the names of businesses found to have misclassified or miscoded workers, the relevant investigation materials, and the number of investigations of misclassification and miscoding.

(d) The department of labor shall pursue entering into a common interest agreement with the United States Department of Labor and the Internal Revenue Service, and any willing states or federal agencies regarding the sharing of information regarding misclassification and miscoding of workers. The department shall notify the chairs of the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs before entering into a common interest agreement. The department shall consider whether the common interest agreement would result in the disclosure of an individual's personal information, or disclose information in violation of state or federal law.

(e) The department of labor shall report to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs on the progress of the interagency and departmental task force, the memorandum of understanding, the status of the common interest agreement, and any other information regarding misclassification and miscoding annually by January 15 in 2013, 2014, and 2015.

Sec. 24. WORKERS' COMPENSATION PREMIUMS

(a) The department of financial regulation in consultation with the department of labor shall study the issue of workers' compensation premiums increasing as a result of an employee completing a job-related safety course. The department of financial regulation shall investigate how workers' compensation premiums can be decreased or kept at a steady rate for employees who receive job safety training.

(b) The department of financial regulation shall report its findings and any recommendations to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs no later that January 15, 2013.

Sec. 25. REPORT

The commissioner of labor shall report to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs regarding the implementation and operation of the sole contractor authorization process. The report shall be made on or before January 15, 2013.

Sec. 26. SHORT-TIME COMPENSATION FUNDING

The commissioner of labor is hereby authorized to pursue federal funding for Vermont's short-time compensation program, if after an analysis of the eligibility requirements for receiving such funding, he or she concludes that doing so would be in the best interest of the state of Vermont.

Sec. 26a. 21 V.S.A. § 601 is amended to read:

§ 601. DEFINITIONS

Unless the context otherwise requires, words and phrases used in this chapter shall be construed as follows:

* * *

(14) "Worker" and "employee" means an individual who has entered into the employment of, or works under contract of service or apprenticeship with, an employer. Any reference to a worker who has died as the result of a work injury shall include a reference to the worker's dependents, and any reference to a worker who is a minor or incompetent shall include a reference to the minor's committee, guardian, or next friend. The term "worker" or "employee" does not include:

* * *

(I) An individual who receives foster care payments excluded from the definition of gross income under Section 131 of Title 26 of the Internal Revenue Code.

* * *

Sec. 26b. STUDY

The commissioner of labor and the secretary of human services shall determine the instances in which arrangements made or paid for directly or indirectly by the agency of human services to recipients constitute employment. The commissioner and the secretary shall also assess whether contracts entered into by the agency comply with employment law including workers' compensation requirements. The commissioner and the secretary shall report their findings and, to the extent that the agency is required or may elect to provide workers' compensation and unemployment compensation,

shall provide an analysis of the financial costs concerning the provision of workers' compensation and unemployment compensation as well as an analysis of how the compensation could be administered. The report shall be made to the house committees on appropriations, on commerce and economic development, and on human services and the senate committees on appropriations, on economic development, housing and general affairs, and on health and welfare by January 15, 2013.

Sec. 27. APPROPRIATION

The amount of $40,000.00 is appropriated in fiscal year 2013 from the general fund to the department of labor to partially fund the one limited service position created in 21 V.S.A. § 1811 to administer the sole contractor authorization program.

Sec. 28. EFFECTIVE DATE

Sec. 12 (relating to nondisclosure or misrepresentation in order to receive unemployment benefits) of this act shall take effect on July 1, 2013. Sec. 18 (relating to employer obligations) of this act shall take effect on October 1, 2012.

And that after passage the title of the bill be amended to read:

An act relating to workers' compensation and unemployment compensation.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, on motion of Senator Illuzzi, the Senate refused to concur in the House proposal of amendment.

Message from the House No. 71

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has considered a bill originating in the Senate of the following title:

S. 93. An act relating to labeling maple products.

And has passed the same in concurrence with proposal of amendment in the adoption of which the concurrence of the Senate is requested.

The House has considered Senate proposal of amendment to House bill entitled:

H. 771. An act relating to making technical corrections and other miscellaneous changes to education law.

And has refused to concur therein and asks for a Committee of Conference upon the disagreeing votes of the two Houses;

The Speaker appointed as members of such Committee on the part of the House:

Rep. Donovan of Burlington
Rep. Crawford of Burke
Rep. Peltz of Woodbury

The House has considered Senate proposal of amendment to House bill entitled:

H. 780. An act relating to compensation for certain state employees.

And has refused to concur therein and asks for a Committee of Conference upon the disagreeing votes of the two Houses;

The Speaker appointed as members of such Committee on the part of the House:

Rep. Atkins of Winooski
Rep. Devereux of Mount Holly
Rep. Martin of Wolcott

Appointments to Committee of Conference

H. 559.

The President announced the appointment of

Senator Fox

as a replacement for

Senator Carris

as a member of the Committee of Conference on the part of the Senate to consider the disagreeing votes of the two Houses upon House bill entitled:

An act relating to health care reform implementation.

S. 113.

An act relating to prevention, identification, and reporting of child abuse and neglect at independent schools.

Was taken up. Pursuant to the request of the Senate, the President announced the appointment of

Senator Mullin
Senator Baruth
Senator Kittell

as members of the Committee of Conference on the part of the Senate to consider the disagreeing votes of the two Houses.

S. 200.

An act relating to the reporting requirements of health insurers.

Was taken up. Pursuant to the request of the Senate, the President announced the appointment of

Senator McCormack
Senator Westman
Senator Pollina

as members of the Committee of Conference on the part of the Senate to consider the disagreeing votes of the two Houses.

S. 217.

An act relating to closely held benefit corporations.

Was taken up. Pursuant to the request of the Senate, the President announced the appointment of

Senator Brock
Senator McCormack
Senator Carris

as members of the Committee of Conference on the part of the Senate to consider the disagreeing votes of the two Houses.

Bill Called Up

H. 669.

Senate bill of the following title was called up by Senator Carris, and, under the rule, placed on the Calendar for action the next legislative day:

An act relating to confidentiality of applications for compensation to the victims' compensation board.

Bill Called Up

H. 774.

Senate bill of the following title was called up by Senator Kittell, and, under the rule, placed on the Calendar for action the next legislative day:

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

Adjournment

On motion of Senator Campbell, the Senate adjourned until one o'clock and thirty minutes in the afternoon on Tuesday, May 1, 2012.