House Calendar

TUESDAY, MARCH 24, 2009

77th DAY OF BIENNIAL SESSION

House Convenes at 10:00 A.M.

TABLE OF CONTENTS

ACTION CALENDAR

Action Postponed Until Tuesday, March 24, 2009

Senate Proposal of Amendment to House Proposal of Amendment

J. R. S. 22

Joint resolution providing for a Joint Assembly to vote on the retention of three Superior Judges, and one District Judge.

The Senate has concurred in the House proposal of amendment with a proposal of amendment as follows:

By striking out the following: "ten o'clock" and inserting in lieu thereof the following: eight o'clock

Favorable with Amendment

H. 34

An act relating to automated external defibrillators.

Rep. French of Shrewsbury, for the Committee on **Judiciary,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. § 907 is amended to read:

§ 907. AUTOMATED EXTERNAL DEFIBRILLATORS

(a) As used in this section:

(1) "Automated external defibrillator (AED)" means a medical device approved by the United States Food and Drug Administration, that:

~~(1)~~(A) is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia;

~~(2)~~(B) is capable of determining whether defibrillation should be performed on an individual;

~~(3)~~(C) upon determination that defibrillation should be performed, automatically charges and requests delivery of an electrical impulse to an individual's heart; and

~~(4)~~(D) then, upon action by an operator, delivers an appropriate electrical impulse to the patient's heart to perform defibrillation.

(b) ~~No person may operate an AED unless the person has successfully completed a training course in the operation of the AED approved by the American Red Cross, the American Heart Association, or by the department, in cardiopulmonary resuscitation and use of a defibrillator. The department of health may provide periodic training bulletins and other information to persons owning and using the AED. The training course in cardiopulmonary resuscitation (CPR) and in the use of an AED shall be either a course offered by the American Heart Association or the American Red Cross. A person using an AED shall be certain that emergency personnel have been summoned by calling 911. This prohibition and training requirement shall not apply to a health care provider, as defined in section 9432(8) of this title, if the person has received appropriate training in the use of the AED as part of his or her education or training.~~

(c) Any person who owns or leases an AED shall:

(1) ~~maintain a relationship with a physician to provide technical assistance and consultation regarding the selection and location of an AED, training of potential operators, protocols for use, and individual case review;~~

~~(2)~~ notify the department and the person's regional ambulance service or first responder service of the existence, location, and type of device ~~it~~ the person possesses; and

~~(3)~~(2) maintain and test the device in accordance with the applicable standards of the manufacturer ~~and any rule adopted by the department~~.

(d)(1) Any person, other than a person defined as a health care provider by section 9432(8) of this title or as emergency medical personnel by section 2651(6) of title 24 acting in the normal course of his or her duties as a health care provider or as emergency medical personnel, who acts in good faith and ~~has complied in all material respects with the requirements of subsections (b) and (c) of this section and~~ who renders emergency care by the use of an AED, acquires an AED, owns a premises on which an AED is located, or provides a training course in the operation of an AED ~~or is a licensed physician providing technical assistance to a person acquiring an AED,~~ shall not be liable for civil damages for that person's acts or omissions unless those acts or omissions were grossly negligent or willful and wanton.

(2) This subsection shall not relieve an AED manufacturer, designer, developer, distributor, installer, or supplier of any liability under any applicable statute or rule of law.

(e) This section shall not be construed to create a duty to act under section 519 of Title 12 for any person.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 10-0-1)

H. 287

An act relating to the uniform prudent management of institutional funds act.

Rep. Wilson of Manchester, for the Committee on **Commerce and Economic Development,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. REPEAL

Chapter 119 of Title 14 (Uniform Management of Institutional Funds Act) is repealed.

Sec. 2. 14 V.S.A. chapter 120 is added to read:

CHAPTER 120. UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT

§ 3411. SHORT TITLE

This chapter may be cited as the Uniform Prudent Management of Institutional Funds Act.

§ 3412. DEFINITIONS

In this chapter:

(1) "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community.

(2) "Endowment fund" means an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term does not include assets that an institution designates as an endowment fund for its own use.

(3) "Gift instrument" means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.

(4) "Institution" means:

(A) a person, other than an individual, organized and operated exclusively for charitable purposes;

(B) a government or governmental subdivision, agency, or instrumentality, to the extent that it holds funds exclusively for a charitable purpose; or

(C) a trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.

(5) "Institutional fund" means a fund held by an institution exclusively for charitable purposes. The term does not include:

(A) program-related assets;

(B) a fund held for an institution by a trustee that is not an institution; or

(C) a fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(7) "Program-related asset" means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

(8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

§ 3413. STANDARD OF CONDUCT IN MANAGING AND INVESTING INSTITUTIONAL FUND

(a) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

(b) In addition to complying with the duty of loyalty imposed by law other than this chapter, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(c) In managing and investing an institutional fund, an institution:

(1) may incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the

institution; and

(2) shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(d) An institution may pool two or more institutional funds for purposes of management and investment.

(e) Except as otherwise provided by a gift instrument, the following rules apply:

(1) In managing and investing an institutional fund, the following factors, if relevant, must be considered:

(A) general economic conditions;

(B) the possible effect of inflation or deflation;

(C) the expected tax consequences, if any, of investment decisions or strategies;

(D) the role that each investment or course of action plays within the overall investment portfolio of the fund;

(E) the expected total return from income and the appreciation of investments;

(F) other resources of the institution;

(G) the needs of the institution and the fund to make distributions and to preserve capital; and

(H) an asset's special relationship or special value, if any, to the charitable purposes of the institution.

(2) Management and investment decisions about an individual asset must be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.

(3) Except as otherwise provided by law other than this chapter, an institution may invest in any kind of property or type of investment consistent with this section.

(4) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.

(5) Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of this chapter.

(6) A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.

§ 3414. APPROPRIATION FOR EXPENDITURE OR ACCUMULATION OF ENDOWMENT FUND; RULES OF CONSTRUCTION

(a) Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

(1) the duration and preservation of the endowment fund;

(2) the purposes of the institution and the endowment fund;

(3) general economic conditions;

(4) the possible effect of inflation or deflation;

(5) the expected total return from income and the appreciation of investments;

(6) other resources of the institution; and

(7) the investment policy of the institution.

(b) To limit the authority to appropriate for expenditure or accumulate under subsection (a) of this section, a gift instrument must specifically state the limitation.

(c) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income," "interest," "dividends," or "rents, issues, or profits," or "to preserve the principal intact," or words of similar import:

(1) create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and

(2) do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection (a) of this section.

§ 3415. DELEGATION OF MANAGEMENT AND INVESTMENT FUNCTIONS

(a) Subject to any specific limitation set forth in a gift instrument or in law other than this chapter, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

(1) selecting an agent;

(2) establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and

(3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

(c) An institution that complies with subsection (a) of this section is not liable for the decisions or actions of an agent to which the function was delegated.

(d) By accepting delegation of a management or investment function from an institution that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.

(e) An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law of this state other than this chapter.

§ 3416. RELEASE OR MODIFICATION OF RESTRICTIONS ON MANAGEMENT, INVESTMENT, OR PURPOSE

(a) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or

modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(b) The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution shall notify the attorney general of the application, and the attorney general must be given an opportunity to be heard. To the extent practicable, any modification must be made in accordance with the donor's probable intention.

(c) If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the attorney general of the application, and the attorney general must be given an opportunity to be heard.

(d) If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, 60 days after notification to the attorney general, may release or modify the restriction, in whole or in part, if:

(1) the institutional fund subject to the restriction has a total value of less than $50,000.00;

(2) more than 20 years have elapsed since the fund was established; and

(3) the institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

§ 3417. REVIEWING COMPLIANCE

Compliance with this chapter is determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight.

§ 3418. APPLICATION TO EXISTING INSTITUTIONAL FUNDS

This chapter applies to institutional funds existing on or established after the effective date of this chapter. As applied to institutional funds existing on the effective date of this chapter, this chapter governs only decisions made or actions taken on or after that date.

§ 3419. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT

This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101 of that act, 15 U.S.C. Section 7001(a), or authorize electronic delivery of any of the notices described in Section 103 of that act, 15 U.S.C. Section 7003(b).

§ 3420. UNIFORMITY OF APPLICATION AND CONSTRUCTION

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Sec. 3. EFFECTIVE DATE

This act shall take effect upon passage.

(Committee vote: 11-0-0)

NOTICE CALENDAR

Committee Bill for Second Reading

H. 431

An act relating to miscellaneous adjustments to the public retirement systems.

(Rep. Atkins of Winooski will speak for the Committee on **Government Operations.)**

Favorable with Amendment

H. 15

An act relating to aquatic nuisance control.

Rep. Adams of Hartland, for the Committee on **Fish, Wildlife and Water Resources,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. chapter 50 is added to read:

CHAPTER 50. AQUATIC NUISANCE CONTROL

§ 1451. FINDINGS

The general assembly finds that:

(1) It is the policy of the state of Vermont that the water resources of the state shall be protected, regulated, and where necessary controlled under the

authority of the state in the public interest to promote the general welfare and to protect public health and the environment.

(2) It is the policy of the state of Vermont to prevent the infestation and invasive proliferation of new aquatic species in waters of the state that result in negative environmental impacts, including habitat loss and a reduction in native biodiversity along with adverse social and economic impacts and impacts to the public health and safety.

(3) The ability to initiate quickly a response to contain and control a new aquatic species introduction before it can spread is critical to reduce future management costs and protect the integrity of Vermont's ecosystems.

(4) Infestations of new aquatic species must be detected early and acted upon swiftly to minimize economic, social, and ecological impacts as well as to increase the probability of a successful eradication effort.

§ 1452. DEFINITIONS

As used in this chapter:

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

(2) "Aquatic nuisance" means undesirable or excessive substances or populations that interfere with the recreational potential or aquatic habitat of a body of water. Aquatic nuisances include rooted aquatic plants and animal and algal populations.

(3) "Aquatic plant" means a plant that naturally grows in water, saturated soils, or seasonally saturated soils, including algae and submerged, floating-leafed, floating, or emergent plants.

(4) "Biological controls" mean multi-cellular organisms.

(5) "Board" means the water resources panel of the natural resources board.

(6) "New aquatic species" means an aquatic species that was not known to occur in a surface water of Vermont or in a segment of Lake Champlain as of January 1, 2007.

(7) "Pesticide" means any substance produced, distributed, or used for preventing, destroying, or repelling nuisance aquatic plants, insects, or other aquatic life, including lamprey. Pesticide includes unicellular organisms or extracts from unicellular organisms and does not include biological controls.

(8) "Secretary" means the secretary of natural resources.

(9) "Water resources" means the waters and the values inherent or potential in waters and their uses.

(10) "Waters" means all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, and springs and all bodies of surface waters, artificial or natural, which are contained within, flow through, or border upon the state or any portion of it.

§ 1453. AQUATIC NUISANCE CONTROL PROGRAM

(a) The agency of natural resources shall establish and maintain an aquatic nuisance control program.

(b) The aquatic nuisance control program shall perform the following services:

(1) receive and respond to aquatic nuisance complaints;

(2) work with municipalities, local interest organizations, private individuals, and agencies of the state to develop long-range programs regarding aquatic nuisance controls;

(3) work with federal, state, and local governments to obtain funding for aquatic nuisance control programs;

(4) implement an aquatic species rapid response program under this chapter;

(5) administer a grant-in-aid program under section 1458 of this title;

(6) place a sign at least 2 feet by 2 feet in size which states that the water is infected with an aquatic nuisance and that a person transporting the nuisance in violation of section 1454 of this title may be subject to a penalty of up to $1,000.00 pursuant to 23 V.S.A. § 3317, so that the sign is easily visible from a ramp used to launch vessels at any fish and wildlife access area on a body of water infected with an aquatic nuisance;

(7) provide the commissioner of fish and wildlife and the commissioner of motor vehicles with written educational information about aquatic nuisances that can be included in an envelope containing a boat registration and in a department of fish and wildlife publication pertaining to fishing and boating.

§ 1454. TRANSPORT OF AQUATIC PLANTS AND AQUATIC NUISANCE SPECIES

(a) No person shall transport an aquatic plant or aquatic plant part, zebra mussels (Dreissena polymorpha), quagga mussels (Dreissena bugensis), or other aquatic nuisance species identified by the secretary by rule to or from any Vermont waters on the outside of a vehicle, boat, personal watercraft, trailer,

or other equipment. This section shall not restrict proper harvesting or other control activities undertaken for the purpose of eliminating or controlling the growth or propagation of aquatic plants, zebra mussels, quagga mussels, or other aquatic nuisance species.

(b) The secretary may grant exceptions to persons to allow the transport of aquatic plants, zebra mussels, quagga mussels, or other aquatic nuisance species for scientific or educational purposes. When granting exceptions, the secretary shall take into consideration both the value of the scientific or educational purpose and the risk to Vermont surface waters posed by the transport and ultimate use of the specimens. A letter from the secretary authorizing the transport must accompany the specimens during transport.

§ 1455. AQUATIC NUISANCE CONTROL PERMIT

(a) No person may use pesticides, chemicals other than pesticides, biological controls, bottom barriers, structural barriers, structural controls, or powered mechanical devices in waters of the state to control nuisance aquatic plants, insects, or other aquatic nuisances, including lamprey, unless that person has been issued a permit by the secretary.

(b) Notwithstanding other requirements set forth in chapter 47 of this title to the contrary, the secretary may issue permits under this section.

(c) Persons desiring a permit under this section shall make application to the secretary on a form prescribed by the secretary.

(d) The secretary shall issue a permit for the use of pesticides in waters of the state for the control of nuisance aquatic plants, insects, or other aquatic life, including lamprey, when the applicant demonstrates and the secretary finds:

(1) there is no reasonable nonchemical alternative available;

(2) there is acceptable risk to the nontarget environment;

(3) there is negligible risk to public health;

(4) a long-range management plan has been developed which incorporates a schedule of pesticide minimization; and

(5) there is a public benefit to be achieved from the application of a pesticide or, in the case of a pond located entirely on a landowner's property, no undue adverse effect upon the public good.

(e) A landowner applying to use a pesticide on a pond located entirely on the landowner's property is exempt from the requirement of subdivision (d)(4) of this section.

(f) The secretary shall issue a permit for the control of aquatic nuisances by

biological controls, bottom barriers, structural barriers, structural controls, powered mechanical devices, or chemicals other than pesticides when the secretary finds:

(1) there is acceptable risk to the nontarget environment;

(2) there is negligible risk to public health; and

(3) there is either benefit to or no undue adverse effect upon the public good.

(g) The use of bottom barriers, structural barriers, structural controls, powered mechanical devices, and copper compounds as an algaecide in waters with a surface area of one acre or less located entirely on a person's property and with an outlet where the flow can be controlled for at least three days is exempt from the permit requirements of this section.

(h) The secretary shall adopt procedures under 3 V.S.A. chapter 25 which will provide an opportunity for public review and comment on permit applications. The procedures shall classify permit applications by degree of environmental risk involved and establish appropriate opportunities for public notice and comment for each class.

(i) An aquatic nuisance control permit issued under this section shall:

(1) specify in writing the secretary's findings under subsection (d) or (f) of this section;

(2) specify the location, manner, nature, and frequency of the permitted activity;

(3) contain additional conditions, requirements, and restrictions as the secretary deems necessary to preserve and protect the quality of the receiving waters, to protect the public health, and to minimize the impact on the nontarget environment. Such conditions may include requirements concerning recording, reporting, and monitoring;

(4) be valid for the period of time specified in the permit, not to exceed three years for chemical control, and not to exceed ten years for nonchemical control.

(j) An aquatic nuisance control permit issued under this chapter may be renewed from time to time upon application to the secretary. The process of permit renewal will be consistent with the requirements of this section.

(k) An applicant for a permit under this section shall pay an application fee as required by 3 V.S.A. § 2822. The agency of natural resources shall be exempt from this fee requirement.

(l) No permit shall be required under this section for mosquito control activities that are regulated by the agency of agriculture, food and markets, provided that:

(1) Prior to authorizing the use of larvicides or pupacides in waters of the state, the secretary of agriculture, food and markets shall designate acceptable control products and methods for their use and issue permits pursuant to 6 V.S.A. § 1083(5); and

(2) On an annual basis, the secretary of agriculture, food and markets shall notify the secretary of the location of all authorized mosquito control applications to the waters of the state that took place during the reporting year and the type and quantity of larvicide and pupacide used at each location.

(m) The secretary may issue general permits for the use of nonchemical aquatic nuisance control activities provided that the secretary makes the findings required in subsection (f) of this section. A general permit issued under this subsection is not required to specify the exact location or the frequency of the permitted activity.

§ 1456. AQUATIC SPECIES RAPID RESPONSE GENERAL PERMITS

(a) Notwithstanding the requirements of section 1455 of this title, the secretary may issue an aquatic species rapid response general permit under this section for a term not to exceed ten years for the control of a nonindigenous new aquatic species. This general permit shall identify the control technique, including the use of biological controls, pesticides, and any other control techniques for the nonindigenous new aquatic species for which coverage may be sought under the permit.

(b) Applications for coverage under this general permit shall be limited to the commissioner of environmental conservation and the commissioner of fish and wildlife. The application shall state the grounds for declaring an emergency situation as defined in subsection (f) of this section. The application shall identify the nonindigenous new aquatic species and control techniques selected to respond to the emergency.

(c) The secretary shall provide notice of the application to the municipal clerk of the municipality or municipalities in which the proposed control activity will be conducted at the time the request for authorization is filed with the secretary. The secretary shall provide an opportunity for written comment regarding whether the request complies with the terms and conditions of the aquatic species rapid response general permit for 10 days following receipt of the request for authorization.

(d) The secretary may issue an authorization under an aquatic species rapid response general permit only when the secretary finds:

(1) that an emergency exists; and

(2) that the proposed control technique meets the requirements of the general permit and is acceptable when considering the emergency situation.

(e) Authorization to act under the terms of a general permit issued under this section shall not exceed three years.

(f) Prior to determining that a nonindigenous new aquatic species emergency exists, the secretary shall consider the following factors:

(1) the likelihood that the nonindigenous new aquatic species will cause harm to human health, safety, or the environment;

(2) the likelihood that the nonindigenous new aquatic species will cause significant harm to the economy;

(3) the magnitude of the potential adverse impact of the nonindigenous new aquatic species upon public health, safety, the environment, native biodiversity, water bodies, outdoor recreation, or any other use of the state's water resources;

(4) the likelihood that the nonindigenous new aquatic species would naturalize in the state if not immediately controlled;

(5) the rate at which the invasion would spread throughout the state; and

(6) the difficulty to control the spread of the nonindigenous new aquatic species in the state.

§ 1457. ENTRANCE UPON LANDS TO PREVENT THE INTRODUCTION AND SPREAD OF NEW AQUATIC SPECIES

(a) The aquatic nuisance control program shall take reasonable steps to prevent the introduction and spread of new aquatic species that may become invasive in the state. To accomplish this objective, the secretary or his or her agent may, after first obtaining the permission of the landowner or occupant, enter upon lands for the following purposes:

(1) to survey for, inspect, or investigate conditions relating to new aquatic species that may become invasive;

(2) to collect information to issue coverage under rapid response general permits under section 1456 of this title;

(3) to conduct or use control techniques that are available under or authorized by a rapid response general permit issued under section 1456 of this title; and

(4) to determine whether the rules of the agency adopted or issued under this chapter are being complied with.

(b) If a land owner refuses to grant the secretary or his or her agent permission to enter onto the owner's land under this section, the secretary or the duly authorized representative of the secretary may apply for and obtain a warrant or subpoena to allow such entry, surveying, collection, and control as is necessary to protect human health, safety, and the environment or prevent economic loss.

§ 1458. GRANT-IN-AID TO MUNICIPALITIES AND AGENCIES OF THE STATE

(a) A municipality or agency of the state which desires state assistance to control aquatic nuisances may apply in writing to the agency of natural resources in a manner prescribed by the agency of natural resources.

(b) When the agency finds that a proposed aquatic nuisance control program is suitable to control or minimize the effect an aquatic nuisance has on water quality and water use, it may award a grant of 75 percent or less of the project costs as determined by the agency. Recurring maintenance projects may be awarded grants of 75 percent or less of the annual project cost. In approving requests and determining the amount of any grant, the agency shall consider the following:

(1) the use of the waters by persons outside the municipality in which the waters are located;

(2) the long-range effect of the control project;

(3) the recreational use of the waters; and

(4) the effectiveness of municipal shoreland zoning and other controls in minimizing or preventing existing or new development from having any adverse effects on the waters subject to the control program.

(c) The agency shall make awards to priority projects to the extent funds are available. First priority shall be projects to manage incipient infestations of aquatic nuisances, second priority shall be projects to prevent or control the further spread of aquatic nuisances, and third priority shall be recurring maintenance projects. In establishing priorities for individual projects, the agency shall consider the following:

(1) public accessibility and recreational uses;

(2) the importance to commercial, agricultural, or other interests;

(3) the degree of local interest, as manifested by municipal or other contributions to the project;

(4) local efforts to control aquatic nuisances;

(5) other considerations affecting feasibility, probability of achieving long-term control, and necessity or advantage of the proposed work; and

(6) the extent to which the control project is a developmental rather than a maintenance program.

(d) With the approval of the secretary, the agency may use funds provided under this section as well as other funds for restoration, management, or protection projects or for studies in the best interests of the state when the appropriate municipal applicant is not available or not eligible to receive a grant.

(e) When the agency finds that a proposed aquatic nuisance control program is necessary and involves construction or installation of permanent facilities designed to control or minimize the effect that an aquatic nuisance has on water quality or water use, it may award a grant of up to 50 percent of the nonfederal costs of the project provided that evidence is received that the project applicant has voted funds in a specific amount to undertake the project. The applicant shall demonstrate it has or will acquire adequate interests in the site of the project to provide undisturbed possession and use during the life of the project and shall demonstrate ability to operate and maintain the project. The applicant may enter into agreements with the agency for prosecution of all or any portion of the project. For purposes of this subsection, corporations registered with the secretary of state may be eligible applicants.

(f) The agency may make periodic grant payments upon submission by the grantee showing that costs for which reimbursement is requested have been incurred and paid by the grantee. Partial payments shall be made not more frequently than monthly. After the project has been completed and its costs audited by the agency, the agency shall certify the remainder of the award to the commissioner of finance and management who shall issue his or her warrant for payment. Interest costs incurred in local short-term borrowing of the grant amount may be reimbursed as part of the grant.

§ 1459. JOINT MUNICIPAL PARTICIPATION

Should the shorelands of waters for which funds are requested under sections 1451–1460 of this title be under more than one municipal governmental jurisdiction, the provisions herein shall apply to the respective

municipalities under a joint application, except that the required municipal contribution shall be apportioned among the respective municipalities.

§ 1460. RULEMAKING

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

Sec. 2. 10 V.S.A. § 8003(a) is amended to read:

(a) The secretary may take action under this chapter to enforce the following statutes:

(1) [Deleted.]

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

(3) 10 V.S.A. chapters 37, 47, and 56, relating to water pollution control, water quality standards, water resources management, and public water supply;

(4) 10 V.S.A. chapters 41 and 43, relating to dams and stream alterations;

(5) 10 V.S.A. chapter ~~37~~ 50, relating to the control of aquatic species and introduction of algicides, pesticides, and herbicides;

* * *

Sec. 3. 10 V.S.A. § 8503(a) is amended to read:

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

(1) The following provisions of this title:

(A) chapter 23 (air pollution control).

(B) ~~section 922~~ chapter 50 (aquatic ~~nuisance~~ species control ~~grants-in-aid~~).

* * *

Sec. 4. REPEAL

Sections 921, 922, 923, 924, 1263a, and 1266 of Title 10 are repealed on the effective date of chapter 50 of Title 10.

Sec. 5. 23 V.S.A. § 3305(k) is amended to read:

(k) The commissioner shall enclose with every permanent and temporary motorboat registration and registration renewal certificate issued pursuant to

this chapter ~~the following~~ a statement~~: "I. Transporting zebra mussels, or Eurasian milfoil to or from any Vermont water surface is illegal (10 V.S.A. § 1266).~~

~~"II. If your boat or equipment is exposed to Lake Champlain or any other zebra mussel or Eurasian milfoil infested water, the following steps should be taken prior to putting your boat or equipment in another Vermont lake, pond or other water body:~~

~~"A. Inspect for and scrape off from your boat's hull or equipment or any exposed areas any visible mussels or milfoil.~~

~~"B. Carefully flush with clean water all boat hulls, outdrive, live wells, bilge, trailers, anchors, ropes, bait buckets, raw engine cabling systems, and other boat parts or equipment.~~

~~"C. Dry boats, trailers, and equipment thoroughly in the sun."~~ , based on current aquatic nuisance threats and spread prevention methods, regarding the danger of aquatic nuisances, how aquatic nuisance species are spread, and how spread of aquatic nuisance species may be controlled.

Sec. 6. 23 V.S.A. § 3305b is amended to read:

§ 3305b. BOATING SAFETY EDUCATION; RULES

(a) When required. A person born after January 1, 1974 shall not operate a motorboat on the public waters of this state without first obtaining a certificate of boating education.

(b) Possession of certificate. A person who is required to have a certificate of boating education shall:

(1) possess the certificate when operating a motorboat on the public waters of the state; and

(2) show the certificate on the demand of an enforcement officer wearing insignia identifying him or her as such or operating a law enforcement motorboat or vessel. However, no person charged with violating this subsection shall be convicted if the person produces in court, to the officer, or to a state's attorney a certificate which was valid at the time the violation occurred.

(c) Exemptions. The following persons are exempt from the requirements of this section:

(1) a person who is licensed by the United States Coast Guard to operate a vessel for commercial purposes;

(2) a person operating a vessel on a body of water located on private property; and

(3) any other person exempted by rules of the department of public safety.

(d) Rules. The department of public safety shall:

(1) adopt rules that establish criteria for a course of instruction in boating safety education;

(2) adopt rules relating to transient boaters and persons who hire chartered vessels;

(3) administer a verbal test when appropriate;

(4) coordinate a statewide program of boating safety instruction and certification and ensure that a course of boating safety education is available within each county; ~~and~~

(5) ensure that a course of boating safety education is available at the earliest practicable age for children; and

(6) ensure that the course includes an educational component regarding the environmental harm caused by aquatic nuisance species and how the spread of such species may be controlled when boaters follow specific steps to clean boats and trailers after use in state waters.

(e) Hours of instruction. Any course of boating safety education that is offered shall provide a minimum of eight hours of instruction.

(f) Persons offering courses. The following persons may offer the course of instruction in boating safety education if approved by the department of public safety:

(1) the department of public safety;

(2) the United States Coast Guard Auxiliary;

(3) the United States Power Squadron;

(4) a political subdivision;

(5) a municipal corporation;

(6) a state agency;

(7) a public or nonpublic school;

(8) any group, firm, association, or person.

(g) Issuance of certificate. The department of public safety or its designee, shall issue a certificate of boating safety education to a person who:

(1) passes the departmentally prescribed course in boating safety education; or

(2) passes a boating safety equivalency examination administered by persons authorized to offer the course on boating safety education.

(h) Education materials. Upon request, the department of public safety shall provide, without charge, boating safety education materials to persons who plan to take the boating safety equivalency examination.

(i) Lifetime issuance. Once issued, the certificate of boating safety education is valid for the lifetime of the person to whom it was issued and may not be revoked by the department of public safety or a court of law.

(j) Certificate replacement. The department of public safety shall replace, without charge, a lost or destroyed certificate if the department issued the certificate or has a record that the certificate was issued.

(k) Out-of-state certificate. A boating safety certificate issued in another state or country in accordance with or substantially equivalent to criteria of the National Association of State Boating Law Administrators is sufficient to comply with the requirements of this section.

Sec. 7. 23 V.S.A. § 3319 is amended to read:

§ 3319. FEES COLLECTED; SPECIAL FUND

(a) There is hereby established a special fund to be known as the motorboat registration fund for the purposes of ensuring that the fees and penalties collected under this subchapter are utilized in the protection and maintenance of the state's water resources. Any interest earned on the monies in this fund will be deposited in the general fund.

(b) The fees and penalties collected under the provisions of this subchapter, excluding surcharges collected under subsection 3305(b) and subdivisions 3305(c)(3)(A) and (B) of this title, shall be deposited in the motorboat registration fund and shall be allocated as follows:

(1) 15 percent to the department of public safety, to be used for enforcement of this subchapter and implementation of a boating safety education program;

(2) 50 percent to the department of fish and wildlife, to be used: to match federal funds; for upgrading and expanding boating access areas and facilities located at those areas; for developing and constructing new boating access areas; and for facilitating or establishing and maintaining pump out

stations, which may be, in the discretion of the commissioner, constructed or operated either by the department or on a contractual basis by a private person or entity. Users shall be charged reasonable and appropriate fees;

(3) 25 percent to the department of environmental conservation for the purpose of aquatic nuisance control pursuant to ~~10 V.S.A. §§ 921, 922, 923, and 1263a~~ chapter 50 of Title 10;

(4) 10 percent to the agency of agriculture, food and markets for the purpose of mosquito control pursuant to 6 V.S.A. chapter 85.

(c) The surcharges collected under subsection 3305(b) and subdivisions 3305(c)(3)(A) and (B) of this title shall be credited to the special fund established under subdivision (b)(3) of this section for the purpose of an aquatic nuisance control grant program pursuant to ~~sections 921, 922, and 923~~ chapter 50 of Title 10.

Sec. 8. AGENCY OF NATURAL RESOURCES EDUCATIONAL MATERIALS

Educational materials prepared by the agency of natural resources after July 1, 2009 regarding water pollution, use of state waters, hunting, or fishing shall include information regarding the environmental harm caused by aquatic nuisance species and how the spread of such species may be controlled when boaters and other users of state waters follow specific steps to clean boats, trailers, and other equipment after use in state waters.

Sec. 9. DEPARTMENT OF TOURISM AND MARKETING

All brochures prepared by the department of tourism and marketing after July 1, 2009 that address or relate to the use of state surface waters shall include information regarding the environmental harm caused by aquatic nuisance species and how the spread of such species may be controlled when boaters and other users of state waters follow specific steps to clean boats, trailers, and other equipment after use in state waters.

Sec. 10. AGENCY OF NATURAL RESOURCES REPORT ON FINANCING OF AQUATIC NUISANCE CONTROL

On or before January 15, 2010, the agency of natural resources shall report to the house committee on fish, wildlife and water resources and the senate committee on natural resources and energy regarding the funding of aquatic nuisance control activities in the state. The report shall include:

(1) A summary of the existing funding available for aquatic nuisance control activities in the state;

(2) A summary of the demand for aquatic nuisance control activities and the demand for funds to finance such activities;

(3) Recommended user fees, permit fees, or other financial mechanisms that could be utilized to fund the demand for aquatic nuisance control activities in the state.

Sec. 11. EFFECTIVE DATE

(a) This section and Secs. 8 (ANR materials), 9 (department of tourism and marketing materials), and 10 (ANR report on financing aquatic nuisance control) of this act shall take effect July 1, 2009.

(b) Secs. 1 (ANR aquatic nuisance control chapter), 2 (ANR enforcement), 3 (ANR appeals), 4 (repeal of existing aquatic nuisance control authority), 5 (agency of transportation aquatic nuisance educational materials), 6 (boating safety rules educational materials) and 7 (special fund for motor vehicle registration) of this act shall take effect July 1, 2010.

(Committee vote: 8-0-1)

H. 80

An act relating to the use of chloramine as a disinfectant in public water systems.

Rep. Webb of Shelburne, for the Committee on **Fish, Wildlife and Water Resources,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The general assembly finds and declares that the disinfection of public water supplies is acknowledged to be one of the most significant public health accomplishments of all time, and that:

(1) The Champlain water district is the first water system in Vermont to use the disinfectant known as chloramine;

(2) Before using chloramine, the Champlain water district was in compliance with the U.S. Environmental Protection Agency Stage 1 regulations for disinfectants and disinfectant byproducts in public water supplies, which are in effect until October 1, 2012;

(3) Since the Champlain water district began the use of chloramine as a disinfectant in April 2006, more than 80 people who use Champlain water district water have reported adverse human health effects, including rashes, respiratory problems, and digestive problems;

(4) It has been reported that people using water from the Champlain water district cannot filter out all the chemical byproducts;

(5) It has been reported that doctors lack sufficient studies to make diagnoses of the public health effect of chloramine in public water supplies;

(6) There have been no Vermont epidemiological studies on the dermal, respiratory, and digestive effects of human exposure to chloraminated drinking water;

(7) There is considerable controversy about whether the Champlain water district, the department of health and the department of environmental conservation have adequately responded to the public health concerns raised by the use of chloramine;

(8) The agency of natural resources and the department of health should work together to review the health and safety of the use of chloramine as a disinfectant and make efforts to enhance response to public health concerns raised by individuals alleging harm to health due to the use of chloramine as a disinfectant.

Sec. 2. 10 V.S.A. § 1675 is amended to read:

§ 1675. PERMITS; CONDITIONS; DURATION; SUSPENSION OF REVOCATION

(a) Authority to issue, renew, or deny permit. The secretary may issue, renew, or deny a public water system permit required by this chapter. As part of this authority, the secretary may issue general operating permits for the operation of transient noncommunity water systems.

(b) Avoidance of public health hazard or risk. A public water system permit shall be issued or renewed only upon a finding by the secretary, included in the permit, that operation of the system will comply with the standards adopted under this chapter and will not constitute a public health hazard or a significant public health risk.

(1) In making this finding for the issuance of a permit for a new public water source, the secretary shall consider the probable effects of existing and likely future land use practices, including the effects of the uses of agricultural lands, that may affect the quantity or quality of the water associated with any proposed public water source, and whether such practices are likely to constitute a public health hazard relating to such source. The secretary shall not issue a permit for a new public water source if he or she determines that such existing or likely future land use practices are likely to constitute such a public health hazard.

(2) In making this finding for the issuance of a permit for ~~the addition of~~ a ~~new type of~~ change in type of disinfectant, the secretary shall, after consultation with the department of health, consider the likely effects on health from ~~the use of the~~ ~~new type of~~ a change in type of disinfectant. The secretary shall not issue a permit for a new or existing public water system if he or she determines that ~~use of a new type of disinfectant~~ the change in the type of disinfectant used will result in a health effect that is likely to constitute a public health hazard. For the purposes of this section, a change in the type of disinfectant used by a public water system does not include increased or decreased dosage of a previously permitted disinfectant.

(c) Notice and hearing.

* * *

(2) The secretary shall give notice to the public of each application by a public community system for the ~~addition of a new type of~~ change in type of disinfectant to be used. Notice shall be by publication in a newspaper of general circulation for the area containing the ~~proposed~~ public water system and by ~~causing a~~ notice ~~to be~~ posted in the clerk's office for the municipality in which the system is located. The secretary shall also give notice to appropriate state agencies. The secretary shall provide an opportunity for written comment and shall, upon request, provide for a public hearing on the application before ruling on the application. The secretary may require the applicant to submit additional information which the secretary considers necessary in order to support the findings required in subsection (b) of this section, and may refuse to grant a permit until the information is furnished and evaluated. The secretary may also consult with the commissioner of health, as necessary, in making decisions regarding health issues raised by the application. The commissioner's response, if any, shall be part of the public record for the application.

* * *

Sec. 3. CHLORAMINE PUBLIC HEALTH IMPACT ~~TRIAL~~ REVIEW

(a) The secretary of natural resources, in consultation with the department of health and the Champlain water district, shall review the public health impact of the use of chloramine and shall continue to consult with the users of the Champlain water district whose health has allegedly been adversely impacted by the use of chloramine as a disinfectant chemical in the water supply of the Champlain water district.

(b) On or before January 15, 2010, the secretary of natural resources shall report to the house committee on fish, wildlife and water resources, the senate committee on natural resources and energy, the house committee on human

services, and the senate committee on health and welfare with the information generated or collected under the requirements of subsection (a) of this section. The report shall also include a summary of the U.S. Environmental Protection Agency's literature survey of the health impact of chloramine as a disinfectant.

(Committee vote: 8-0-1)

H. 93

An act relating to leasing state forestland for maple sugar production.

Rep. Taylor of Barre City, for the Committee on **Agriculture,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. § 2606b is added to read:

§ 2606b. LICENSE OF FORESTLANDS FOR MAPLE SUGAR PRODUCTION

(a) The general assembly finds and declares that:

(1) maple sugaring is an important cultural tradition of Vermont life that should be maintained and encouraged;

(2) maple sugaring is an important component of the agricultural and forest products economy in Vermont and is increasingly necessary for farmers that must diversify in order to continue to farm in Vermont;

(3) maple sugaring is a sustainable use of forestland;

(4) state forestland should be managed and used for multiple uses including maple sugar production;

(5) it is hereby adopted as state policy to permit limited use of designated state-owned land under the jurisdiction of the department for maple sugar production.

(b) Beginning on July 1, 2009, pursuant to guidelines developed jointly by the department of forests, parks and recreation and the Vermont maple sugar makers' association, the department shall issue licenses for the use of state forestland for the tapping of maple trees, the collection of maple sap, and the right to transport such sap to a processing site located off state forest land or to sites located on state forest land if approved by the commissioner. All tapping of maple trees authorized under a license shall be conducted according to the guidelines for tapping maple trees agreed to by the department and the Vermont maple sugar makers' association. Each person awarded a license under this section shall maintain and repair any road, water crossing, or work area according to requirements set by the department in the license. Each

license shall include such additional terms and conditions set by the department as may be necessary to preserve forest health and to assure compliance with the requirements of this chapter and applicable rules. A license shall be issued for a fixed term not to exceed five years and shall be renewable for two five-year terms subsequent to the initial license. Subsequent renewals shall be allowed where agreed upon by the department and the licensee. The department shall have power to terminate or modify a license for cause, including damage to forest health.

(c) The commissioner may adopt rules to implement the requirements of this section.

(d) There is hereby established a maple advisory board to provide the commissioner of forests, parks and recreation with guidance on licensing of state forest land for maple sugar production, including identification of potential sites on state lands for licensure . The board shall be composed of:

(1) three employees of the department of forests, parks and recreation, appointed by the commissioner.

(2) three members of the maple sugar makers association designated by the association.

(3) one member of either the University of Vermont Proctor maple research center or the University of Vermont agricultural extension service, appointed by the commissioner.

(e) The fee for a license issued under this section shall be one-quarter of the average of the per pound price of Vermont fancy grade syrup and the per pound price of Vermont commercial grade syrup as those prices are set on May 1 of each year. The fee set each May 1 shall apply to licenses issued by the department for the succeeding period beginning June 1 and ending May 31. Fees collected under this section shall be deposited in the forest parks revolving fund established under 10 V.S.A. § 2609 and shall be used by the department to implement the license program established by this section.

(Committee vote: 11-0-0)

H. 94

An act relating to the collection and recycling of mercury-added lamps.

Rep. Fagan of Rutland City, for the Committee on **Fish, Wildlife and Water Resources,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. § 7115 is amended to read:

§ 7115. RULEMAKING

(a) The secretary of the agency of natural resources is authorized to adopt rules necessary to implement this chapter.

(b) The secretary of natural resources may adopt rules or procedures to establish mercury content standards for lamps. If the secretary adopts standards governing mercury content, the standards shall rely upon content standards established in California. If one or more categories of lamps are not covered by the California mercury content standards, the secretary may adopt standards minimizing the mercury content of lamps within such categories, including adoption of a no-mercury standard when non-mercury alternatives are available at comparable cost. Before adopting or amending any standards under this subsection the secretary shall consider mercury reduction controls in other states.

Sec. 2. 10 V.S.A. § 7113(b) is amended to read:

(b) The advisory committee shall be terminated on January 1, ~~2010~~ 2015, unless extended by the general assembly.

(Committee vote: 8-0-1)

H. 147

An act relating to the operation of a motor vehicle by junior operators and primary safety belt enforcement.

Rep. Grad of Moretown, for the Committee on **Judiciary,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. SHORT TITLE

This act shall be known as and may be cited as the "Highway Traffic Safety Act of 2009."

* * * Legislative Findings * * *

Sec. 2. LEGISLATIVE FINDINGS

The general assembly finds that:

* * * General Findings * * *

(1) In December 2006, the governor transmitted to the Division Administrator of the Federal Highway Administration the Strategic Highway Plan for Vermont that stated "The first half of 2006 was trending toward a near record-breaking year for highway deaths and incapacitating injuries." In response to this trend, the Strategic Highway Safety Plan for Vermont was created with the mission to "minimize the occurrence and severity of crashes,

related human suffering, and economic losses on the Vermont transportation network."

(2) According to the governor's highway safety office, traffic crashes cost the nation about $230 billion each year in medical expenses, lost productivity, property damage, and related costs. Vermont pays $221 million of those costs. In 2008, workplace traffic crash injuries cost Vermonters more than $39 million.

(3) According to the governor's highway safety program, each highway fatality cost the state of Vermont more than $900,000.00.

(4) In recognition of the terrible toll in terms of human suffering and financial loss resulting from motor vehicle crashes, on July 6, 2006, the Vermont department of health's injury prevention program hosted the 2006 Symposium on Preventing Crashes Among Young Drivers at the Inn at Essex, Vermont. The symposium brought together key leaders in highway safety, transportation, public health, and youth development for an in-depth multidisciplinary exploration of the causes of crashes among young drivers and opportunities for prevention.

* * * Teen Driving Safety * * *

(1) The Strategic Highway Safety Plan for Vermont of 2006, signed by the governor and endorsed by state agencies, stated that "new language" should be added to the existing graduated driver license legislation to achieve:

(A) Restrictions on passengers in cars driven by young drivers.

(B) Nighttime limitations for young drivers.

(C) Primary safety belt enforcement to the age of 18.

(D) No cell phone or electronic device use by junior operators.

(2) From a public health perspective, "motor vehicle crashes are among the most serious problems facing teenagers." (Anatomy of Crashes Involving Young Drivers-Preventing Teen Motor Crashes.) According to the Centers for Disease Control, highway injuries and deaths constitute the largest reason for youth injuries and deaths, and therefore constitute a public health risk warranting remedial action.

(3) According to the above sources, the 2002 cost of crashes involving drivers ages 20 through 25 was $40.8 billion (National Center for Injury Prevention and Control, 2006).

(4) According to the Vermont Safety Education Center (VSEC), junior operator passenger restrictions are essential components of graduated licensing. Crash risks for teenage drivers increases incrementally with one,

two, three or more passengers. With three or more passengers, fatal crash risk is about three times higher than when a beginner is driving alone.

(5) According to VSEC, the presence of passengers is a major contributor to the teenage death toll. About two-thirds of all crash deaths of teens that involve 16-year-old drivers occur when the beginners were driving with teen passengers. Studies indicate that passenger restrictions can reduce this problem.

(6) According to VSEC, four out of every 10 deaths of teens in motor vehicles occur between 9 p.m. and 6 a.m. Nighttime is one of the riskiest times of day for junior operators due to DUI, darkness, and sleep deprivation in teens. Midnight to 2 a.m. is the most dangerous nighttime period.

* * * Cell Phones and Electronic Devices * * *

(1) The National Highway Traffic Safety Administration policy on cell phones states, "The primary responsibility of the driver is to operate a motor vehicle safely. The task of driving requires full attention and focus. Cell phone use can distract drivers from this task, risking harm to themselves and others. Therefore, the safest course of action is to refrain from using a cell phone while driving."

(2) Teens, driving, and cell phones are a dangerous mix due to teens' vulnerability to distractions and accidents ("Most Wanted Transportation Safety Improvements," National Transportation Safety Board, November 2008).

(3) In 2008, the National Safety Council called for a ban on cell phones while driving, stating that "drivers talking on a cell phone are four times as likely to have an accident as drivers who are not."

* * * Safety Belts * * *

(1) States with primary enforcement average 10-percent higher usage than states with secondary enforcement.

(2) A crash involving an unrestrained person costs 55 percent more than for someone who was restrained.

(3) Approximately 74 percent of the costs associated with crashes are paid for by society; the victim pays the balance.

(4) Drivers who do not wear safety belts are also most likely to engage in risky behavior such as speeding or drinking and driving.

(5) Traffic crashes are not just an enforcement issue.

* * * Junior Operator Nighttime Restriction * * *

Sec. 3. 23 V.S.A. § 614(c) and (d) are added to read:

(c) A person operating with a junior operator's license shall not operate a motor vehicle between 1:00 a.m. and 5:00 a.m., except when carrying the signed and dated written permission of a parent or guardian that contains the parent's or guardian's contact information, including a home and work address and telephone numbers, or except when:

(1) traveling on a direct route between work and home;

(2) traveling for a school-related activity; or

(3) going to or returning from hunting or fishing, provided the operator has in his or her possession hunting or fishing equipment and a valid hunting or fishing license.

(d) A person in violation of subsection (c) of this section shall be allowed to drive his or her vehicle on a direct route home, following issuance of a traffic ticket by a law enforcement officer.

* * * Safety Restriction on the Use of Wireless Telephones and Handheld Electronic Devices by Junior Operators * * *

Sec. 4. 23 V.S.A. § 1095a is added to read:

§ 1095a. WIRELESS TELEPHONE USE; HANDHELD ELECTRONIC DEVICES; LEARNERS AND JUNIOR OPERATORS

A person operating a motor vehicle with a learner's permit under the provisions of section 617 of this title or with a junior operator's license under the provisions of section 607 of this title shall not use any wireless telephone or handheld electronic device while operating on the traveled portion of the highway. This prohibition shall not apply if it is necessary to place an emergency 911 call.

* * * Use of Wireless Telephones and other Electronic Devices by a Person Operating a Vehicle with an Operator's License * * *

Sec. 5. 23 V.S.A. § 1095b is added to read:

§ 1095b. USE OF HANDS-FREE WIRELESS TELEPHONES AND ELECTRONIC DEVICES BY A PERSON WITH AN OPERATOR'S LICENSE

(a) A person operating a motor vehicle with a valid operator's license shall be restricted to using only a hands-free wireless telephone or hands-free electronic communication device while operating on the traveled portion of the highway. This prohibition shall not apply if it is necessary to place an emergency 911 call.

(b) As used in this section, "hands-free" means a mobile telephone or electronic communication device that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of the mobile telephone or electronic communication device, by which a user engages in a conversation without the use of either hand; provided, however, this definition shall not preclude the use of either hand to activate, deactivate, or initiate a function of the telephone or device.

* * * Primary Enforcement of Safety Belt Law; Federal Funds * * *

Sec. 6. REPEAL; PRIMARY ENFORCEMENT OF SAFETY BELT LAW; ACCEPTANCE OF FEDERAL FUNDS

(a) 23 V.S.A. § 1259(e) (secondary enforcement of safety belt law) is repealed.

(b) The state is authorized to accept any additional funding available from the federal government attributable to the passage of this section.

* * * Operation by a Junior Operator After Recall is a Civil Violation * * *

Sec. 7. 23 V.S.A. § 676 is amended to read:

§ 676. OPERATION AFTER SUSPENSION, REVOCATION, ~~OR~~ REFUSAL, OR RECALL - CIVIL VIOLATION

(a) A person whose license or privilege to operate a motor vehicle has been revoked, suspended ~~or~~, refused, or recalled by the commissioner of motor vehicles for any reason other than a violation of sections 1091(b), 1094(b), 1128(b) or (c), or 1201 or a suspension under section 1205 of this title and who operates or attempts to operate a motor vehicle upon a public highway before the license or privilege of the person to operate a motor vehicle has been reinstated by the commissioner commits a civil traffic violation.

(b) In establishing a prima facie case against a person accused of violating this section, the judicial bureau shall accept as evidence, a printout attested to by the law enforcement officer as the person's motor vehicle record showing convictions and resulting license suspensions. The admitted motor vehicle record shall establish a permissive inference that the person was under suspension or had his or her license revoked or recalled on the dates and time periods set forth in the record. The judicial bureau shall not require a certified copy of the person's motor vehicle record from the department of motor vehicles to establish the permissive inference.

Sec. 8. EFFECTIVE DATE

This act shall take effect from passage.

(Committee vote: 8-1-2)

H. 152

An act relating to encouraging biomass energy production.

Amendment to be offered by Rep. Bray of New Haven to H. 152

Sec. 1. BIOMASS ENERGY DEVELOPMENT WORKING GROUP

(a) The biomass energy development working group is established to enhance the growth and development of Vermont's biomass industry while also maintaining forest health. In order to meet these goals, the working group shall analyze current issues in the biomass industry in order to develop a coherent body of recommendations. These recommendations may include incentives, harvesting guidelines, and procurement standards for the development and operation of biomass energy in the state of Vermont. The working group shall also include the following members:

(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) The secretary of natural resources or his or her designee;

(4) The commissioner of the department of public service or his or her designee;

(5) A representative of the biomass energy resource center, appointed by the committee on committees;

(6) Two representatives of the forest products industry that represent logging, processing, or wholesale operator interests, one appointed by the committee on committees and the other appointed by the speaker of the house;

(7) Two representatives of natural resources or environmental organizations that represent wildlife and biodiversity and forest health and sustainability interests, one appointed by the committee on committees and the other appointed by the speaker of the house;

(8) Two representatives of an industry, organization, utility, or corporation that either produces electricity or heat from biomass or purchases power from biomass, appointed by the governor.

(9) A representative of the Vermont woodlands association appointed by the governor;

(10) A representative of a university or college with a focus on biomass policy or research appointed by the speaker of the house;

(11) A representative of the consulting foresters association of Vermont appointed by the governor; and

(12) A representative of the forest guild appointed by the speaker of the house.

(b) The working group is authorized to hold meetings and operate for a maximum of three years in order to review the adequacy of its initial recommendations, continue research and analysis, and make additional recommendations to the legislature. The working group shall elect co-chairs at its initial meeting, and one of the co-chairs shall be a member of the general assembly. For attendance at a meeting when the general assembly is not in session, legislative members of the commission shall be entitled to the same per diem compensation and reimbursement for actual and necessary expenses as provided members of standing committees under 2 V.S.A. § 406.

(c) On or before November 15, 2010, the working group shall issue an interim report to the house committee on agriculture and the house and senate committees on natural resources and energy with:

(1) recommended fiscal and regulatory incentives for the promotion of efficient and sustainable uses of local biomass for energy production and opportunities for offering more predictability in the permitting process;

(2) recommended guidelines or standards for maintaining forest health, including model harvesting and silvicultural guidelines for retaining dead wood and coarse woody material; maintaining soil productivity, wildlife, and biodiversity and other indicators of forest health; and wood procurement standards. In reviewing and recommending standards for biomass procurement, the working group shall review whether:

(A) separate procurement standards are necessary for certain consumers of biomass, such as retail electricity;

(B there are obstacles or policy considerations that need to be overcome to establish model procurement standards for biomass energy facilities;

(C) a uniform procurement standard for maintaining forest health would offer more predictability in the permitting process;

(D) procurement standards can be designed to effectively monitor whether the collective demand for energy produced from biomass does not impair long-term site productivity and forest health; and

(E) it is feasible to coordinate with adjoining states to develop a regional procurement standard for biomass energy facilities.

(3) Recommend standards and policies for the design of new renewable energy from biomass that are designed to promote sustainable, efficient, local, and fair use of biomass supplies.

(4) Recommend additional research and analysis that is needed to ensure that forest health is maintained while providing for a sustainable, long-term supply of local biomass for the production of energy and forest products.

(d) On or before January 15, 2011, the working group shall submit to the house committee on agriculture and the house and senate committees on natural resources and energy a final report addressing the issues in subdivisions (c)(1)–(4) of this section.

(e) Prior to reporting to the general assembly under subsections (c) and (d) of this section, the working group shall allow for public review and comment of any proposed recommendations for incentives, guidelines, or standards for the development and operation of biomass energy. At a minimum, the working group shall allow the department of forests, parks and recreation; the department of fish and wildlife; the public service board; the agency of agriculture, food, and markets; the Vermont economic development authority; and the department of public service to review and offer comments on any proposed recommendations for incentives, guidelines, or standards. In addition, the working group should coordinate with the Forest Roundtable to hold a minimum of two meetings to collect stakeholder input and gather expert testimony on the issues included in this section.

(f) The working group shall seek funding from the clean energy development fund or other available funding sources to hire consultants and conduct research and analysis related to the issues included in this section. In no event shall the working group seek more than $200,000.00 under this subsection. Funding acquired by the working group shall be administered by the office of legislative council.

(g) As used in this section, "biomass" means material from trees, woody plants, or grasses, including limbs, tops, needles, leaves, and other woody parts, grown in a forest, woodland, farm, rangeland, or wildland-urban environment that is the product of forest management, land clearing, ecosystem restoration, or hazardous fuel reduction treatment.

(h) Legislative council shall provide legal and administrative services to the working group. The department of forests, parks and recreation shall provide technical and economic advice to the working group.

(Committee vote: 11-0-0)

H. 171

An act relating to home mortgage protection for Vermonters.

Rep. Turner of Milton, for the Committee on **Commerce and Economic Development,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

SEC. 1. 8 V.S.A. CHAPTER 73 IS AMENDED TO READ:

CHAPTER 73. LICENSED LENDERS

§ 2200. DEFINITIONS

As used in this chapter:

~~(1) "Bank," shall mean institutions organized and regulated as such under the laws of the United States or any state or territory of the United States and which are engaged in the business of banking, and shall also include any Vermont financial institution as defined in subdivision 11101(65) of this title, any insured depository institution as such term is defined by the Federal Deposit Insurance Act, 12 U.S.C. § 1813(c)(2), and a bank not organized within the United States, or a United States or state branch or agency thereof, which is conducting business pursuant to the International Banking Act of 1978, 12 U.S.C. § 3101 et seq. For purposes of this chapter, "bank " shall also includes any credit unions organized and regulated as such under the laws of the United States or any state or territory of the United States.~~

~~(2)~~(1) "Commercial loan" means any loan or extension of credit that is described in section 46(1), (2) or (4) of Title 9 and that is in excess of $25,000.00. The term does not include a loan or extension of credit for the purpose of farming, as defined in ~~section~~ subdivision 6001(22) of Title 10 and does not include a loan or extension of credit for the purpose of financing an owner occupied one- to four-unit dwelling.

~~(3)~~(2) "Commissioner" means the commissioner of banking, insurance, securities, and health care administration.

~~(4)~~(3) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract other than a

commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities or other interest of any other person.

(4) "Depository institution" has the same meaning as in Section 3 of the Federal Deposit Insurance Act, 12 U.S.C. § 1813(c), which includes any bank and any savings association as defined in Section 3 of the Federal Deposit Insurance Act. For purposes of this chapter, "depository institution" also includes any credit union organized and regulated as such under the laws of the United States or any state or territory of the United States.

(5) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation or any successor of any of these.

(6) "Holder" shall have the meaning set forth in section 1-201(20) of Title 9A.

(7) "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild, including stepparents, stepchildren, stepsiblings, and adoptive relationships.

(8) "Individual" means a natural person.

~~(6)~~(9) "Insurance company" shall mean an institution organized and regulated as such under the laws of the state of Vermont or any state or territory of the United States.

~~(7)~~(10) "Licensee" means any person subject to the provisions of section 2201 of this title.

(11) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under this chapter.

(A) For purposes of this subdivision (11), the term "clerical or support duties" may include, subsequent to the receipt of a loan application:

(i) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(ii) Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such

communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

(B) An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator.

~~(8)~~(12) "Mortgage broker" means any person who for compensation or gain, or in the expectation of compensation or gain, directly or indirectly negotiates, places, assists in placement, finds or offers to negotiate, place, assist in placement or find mortgage loans, other than commercial loans, on real property for others. The term shall not include real estate brokers or salespersons, as defined in section 2211 of Title 26, who in connection with services performed in a prospective real estate transaction, provide mortgage information or assistance to a buyer, if such real estate broker or real estate salesperson is not compensated for providing such mortgage information or assistance in addition to the compensation received from the seller or buyer for such real estate ~~services~~ brokerage activity. The term shall not include attorneys licensed to practice law in this state acting in their professional capacity. The term shall not include persons engaged in the foregoing activities solely in connection with the sale, assignment, or other transfer of one or more previously originated loans.

~~(9)~~(13) "Mortgage loan" means a loan secured primarily by a lien against real estate.

(14) "Mortgage loan originator":

(A) Means an individual who for compensation or gain or in the expectation of compensation or gain:

(i) Takes a residential mortgage loan application; or

(ii) Offers or negotiates terms of a residential mortgage loan;

(B) Does not include:

(i) an individual engaged solely as a loan processor or underwriter, except as otherwise provided in subsection 2201(f) of this chapter;

(ii) a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with Vermont law, unless the person or entity is compensated by a buyer or a seller in addition to the compensation received for such real estate brokerage activity or is compensated by a lender, a mortgage broker, or other mortgage loan originator

or by any agent of such lender, mortgage broker, or other mortgage loan originator; and

(iii) a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in Section 101(53D) of Title 11, United States Code.

(15) "Nationwide Mortgage Licensing System and Registry" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators, or any successor to the Nationwide Mortgage Licensing System and Registry.

(16) "Nontraditional mortgage product" means any mortgage product other than a 30-year fixed rate mortgage.

~~(10)~~(17) "Person" shall have the meaning set forth in section 128 of Title 1 and includes a natural person, corporation, company, limited liability company, partnership, or association.

(18) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

(A) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(B) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(C) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to any such transaction);

(D) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(E) Offering to engage in any activity or act in any capacity described in subdivision (A), (B), (C), or (D) of this subdivision (18).

(19) "Registered mortgage loan originator" means any individual who:

(A) meets the definition of mortgage loan originator and is an employee of:

(i) A depository institution;

(ii) A subsidiary that is:

(I) Owned and controlled by a depository institution, as determined by a federal banking agency; and

(II) Regulated by a federal banking agency; or

(iii) An institution regulated by the Farm Credit Administration; and

(B) is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(20) "Residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).

(21) "Residential real estate" means any real property located in Vermont, upon which is constructed or intended to be constructed a dwelling.

~~(11)~~(22) "Sales finance company" means any person who has purchased one or more retail installment contracts, as defined in sections 2351(5) and 2401(7) of Title 9, from one or more retail sellers located in this state. Taking one or more retail installment contracts as security for a loan or loans shall not be construed as purchasing for purposes of this definition.

(23) "Unique identifier" means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

§ 2201. LICENSES REQUIRED

(a) No person shall without first obtaining a license under this chapter from the commissioner:

(1) engage in the business of making loans of money, credit, goods or things in action and charge, contract for or receive on any such loan interest, a finance charge, discount or consideration therefore;

(2) act as a mortgage broker;

(3) act as a mortgage loan originator; or

(4) act as a sales finance company.

(b) Each licensed mortgage loan originator must register with and maintain a valid unique identifier with the Nationwide Mortgage Licensing System and Registry and must be a W-2 employee actively employed at a licensed location of, and supervised and sponsored by, only one licensed lender or licensed mortgage broker operating in this state.

(c) A person licensed pursuant to subdivision (a)(1) of this section may engage in mortgage brokerage and sales finance if such person informs the commissioner in advance that he or she intends to engage in sales finance and mortgage brokerage. Such person shall inform the commissioner of his or her intention on the original license application under section 2202 of this title, any renewal application under section 2209 of this title, or pursuant to section 2208 of this title.

~~(c)~~(d) No lender license, mortgage broker license, or sales finance company license shall be required of:

(1) a state agency, political subdivision, or other public instrumentality of the state;

(2) a federal agency or other public instrumentality of the United States;

(3) a gas or electric utility subject to the jurisdiction of the public service board engaging in energy conservation or safety loans;

(4) a ~~bank~~ depository institution;

(5) a pawnbroker;

(6) an insurance company;

(7) a seller of goods or services that finances the sale of such goods or services, other than a residential mortgage loan;

(8) any individual who offers or negotiates the terms of a residential mortgage loan secured by a dwelling that served as the individual's residence.

(9) lenders that conduct their lending activities, other than residential mortgage loan activities, through revolving loan funds, that are nonprofit organizations exempt from taxation under section 501(c) of the Internal Revenue Code, and that register with the commissioner of economic development under section 690a of Title 10;

~~(9) lenders making only commercial loans of $1,000,000.00 or more;~~

(10) persons who loan, other than residential mortgage loans, an aggregate of less than $50,000.00 in any one year at rates of interest of no more than 12 percent per annum;

(11) ~~nonprofit institutions of higher education, exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, that make residential mortgage loans to their employees from their own funds;~~

~~(12)~~ a seller who, pursuant to subdivision 2355(f)(1)(D) of Title 9, includes the amount paid or to be paid by the seller to discharge a security interest, lien interest, or lease interest on the traded-in motor vehicle in a motor

vehicle retail installment sales contract, provided that the contract is purchased, assigned, or otherwise acquired by a sales finance company licensed pursuant to this title to purchase motor vehicle retail installment sales contracts or a ~~bank~~ depository institution;

~~(13)~~(12)(A) a person making an unsecured commercial loan, which loan is expressly subordinate to the prior payment of all senior indebtedness of the commercial borrower regardless of whether such senior indebtedness exists at the time of the loan or arises thereafter. The loan may or may not include the right to convert all or a portion of the amount due on the loan to an equity interest in the commercial borrower;

(B) for purposes of this subdivision ~~(13)~~(12), "senior indebtedness" means:

(i) all indebtedness of the commercial borrower for money borrowed from ~~banks~~ depository institutions, trust companies, ~~credit unions,~~ insurance companies, and licensed lenders, and any guarantee thereof; and

(ii) any other indebtedness of the commercial borrower that the lender and the commercial borrower agree shall constitute senior indebtedness;

~~(14)~~(13) nonprofit organizations established under testamentary instruments, exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), and which make loans for postsecondary educational costs to students and their parents, provided that the organizations provide annual accountings to the probate court pursuant to 14 V.S.A. § 2324;

(14) any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual.

(e) No mortgage loan originator license shall be required of:

(1) Registered mortgage loan originators, when acting for an entity described in subdivision 2200(19) of this chapter.

(2) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual.

(3) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence.

(4) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a

mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator.

(f) Independent contractor loan processors or underwriters. A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless such independent contractor loan processor or underwriter obtains and maintains a mortgage loan originator license. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(g) This chapter shall not apply to commercial loans of $1,000,000.00 or more.

§ 2202. APPLICATION FOR LICENSE; LICENSE AND INVESTIGATION FEES

(a) Application for a license shall be in writing, under oath, and in the form prescribed by the commissioner, and shall contain the name and the address of the residence and place of business of the applicant, and if the applicant is a partnership or association, of every member thereof, and if a corporation, of each officer and director thereof; also the county and municipality with street and number, if any, where the business is to be conducted and such further information as the commissioner may require.

(b)~~(1)~~ At the time of making application, the applicant shall pay to the commissioner a fee for investigating the application and a license fee for a period terminating on the last day of the current calendar year. The following fees are imposed on applicants:

~~(A)~~(1) For an applicant for a lender's license, $1,000.00 as a license fee, and $1,000.00 as an application and investigation fee for the initial license. ~~An additional license fee of $100.00 shall be required of any applicant for a lender's license who also intends to engage in mortgage brokerage. An additional license fee of $100.00 shall be required for any applicant for a lender's license who also intends to engage in sales finance.~~

~~(B) For an applicant for a mortgage broker's license, $250.00 as a license fee, and $250.00 as an application and investigation fee.~~

~~(C) For an applicant for a sales finance company's license, $300.00 as a license fee, and $250.00 as an application and investigation fee.~~ For each additional lender license from the same applicant, $500.00 as a license fee and $500.00 as an application and investigation fee.

(2) For an applicant for a mortgage broker's license, ~~$350.00~~ $500.00 as a license fee, and ~~$350.00~~ $500.00 as an application and investigation fee.

(3) For an applicant for a mortgage loan originator license, $50.00 as a license fee, and $50.00 as an application and investigation fee.

(4) For an applicant for a sales finance company's license, $350.00 as a license fee, and $350.00 as an application and investigation fee.

~~(4) The license fee for an application submitted after September 30 of any year shall be prorated.~~

(c) In connection with an application for a license, the applicant and each officer, director, and control person of the applicant shall furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including:

(1) Fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a state, national, and international criminal history background check.

(2) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the commissioner to obtain:

(A) An independent credit report and credit score obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act for the purpose of evaluating the applicant's financial responsibility at the time of application and may obtain additional credit reports and credit scores to confirm the licensee's continued compliance with the financial responsibility requirements of this chapter; and

(B) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(3) Any other information required by the Nationwide Mortgage Licensing System and Registry or the commissioner.

§ 2203. BOND; LIQUID ASSETS REQUIRED

(a) Prior to issuance of a license, the applicant shall file with the commissioner, and shall keep in force thereafter for as long as the license remains in effect, a bond in a form and substance to be approved by the commissioner in which the applicant shall be the obligor, in such sum as the commissioner may require. The aggregate liability for any and all claims on any bond shall in no event exceed the sum thereof. No surety obligation on a bond shall be terminated unless at least 60 days' prior written notice is given by the surety to the obligor and the commissioner. When one person is issued licenses to conduct the licensed activity at more than one office, the commissioner may accept a single bond covering all such offices. The bond

shall run to the state for the use of the state and of any person or persons who may have cause of action against the obligor of such bond under the provisions of this chapter. Such bond shall be conditioned that the obligor will faithfully conform to and abide by the provisions of this chapter and of all rules and regulations lawfully made by the commissioner hereunder, and will pay to the state and to any such person or persons any and all moneys that may become due or owing to the state or to such person or persons from such obligor under and by virtue of the provisions of this chapter. The commissioner shall require that the amount of the bonds shall be based upon the dollar amount of loans originated in Vermont and, at a minimum:

~~(1) For an applicant for a lender's license, a surety bond of $50,000.00;~~

~~(2) For an applicant for a mortgage broker's license, a surety bond of $25,000.00;~~

(1) For licensed lenders:

(A) who annually originate $0.00 to $1,000,000.00 in loans, a surety bond not less than $50,000.00;

(B) who annually originate $1,000,000.01 to $15,000,000.00 in loans, a surety bond not less than $100,000.00;

(C) who annually originate $15,000,000.01 or more in loans, a surety bond not less than $150,000.00.

(2) For mortgage brokers:

(A) who annually originate $0.00 to $2,000,000.00 in mortgage loans, a surety bond not less than $25,000.00;

(B) who annually originate $2,000,000.01 to $5,000,000.00 in mortgage loans, a surety bond not less than $50,000.00;

(C) who annually originate $5,000,000.01 to $15,000,000.00 in mortgage loans, a surety bond not less than $75,000.00;

(D) who annually originate $15,000,000.01 or more in mortgage loans, a surety bond not less than $100,000.00.

~~(3) For an applicant for a lender's license engaged in commercial lending, a surety bond of $100,000.00.~~

(3) The commissioner may adopt regulations modifying the minimum bond requirements set forth in this subsection.

(b) Each mortgage loan originator shall be covered by a surety bond in accordance with this section. In the event that the mortgage loan originator is an employee of a person subject to this chapter, the surety bond of such

licensed lender or licensed mortgage broker can be used in lieu of the mortgage loan originator's surety bond requirement, provided that the surety bond shall provide coverage for each mortgage loan originator in an amount as prescribed in this section.

(c) When an action is commenced on a licensee's bond, the commissioner may require the filing of a new bond. Immediately upon recovery upon any action on the bond, the licensee shall file a new bond.

(d) Every applicant for a lender's license shall also prove, in form satisfactory to the commissioner, that the applicant has liquid assets of $25,000.00, or such greater amount as the commissioner may require, available for the operation of such business at the location specified in the application. Every applicant wishing to make commercial loans shall prove liquid assets in an amount of $50,000.00 or such greater amount as the commissioner may require.

~~(c)~~(e) Notwithstanding subsections (a) and ~~(b),~~ (d) of this section, the commissioner may waive or modify the requirement for or amount of a bond or liquid asset set forth in this section, or accept other appropriate means of assuring the financial responsibility of a licensee.

§ 2204. APPROVAL OF APPLICATION AND ISSUANCE OF LICENSE

(a) Upon the filing of the application, payment of the required fees, approval of the bond, and satisfactory proof of liquid assets, the commissioner shall issue and deliver a license to the applicant upon findings by the commissioner as follows:

(1)(A) That the financial responsibility, experience, character, and general fitness of the applicant are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently within the purposes of this chapter. If the applicant is a partnership or association, such findings are required with respect to each partner, member, and control person. If the applicant is a corporation, such findings are required with respect to each officer, ~~and~~ director, and control person.

(B) For purposes of this subsection, a person has shown that he or she is not financially responsible when he or she has shown a disregard in the management of his or her own financial condition. A determination that an individual has not shown financial responsibility may include:

(i) Current outstanding judgments, except judgments solely as a result of medical expenses;

(ii) Current outstanding tax liens or other government liens and filings;

(iii) Foreclosures within the past three years;

(iv) A pattern of seriously delinquent accounts within the past three years.

(2) That allowing the applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted.

(3) That the applicant is licensed to engage in such business in its state of domicile and is in good standing in its state of domicile with its banking regulator or equivalent financial industry regulator.

(4) That the applicant, and each officer, director, and control person of the applicant, has never had a lender license, mortgage broker license, mortgage loan originator license, or similar license revoked in any governmental jurisdiction, except that a subsequent formal vacation of such revocation shall not be deemed a revocation.

(5) That the applicant, and each officer and director of the applicant, has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court:

(A) During the seven-year period preceding the date of the application for licensing and registration; or

(B) At any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering;

(C) Provided that any pardon of a conviction shall not be a conviction for purposes of this subsection.

(6) That the applicant has satisfied the surety bond and liquid asset requirement of section 2203 of this chapter.

(7) For an application for a mortgage loan originator license, the applicant has satisfied the prelicense education requirement of section 2204a of this chapter and the prelicense testing requirement of section 2204b of this chapter.

(b) If the commissioner does not find as set forth in subsection (a) of this section, the commissioner shall not issue a license. Within 60 days of filing of the completed application, the commissioner shall notify the applicant of the denial, stating the reason or reasons therefore. If after the allowable period, no request for reconsideration under ~~section~~ subsection 2205(a) of this title is received from the applicant, the commissioner shall return to the applicant the

bond and the sum paid by the applicant as a license fee, retaining the investigation fee to cover the costs of investigating the application.

(c) If the commissioner makes findings as set forth in subsection (a) of this section, he or she shall issue the license within 60 days of filing the completed application. Except as provided in subsection 2209(c) of this chapter with respect to a mortgage loan originator license, the license shall be in full force and effect until surrendered by the licensee, or revocation, suspension, or refusal to renew by the commissioner.

§ 2204a. MORTGAGE LOAN ORIGINATOR PRELICENSING AND RELICENSING EDUCATION REQUIREMENT

(a) In order to meet the prelicensing education requirement for a mortgage loan originator, a person shall complete at least 20 hours of education approved in accordance with subsection (b) of this section, which shall include at least:

(1) Three hours of federal law and regulations;

(2) Three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) For purposes of subsection (a) of this section, prelicensing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a prelicensing education course shall include review and approval of the course provider.

(c) Nothing in this section shall preclude any prelicensing education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the applicant or an entity which is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such employer or entity.

(d) Prelicensing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(e) The prelicensing education requirements approved by the Nationwide Mortgage Licensing System and Registry in subdivisions (a)(1), (2), and (3) of this section for any state shall be accepted as credit toward completion of prelicensing education requirements in Vermont.

(f) A person previously licensed as a mortgage loan originator under this chapter applying to be licensed again must prove that he or she has completed

all of the continuing education requirements for the year in which the license was last held.

§ 2204b. TESTING OF MORTGAGE LOAN ORIGINATORS

(a) In order to meet the written test requirement referred to in subdivision 2204(a)(6) of this chapter, an individual applying for a mortgage loan originator license shall pass, in accordance with the standards established under this section, a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards.

(b) A written test shall not be treated as a qualified written test for purposes of subsection (a) of this section unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including:

(1) Ethics;

(2) Federal law and regulation pertaining to mortgage origination;

(3) State law and regulation pertaining to mortgage origination;

(4) Federal and state law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(c) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant.

(d) An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than 75 percent correct answers to questions.

(e) An individual may retake a test three consecutive times with each consecutive taking occurring at least 30 days after the preceding test. After failing three consecutive tests, an individual shall wait at least six months before taking the test again.

(f) A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer shall retake the test, not taking into account any time during which such individual is a registered mortgage loan originator.

§ 2205. REVIEW OF DENIAL OF APPLICATION

(a) If the application is denied, the applicant may request that the commissioner reconsider the application by making such request in writing, within 15 days of the denial, responding specifically to the commissioner's stated reason or reasons for denial. The commissioner shall then reconsider the application in light of the response stated in the request for reconsideration. Within 60 days of filing the request, upon findings as set forth in section ~~2204(a)~~ 2204 of this title, the commissioner shall issue the license.

(b) If the commissioner is unable to make findings as set forth in section ~~2204(a)~~ 2204 of this title, the commissioner shall not issue a license. Within 60 days of filing of the request for reconsideration, the commissioner shall notify the applicant of the denial, and return to the applicant the bond and the sum paid by the applicant as a license fee, retaining the investigation fee to cover the costs of investigating the application. The applicant may request review by the superior court in Washington ~~county~~ County upon action brought in the usual form by an aggrieved party, within 15 days after written notice of the denial of the request for reconsideration.

§ 2206. CONTENTS OF LICENSE; NONTRANSFERABILITY; INACTIVE STATUS

(a) The license shall state the address at which the business is to be conducted and shall state fully the name of the licensee, and if the licensee is ~~a partnership or association, the names of the members thereof, and if a corporation, of~~ other than an individual, the date and place of its organization or incorporation. The commissioner may issue an electronic license. The license or a copy of the electronic license shall be kept conspicuously posted in the place of business of the licensee and shall not be transferable or assignable.

(b) The mortgage loan originator license shall fully state the name of the individual and the individual's place of residence. The commissioner may issue an electronic license. The mortgage loan originator license shall not be transferable or assignable.

(c) The license of a mortgage loan originator that has satisfied all of the requirements of licensure, other than being employed by a licensed lender or licensed mortgage broker, may be placed in an approved inactive status.

§ 2207. ADDITIONAL BOND; LIQUID ASSETS TO BE MAINTAINED

(a) If the commissioner finds at any time that a licensee's bond is insecure, exhausted, insufficient, or otherwise doubtful, the commissioner shall require one or more additional bonds meeting the standards set forth in section 2203 of this title. The licensee shall file the bond within ten days of the commissioner's written demand to do so.

(b) Every licensee, except as set forth in subsection (c) of this section, shall maintain at all times assets in amounts as set forth in section 2203 of this title, or in such greater amount deemed necessary by the commissioner. Assets must be either in liquid form available for the operation of or actually used in the conduct of such business at the location specified in the license.

(c) Every licensee making commercial loans shall maintain liquid assets in an amount deemed necessary by the commissioner, but in no event less than $50,000.00.

§ 2208. ADDITIONAL PLACES OF BUSINESS; CHANGE OF PLACE OF BUSINESS; CHANGE OF MANAGEMENT OR CONTROL

(a) Not more than one place of business shall be maintained under the same license, but the commissioner may issue more than one license to the same lender, mortgage broker, or sales finance company licensee upon compliance with all the provisions of this chapter governing an original issuance of a license.

(b) Any change of location or closing of a place of business of the licensee shall require 30 days' prior written notice thereof to the commissioner. ~~Any licensed lender wishing to engage in mortgage brokerage or sales finance, when such was not disclosed to the commissioner in the original application for a license to lend or in any renewal application, shall provide the commissioner 30 days' prior written notice thereof.~~ Notice of such change of location ~~or such change in activities~~ shall be accompanied by a fee of $100.00. Upon receipt of notice and fee, the commissioner shall attach to the license in writing the commissioner's record of the change and the date thereof, which shall be authority for the operation of such business under such license at such new location ~~or, as the case may be, authority for the licensed lender to engage in mortgage brokerage or sales finance. No change in the place of business of a licensee to a location outside of the original state shall be permitted under the same license~~.

(c) The licensee shall notify the commissioner of any change in control of the licensee, and of every change in senior management personnel, and of every change in membership of the board of directors or control persons of the licensee within 30 days of such change.

§ 2209. RENEWAL OF LICENSE

(a) On or before December 1 of each year, every licensee shall renew its license for the next succeeding calendar year and shall pay to the commissioner a renewal of license fee ~~for the next succeeding calendar year, and shall at~~. At a minimum, the licensee shall continue to meet the standards for license issuance under section 2204 of this title. At the same time ~~file~~, the

licensee shall maintain with the commissioner a bond in the ~~same~~ amount and of the ~~same~~ character as required by section 2203 of this title or as required by the commissioner under section 2207 of this title. The license renewal fee shall be:

(1) For the renewal of lender's license, $1,200.00. ~~For a person with ten or more licensed locations, the renewal fee under this subdivision shall be no more than $12,000.00;~~

(2) For the renewal of a mortgage broker's license, ~~$350.00;~~ $500.00.

(3) For the renewal of a sales finance company's license, $350.00.

(4) For renewal of a mortgage loan originator license, $100.00.

(b) Any license originally issued on or after November 1 of the current year shall be valid for the next succeeding year.

(c) An individual holding a mortgage loan originator license must also satisfy the annual continuing education requirement of section 2209a of this title. The license of any mortgage loan originator who fails to pay the annual renewal fee or fails to satisfy all of the minimum license renewal standards by December 1 shall automatically expire on December 31.

§ 2209a. CONTINUING EDUCATION FOR MORTGAGE LOAN ORIGINATORS

(a) In order to meet the annual continuing education requirements, a licensed mortgage loan originator shall complete at least eight hours of education approved in accordance with subsection (b) of this section, which shall include at least:

(1) three hours of federal law and regulations;

(2) two hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(3) two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) For purposes of subsection (a) of this section, continuing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a continuing education course shall include review and approval of the course provider.

(c) Nothing in this section shall preclude any education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the mortgage loan originator or an entity which is affiliated

with the mortgage loan originator, or any subsidiary or affiliate of the employer.

(d) Continuing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(e) A licensed mortgage loan originator:

(1) Except for section 2212 of this title and subsection (i) of this section, may only receive credit for a continuing education course in the year in which the course is taken; and

(2) May not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(f) A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours of credit for every one hour taught.

(g) A person having successfully completed the education requirements approved by the Nationwide Mortgage Licensing System and Registry in subdivisions (a)(1), (2), and (3) of this section for any state shall be accepted as credit toward completion of continuing education requirements in Vermont.

(h) A licensed mortgage loan originator who subsequently becomes unlicensed must complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

(i) A person who otherwise meets the requirements of section 2209 of this title may make up any deficiency in continuing education as established by order, rule, or regulation of the commissioner.

§ 2210. REVOCATION, SUSPENSION OR NONRENEWAL OF LICENSE; CEASE AND DESIST ORDERS

(a) The commissioner may deny, suspend, revoke, condition, or refuse to renew a license, or order that ~~a~~ any person or licensee cease and desist in any specified conduct if the commissioner finds that:

(1) The licensee has failed to pay the renewal of license fee, or an examination fee as provided in section 2222 of this title, or to maintain in effect the required liquid assets or the bond or bonds required under the provisions of this chapter, or to file any annual report or other report, or to comply with any lawful demand, ruling, or requirement of the commissioner; or

(2) The licensee has violated any provisions of this chapter, sections 10403 and 10404 of this title or ~~chapters~~ chapter 4, 59, or 61 of Title 9, where applicable, or any rule, order, directive, or regulation lawfully made thereunder; or

(3) The licensee fails to meet the requirements of section 2204 or 2209 of this title, or withholds information, or fails to cooperate with an examination, or makes a material misstatement in a license application, license renewal, or any document submitted to the commissioner or to the Nationwide Mortgage Licensing System and Registry.

(4) Any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner at the time of issuance, including unconscionable conduct which takes advantage of a borrower's lack of bargaining power or lack of understanding of the terms or consequences of the transaction.

(b) The commissioner may issue orders or directives to any person:

(1) To cease and desist from conducting business;

(2) To cease any harmful activities or violations of this chapter, sections 10403 and 10404 of this title, chapter 4, 59, or 61 of Title 9, where applicable, or any order, directive, rule, or regulation lawfully made thereunder;

(3) To cease business under a license or any conditional license if the commissioner determines that such license was erroneously granted or the licensee is currently in violation of this chapter, sections 10403 and 10404 of this title, chapter 4, 59, or 61 of Title 9, where applicable, or any order, directive, rule, or regulation lawfully made thereunder;

(4) Enjoining or prohibiting any person from engaging in the financial services industry in this state;

(5) To remove any officer, director, employee, or control person;

(6) Regarding any other action or remedy as the commissioner deems necessary to carry out the purposes of this chapter.

~~(b)~~(c) The licensee shall receive 15 days' notice and an opportunity to be heard before such order shall be issued. Mailing notice to the licensee's current address as stated on the license shall be presumptive evidence of its receipt by the licensee. However, if the commissioner finds that the public safety or welfare imperatively requires emergency action, action with no prior notice or prior opportunity to be heard may be taken, pending proceedings for revocation or other action.

§ 2211. REVOCATION, SUSPENSION, OR NONRENEWAL WHERE MORE THAN ONE PLACE OF BUSINESS

The commissioner may revoke, suspend, or refuse to renew only the particular license with respect to which grounds for revocation, suspension, or refusal to renew may occur or exist, or, if the commissioner shall find that such grounds for revocation, suspension, or refusal to renew are of general application to all offices, or to more than one office, operated by such licensee, the commissioner shall revoke, suspend, or refuse to renew all of the licenses issued to the licensee or such licenses as such grounds apply to, as the case may be.

§ 2212. SURRENDER OF LICENSE, NO EFFECT ON LIABILITY; REINSTATEMENT

(a) Any licensee may surrender any license by delivering to the commissioner the license and notice that the licensee thereby surrenders such license.

(b) Surrender shall not affect the licensee's administrative, civil, or criminal liability for acts committed prior to surrender. No revocation, suspension, refusal to renew, or surrender of any license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any borrower.

(c) The commissioner shall have authority to reinstate revoked, suspended, expired, inactive, or nonrenewed licenses or to issue new licenses to a licensee whose license or licenses shall have been revoked, suspended, expired, inactive, or nonrenewed if no fact or condition then exists which clearly would have warranted the commissioner in refusing originally to issue such license under this chapter, provided, however, that the commissioner shall not issue a new license or reinstate a license to any mortgage loan originator whose license has been revoked unless the revocation order has been vacated.

§ 2213. REVIEW OF SUSPENSION, REVOCATION, OR ORDER

The commissioner's findings and order of suspension, revocation, or to cease and desist in specified conduct shall be served on the licensee. Mailing to the licensee's current address as stated on the license shall constitute such service and shall be presumptive evidence of its receipt by the licensee. Within ~~fifteen~~ 15 days of service the licensee may appeal the commissioner's decision to the superior court in Washington ~~county~~ County.

§ 2214. REGULATIONS

The commissioner is hereby authorized and empowered to make such general rules, orders, and regulations and such specific rulings, demands, and

findings as may be necessary for the proper conduct of such business and the enforcement of this chapter, in addition hereto and not inconsistent herewith.

§ 2215. PENALTIES

(a) The commissioner may:

(1) Impose an administrative penalty of not more than ~~$1,000.00~~ $10,000.00 for each violation upon any person who violates or participates in the violation of this chapter, sections 10403 and 10404 of this title or ~~chapters~~ chapter 4, 59, or 61 of Title 9, or any lawful regulation, directive, or order issued thereunder; and

(2) Order any person to make restitution to any person ~~injured as a result of a~~ for any violation of this chapter, sections 10403 and 10404 of this title, or ~~chapters~~ chapter 4, 59, or 61 of Title 9.

(b) Each violation, or failure to comply with any directive or order of the commissioner, is a separate and distinct violation.

(c) It shall be a criminal offense, punishable by a fine of not more than ~~$1,000.00~~ $100,000.00, or not more than a year in prison, or both, for any person, after receipt of an order directing the licensee to cease exercising any duties and powers of a licensee, and assessing an administrative penalty under the authority of this chapter, to perform such duties or exercise such powers of any licensee until the penalty has been satisfied, or otherwise satisfactorily resolved between the parties, or the order is vacated by the commissioner or by a court of competent jurisdiction.

~~(c)~~(d)(1) Any contract of loan made in knowing and willful violation of section 2201(a)(1) of this title, shall be void and the lender shall have no right to collect or receive any principal, interest, or charges whatsoever; provided, however, in the case of loans made in violation of section 2201(a)(1) of this title, where no finding of a knowing and willful violation is made, the lender shall have no right to collect or receive any interest or charges whatsoever, but shall have a right to collect and receive principal.

(2) In the case of any person who, after receipt of an order directing such person to cease exercising any duties and powers of a licensee, and assessing an administrative penalty under the authority of this chapter, continues to perform such duties or exercise such powers of any licensee without satisfying the penalty, or otherwise reaching a satisfactory resolution between the parties, or securing a decision vacating the order by the commissioner or by a court of competent jurisdiction, any contract of loan made by such person after receipt of such order shall be void and the lender

shall have no right to collect or receive any principal, interest, or charges whatsoever.

~~(d)~~(e) The powers vested in the commissioner by this chapter shall be in addition to any other powers to enforce any penalties, fines or forfeitures authorized by law with respect to the requirements set forth herein.

§ 2216. MORTGAGE LENDING; SPECIFIC REQUIREMENTS; EXCEPTIONS

Every licensee engaging in the making of loans secured by a lien against real estate located in this state, whether conducting its affairs as an agent or principal and whether operating from facilities within the state or by mail, telephone or by electronic means, shall comply with the general provisions of this chapter unless exempted herein. A licensee making such loans through a third person, shall only make loans through a person licensed as a mortgage broker and as a mortgage loan originator under this chapter, unless such third person is exempt from such licensing provisions. Any lender who makes such loans through a third person required to be licensed and not so licensed, in addition to being subject to all applicable penalties under Vermont law, shall be responsible for the acts or omissions of the third person as a principal is responsible for the acts and omissions of its agent. Every licensee making loans secured by a lien against real estate shall comply with sections 10403 and 10404, and subchapter 2 of chapter 200 of this title, and shall also be subject to the following specific limitations:

(1) For loans secured by a first lien, the term shall not exceed 480 months, and the licensees may not exceed the interest rate permitted by ~~section~~ subdivision 41a(b)(8) of Title 9. All such lien documents shall include a power of sale pursuant to section 4531a et seq. of Title 12. The limitations on permitted charges contained in sections 2231 and 2233 of this title and sections 42, 44, and 46 of Title 9 shall not apply to any loan within the scope of 12 U.S.C. § 1735f-7a. Permitted charges shall be as specified in sections 42, 44, and 46 of Title 9 for any loan secured by a first lien on real estate that is not included within the scope of 12 U.S.C. § 1735f-7a, instead of sections 2231 and 2233 of this title.

(2) For loans secured by a subordinate lien, the term shall not exceed 360 months, and the licensees may not exceed the interest rate permitted by chapter 4 of Title 9. All such lien documents shall include a power of sale pursuant to section 4531a et seq. of Title 12. Permitted charges for loans secured by a subordinate lien shall be as specified in sections 42, 44, and 46 of Title 9, instead of sections 2231 and 2233 of this title.

(3) No licensee shall take a lien upon real estate as security for any loan made under this chapter, except such lien as is created by law upon the recording of a judgment or such lien as secures a loan in principal amount in excess of $3,000.00 at the time of making.

(4) Interest shall be computed by the actuarial method in accordance with ~~section~~ subsection 41a(d) of Title 9.

(5) Any loan secured by a lien on real estate, except a commercial loan, which does not contain a fixed rate or substantially equal payments for full amortization within the repayment period shall conform to federal regulations on alternative mortgages where applicable by reason of federal law or action of the commissioner.

(6) This section shall not apply to commercial loans.

§ 2217. MORTGAGE BROKERS

(a) No licensee or other person shall act as a mortgage broker in any transaction in which the licensee or such other person is acting as a mortgage lender.

(b) Each mortgage broker required to be licensed under this chapter shall retain for a minimum of six years after a contract is executed pursuant to section 2219 of this title, the original contract between the mortgage broker and the prospective borrower, a copy of the settlement statement, an account of fees received in connection with the loan, correspondence, papers or records relating to the loan and such other documents as the commissioner may require.

(c) A mortgage broker and a mortgage loan originator shall only negotiate, place, or assist in placement of Vermont mortgage loans with lenders licensed pursuant to this chapter, or with ~~bank, savings and loan associations, credit unions, or insurance companies~~ depository institutions authorized to do such business in Vermont.

§ 2218. SEGREGATED ACCOUNTS

(a) All permitted charges paid by loan applicants or borrowers to a lender or a mortgage broker subject to this chapter shall be deposited in one or more accounts maintained at a bank approved by the commissioner, and with respect to such funds the lender or mortgage broker shall act as a fiduciary. Such account or accounts shall be segregated from all other accounts of the lender or broker. No permitted charges shall be used in the conduct of a lender's or a broker's personal affairs, nor in a lender's or a broker's business affairs not specifically related to the applicant or borrower.

(b) Such lender or mortgage broker may withdraw funds from the segregated account for payment directly to third parties for authorized fees.

(c) Such lender or mortgage broker may withdraw funds from the segregated account for commissions to which it is entitled for services actually performed. Services are deemed to have been performed when a loan has closed, the loan applicant has withdrawn the loan application in writing, or such mortgage broker or lender has provided to the loan applicant or borrower written notice that the loan has been denied.

(d) Such lender or mortgage broker may return funds from the segregated account to the borrower if not prohibited by the application or contract.

(e) Such lender or mortgage broker shall maintain complete and accurate account records, including, at a minimum, the source of all deposits, the nature of all disbursements, the date and amount of each transaction and the name of the loan applicant or borrower. All documents pertaining to account activity shall be produced upon request of the commissioner.

§ 2219. CONTRACT REQUIRED OF MORTGAGE BROKER

In advance of taking any fee or collecting any charges, or at the time the prospective borrower submits a signed application, a written agreement in a form approved by the commissioner shall be prepared by the mortgage broker, and shall be signed by both the mortgage broker and the prospective borrower. The agreement shall set forth the particulars of the service to be performed by the mortgage broker, including specifics as to what shall constitute reasonable efforts on the part of the mortgage broker to perform the agreed upon services, shall state clearly that the mortgage broker shall represent the interests of the prospective borrower rather than those of any lender, and shall state the fee for the services.

§ 2220. DISCLOSURE REQUIRED BY MORTGAGE LENDER

In advance of taking any fee or collecting any charges for a mortgage loan, or at the time the prospective borrower submits a signed application, a written disclosure shall be provided by the lender to the prospective borrower setting forth all provisions relating to interest rates applicable to the loan, and specific disclosure regarding any possibility that the lender may change its role to that of a mortgage broker. This section shall not apply to commercial loans.

§ 2221. OUT-OF-STATE MORTGAGE LOANS

A mortgage loan made outside ~~of~~ Vermont for use outside ~~of~~ Vermont shall be deemed to be made outside the state of Vermont and shall not be subject to this chapter except upon written agreement of the borrower and the licensee.

§ 2222. EXAMINATIONS ~~BY THE COMMISSIONER~~ AND INVESTIGATIONS; EXAMINATION FEES

(a) ~~For the purpose of discovering violations of this chapter, subchapter 2 of chapter 200 and sections 10403 and 10404 of this title, or chapters 4, 59 or 61 of Title 9, or securing information lawfully required thereunder, the commissioner may at any time, either personally or by a person or persons duly designated by him or her, investigate the loans and business and examine the books, accounts, records and files used therein, of every licensee and of every person whom the commissioner believes to be engaged in the business described in section 2201 of this title, whether such person shall act or claim to act as principal or agent, or under or without the authority of this chapter.~~

~~(b) For that purpose the commissioner and his or her duly designated representatives shall have free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all such persons. The commissioner and all persons duly designated by him or her shall have authority to issue subpoenas to require the attendance of and to examine under oath all persons whomsoever whose testimony he or she may require relative to such loans or such business.~~

In addition to any authority allowed under this chapter or elsewhere, and for the purpose of examination, or discovering or investigating violations or complaints, of or arising under this chapter, subchapter 2 of chapter 200, and sections 10403 and 10404 of this title, or chapter 4, 59, or 61 of Title 9, or any rule, order, directive, or regulation lawfully made thereunder, or securing any information required or useful thereunder, and for purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation, the commissioner or his or her duly designated representative shall have the authority to:

(1) Conduct investigations and examinations:

(2) Access, receive, and use any books, accounts, records, files, documents, information, or evidence including:

(A) Criminal, civil, and administrative history information, including nonconviction data;

(B) Personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and

(C) Any other documents, information, or evidence the commissioner deems relevant to the inquiry or investigation regardless of the location, possession, control, or custody of such documents, information, or evidence.

(b) The commissioner may review, investigate, or examine any licensee, individual, or person regardless of whether such individual or person has obtained a license under this chapter as often as necessary in order to carry out the purposes of this chapter. The commissioner may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation, and may direct, subpoena, or order such person to produce books, accounts, records, files, and any other documents the commissioner deems relevant to the inquiry.

(c) Each licensee, individual, or person subject to this chapter shall make available to the commissioner upon request the books and records relating to the operations of such licensee, individual, or person. The commissioner shall have access to such books and records and to interview the officers, principals, control persons, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual, or person concerning their business.

(d) Each licensee, individual, or person subject to this chapter shall make or compile reports or prepare other information as directed by the commissioner in order to carry out the purposes of this section, including:

(1) Accounting compilations;

(2) Information lists and data concerning loan transactions in a format prescribed by the commissioner; or

(3) Such other information as the commissioner deems necessary to carry out the purposes of this chapter.

(e) In making any examination or investigation authorized by this chapter, the commissioner may control access to any documents and records of the licensee or person under examination or investigation. The commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the commissioner. Unless the commissioner has reasonable grounds to believe the documents or records of the licensee have been or are at risk of being altered or destroyed for purposes of concealing a violation of this chapter, the licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

(f) In order to carry out the purposes of this chapter, the commissioner may:

(1) Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

(2) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section;

(3) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to this chapter;

(4) Accept and rely on examination or investigation reports made by other government officials within or without this state; or

(5) Accept audit reports made by an independent certified public accountant for the licensee, individual, or person subject to this chapter in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the commissioner.

(g) The authority of this section shall remain in effect, whether such a licensee, individual, or person acts or claims to act under any licensing or registration law of this state, acts without such authority, or surrenders such licensee's license.

(h) No licensee, individual, or person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

~~(c)~~(i) The commissioner shall make an examination of the affairs, business, and records of each licensee at least once every three years. The commissioner may, in the case of those licensees who~~, under section 2233 of this title,~~ do not maintain a Vermont office, accept reports of examinations prepared by another state or federal regulatory agency as substitutes if such reports are available to the commissioner and are determined to be adequate in exercising his or her powers and discharging his or her responsibilities under this chapter.

~~(d)~~(j) Each licensee shall pay to the department all fees, costs, and expenses of any examination, review, and investigation ~~fees~~ as prescribed by section 18 of this title, which fees, costs, and expenses shall be billed when they are incurred. In addition to the powers set forth in section 2210 of this title, the commissioner may maintain an action for the recovery of examination, review

and investigation fees, costs, and expenses as prescribed in section 18 of this title in any court of competent jurisdiction.

§ 2223. RECORDS REQUIRED OF LICENSEE

The licensee shall keep, use in the licensee's business, and make available to the commissioner upon request, such books, accounts, records, and data compilations as will enable the commissioner to determine whether such licensee is complying with the provisions of this chapter and with the rules and regulations lawfully made by the commissioner hereunder. Every licensee shall preserve such books, accounts, records, and data compilations in a secure manner for at least seven years after making the final entry on any loan recorded therein. Thereafter, the licensee shall dispose of such books, accounts, records, and data compilations in accordance with 9 V.S.A. § 2445.

§ 2224. ANNUAL REPORT; MORTGAGE CALL REPORTS

(a) Annually, on or before April 1, each ~~licensee~~ licensed lender, mortgage broker, and sales finance company shall file a report with the commissioner giving such relevant information as the commissioner reasonably may require concerning the business and operations during the preceding calendar year of each licensed place of business conducted by such licensee within the state. Such report shall be made under oath and shall be in the form prescribed by the commissioner, who shall make and publish annually an analysis and recapitulation of such reports.

(b) Annually, within 90 days of the end of its fiscal year, each licensed lender, mortgage broker, and sales finance company shall file financial statements with the commissioner in a form and substance satisfactory to the commissioner, which financial statements must include a balance sheet and income statement.

(c) Each licensed lender, mortgage broker, and mortgage loan originator shall submit to the Nationwide Mortgage Licensing System and Registry reports of condition, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may require.

§ 2225. STATEMENT OF RATES OF CHARGE

Rates of charge shall be stated fully and clearly in such manner as necessary to prevent misunderstanding thereof by prospective borrowers.

§ 2226. DECEPTIVE ADVERTISING

No licensee or other person shall advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner whatsoever any statement

or representation with regard to the rates, terms, or conditions for the lending of money, credit, goods, or things in action which is false, misleading, or deceptive. The commissioner may order any person to desist from any conduct which the commissioner finds to be a violation of the foregoing provisions.

§ 2227. CONDUCT OF UNRELATED BUSINESS

No licensee shall conduct the business of making noncommercial loans under this chapter within any office, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as may be authorized in writing by the commissioner upon his or her finding that the character of such other business is such that the granting of such authority would not facilitate evasions of this chapter or of the rules and regulations lawfully made hereunder.

§ 2228. USE OF OTHER NAMES OR BUSINESS PLACES

No licensee shall transact such business or make any loan provided for by this chapter under any other name or at any other place of business than that named in the license. This section shall not apply to commercial loans made to a borrower located outside ~~of~~ Vermont for use outside ~~of~~ Vermont.

§ 2229. CONFESSIONS OF JUDGMENT; POWERS OF ATTORNEY; CONTENTS OF NOTES

No licensee shall take any confession of judgment. No licensee shall take any power of attorney excepting such as may be incorporated in a form of note approved by the commissioner for use in the financing of insurance premiums. No licensee shall take any note, promise to pay, or security that does not accurately disclose the actual amount of the loan, the time for which it is made, and the agreed rate of interest, nor any instrument in which blank spaces are left to be filled in after execution. Notwithstanding the foregoing provisions of this section, the commissioner may by rule exempt from all or part of this section commercial loans.

§ 2230. RATE OF INTEREST

(a) Every licensee may charge, contract for, and receive thereon interest, calculated according to the actuarial method as set forth in ~~section 41a(d)(2)~~ subsection 41a(d) of Title 9, not exceeding the rates permitted by chapter 4 of Title 9, except that the rate of interest on loans secured by motor vehicles, mobile homes, travel trailers, aircraft, watercraft and farm equipment may not exceed the rate permitted by ~~section~~ subdivision 41a(b)(4) of Title 9.

(b) Interest may be charged, contracted for, and received at the single annual percentage rate that would earn the same interest as the graduated rates when the loan is paid according to its agreed terms and the calculations are

made according to the actuarial method. Interest shall not be paid, deducted, received, or added to principal in advance, except that the advance collection of interest for a period not to exceed 30 days shall be permitted upon the origination of a mortgage loan. ~~The~~ Except for loans made pursuant to section 2216 of this title, the maximum interest permitted on loans made under this chapter shall be computed on the basis of the number of days actually elapsed. For the purpose of these computations a year is any period of 365 consecutive days and 366 days during a leap year.

(c) No licensee shall induce or permit any person jointly or severally to become obligated, directly or contingently or both, under more than one contract of loan made under this section at the same time, for the purpose of obtaining a higher rate of interest than would otherwise be permitted by law.

(d) This section shall not apply to commercial loans.

§ 2231. CONTRACTS TO BE REPAYABLE IN MONTHLY INSTALLMENTS; MAXIMUM TERM; ADDITIONAL CHARGES PROHIBITED; INVALIDITY OF LOAN CONTRACT

(a) Except for loans made pursuant to section 2216 of this title and in compliance with applicable regulations of the commissioner, all loan contracts made under the provisions of this chapter shall require repayment in substantially equal consecutive monthly installments of principal and interest combined.

(b) In addition to the interest and charges herein provided for no further or other charge or amount for any examination, service, brokerage, commission, expense, fee, bonus, or other thing or otherwise shall be directly or indirectly charged, contracted for or received except filing, recording, releasing or termination fees paid or to be paid to a public officer; the premium or identifiable charge for credit life or disability insurance obtained, provided or sold by the licensee subject to the provisions of sections 4101-4115 or sections 3805 and 3806 of this title and any gain or advantage to the licensee from such shall not be deemed in violation of this chapter nor an additional charge in violation of this section or section 2230 of this title. For loans subject to this subsection, if any interest, consideration, or charges in excess of those permitted by this subsection, except as the result of an accidental or bona fide error are charged, contracted for or received, the contract of loan shall be void and the licensee shall have no right to collect or receive any principal, interest or charges whatsoever.

(c) This section shall not apply to commercial loans.

(d) The provisions of subsection (b) of this section shall not apply to mortgage loans.

§ 2232a. REQUIREMENTS REGARDING THE BORROWER

(a) Each licensed lender shall deliver to the borrower at the time any loan is made a statement, showing in clear and distinct terms the amount and date of the loan and of its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and of the licensee, and the agreed rate of charge.

(b) Each licensed lender shall, in advance of any loan closing, deliver to each prospective borrower, based on the type of loan applied for, a full and accurate schedule of the charges to be made and the method of computing the same.

(c) Each licensed lender or holder shall give to the borrower a plain and complete statement of all payments made on account of any such loan specifying the amount applied to finance charges and the amount, if any, applied to principal, and stating the unpaid principal balance, if any, of such loan. When payment is made, a licensee shall provide the borrower with a statement therefor within 30 days after the payment is received, or shall provide, on an annual basis, statements setting forth the information required herein. Each licensed lender or holder shall provide a transaction history of the loan to the borrower upon request.

(d) Each licensed lender or holder shall permit payment to be made in advance without prepayment premium or penalty in any amount on any contract of loan at any time, but the licensee or holder may apply such payment first to all finance charges in full at the agreed rate up to the date of such payment.

(e) Each licensed lender or holder shall upon repayment of the loan in full, promptly mark indelibly every obligation and security signed by the borrower with the word "Paid" or "Canceled," and within 30 days release any mortgage, restore any pledge, cancel and return any note, record or file any necessary release or discharge, cancel and return any assignment given to the licensee by the borrower, and refund to the borrower, in accordance with regulations promulgated by the commissioner any unearned portion of the premium for credit life or disability insurance if a premium for such insurance was disbursed on behalf of the borrower at the time the loan was originally made. The provisions of this subsection shall not affect the right of action created by section 464 of Title 27.

(f) This section shall not apply to commercial loans.

§ 2233. ~~EFFECT~~ CHARGES; LOAN SOLICITATION; SPECIALIZED FINANCING

(a) ~~No~~ Other than a mortgage broker fee pursuant to section 2219 of this title, no person who is required to be licensed under this chapter, shall directly or indirectly charge, contract for, or receive any interest, discount, consideration or charge greater than is authorized by section 41a or 46 of Title 9. No such loan for which a greater rate of interest, finance charge, consideration or charges than is authorized by section 41a or 46 of Title 9 has been charged, contracted for, or received shall be enforced in this state, and every person in any way participating therein in this state shall be subject to the provisions of this chapter. However, any loan legally made in any state which then had in effect a regulatory loan law similar in principle to this chapter may be enforced in this state only to the extent of collecting the principal amount owed and interest thereon at a rate not greater than that authorized by section 41a or 46 of Title 9.

(b) A loan solicited ~~and~~ or made by mail, telephone, or electronic means to a Vermont resident shall be subject to the provisions of this chapter notwithstanding where the loan was legally made. No person shall engage in the business of soliciting ~~and~~ or making loans by mail, telephone, or electronic means to residents of this state unless duly licensed. Such licensee shall be subject to the applicable provisions of this title and chapters 4, 59, and 61 of Title 9, but shall not be required to have or maintain a place of business in the state.

(c) No person other than a ~~bank, savings and loan association, credit union,~~ depository institution, pawnbroker, insurance company, or seller of merchandise or services shall engage in specialized financing, including ~~but not limited to~~ tuition plans or other such financing, but not including insurance premium financing, for residents of this state unless duly licensed. Such licensee shall be subject to the applicable provisions of this title and chapters 4, 59, and 61 of Title 9, but shall not be required to maintain a place of business in this state. Such financing may include more than one loan per borrower. A license granted to such lenders shall be explicit in its authority with respect to the types of business permitted.

§ 2234. ASSIGNMENT OF WAGES

The payment in money, credit, goods, or things in action, as consideration for any sale or assignment of, or order for, the payment of wages, salary, commissions, or other compensation for services, whether earned or to be earned, for the purpose of regulation under this chapter, shall be deemed a loan secured by such assignment. The amount by which such assigned compensation exceeds the amount of such consideration actually paid, for the purposes of regulation under this chapter, shall be deemed finance charges or charges upon such loan from the date of such payment to the date such

compensation is payable. Such transactions shall be governed by and subject to applicable provisions of this title and chapters 4, 59, and 61 of Title 9.

§ 2235. REQUIREMENTS FOR ASSIGNMENT OF WAGES

No assignment of or order for payment of any salary, wages, commissions, or other compensation for services, earned or to be earned, given to secure any loan made by any licensee under this chapter, shall be valid unless the amount of such loan is paid to the borrower simultaneously with its execution. Such assignment or order, or any chattel mortgage or other lien on household furniture then in the possession and use of the borrower, shall not be valid unless it is in writing, signed in person by the borrower, nor shall it be valid if the borrower is married unless it is signed in person by both husband and wife. However, written assent of a spouse shall not be required if the borrower has title as a result of a court order.

§ 2236a. EXTENT OF ASSIGNMENT; SERVICE UPON EMPLOYER

Under any such assignment or order for the payment of future salary, wages, commissions, or other compensation for services given as security for a loan made by any licensee under this chapter, a sum not to exceed ten percent of the borrower's salary, wages, commissions, or other compensation for services shall be collectible from the employer of the borrower by the licensee at the time of each payment to the borrower of such salary, wages, commissions, or other compensation for services, from the time that a copy of such assignment, verified by the oath of the licensee or ~~his~~ the licensee's agent, together with a similarly verified statement of the amount unpaid upon such loan, is served upon the employer.

§ 2237. LICENSES MODIFIED, AMENDED, OR REPEALED BY AMENDMENT TO CHAPTER

This chapter or any part thereof may be modified, amended, or repealed so as to effect a cancellation or alteration of any license or right of a licensee hereunder, provided that such cancellation or alteration shall not impair or affect the obligation of any pre-existing lawful contract between any licensee and any borrower.

§ 2238. OUT-OF-STATE COMMERCIAL LOANS

A commercial loan made to a borrower located outside ~~of~~ Vermont for use outside ~~of~~ Vermont shall be deemed to be made outside the state of Vermont and shall not be subject to this chapter except upon written agreement of the licensee and borrower.

§ 2239. COMMERCIAL LEASES

This chapter shall not apply to commercial leases as defined in chapters 59 and 61 of Title 9.

§ 2240. NATIONAL LICENSING SYSTEM

(a) In furtherance of the commissioner's duties under this chapter, the commissioner may participate in ~~a national licensing system~~ the Nationwide Mortgage Licensing System and Registry and may take such action regarding participation in the licensing system as the commissioner deems necessary to carry out the purposes of this section, including:

(1) Issue rules or orders, and may establish procedures, to further participation in the ~~national licensing system~~ Nationwide Mortgage Licensing System and Registry;

(2) Facilitate and participate in the establishment and implementation of the ~~national licensing system~~ Nationwide Mortgage Licensing System and Registry;

(3) ~~Contract with the administrator of the national licensing system to collect, process, and maintain information for the department~~ Establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry;

(4) Authorize the ~~national licensing system~~ Nationwide Mortgage Licensing System and Registry to collect and maintain records and to collect and process any fees associated with licensure on behalf of the commissioner;

(5) Require persons engaged in activities that require a license under this chapter to utilize the ~~national licensing system~~ Nationwide Mortgage Licensing System and Registry for license applications, renewals, amendments, surrenders, and such other activities as the commissioner may require, and to pay through the national licensing system all fees provided for under this chapter;

(6) Authorize the ~~national licensing system~~ Nationwide Mortgage Licensing System and Registry to collect fingerprints on behalf of the commissioner in order to receive or conduct criminal history background checks, and in order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of this subsection the commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency.

(7) In order to reduce the points of contact which the commissioner may have to maintain for purposes of subsection 2202(c) of this chapter the

commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the commissioner.

(b) The commissioner may require persons engaged in activities that require a license under this chapter to submit fingerprints, and the commissioner may utilize the services of a ~~national licensing system national licensing system~~ Nationwide Mortgage Licensing System and Registry to process the fingerprints and to submit the fingerprints to the Federal Bureau of Investigation, the Vermont state police, or any equivalent state or federal law enforcement agency for the purpose of conducting a criminal history background check. The licensee or applicant shall pay the cost of such criminal history background check, including any charges imposed by the ~~national licensing system~~ Nationwide Mortgage Licensing System and Registry.

(c) Persons engaged in activities that require licensure pursuant to this chapter shall pay all applicable charges to utilize the ~~national licensing system~~ Nationwide Mortgage Licensing System and Registry, including such processing charges as the administrator of the ~~national licensing system~~ Nationwide Mortgage Licensing System and Registry shall establish, in addition to the fees required under this chapter.

(d) The ~~national licensing system~~ Nationwide Mortgage Licensing System and Registry is not intended to and does not replace or affect the commissioner's authority to grant, deny, suspend, revoke, or refuse to renew licenses.

§ 2241. PROHIBITED ACTS AND PRACTICES

It is a violation of this chapter for a person or individual to:

(1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(2) Engage in any unfair or deceptive practice toward any person;

(3) Obtain property by fraud or misrepresentation;

(4) Solicit or enter into a contract with a borrower that provides in substance that the person or individual may earn a fee or commission through "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

(5) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;

(6) Conduct any business covered by this chapter without holding a valid license as required under this chapter, or assist or aid and abet any person in the conduct of business under this chapter without a valid license as required under this chapter;

(7) Fail to make disclosures as required by this chapter and any other applicable state or federal law, including regulations thereunder;

(8) Fail to comply with this chapter or rules adopted under this chapter, or fail to comply with any orders or directives from the commissioner, or fail to comply with any other state or federal law, including the rules thereunder, applicable to any business authorized or conducted under this chapter;

(9) Make, in any manner, any false or deceptive statement or representation, including with regard to the rates, points, or other financing terms or conditions for a mortgage loan, or engage in bait and switch advertising;

(10) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the Nationwide Mortgage Licensing System and Registry or in connection with any investigation conducted by the commissioner or another governmental agency;

(11) Make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(12) Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this chapter;

(13) Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer;

(14) Fail to account truthfully for monies belonging to a party to a mortgage loan transaction.

§ 2242. REPORT TO NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY

(a) Subject to state privacy and confidentiality law, the commissioner is required to report regularly violations of this chapter, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing

System and Registry subject to the provisions contained in section 2243 of this title.

(b) A licensee may challenge information the commissioner enters into the Nationwide Mortgage Licensing System and Registry in accordance with the administrative procedure act (chapter 25 of Title 3) and any rules adopted by the department on hearing procedures.

§ 2243. CONFIDENTIALITY

In order to promote more effective regulation and reduce regulatory burden through supervisory information sharing:

(1) The privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege arising under federal or state law (including the rules of any federal or state court) with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. Such information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or state law.

(2) For these purposes, the commissioner is authorized to enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies.

(3) Information or material that is subject to privilege or confidentiality under subdivision (1) of this section shall not be subject to:

(A) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(B) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.

(4) This section shall not apply with respect to information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in

the Nationwide Mortgage Licensing System and Registry for access by the public.

§ 2244. UNIQUE IDENTIFIER SHOWN

The unique identifier of any person originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or websites, and any other documents as established by rule or order of the commissioner.

Sec. 2. 12 V.S.A. § 4532a is added to read:

§ 4532a. NOTICE TO COMMISSIONER OF BANKING, INSURANCE, SECURITIES, AND HEALTH CARE ADMINISTRATION

(a) At the same time the mortgage holder files an action to foreclose owner occupied, one-to-four-family residential property, the mortgage holder shall file a notice of foreclosure with the commissioner of the department of banking, insurance, securities, and health care administration. The commissioner may require that the notice of foreclosure be sent in an electronic format. The notice of foreclosure shall include:

(1) the name and current mailing address of the mortgagor;

(2) the address of the property being foreclosed;

(3) the name of the current mortgage holder, along with the address and telephone number of the person or entity responsible for workout negotiations concerning the mortgage.

(4) the name of the original lender, if different;

(5) the name, address, and telephone number of the mortgage servicer, if applicable; and

(6) any other information the commissioner may require.

(b) The court clerk shall not accept a foreclosure complaint for filing without a certification by the plaintiff that the notice of foreclosure has been sent to the commissioner of banking, insurance, securities, and health care administration in accordance with subsection (a) of this section.

Sec. 3. TRANSITIONAL PROVISIONS

(a) Any mortgage broker or licensed lender holding a Vermont license as of the effective date of this act shall have until December 1, 2009 to comply with the bond and liquid asset requirements of 8 V.S.A. § 2203.

(b) All individuals who, on or before December 31, 2009, are employed by a mortgage broker holding a valid Vermont license and who are authorized to

act as a mortgage broker under such license, or are employed by a lender holding a valid Vermont license and are acting as a lender or loan officer under such license, shall complete the prelicensing education and testing requirements and shall obtain a mortgage loan originator license required by this act no later than July 1, 2010. All other individuals must obtain a mortgage loan originator license as required by this act prior to acting as a mortgage loan originator in this state. The commissioner may extend the date for compliance with any provision of this act provided the extension is permitted or approved by the federal Department of Housing and Urban Development.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2009, except that Sec. 2 (notice of foreclosure) shall take effect 30 days after passage of this act.

(Committee vote: 11-0-0)

H. 192

An act relating to electronic benefit machines for farmers' markets.

Rep. Stevens of Shoreham, for the Committee on **Agriculture,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. ELECTRONIC BENEFIT MACHINES; FARMERS' MARKETS; DEPARTMENT FOR CHILDREN AND FAMILIES' FUNDING

(a) The department for children and families will receive funding through the American Recovery and Reinvestment Act (ARRA) of 2009, Pub.L. 111-5, a portion of which is dedicated to administrative expenses of the 3SquaresVT (formerly food stamp) program.

(b) With respect to federal monies available to the department for children and families under the ARRA, the general assembly directs the department to dedicate at least $35,000.00 for the purpose of helping Vermont farmers' markets cover the costs of electronic benefit machines and related expenses, or to use the money for other administrative programs that facilitate access to healthy local foods.

(Committee vote: 11-0-0)

H. 205

An act relating to the Vermont criminal justice training council.

Rep. Townsend of Randolph, for the Committee on **Government Operations,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 20 V.S.A. § 2362 is amended to read:

§ 2362. REPORTS

(a) Within five working days:

(1) Town, village, and city clerks shall ~~report to~~ notify the council, ~~within five working days, any issuance, termination, revocation or alteration in the terms of appointment of any law enforcement officer or~~ on a form provided by the council, of the election ~~or~~, appointment to fill a vacancy under section 963 of Title 24, expiration of term, or reelection of any constable.

(2) The legislative body of a municipality or its designee shall notify the council of the appointment or removal of a constable or police chief.

(3) A police chief appointed under section 1931 of Title 24 shall notify the council of the appointment or removal of a police officer under the police chief's direction and control.

(4) The appointing authority of a state agency employing law enforcement officers shall notify the council of the appointment or removal of a law enforcement officer employed by that agency.

(5) A sheriff shall notify the council of the appointment or removal of a deputy or other law enforcement officer employed by that sheriff's department.

(b) ~~The report~~ Notification required by this section shall ~~contain~~ include the name of the ~~officer or~~ constable, police chief, police officer, deputy, or other law enforcement officer, the date of appointment or ~~election~~ removal, ~~if a constable,~~ and the term of office or length of appointment, if any.

Sec. 2. 24 V.S.A. § 1931(c) is added to read:

(c) The legislative body or town manager shall report the creation of a new police department or the elimination of an existing police department to the Vermont criminal justice training council within five working days of the creation or elimination. The report shall include the effective date of creation or elimination, the mailing address for the police department, and the name of the appointed police chief.

Sec. 3. VERMONT CRIMINAL JUSTICE TRAINING COUNCIL; NOTIFICATION

On or before August 1, 2009, the Vermont criminal justice training council shall notify all municipal clerks, municipal legislative bodies, sheriffs, and

commissioners of state agencies employing law enforcement officers of the requirements set forth in this act.

(Committee vote: 10-0-1)

H. 313

An act relating to near-term and long-term economic development.

Rep. Kitzmiller of Montpelier, for the Committee on **Commerce and Economic Development,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The general assembly finds that:

(1) During the 2007 legislative session, the legislature, in No. 182 of the Acts of the 2007 Adj. Sess. (2008), instructed the commission on the future of economic development to complete a public engagement process, develop specific goals and, with input and validation by the economists of the executive and legislative branches, benchmarks.

(2) The commission sought expert testimony, reviewed numerous studies, and conducted a rigorous public engagement process to identify the elements needed for successful economic development in Vermont. The commission distilled four principal goals and identified a benchmarking process for future economic development in Vermont that are the most critical to the state's future prosperity and the welfare of its citizens.

(3) The four principal goals emerged from two and one-half years of the commission's study of Vermont's economy and the public policies that advance and impede economic development. The goals are interdependent and interconnected, and they must all be addressed if Vermont is to reach its economic development promise.

(4) The implementation of the goals is the joint task of the legislature, the administration, our local, regional, and state agencies, our nongovernmental organizations, and our citizens. State economists have concluded that the goals cannot be adequately evaluated with a small set of simplistic benchmarks, but rather, must be evaluated through a wide range of indicators using statistical benchmarks accompanied by a narrative that is a contextual interpretation of the data by professionals. Ultimately, consistent monitoring of credible benchmarks will provide information on both the efficacy and cost-effectiveness of our public policies and strategies so that necessary adjustments can be made to continually improve Vermont's economic prosperity.

(5) In the course of its work, the commission on the future of economic development reviewed many reports on and evaluations of economic development polices and heard many hours of testimony from a broad spectrum of Vermonters who expressed concerns about the economic challenges facing Vermonters, identified what they perceived as impediments to economic development in Vermont, spoke about Vermont's assets and strengths, and offered many good suggestions for public policies and strategies for growing our economy. The commission traveled to 12 regions of the state to hear from local business leaders, community organizations, and the public, and spoke with representatives of the public and private sectors, traditional and emerging business sectors, educators, and financial experts.

(6) The commission heard that businesses are hindered by the lack of a sufficient number of technically skilled workers, and that some educational institutions are reluctant to see themselves as engines of economic development. Existing technical training, apprenticeship opportunities, and workforce development efforts are valued, but insufficient to meet the needs of Vermont businesses in preparing workers for the workplace.

(7) Vermonters are concerned that inefficiencies in our state and local regulatory and permitting programs, including a lack of coordination between state regulatory agencies and redundancies in state and local regulatory programs that have hampered or dissuaded economic development and investment in Vermont. Navigating the permitting process can be unnecessarily difficult, time consuming, and expensive, and many potential entrepreneurs and investors simply give up.

(8) Vermonters are also very concerned over the deterioration of our physical infrastructure, in particular state transportation systems, and the reliability and cost of energy.

(9) The commission also heard that Vermonters are concerned about the current and future health of our economy and understand that our government's policies affect our economy in both positive and negative ways. They lack confidence that Vermont's government has a clear vision of the future, and they worry that our government does not appear to have a coherent plan to overcome the challenges we face or to recognize and capitalize on our unique strengths and opportunities. Recent deterioration of state, national, and global economic conditions has given our work a greater sense of urgency.

(10) Vermont is a small rural state, smaller than other states in almost every aspect. The commission found that Vermont's scale can become an asset in this fast-paced global economy that rewards flexibility and agility. However, while our government agencies are small, they are not nimble, and our policies often impede economic opportunity at the expense of Vermonters'

quality of life. The commission determined that significant restructuring of agencies and policies could increase efficiency and effectiveness.

(11) Despite its small scale and accessible government, Vermont lacks a shared statewide vision of its economic future. Economic vitality in Vermont is hampered by the lack of coordination among and between state agencies, between regional economic development corporations and regional planning commissions, and between these regional entities and state agencies. As a result of these disconnects, Vermont lacks a single, holistic, integrated state plan for economic development. Additionally, coordinated regional input is imperative for an effective, nimble, and integrated statewide economic development plan. Strong regional development organizations and regional planning commissions are critical partners and resources. Our citizens and business and civic leaders consistently recognize Vermont's small scale and easy access to our government as a potential strength, but observe that we have often failed to take advantage of the opportunities that our smallness offers us.

(12) Vermonters are struggling to secure basic needs such as health care, child care, affordable housing, and quality education. These basic needs are prerequisites to, rather than the product of, economic development. Employers recognize that the health and well-being of our workforce are critical to business success. Worker recruitment, retention, and productivity depend on worker quality of life as measured by wages, health care, child care, housing, connected communities, and a healthy environment.

(13) In addition to providing for these basic needs, an essential role of government is investing in our digital, physical, and human infrastructure as the foundation for all successful economic development. Funding, building, and maintaining our state's infrastructure is one of the highest priorities for the investment of state resources.

(14) The lack of adequate and reliable broadband and cellular infrastructure and access across the state not only impedes the growth of existing and new business in Vermont, but may induce existing businesses to relocate to other states that have better access to broadband and cellular service. Digital infrastructure benefits include government cost savings, increased productivity, and improved quality of life for Vermonters.

(15) The availability of mobile telecommunications and broadband services is essential for promoting the economic development of the state, the education of its young people and life-long learning, the delivery of cost-effective health care, the public safety, and the ability of citizens to participate fully in society and civic life.

(16) Small broadband enterprises now offering broadband service in Vermont have limited access to financial capital necessary for expansion of broadband service to unserved areas of the state.

(17) Telecommunications and broadband infrastructure in all areas of the state should continue to be upgraded to reflect the rapid evolution in the capabilities of available mobile telecommunications and broadband technologies and services that are needed by persons, businesses, and institutions in the state.

(18) The state should continue to ensure the most efficient use of both public and private resources through state policies by encouraging the development of open access telecommunications infrastructure that can be shared by multiple service providers.

(19) The Vermont telecommunications authority has made significant progress toward, and should continue going forward as the primary vehicle for, achieving the goal of realizing universal availability of adequate mobile telecommunications and broadband services, with a focus on unserved areas in the state.

(20) Vermonters' ingenuity, work ethic, and entrepreneurship have long been viewed as competitive assets. Our rapidly evolving economy requires a collaborative partnership of business people, educators, representatives from nongovernmental organizations, and government leaders to provide a skilled workforce to traditional and emerging Vermont businesses, and to enhance career opportunities to all Vermonters.

(21) The strength of our state economy is dependent upon a diversity of business sectors. Despite difficult economic conditions, the state should exercise leadership and creativity in continuing its support of traditional economic drivers such as tourism, agriculture, forestry, construction, and manufacturing, among others.

(22) Tourism has a stabilizing effect on Vermont's economy by insulating the state's residents from the inevitable ups and downs of national and global business cycles, while providing individuals and their families with a diverse set of earning possibilities and challenging occupations that fit into their lifestyle and family situation. Vermont should continue to support this critical component of its economy.

(23) State government should lead by example in supporting local- and state-based economic strategies that are not protectionist, but rather, build on the proud Vermont tradition of self-reliance. Initiatives such as Local First, the department of agriculture's Buy Local program, and state and local government procurement policies for food, goods, and services that give

priority to Vermont businesses when possible, each enhance the Vermont economy through the demonstrated multiplier effects of buying local.

(24) Vermont is home to a vibrant manufacturing sector, which consists of many businesses producing specialized and innovative products. Nationwide, manufacturing accounts for the majority of product and service innovation, and businesses whose competitive advantage flows from innovative and unique products and services, rather than low-cost or high volume, enjoy significantly increased profitability and generate more job opportunities and tax revenue. State government's role should be to support this dynamic manufacturing base, and to provide the necessary training, education, and resources to cultivate a culture of innovation.

(25) In addition to traditional economic drivers, there are new, unique, and innovative Vermont businesses that are successfully competing in the global marketplace that need to be nurtured. There is broad consensus that Vermont can further leverage its brand, including its green reputation, into economic gain. Our entrepreneurial people, healthy environment, and connected communities – our quality of life – are genuine economic assets.

(26) Vermont's reputation for environmental stewardship can be turned to our advantage. Vermont businesses, government, and environmental organizations must be partners and leaders in supporting and creating a green economic sector and the use of green business practices throughout our diverse economy.

(27) Microenterprise also plays an important role in our state's economy and within the working lives of low to moderate income families. Microenterprises develop new industries, increase community assets, are important providers of goods and services in local communities, find unique solutions to local problems, and keep profits circulating locally. Microenterprise provides economic opportunity for low income households and is a proven wealth creation strategy for struggling communities.

(28) Microenterprises often require access to training, services, financing, and support that are different from what small businesses require in order to grow and prosper. Microenterprise financing options and business training and technical assistance are equally important and work together to support microenterprise development.

(29) Research by the Center for Rural Studies at the University of Vermont shows that microenterprise ownership, whether full time or part time, increases income for low income Vermonters, helps people move out of poverty and off public assistance, and helps low income households build assets.

(30) Individual development accounts are a proven strategy for helping low income families move out of poverty and secure an economic foothold through home purchase, business development, and education and training. The Vermont IDA program enables low income Vermonters, over 60 percent of whom have been or are currently TANF recipients, to save a part of their earned income for a first-time home, a small business, or postsecondary education or training. The Vermont IDA program helps participants increase their commitment to their communities and offers stability to their families.

(31) The legislature, administration, and myriad economic and community partners must now work together with unerring discipline to focus policies, regulations, programs, and incentives on the critical interconnection between Vermont's assets, our collective values, our capabilities, and the opportunities which will increase state revenues and the prosperity of all Vermonters.

Sec. 2. PURPOSE; POLICY STATEMENTS FOR FEDERAL STIMULUS COLLABORATION AND FUTURE UTILIZATION OF ECONOMIC DEVELOPMENT RESOURCES

(a) The purpose of this act is to promote the economic development of the state and the prosperity of its businesses and citizens by creating a framework for near-term and long-term collaboration among and within industry sectors and government in order to achieve the four principal goals established by the commission on the future of economic development.

(b) In the near term, this act seeks to promote the most coordinated and efficient means to capitalize on federal stimulus funds. The American Reinvestment and Recovery Act of 2009 ("ARRA") provides economic development resources that are available to the state, its subdivisions, and the private sector. In order to realize the full potential of these funds, and in order to most effectively increase the opportunities for Vermonters to benefit from the ARRA, the Director of Vermont's Office of Economic Stimulus and Recovery ("VOESR") shall coordinate efforts to obtain funds under the ARRA and shall oversee the use of those funds.

(c) Recipients of ARRA formula fund allocations and applicants for ARRA competitive grants shall collaborate to present unified proposals for funding. The VOESR shall provide support to applicants and recipients of ARRA funds to develop unified proposals, and priority shall be given to those programs that achieve multiple economic development goals simultaneously and demonstrate broad geographic benefits. Where applicable, potential beneficiaries shall use best efforts to structure programs so as to maximize eligibility for ARRA funds, and the VOESR shall give priority to those programs that are structured to maximize ARRA eligibility.

(d) The ARRA offers competitive grants to stimulate economic development in the areas of agriculture and rural development, broadband and telecommunications, energy efficiency and renewable energy, employment and training, educational technical assistance, redevelopment of abandoned and foreclosed homes, homelessness prevention and housing, and energy-saving and green retrofit investments in elderly, low income, and disability housing. In order to help Vermonters secure competitive grant funding, the VOESR, in coordination with the appropriate agencies of the state, shall be responsible for identifying competitive grant programs relating to the department's or agency's jurisdiction. Each agency shall provide technical and logistical support to the VOESR as necessary, and shall connect grant applicants with grant-writing and additional resources and services available from both the VOESR and related public and private resources as appropriate.

(e) In the long term, this act seeks to build a foundation for economic development through collaboration and cooperation among Vermonters for their mutual gain. It is the intent of the general assembly to channel these collaborative efforts for economic development through the principal goals and benchmarks for economic development identified by the commission on the future of economic development, utilizing both new and existing resources from the state and federal levels to increase prosperity for all Vermonters.

Sec. 3. 10 V.S.A. chapter 1 is amended to read:

CHAPTER 1. ~~VERMONT DEVELOPMENT BOARD~~ THE FUTURE OF ECONOMIC DEVELOPMENT

* * *

§ 3. ECONOMIC DEVELOPMENT; LONG-TERM GOALS; REVIEW AND ASSESSMENT

(a) For purposes of the Vermont Statutes Annotated and state economic development programs and assistance, "economic development" means the process of generating economic wealth and vitality, security, and opportunity for all Vermonters.

(b) There are established the following four principal, interrelated goals for future economic development in Vermont:

(1) Vermont's businesses, educators, nongovernmental organizations, and government form a collaborative partnership that results in a highly skilled multigenerational workforce to support and enhance business vitality and individual prosperity.

(2) Vermont invests in its digital, physical, and human infrastructure as the foundation for all economic development.

(3) Vermont state government takes advantage of its small scale to create nimble, efficient, and effective policies and regulations that support business growth and the economic prosperity of all Vermonters.

(4) Vermont leverages its brand and scale to encourage a diverse economy that reflects and capitalizes on our rural character, entrepreneurial people, and reputation for environmental quality.

(c)(1) The four principal goals shall be used to guide the design and implementation of each economic development program, policy, or initiative that is sponsored or financially supported by the state, its subdivisions, agencies, authorities, or private partners.

(2) Each legislative or executive act that creates or modifies an economic development program, policy, initiative, or grant of assistance shall promote the principal economic development goals. The enacting authority shall state clear and measurable goals for the program, and shall also demonstrate how the program will promote the four principal goals. The enacting authority shall collaborate with other agencies or entities as necessary to ensure the economic development program, policy, initiative, or grant of assistance promotes the four principal goals.

(d) The department of economic development, department of housing and community affairs, department of tourism and marketing, and the administrative division within the agency of commerce and community development; the agency of agriculture, food and markets; the office of economic opportunity within the department for children and families; the department of finance and management and the department of information and innovation within the agency of administration; the department of labor; the department of public service; the department of taxes; the Vermont economic development agency; the Vermont economic progress council shall:

(1) By January 15, 2010, identify its own goals, benchmarks, and priorities for promoting economic development that are consistent with and serve to promote the four principal goals.

(2) By January 15 of each year, report to the house committee on commerce and economic development, the senate committee on finance, and the senate committee on economic development, housing and general affairs, on the status of the agency or department's progress in setting and achieving its goals, benchmarks, and priorities and on how the programs, policies, and initiatives undertaken in the previous year have promoted the principal goals. The format for each agency or department report shall be uniform and shall be substantially the same as the model graph presented in the next generation goals and measures report.

(e)(1) The commission on the future of economic development shall work with the economists of the executive and legislative branches and the joint fiscal office to adopt benchmarks for the four principal goals.

(2) Beginning no later than January 15, 2010, and thereafter at least biannually until January 15, 2012, the commission on the future of economic development shall review the principal goals and any benchmarks adopted and shall assess the effectiveness of the goals and benchmarks in promoting economic development.

(3) The commission shall also review and assess the adequacy and success of the specific goals and benchmarks adopted by the agencies and departments required under subsection (d) of this section.

(4) The commission shall annually report to the house committee on commerce and economic development, the senate committee on finance, and the senate committee on economic development, housing and general affairs, concerning its review of the goals, benchmarks, and agency progress pursuant to this subsection.

(5) On or before January 15, 2012, the commission shall recommend to the senate committee on economic development, housing and general affairs, the senate committee on finance, the house committee on commerce and economic development, the house committee on ways and means, and the governor on whether it would promote the best interests of Vermont for the commission to continue biannual review of the goals and benchmarks, or if a successor to that responsibility should be designated. Notwithstanding any recommendation, the commission shall continue to perform the biannual review unless and until a successor is designated by legislation approved by the legislature and the governor.

* * * Workforce Development * * *

Sec. 4. FINDINGS AND ARRA WORKFORCE DEVELOPMENT PRIORITIES

(a) The general assembly recognizes numerous hurdles that inhibit workforce opportunities for working families in need of adequate child care, for low income persons, for the disabled, and for the elderly. The department of labor, and other agencies where applicable, shall use ARRA funds allocated to workforce development, including funds for childcare services, to expand employment opportunities to the unemployed, to dislocated workers, to working families, and to low income, disabled, and elderly Vermonters.

(b) The general assembly recognizes the opportunities available to the next generation of Vermonters to secure well-paying and secure jobs in emerging

sectors such as energy efficiency and health care, including health care information technology. The department of education, the department of labor, and other agencies where applicable, shall use ARRA funds allocated to education and workforce development to promote education and job opportunities in these emerging sectors.

(c) Current economic conditions may present an opportunity for unemployed or dislocated workers to innovate and develop new businesses or products. Where appropriate, the departments of labor and education should use ARRA funds for training and education to aid unemployed or dislocated workers in pursuing product innovations and new business pursuits.

(d) Prior to expending ARRA funds for workforce development or for expenditures that will require additional workforce capacity, the government authority seeking funding shall certify that the workforce capacity currently exists, or alternatively, how much capacity will be necessary to implement a program or project. To the extent allowable under the ARRA, the relevant agency shall prioritize expenditures first for training that is necessary to maintain current employment, second for hiring or training unemployed and dislocated workers, and third for promoting new hiring. Priority for workforce training funds shall be given to programs or training that will result in increased worker remuneration or job promotion.

(e) When pursuing competitive grant funds for workforce development under Title VIII of the ARRA, the VOESR shall coordinate with appropriate government agencies, nonprofit organizations, private businesses, and individuals to secure the maximum amount of resources available to promote workforce development and opportunity for Vermonters.

Sec. 5. Sec. 6 of No. 46 of the Acts of 2007 is amended to read:

Sec. 6. WORKFORCE DEVELOPMENT LEADER~~; LEADERSHIP COMMITTEE; CREATED~~

(a) The commissioner of labor shall be the leader of workforce development strategy and accountability. The commissioner of labor shall consult with ~~and chair a subcommittee of the workforce development council consisting of the secretary of human services, the commissioner of economic development, the commissioner of education, four business members appointed by the governor, and a higher education member appointed by the governor. Membership on the subcommittee shall be coincident with the members' terms on the workforce development council~~ the workforce development council executive committee in developing the strategy, goals, and accountability measures. The workforce development council shall

provide administrative support. The ~~subcommittee~~ executive committee shall assist the leader. The duties of the leader include all the following:

(1) developing a limited number of overarching goals and challenging measurable criteria for the workforce development system that supports the creation of good jobs to build and retain a strong, appropriate, and sustainable economic environment in Vermont;

(2) reviewing reports submitted by each entity that receives funding under Act 46 of the Acts of 2007. The reports shall be submitted on a schedule determined by the executive committee and shall include all the following information:

* * *

(4) issuing an annual report to the governor and the general assembly on or before December 1, which shall include a systematic evaluation of the accomplishments of the system and the participating agencies and institutions and all the following:

(A) a compilation of the systemwide accomplishments made toward achieving the overarching goals, specific notable accomplishments, innovations, collaborations, grants received, or new funding sources developed by participating agencies, institutions, and other education and training organizations;

(B) ~~an evaluation~~ identification of each provider's contributions toward achieving the overarching goals;

* * *

(b) Entities receiving grants through the workforce education and training fund (WETF) and the Vermont training program (VTP) shall provide the Social Security number of each individual who has successfully completed a training program funded through the WETF and the VTP within 30 days. On or before July 1 of each year, the department of labor shall process the information received within the most recent 12 months and prepare the report required in subdivision (a)(4) of this section. The report shall include a table that sets forth quarterly wage information received pursuant to 21 V.S.A. § 1314a at least 18 months following the date on which the individuals completed the program of study. The table shall include the number of individuals completing the program, the number of those individuals who are employed in Vermont, and the median quarterly income of those individuals.

(c) Other entities, including public and private institutions of higher education, postsecondary and secondary programs, and other training providers who wish to participate in the process under subsection (b) of this section may

do so by making a request in writing to the commissioner of labor who shall make a decision regarding inclusion of such programs and the process for the collection of the necessary data.

(d) Confidentiality. Notwithstanding any other provision of law, the department of labor shall collect the Social Security numbers of students for the purposes of this section. Access to the Social Security numbers provided to the department of labor shall be limited to those department individuals creating the table required in subsection (b) of this section and shall be confidential. The departments shall prepare the table in a way that ensures the confidentiality of all trainee and employer information. A department employee who intentionally communicates or otherwise makes available to the general public a Social Security number collected pursuant to this section or who otherwise disseminates the number for purposes other than those specified in this section shall be subject to the penalties of the Social Security Number Protection Act, subchapter 3 of chapter 62 of Title 9.

Sec. 6. Sec. 7(a)(3) of No. 46 of the Acts of 2007 (career and alternative workforce education) is amended to read:

(3) Career And Alternative Workforce Education. The amount of $900,000 is appropriated to the department of labor. Of this appropriation, $450,000 is from the fiscal year 2007 monies transferred to the next generation initiative fund, and $450,000 is from the fiscal year 2008 monies transferred to the next generation initiative fund. This appropriation shall be to support

out-of-school youth, youth at risk, and youth at risk of remaining unemployed with outcomes that lead to employment or continued education ~~as follows:~~

~~(A) Forty-five percent (45%).~~ At least 25 percent of this appropriation shall be for grants to regional technical centers, comprehensive high schools, and other programs for career exploration programs for students entering grades 7 through 12~~.~~, and at least 25 percent

~~(B) Fifty-five percent (55%)~~ shall be for grants to regional technical centers, comprehensive high schools, the community high school of Vermont, and non-profit organizations, designated by the workforce development council, for alternative and intensive vocational/academic programs for secondary students in order to earn necessary credits toward graduation.

Sec. 7. REPEAL

The following are repealed.

(1) Sec. 7(d) of No. 46 of the Acts of 2007 (accountability);

(2) 10 V.S.A. § 543(g) (accountability); and

(3) Sec. 5.801.1 of No. 192 of the Acts of the 2007 Adj. Sess. (2008).

* * * Energy Efficiency * * *

Sec. 8. ENERGY EFFICIENCY

In order to deliver thousands of additional building energy efficiency improvements and create green jobs, Vermont will need to expand the available workforce trained and ready to make these building improvements. To ensure the availability and adequate training of the workforce necessary to provide comprehensive energy efficiency services to Vermont homes, businesses, and institutions, and to ensure that the funding provided by the ARRA, as well as the longer-term energy needs of the state are met, the commissioner of the department of labor and the state's energy efficiency utility shall convene the Green Workforce Collaborative, bringing parties interested and involved in high-quality green workforce development to identify appropriate labor and resources needs that would meet the increased opportunities generated by the ARRA and, in the long term, to enhance the economic and environmental vitality of the state. The convening parties shall report to the house committee on commerce and economic development, and any other appropriate committees of the general assembly, with an interim status and needs assessment by April 15, 2009, and then again by no later than January 30, 2010, to evaluate the long-term needs of the green workforce strategy for the state of Vermont.

* * * Broadband and Telecommunications * * *

Sec. 9. 30 V.S.A. § 248a is amended to read:

§ 248a. CERTIFICATE OF PUBLIC GOOD FOR MULTIPLE COMMUNICATIONS FACILITIES

(a) Notwithstanding any other provision of law, if the applicant ~~in a single application~~ seeks approval for the construction or installation ~~within three years~~ of ~~three or more~~ telecommunications facilities ~~as part of an interconnected network~~ which are to be interconnected with other telecommunications facilities proposed or already in existence, the applicant may obtain a certificate of public good issued by the public service board under this section, which the board may grant if it finds that the facilities will promote the general good of the state consistent with subsection 202c(b) of this title. A single application may seek approval of one or more telecommunications facilities.

(b) For the purposes of this section:

(1) "Telecommunications facility" means ~~any~~ a communications facility that transmits and receives signals to and from a local, state, national, or

international network used primarily for two-way communications for commercial, industrial, municipal, county, or state purposes and any associated support structure ~~extending more than 50 feet above the ground~~ that is proposed for construction or installation which is primarily for communications purposes ~~and which supports facilities that transmit and receive communications signals for commercial, industrial, municipal, county, or state purposes~~, and any ancillary improvements which are proposed for construction or installation and which are primarily intended to serve the communications facilities or support structure.

(2) ~~Telecommunications facilities are "part of an interconnected network" if those facilities would allow one or more communications services to be provided throughout a contiguous area of coverage created by means of the proposed facilities or by means of the proposed facilities in combination with other facilities already in existence~~ An applicant may seek approval of construction or installation of a telecommunications facility whether or not the telecommunications facility is attached to a preexisting structure.

(c) Before the public service board issues a certificate of public good under this section, it shall find that~~, in the aggregate~~:

(1) the proposed facilities will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, and the public health and safety, with due consideration having been given to the relevant criteria specified in subsection 1424a(d) and subdivisions 6086(a)(1) through (8) and (9)(K) of Title 10; and

(2) unless there is good cause to find otherwise, substantial deference has been given to the land conservation measures in the plans of the affected municipalities and the recommendations of the municipal and regional planning commissions regarding the municipal and regional plans, respectively.

(d) When issuing a certificate of public good under this section, the board shall give due consideration to all conditions in an existing state or local permit and shall harmonize the conditions in the certificate of public good with the existing permit conditions to the extent feasible.

(e) No less than 45 days prior to filing a petition for a certificate of public good under this section, the applicant shall serve written notice of an application to be filed with the board pursuant to this section to the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities; the secretary of the agency of natural resources; the commissioner of the department of public service and its director for public advocacy; and the landowners of record of

property adjoining the project sites, unless the board determines that good cause exists to waive or modify the notice requirement with respect to such landowners. In addition, at least one copy of each application shall be filed with each of these municipal and regional planning commissions. Upon motion or otherwise, the public service board shall direct that further public or personal notice be provided if the board finds that such further notice will not unduly delay consideration of the merits and that additional notice is necessary for fair consideration of the application.

(f) Unless the public service board identifies that an application raises a substantial issue, the board shall issue a final determination on an application filed pursuant to this section within 90 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 90 days of the date on which the clerk of the board notifies the applicant that the filing is complete. If the board rules that an application raises a substantial issue, it shall issue a final determination on an application filed pursuant to this section within 180 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 180 days of the date on which the clerk of the board notifies the applicant that the filing is complete.

(g) Nothing in this section shall be construed to prohibit an applicant from executing a letter of intent or entering into a contract before the issuance of a certificate of public good under this section, provided that the obligations under that letter of intent or contract are made subject to compliance with the requirements of this section.

(h) An applicant using the procedures provided in this section shall not be required to obtain a ~~local zoning~~ permit or a permit amendment under the provisions of Title 24, including chapters 83 and 117, or chapter 151 of Title 10 for the facilities subject to the application or to a certificate of public good issued pursuant to this section. Ordinances adopted pursuant to subdivision 2291(19) of Title 24 or a municipal charter that would otherwise apply to the construction or installation of facilities subject to this section are preempted. Disputes over jurisdiction under this section shall be resolved by the public service board, subject to appeal as provided by section 12 of this title. An applicant that has obtained or been denied a permit amendment under the provisions of Title 24 (including chapters 83 and 117) or chapter 151 of Title 10 for the construction of a telecommunications facility may not apply for approval from the board for the same or substantially the same facility, except that an applicant may seek approval for a modification to such a facility.

(i) ~~Effective July 1, 2010, no new applications for certificates of public good under this section may be considered by the board.~~ [Repealed.]

(j)(1) The board may, subject to such conditions as it may otherwise lawfully impose, issue a certificate of public good in accordance with the provisions of this subsection and without the notice and hearings otherwise required by this chapter if the board finds that such facilities will be of limited size and scope, and the petition does not raise a significant issue with respect to the substantive criteria of this section. If an applicant requests approval of multiple telecommunications facilities in a single application under this section, the board may issue a certificate of public good in accordance with the provisions of this subsection for all or some of the telecommunications facilities described in the petition.

(2)(A) Any party seeking to proceed under the procedures authorized by this subsection shall file a proposed certificate of public good and proposed findings of fact with its petition, and provide notice and a copy of the petition, proposed certificate of public good, and proposed findings of fact to the commissioner of the department of public service and its director for public advocacy, the secretary of the agency of natural resources, and each of the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities. The applicant shall give written notice of the proposed certificate to the landowners of record of property adjoining the project site or sites, unless the board determines that good cause exists to waive or modify the notice requirement with respect to such landowners and any other person which the board has directed by rule or order to receive such notices. Such notice shall request comment to the board within 21 days of the notice on the question of whether the petition raises a substantial issue with respect to the substantive criteria of this section.

(B) If a party makes a request under the procedures authorized by this subsection and if the board does not find that the petition raises a substantial issue, the board shall issue a final determination on an application filed pursuant to this section within 45 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 45 days of the date on which the clerk of the board notifies the applicant that the filing is complete.

(C) If the board denies a request to consider an application under the procedures of this subsection, a filing made under this subsection that the board has found to be complete shall be deemed to satisfy notice requirements of subsection (e) of this section, and to have been made 45 days after receipt by the board for purposes of subsections (e) and (f) of this section.

(k) The public service board may issue rules or orders implementing and interpreting this section. In developing such rules and orders, the board shall

seek to simplify the application and review process as appropriate, and may by rule or order waive the requirements of this section that the board determines are not applicable to telecommunications facilities of limited size or scope. Determination by the board that a petition raises a substantial issue with regard to one or more substantive criteria of this section shall not prevent the board from waiving other substantive criteria that it has determined are not applicable to such a telecommunications facility.

* * * Motion Picture Industry; Motion Picture Credit* * *

Sec. 10. SOLICITATION OF MOTION PICTURE INDUSTRY

By July 1, 2009, the agency of commerce and community development shall develop a strategy for marketing Vermont as a potential permanent site for businesses associated with the motion picture industry. The agency shall present its strategy and potential costs and benefits to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs.

Sec. 11. 32 V.S.A. chapter 151, subchapter 11K is added to read:

Subchapter 11K. Other Tax Credits

§ 5930gg. MOTION PICTURE INDUSTRY TAX CREDIT

(a) As used in this section:

(1) "Commission" means the Vermont film commission.

(2) "Director" means the director of the Vermont film commission.

(3) "Eligible expense" means preproduction, production, and postproduction expenditures directly incurred in Vermont in the taxable year by an eligible production company for the production of a qualified motion picture. This term includes wages and salaries paid to individuals employed in Vermont in the production of the motion picture, but does not include wages or salaries in excess of $1,000,000.00 for any one individual for any one motion picture; and includes expenditures for the following activities: set construction and operation, editing and related services, photography, sound synchronization, lighting, wardrobe, make-up, and accessories, film processing, transfer, mixing, special and visual effects, music, screenplay purchase, location fees, purchase or rental of facilities and equipment, or any other production expense incurred in Vermont that may be determined by the commission to be an eligible expense. This term does not include expenses incurred for marketing or advertising a motion picture or any amounts paid to persons as a result of their participation in profits from the exploitation of the production.

(4) "Eligible production company" means a company, including its subsidiaries, engaged in the business of producing qualified motion pictures; but shall not include any company which is in default, or which is affiliated with, or owned or controlled, in whole or in part, by any person in default, on taxes owed to the state or on a loan made or guaranteed by the state.

(5) "Principal photography" means the phase of production during which the motion picture is actually filmed. The term shall not include preproduction or postproduction.

(6) "Qualified motion picture" means a feature-length film, video, digital media project, video game, television series of 22 or more episodes, pilot, video on demand, or commercial made in whole or in part in Vermont, for commercial distribution, theatrical or television viewing, or mobile or wireless platforms. "Qualified motion picture" does not mean a television production featuring news, current events, weather, financial market reports, a sporting event, an award show, a production solely for fundraising, a long-form production primarily intended to market a product or service, or a production containing obscene material.

(7) "Secretary" means the secretary of the agency of commerce and community development.

(8) "State-certified production" means a qualified motion picture certified by the Vermont film commission, pursuant to rules adopted by the commission, and produced by an eligible production company that has signed a viable distribution plan with either a major theatrical exhibitor, a television network, or a cable television program.

(b)(1) Qualified motion picture payroll credit. A taxpayer engaged in the making of a qualified motion picture shall be allowed a transferable credit against the taxes imposed by parts 3, 4, and 5 of subtitle 2 of this title for the employment of persons within the state in connection with the filming or production of one or more qualified motion pictures in the state within any consecutive 12-month period when total production costs incurred in the state within a taxable year equal or exceed $50,000.00 and such payments for employment constitute Vermont source income. The credit shall be:

(A) equal to 25 percent of the total aggregate payroll paid by an eligible production company for employees not residents of this state; and

(B) equal to 30 percent of the total aggregate payroll paid by an eligible production company for employees who are residents of this state.

(2) For purposes of this subsection, the term "total aggregate payroll" shall not include the salary of any employee whose salary is equal to or greater than $1,000,000.00.

(3) Dollar limit on qualified motion picture tax credit. Transferable tax credits available under this subchapter shall not exceed $9,000,000.00 in any one taxable year and the awards shall be made for state-certified productions chronologically in the order in which they qualify for the credits, until the $9,000,000.00 is fully awarded; and credits earned in any year which exceed the $9,000,000.00 may not be transferred or carried forward.

(c) Qualified motion picture expense credit. A taxpayer shall be allowed an additional transferable credit against the taxes imposed by parts 3, 4, and 5 of subtitle 2 of this title equal to 30 percent of all Vermont production expenses, not including the payroll expenses used to claim a credit pursuant to subsection (b) of this section, where the motion picture is also eligible for a credit pursuant to subsection (b) and either Vermont production expenses exceed 50 percent of the total production expenses for a motion picture, or at least 50 percent of the total principal photography days of the film take place in the state.

(d) The director of the commission shall determine by rule criteria for state-certified productions.

(e) Upon completion of a state-certified production, the secretary shall review the production expenses and certify the amount of expenses qualified for credit under this section.

(f) Any taxpayer applying for a credit of $100,000.00 or more shall hire a third-party certified public accountant and such accountant shall use Agreed Upon Procedures, as defined by the Auditing Standards Board of the American Institute of Certified Public Accountants, to certify the taxpayer's credit to the secretary.

(g) The transferable tax credit shall be taken only against taxes imposed under parts 3, 4, and 5 of subtitle 2 of this title and shall be refundable to the extent provided for in subsection (i) of this section. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the taxpayer or its transferee, buyer, or assignee to any of the five subsequent taxable years.

(h)(1) All or any portion of tax credits issued in accordance with this subsection may be transferred, sold, or assigned to another taxpayer only once. Any tax credit that is transferred, sold, or assigned and taken against taxes imposed by parts 3, 4, and 5 of subtitle 2 of this title shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be

carried forward by the transferee, buyer, or assignee to any of the three subsequent taxable years from which a certificate is initially issued by the commissioner.

(2) An owner or transferee desiring to make a transfer, sale, or assignment shall submit to the commissioner a statement which describes the amount of tax credit for which the transfer, sale, or assignment of tax credit is eligible. The owner or transferee shall provide to the commissioner information as the commissioner may require for the proper allocation of the credit. The commissioner shall provide to the taxpayer a certificate of eligibility to transfer, sell, or assign the tax credit. The commissioner shall not issue a certificate to a taxpayer that has an outstanding tax obligation with the state for any prior taxable year. A tax credit shall not be transferred, sold, or assigned without a certificate.

(i)(1) At the written election of a taxpayer entitled to a credit under subsection (b) of this section, the commissioner shall apply the credit against the liability of the taxpayer as determined on its return, as first reduced by any other available credits, and shall then refund to the taxpayer 90 percent of the balance of the credits.

(2) The commissioner may require substantiation of a taxpayer's claim for refund under this subsection before payment of the refund. Notwithstanding any law to the contrary, no interest shall accrue on the refund before the commissioner's receipt of the substantiation he or she requested.

(3) The commissioner may adopt regulations or other guidelines as he or she deems necessary to implement this subsection.

(j) A film production company which receives a credit under this section shall acknowledge the state of Vermont in the end credits of the film.

(k) The commissioner, in consultation with the secretary and the director, shall adopt regulations necessary for the administration of this subchapter.

Sec. 12. 32 V.S.A. § 9701(45) is added to read:

(45) Manufacturing: shall not include motion picture or film production for which a credit has been or will be granted under subchapter 11K of chapter 151 of this title.

Sec. 13. 10 V.S.A. § 650h is added to read:

§ 650h. FEE

Each taxpayer, transferee, buyer, or assignee of tax credits granted under subchapter 11K of Title 32 shall pay a fee equal to two percent of the

aggregate value of such credits to the program fund created by section 650g of this title.

* * * Funding Infusion for Travel and Tourism * * *

Sec. 14. APPROPRIATION

For fiscal year 2010, a supplemental appropriation in the amount of $500,000.00 is appropriated from the general fund to the department of tourism and marketing, which shall be expended on direct promotional activities to increase tourism throughout Vermont and shall not be used for administrative or overhead costs of the department.

Sec. 15. APPROPRIATION

For fiscal year 2010, a supplemental appropriation in the amount of $100,000.00 is appropriated from the general fund to the Vermont convention bureau.

* * * Capitalization on Federal Stimulus Funding for Smart Grid, Additional State Energy Grants, and Rural Electrification Grants * * *

Sec. 16. FEDERAL FUNDING FOR SMART GRID AND ENERGY GRANTS; STATE COLLABORATION

It is the intent of the legislature that the department of public service, Vermont utilities, and other interested parties work collaboratively to ensure that Vermont capitalizes on all available funding allocated for research, workforce development, and projects relating to energy efficiency and electric generation, transmission, and distribution under Titles I and IV of Division A of the American Recovery and Reinvestment Act of 2009. Accordingly, to ensure that Vermont accesses and utilizes federal resources under the ARRA to the fullest extent possible:

(1) The department of public service shall investigate and pursue the opportunities for funding of electricity delivery and energy reliability research and projects to implement smart grid technologies, activities, and workforce training made available under Title IV of the ARRA.

(2) The department of public service shall generate a list of projects that are eligible for federal loan and grant funding available from the United States Departments of Agriculture and of Energy under the ARRA, identify the source of the grant funding, and identify the necessary steps for securing grant funds. The department shall work collaboratively with private utilities, additional government entities as necessary and appropriate, and other interested persons to design and submit grant applications that best position the state to capitalize on available funds.

(3) The governor, the department of public service, the public service board, and relevant state and local governmental entities shall take any and all steps necessary to implement the measures required under section 410 of the American Recovery and Reinvestment Act of 2009 to ensure that Vermont will receive the maximum amount of additional state energy grants available from the United States Department of Energy under part D of Title III of the Energy Policy and Conservation Act.

* * * Digital Business * * *

Sec. 17. LEGISLATIVE INTENT

The purpose of the following sections of this act concerning Digital Business is to build on the momentum created by Secs. 74 through 100 of No. 190 of the Acts of the 2007 Adj. Sess. (2008), which provided for Vermont companies to conduct much of their statutorily required corporate affairs using electronic media, including e-mail, facsimile, and web-based filings.

Sec. 18. 32 V.S.A. § 5811(26) is added to read:

(26) "Digital business entity" means a business entity which, during the entire taxable year:

(A) was not a member of an affiliated group or engaged in a unitary business with one or more members of an affiliated group that is subject to Vermont income taxation; did not perform any activities in this state which would constitute doing business for purposes of income taxation, other than activities described in subdivisions (15)(C)(i) of this section (fulfillment operations) and (C)(ii) (web page, or Internet site maintenance); and

(B) used mainly computer, electronic, and telecommunications technologies in its formation and in the conduct of its business meetings, in its interaction with shareholders, members, and partners, in executing any other formal requirements.

Sec. 19. 32 V.S.A. § 5832(2) is amended to read:

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

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

(C) $250.00 for all other corporations.

Sec. 20. 32 V.S.A. § 5911 is amended to read:

§ 5911. TAXATION OF AN S CORPORATION AND ITS SHAREHOLDERS

(a) An S corporation shall not be subject to the tax imposed by section 5832 of this title, except to the extent of income taxable to the corporation under the provisions of the Internal Revenue Code.

(b) For the purposes of section 5823 of this title, each shareholder's pro rata share of the S corporation's income attributable to Vermont and each resident shareholder's pro rata share of the S corporation's income not attributable to Vermont shall be taken into account by the shareholder in the manner provided in Section 1366 of the Code.

(c) An S corporation and its shareholders shall not be subject to the tax imposed by section 5832 of this title or to the provisions of this subchapter if the S corporation qualifies as and elects to be taxed as a digital business for the taxable year.

Sec. 21. 32 V.S.A. § 5921a is added to read:

§ 5921a. DIGITAL BUSINESS ENTITY ELECTION

A corporation, partnership, or limited liability company and its shareholders, partners, or members shall not be subject to the tax imposed by section 5832 of this title or to provisions of this subchapter if the corporation, partnership, or company qualifies as and elects to be taxed as a digital business entity for the taxable year.

Sec. 22. 32 V.S.A. § 5832a is added to read:

§ 5832a. DIGITAL BUSINESS ENTITY FRANCHISE TAX

(a) There is imposed upon every business entity which qualifies as and has elected to be taxed as a digital business entity an annual franchise tax equal to:

(1) the greater of 0.02 percent of the current value of the tangible and intangible assets of the company or $250.00, but in no case more than $500,000.00; or

(2) where the authorized capital stock does not exceed 5,000 shares, $250.00; where the authorized capital stock exceeds 5,000 shares but is not more than 10,000 shares, $500.00; and the further sum of $250.00 on each 10,000 shares or part thereof.

(b) In no case shall the tax on any corporation for a full taxable year, whether computed under subdivision (a)(1) or (2) of this section, be more than $500,000.00 or less than $250.00.

(c) In the case of a corporation that has not been in existence during the whole year, the amount of tax due, at the foregoing rates and as provided, shall be prorated for the portion of the year during which the corporation was in existence.

(d) In the case of a corporation changing during the taxable year the amount of its authorized capital stock, the total annual franchise tax payable at the foregoing rates shall be arrived at by adding together the franchise taxes calculated pursuant to subdivision (a)(2) of this section as prorated for the several periods of the year during which each distinct authorized amount of capital stock was in effect.

(e) For the purpose of computing the taxes imposed by this section, the authorized capital stock of a corporation shall be considered to be the total number of shares that the corporation is authorized to issue without regard to whether the number of shares that may be outstanding at any one time is limited to a lesser number.

(f) The franchise tax under this section shall be reported and paid in the same manner as the tax under subdivision 5832(2)(B) of this title.

* * * Small Business Loan Program; Bonding;

Technology Loan Program * * *

Sec. 23. STATE PLEDGE ON BEHALF OF SMALL BUSINESSES

An amount not to exceed $500,000.00 of the full faith and credit of the state pledged for the support of the activities of the Vermont economic development authority under section 223 of Title 10 is authorized to be used by the authority for loss reserves in the Vermont small business loan program until July 1, 2012.

Sec. 24. 10 V.S.A. § 221(a) is amended to read:

(a) Upon application of the proposed mortgagee, the authority may insure mortgage payments required to repay loans made by the mortgagee for the purpose of financing the costs of a project, upon such terms and conditions as the authority may prescribe~~,~~; provided, however, that the total principal obligations of all mortgages insured under this subsection and under subsection (c) of this section outstanding at any one time shall not exceed ~~$15,000,000.00~~ $9,000,000.00. Before insuring any mortgage payments hereunder, the authority shall determine and incorporate each of the findings established by this subsection in its minutes. Such findings, when adopted by the authority shall be conclusive.

Sec. 25. 10 V.S.A. § 223 is amended to read:

§ 223. CREDIT OF THE STATE PLEDGED

The full faith and credit of the state is pledged to the support of the activities of the authority under this subchapter. In furtherance of the pledge, the state treasurer is authorized and directed to transfer to the fund, without further approval, first from the indemnification fund and then from available cash in the treasury or from the proceeds of bonds or notes issued under this section, such additional amounts as may be requested from time to time by the authority to enable it to perform all insurance contracts punctually and in accordance with their terms. The authority shall request such transfers from time to time as additional amounts are required for such purposes. The treasurer is authorized and directed, without further approval, to issue full faith and credit bonds of the state, from time to time, in amounts necessary to support the activities of the authority under this subchapter and subchapter 8 of this chapter, but not to exceed an aggregate of ~~$35,000,000.00~~ $10,000,000.00 at any one time outstanding, and to borrow upon notes of the state in anticipation of the proceeds of such bonds. Any bonds under this subchapter shall be issued pursuant to the provisions of chapter 13 of Title 32, except that the approval of the governor shall not be required previous to their issuance by the treasurer.

Sec. 26. 10 V.S.A. § 279b(a) is amended to read:

(a) Upon registration by the authority of an eligible loan, the full faith and credit of the state shall be pledged in an amount equal to the reserve premium payment deposited to the fund by the participating bank in connection with such loan. The aggregate amount of the credit of the state which may be pledged pursuant to the provisions of this subchapter shall not exceed ~~$2,000,000.00~~ $1,000,000.00 at any time.

Sec. 27. 10 V.S.A. chapter 12, subchapter 12 is added to read:

Subchapter 12. Technology Loan Program

§ 280aa. FINDINGS AND PURPOSE

(a) Technology-based companies are a vital source of innovation, employment, and economic growth in Vermont. The continued development and success of this increasingly important sector of Vermont's economy is dependent upon the availability of flexible, risk-based capital. Because the primary assets of technology-based companies sometimes consist almost entirely of intellectual property, such companies frequently do not have access to conventional means of raising capital, such as asset-based bank financing.

(b) To support the growth of technology-based companies and the resultant creation of high-wage employment in Vermont, a technology loan program is established under this subchapter.

§ 280bb. TECHNOLOGY LOAN PROGRAM

There is created a technology (TECH) loan program to be administered by the Vermont economic development authority. The program shall seek to meet the working capital and capital-asset financing needs of technology-based companies. The Vermont economic development authority shall establish such policies and procedures for the program as are necessary to carry out the purposes of this subchapter.

§ 280cc. CREDIT OF THE STATE PLEDGED

An amount not to exceed $1,000,000.00 of the full faith and credit of the state is pledged and authorized to be used by the authority for loss reserves in the TECH loan program established under this subchapter until July 1, 2012.

* * * Microbusiness and Entrepreneurship * * *

Sec. 28. APPROPRIATIONS; USE OF FEDERAL FUNDS

(a) It is the intent of the general assembly that the individual development account program and the microbusiness development program currently administered by the office of economic opportunity continue to be funded with amounts from the general fund in the 2009 budget as passed in May of 2008.

(b) There is appropriated from the general fund for fiscal year 2010 a supplemental appropriation in the amount of $66,000.00 to the office of economic opportunity to fund state matching contributions to individual development accounts.

(c) There is appropriated from the general fund for fiscal year 2010 a supplemental appropriation in the amount of $60,000.00 to the office of economic opportunity to fund the microbusiness development program.

(d) The supplemental amounts appropriated in this section shall to the greatest extent possible be funded through federal allocations and competitive grants under Title VIII of the ARRA.

Sec. 29. REPORTING REQUIREMENT

On or before January 15 of each year all microenterprise development programs, individual development account matched savings programs, and financial education programs that receive state funding allocations shall prepare and deliver to the house committee on commerce and economic development a report to ensure that funding is serving low income Vermonters and meeting economic development and human service goals. Annual reports

should comply with nationally and state-recognized microenterprise outcomes metrics established by the Association for Enterprise Opportunity, FIELD at the Aspen Institute, or the Center for Rural Studies at the University of Vermont.

Sec. 30. ECONOMIC OPPORTUNITY STUDIES AND COLLABORATION

(a) The office of economic opportunity and the department of economic development shall conduct a joint study of possible tools to promote the success of individual development accounts and the microbusiness development program. The study shall evaluate:

(1) Innovative microenterprise development funding models to identify ways to fill existing gaps in start-up capital.

(2) A guarantee program or interest buy-down program that encourages private banks to make longer-term, lower-interest fixed rate loans to Community Development Financial Institutions (CDFIs).

(3) A tax credit to business and individuals that donate funds to microenterprise development programs or IDA matched savings and financial education programs, under which the department of economic development would administer tax credits totaling 75 percent of the value of each donation to recognized qualified organizations with an annual statewide maximum for tax credits of $500,000.00 for contributions.

(4) A policy for collaboration with the Vermont treasurer's office to utilize financial education funding for credit counseling and education.

(5) The feasibility of a first-year tax credit to microenterprises, and a credit or grant to self-employed persons for first-time employee hiring to ease the worker's compensation burden.

(b) The department of economic development (DED) shall designate an employee to serve as a microbusiness liaison to the department of education and the office of economic opportunity. The liaison shall be aware of the resources, tools, and capital needs of microenterprises and Vermont's microenterprise development organizations. The liaison shall assist microentrepreneurs in accessing growth opportunities, new markets, and relevant microenterprise programs and resources much in the way DED economic development specialists currently assist larger-scale businesses. The liaison may also lead collaborative efforts to ensure Vermont's state agencies and nongovernmental organizations function effectively and efficiently to support microenterprises.

Sec. 31. APPROPRIATION

The amount of $1,000,000.00 is appropriated from the State Fiscal Stabilization Fund under Title XIV of the ARRA to the Vermont Economic Development Authority for the purpose of providing interest rate subsidies.

* * * Enhanced VEGI Program for IT Solutions * * *

Sec. 32. 32 V.S.A. § 5930b(h) is added to read:

(h) Employment growth incentive for information technology solutions business.

(1) For purposes of this subsection, an "information technology solutions business" means a business that is subject to income taxation in Vermont and whose current or prospective economic activity in Vermont for which incentives are sought under this section is certified by the secretary of commerce and community development to be primarily in software development, implementation, and utilization, including:

(A) Research, development, design, marketing, and publication of computer software such as operating systems, user applications, and network applications.

(B) Custom computer software development such as software programming services, software analysis and design services, custom software support services, custom webpage design and development services, web application development, and custom database systems and solutions.

(C) Consultation, implementation, integration, or customization of computer software systems, computer systems, computer networks, or database systems using computer programming services, custom networking technologies, or computer software analysis and design services.

(2) Any application for a Vermont employment growth incentive under this section for a software development business shall be considered and administered pursuant to all provisions of this section, except that:

(A) the "incentive ratio" pursuant to subdivision (a)(11) of this section shall be set at 100 percent; and

(B) the "payroll threshold" pursuant to subdivision (a)(17) of this section shall be deemed to be zero percent of the expected average industry payroll growth as determined by the cost-benefit model.

* * * Research and Development Tax Credit * * *

Sec. 33. 32 V.S.A. chapter 151 subchapter 11K is added to read:

Subchapter 11K. Research and Development Tax Credit

§ 5930gg. RESEARCH AND DEVELOPMENT TAX CREDIT

(a) A credit against the income tax liability imposed under this chapter for the taxable year shall be an amount equal to 30 percent of the amount of the federal tax credit received for the same taxable year for eligible research and development expenses under 26 U.S.C. § 41(a).

(b) Any excess credit under this subchapter not used for the taxable year in which the credit is earned may be carried forward for up to ten years.

(c) For purposes of this section, "eligible research and development expenses" means expenditures:

(1) made within the state of Vermont;

(2) that meet the definition contained in 26 U.S.C. § 41(b); and

(3) that have been claimed as eligible expenditures for the same taxable year for a federal tax credit under 26 U.S.C. § 41(a), provided that the taxable year begins on or after January 1, 2010.

* * * Buy Local Initiatives * * *

Sec. 34. ENDORSEMENT OF BUY LOCAL AND VERMONT FIRST ECONOMIC DEVELOPMENT INITIATIVES

The general assembly expresses its strong support for local and state-based initiatives, such as Local First, Buy Local, community-based initiatives sponsored by local chambers of commerce, and local and state government procurement policies that give priority to locally produced goods and services. These initiatives create a multiplier effect whereby dollars spent by Vermonters within their own communities remain within and significantly strengthen Vermont communities. State and local government should lead by example to promote Vermont based business.

Sec. 35. DEVELOPMENT OF STATEWIDE STRATEGIES TO BENEFIT FROM BUY LOCAL AND IN-STATE INITIATIVES

On or before January 15, 2010 the department of agriculture and the agency of commerce and community development shall collaborate and provide a summary report to the house committee on commerce and economic development, the senate committees on finance, and the senate committee on economic development, housing, and general affairs, concerning potential statewide strategies to realize the economic development benefits of buy-local and in-state initiatives, including recommendations for aligning government procurement policies with these strategies.

Sec. 36. EFFECTIVE DATE

This act shall be effective upon passage, except that Secs. 11 through 13 of this act (motion picture tax credit) shall apply to qualified motion picture projects begun on or after July 1, 2009 as certified by the secretary of commerce and community development; and that Secs. 17 through 22 of this act (digital business) shall apply to taxable years beginning on or after January 1, 2010.

(Committee vote: 11-0-0)

Favorable

H. 186

An act relating to authorizing the department of fish and wildlife to administer polygraph examination to applicants for law enforcement positions.

Rep. Higley of Lowell, for the Committee on **Government Operations,** recommends the bill ought to pass.

(Committee Vote: 10-0-1)

CONSENT CALENDAR

Concurrent Resolutions for Notice Under Joint Rule 16

The following concurrent resolutions have been introduced for approval by the House and Senate and have been printed in the Senate and House Addendum to today's calendars. These will be adopted automatically unless a member requests floor consideration before the end of the session of the next legislative day. Requests for floor consideration should be communicated to the Clerk of the House or to a member of his staff.

H.C.R. 69

House concurrent resolution congratulating the primary care providers' offices in the Northeastern Vermont Regional Hospital service area that the National Committee for Quality Assurance has designated as patient-centered medical homes

H.C.R. 70

House concurrent resolution honoring the federal TRIO programs in Vermont

H.C.R. 71

House concurrent resolution honoring the outstanding work of child care providers in Vermont

H.C.R. 72

House concurrent resolution congratulating Spectrum Youth and Family Services on its winning the 2009 National Network for Youth Agency of the Year Award

H.C.R. 73

House concurrent resolution honoring Jayne Barber on her outstanding 28-year coaching career at Bellows Falls Union High School

H.C.R. 74

House concurrent resolution congratulating University of Vermont basketball player Marqus Blakely on his 1,000th career point and award-winning accomplishments

H.C.R. 75

House concurrent resolution congratulating the Albert D. Lawton Middle School boys' A-basketball ADL tournament championship team

H.C.R. 76

House concurrent resolution congratulating the 2009 Springfield Cosmos Division II championship boys' basketball team

H.C.R. 77

House concurrent resolution congratulating William "Bill" Collins on answering his 10,000th call for the Bennington Rescue Squad

H.C.R. 78

House concurrent resolution congratulating the 2009 U-32 High School Raiders Division II championship Nordic ski team

H.C.R.79

House concurrent resolution congratulating the Panton General Store on its receipt of a 2009 Vermont Centennial Business Award

H.C.R. 80

House concurrent resolution congratulating the J.W. & D. E. Ryan plumbing and heating contractors on the receipt of a 2009 Vermont Centennial Business Award

H.C.R. 81

House concurrent resolution congratulating the 2009 Vergennes Union High School Commodores Division II championship cheerleading team

H.C.R. 82

House concurrent resolution recognizing the work of the Brattleboro community to combat racial and ethnic intolerance

S.C.R. 14

Senate concurrent resolution congratulating the 2009 Vermont winners of the Prudential Spirit of Community Awards.

S.C.R. 15.

Senate concurrent resolution honoring the outstanding public service of Thomas Anderson, United States Attorney for the District of Vermont.