

House Calendar

Wednesday, March 10, 2010

65th DAY OF ADJOURNED SESSION

House Convenes at 10:00 A.M.

TABLE OF CONTENTS

	Page No.
ACTION CALENDAR	
Third Reading	
H. 498 Maintenance of private roads	369
H. 578 Requiring all state law enforcement officers to serve under the direction and control of the commissioner of public safety	369
Favorable with amendment	
H. 88 Adding a dental assistant to the state board of dental examiners	369
Rep. Townsend for Government Operations	
H. 647 Misclassification of employees to lower premiums for workers' compensation and unemployment compensation	370
Rep. Kitzmiller for Commerce and Economic Development	
H. 695 Definition of premises for award of liquor license.....	378
Rep. Baker for General, Housing and Military Affairs	
NOTICE CALENDAR	
Committee Bill for Second Reading	
H. 769 The licensing and inspection of plant and tree nurseries.....	381
Rep. Taylor for Agriculture	
Favorable with Amendment	
H. 614 The regulation of composting.....	381
Rep. McCullough for Fish, Wildlife and Water Resources	
H. 709 Creating a prekindergarten-16 council	383
Rep. Peltz for Education	
S. 280 Prohibiting texting while operating on a highway	387
Rep. Grad for Judiciary	
Ordered to Lie	
H.R. 19 Urging the agency of natural resources to retain delegated authority to administer the federal Clean Water Act in Vermont	395

ORDERS OF THE DAY

ACTION CALENDAR

Third Reading

H. 498

An act relating to maintenance of private roads

H. 578

An act relating to requiring all state law enforcement officers to serve under the direction and control of the commissioner of public safety

Favorable with amendment

H. 88

An act relating to adding a dental assistant to the state board of dental examiners

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. 26 V.S.A. § 761 is amended to read:

§ 761. STATE BOARD OF DENTAL EXAMINERS; CREATION; QUALIFICATIONS

The state board of dental examiners is created and shall consist of ~~five~~ six dental practitioners of good standing, who have practiced in this state for a period of five years or more, are in active practice, and are legal residents of the state of Vermont, two registered dental hygienists certified pursuant to subchapter 4 of this chapter, who have practiced in the state of Vermont for a period of three years immediately preceding the appointment, are in active practice and are legal residents of the state of Vermont, one dental assistant registered pursuant to section 863 of this title who has practiced in the state of Vermont for a period of three years immediately preceding the appointment, is in active practice and is a legal resident of the state of Vermont, and two members of the public not associated with the practice of dentistry. Board members shall be appointed by the governor pursuant to sections 129b and 2004 of Title 3. No member of the board may be an officer or serve on a committee of his or her respective state or local professional dental or dental hygienist organization nor shall any member of the board be on the faculty of a school of dentistry or dental hygiene.

and that after passage the title of the bill be amended to read: "An act relating to adding one more dentist and one dental assistant to the state board of dental examiners".

(Committee Vote: 10-0-1)

H. 647

An act relating to misclassification of employees to lower premiums for workers' compensation and unemployment compensation

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. 21 V.S.A. § 692 is amended to read:

§ 692. PENALTIES

(a) If after a hearing under section 688 of this title, the commissioner determines that an employer has failed to comply with the provisions of section 687 of this title, the employer shall be assessed an administrative penalty of not more than \$100.00 for every day for the first seven days the employer neglected to secure liability, and not more than \$150.00 for every day thereafter.

~~(b) Additionally, an employer who fails to comply with the provisions of section 687 of this title for a period of five days after notice from the commissioner shall be assessed an administrative penalty of not more than \$250.00 for every day after five days that the employer fails to secure workers' compensation coverage as required in section 687 of this title. The commissioner may, after giving notice and after the expiration of the five day period, post a notice at a conspicuous place on the premises of the employer informing the employees that their employer has failed to comply with the provisions of section 687 of this title and ordering the premises closed until workers' compensation insurance is secured. If, after investigation, the commissioner determines that an employer has failed to comply with the provisions of section 687 of this title, the commissioner shall issue a stop-work order requiring the immediate cessation of all operations of that employer at every site on which there is a violation. An employer that is issued an initial stop-work order shall be assessed an administrative penalty of \$250.00 for each employee for each day of noncompliance, beginning one business day after the order is issued. An employer that is issued a second or subsequent stop-work order shall be assessed an administrative penalty of \$250.00 for each employee for each day of noncompliance, beginning when the order is issued. Except as provided in subsection (e) of this section, the order is~~

effective on service on the employer and shall be posted upon receipt at each affected work site. The stop-work order shall remain in effect until the commissioner determines that the employer is no longer in violation and is in compliance with the requirements of this chapter, and the commissioner issues an order lifting the stop-work order. Upon making the determination, the commissioner shall issue the order without delay.

~~(c) If any employer fails to secure or retain workers' compensation insurance within two years after receiving an order to obtain insurance or a notice that the commissioner intends to order the premises closed as described in subsection (b) of this section, without further notice, the commissioner shall order the premises of that employer closed and that all business operations cease until the employer has secured workers' compensation insurance.~~

An employer subject to a stop-work order may appeal the order to the commissioner after securing workers' compensation insurance. The appeal must be made within ten days after service of the order. The commissioner shall hold a hearing and render a decision no later than five days after the appeal is filed. The stop-work order shall not be in effect during the pendency of the appeal. No administrative penalties shall be assessed from the time of the hearing until a decision is rendered. The stop-work order shall be lifted, and any administrative penalty assessed under subsection (b) of this section shall be rescinded if the commissioner finds that the employer was not in violation of section 687 of this title.

(d) Pursuant to 29 V.S.A. § 161, an employer against whom a valid stop-work order has been issued is prohibited from contracting, directly or indirectly, with the state or any of its subdivisions for up to three years following the date of the issuance of the valid stop-work order.

(e) When there are multiple employers at a worksite, the stop-work order shall be in effect only against the employer that was issued the order, and shall take effect 24 hours after it is served.

(f) A stop-work order issued under this section may be served by an agent of the commissioner, who shall make return in the same manner as sheriffs, deputy sheriffs, or constables make after serving a summons.

Sec. 2. 21 V.S.A. § 708 is amended to read:

§ 708. PENALTY FOR FALSE REPRESENTATIONS

(a) Action by the commissioner of labor. A person who willfully makes a false statement or representation, for the purpose of obtaining any benefit or payment under the provisions of this chapter, either for ~~her~~ ~~or~~ himself or herself or for any other person, after notice and opportunity for hearing, may

be assessed an administrative penalty of not more than ~~\$5,000.00~~ \$20,000.00 total, and shall forfeit all or a portion of any right to compensation under the provisions of this chapter, as determined to be appropriate by the commissioner after a determination by the commissioner that the person has willfully made a false statement or representation of a material fact.

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

(c) Any penalty assessed or order issued under this chapter or 8 V.S.A. § 3661 shall continue in effect against any successor employer that has one or more of the same principals or corporate officers as the employer against which the penalties were assessed or order issued and is engaged in the same or similar business.

(d) Notwithstanding the assessment of an administrative penalty under this section, a person may be prosecuted under 13 V.S.A. § 2024.

Sec. 3. 21 V.S.A. § 710 is amended to read:

§ 710. UNLAWFUL DISCRIMINATION

* * *

(c) At the request of an individual who has alleged that an employer has made a false statement or misclassified employees, the department shall not include the individual's name or contact information in any publication or public report, unless required by law.

(d) An employer shall not retaliate or take any other negative employment action against an individual because the employer knows or suspects that the individual has filed a complaint with the department or other authority, or reported a violation of this chapter, or cooperated in an investigation of misclassification, discrimination, or other violation of this chapter.

(e) The attorney general or a state's attorney may enforce the provisions of this section by restraining prohibited acts, seeking civil penalties, obtaining assurance, and conducting civil investigations in accordance with the procedures established in sections 2458-2461 of Title 9 as though discrimination under this section were an unfair act in commerce.

Sec. 4. 8 V.S.A. § 3661 is amended to read:

§ 3661. CEASE AND DESIST POWERS; PROSECUTIONS AND PENALTIES

(a) When the commissioner believes that an insurer or an officer or agent ~~thereof~~ of the insurer, or any other person, has violated the law, an administrative rule of the department, or an order of the commissioner relating to insurance, or has not complied with its requirements, ~~he or she~~ the commissioner may take any or all of the following actions:

(1) ~~may issue an order~~ Order the person to cease and desist ~~such the~~ violation or activity. ~~Such an~~ The order shall be ~~is~~ subject to de novo judicial review in the Washington superior court, but ~~such the~~ review shall not stay ~~the~~ enforcement of the commissioner's order while under review, unless the court shall so determine after a preliminary hearing that a stay of enforcement will not unduly injure the interests of the people of the state, in which case a stay of execution may be granted;

(2) ~~may report~~ Report each violation with any related information ~~he or she has relating thereto~~ to the attorney general who ~~shall~~ may prosecute ~~therefor if he or she deems it advisable~~. The offender shall be fined not more than \$2,000.00 ~~as a result of any such prosecution by the attorney general; and~~ for a conviction.

(3) ~~may, after~~ After notice and opportunity for hearing, impose a civil administrative penalty of not more than \$1,000.00 for each violation, and not more than \$10,000.00 for each willful violation.

(b) The powers vested in the commissioner by this section shall be in addition to any other powers to enforce penalties, fines, or forfeitures authorized by law with respect to violations of the law relating to insurance, except that the commissioner shall not impose an administrative penalty under subdivision (a)(3) of this section if the commissioner may impose another administrative penalty authorized by law for the same violation.

(c) An employer who makes a false statement or representation that results in a lower workers' compensation premium, after notice and opportunity for hearing before the commissioner, may be assessed an administrative penalty of not more than \$20,000.00 in addition to any other appropriate penalty.

* * *

Sec. 5. 29 V.S.A. § 161 is amended to read:

§ 161. REQUIREMENTS ON STATE CONSTRUCTION PROJECTS

(a) Bids; selection.

* * *

(b) Each contract awarded under this section for any state project with a construction cost exceeding \$100,000.00 and which is authorized or funded in whole or in part by a capital construction act pursuant to section 701a of Title 32, including such a project of the University of Vermont and State Agricultural College and of the Vermont State Colleges, shall provide that all construction employees working on the project shall be paid no less than the mean prevailing wage published periodically by the department of labor in its occupational employment and wage survey.

(c) In the construction of any state project, local capable labor shall be utilized whenever practicable, but this section shall not be construed to compel any person to discharge or lay off any regular employee.

(d) ~~This~~ Subsections (a) through (c) of this section shall not apply to maintenance or construction projects carried out by the agency of transportation and of the department of forests, parks and recreation.

(e) An employer who violates 13 V.S.A. § 2024, 21 V.S.A. § 708, or 8 V.S.A. § 3661, who fails to accurately classify one or more individuals as employees or otherwise misclassifies or omits an employee for the purposes of avoiding the requirements of chapter 5, 9, or 17 of Title 21, or has been issued a valid stop-work order pursuant to 21 V.S.A. § 692, is prohibited from contracting, directly or indirectly, with the state or any of its subdivisions for a period of up to three years from the date of the violation. The duration of the prohibition shall be determined based on the seriousness of the violation in consideration of any or all of the following:

(1) The size of the employer's business.

(2) The length of time the contractor was not in compliance with chapter 5, 9, or 17 of Title 21.

(3) The number of individuals who were inaccurately classified.

(4) Whether the employer paid any penalty for failure to be in compliance with chapter 5, 9, or 17 of Title 21.

(5) Whether the employer is in good standing with an agreed-upon payment plan.

(6) The number of times the contractor was not in compliance with chapter 5, 9, or 17 of Title 21 or has been subject to stop-work orders.

(f) The agencies of administration and of transportation shall publish on their websites the name of any employer that has been barred from being awarded state contracts under subsection (e) of this section.

Sec. 6. 21 V.S.A. § 1314 is amended to read:

§ 1314. –REPORTS AND RECORDS

* * *

(h) Any employing unit which fails to report employment and separation information with respect to a claimant and wages paid to a claimant required under subsection (b) of this section shall be subject to a penalty of ~~\$35.00~~ \$100.00 for each ~~such~~ report not received by the prescribed due date, which penalty shall be collected in the manner provided for the collection of contributions in section 1329 of this title and shall be paid into the contingent fund provided in section 1365 of this title. If the employing unit demonstrates that its failure was due to a reasonable cause, the commissioner may, in his or her discretion, waive the penalty.

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

§ 1314a. –QUARTERLY WAGE REPORTING REQUIRED

* * *

(f)(1) Any employing unit or employer which fails to file any report required by this section shall be subject to a penalty of ~~\$35.00~~ \$100.00 for each ~~such~~ report not received by the prescribed due dates, which shall be collected in the manner provided for the collection of contributions in section 1329 of this title and shall be paid into the contingent fund provided in section 1365 of this title. If the employing unit demonstrates that its failure was due to a reasonable cause, the commissioner may waive or reduce the penalty.

(2) Any employing unit or employer that fails to properly classify an individual regarding the status of employment is subject to a penalty of not more than \$5,000.00 for each improperly classified employee which shall be collected in the manner provided for the collection of contributions in section 1329 of this title and shall be paid into the contingent fund provided in section 1365 of this title. If the employing unit demonstrates that its failure was due to a reasonable cause, the commissioner may waive the penalty.

* * *

Sec. 8. 21 V.S.A. § 1328 is amended to read:

§ 1328. FILING REPORTS; FAILURE

The commissioner shall impose a penalty of ~~\$35.00~~ \$250.00 for each failure by an employer to file any contribution report required under section 1322 of this title on or before the date on which the report is due, which shall be collected in the manner provided for the collection of contributions in section 1329 of this title and shall be paid into the contingent fund provided in section

1365 of this title. If the employer demonstrates that its failure was due to a reasonable cause, the commissioner may waive or reduce the penalty.

Sec. 9. 21 V.S.A. § 1369 is amended to read:

§ 1369. FALSE STATEMENTS TO AVOID CHAPTER

A person shall not wilfully ~~and intentionally make~~ make a false statement or representation to avoid becoming or remaining subject to this chapter, or to avoid or reduce a contribution or other payment required of an employer under this chapter.

Sec. 10. 21 V.S.A. § 1373 is amended to read:

§ 1373. GENERAL PENALTY

A person who violates a provision of this chapter or any lawful rule or regulation of the board, for which no other penalty is provided, shall be fined not more than ~~\$50.00~~ \$5,000.00 or be imprisoned not more than 30 days, or both.

Sec. 11. EMPLOYEE MISCLASSIFICATION; INTERAGENCY COOPERATION; REPORT

(a) The agency of administration shall ensure that all state agencies and departments share information concerning any employer that appears to have misclassified one or more employees as independent contractors.

(b) Upon determining that an employer misclassified one or more employees as independent contractors, the commissioner of the department of labor shall notify the division administering unemployment insurance services, the division of workers' compensation, the department of taxes, and the attorney general, each of which shall investigate the employer's compliance with applicable state laws.

(c) The commissioner of the department of labor, the commissioner of the department of taxes, and the attorney general shall develop memoranda of understanding regarding the employee misclassification provisions of this section. The memoranda shall describe procedures regarding the investigation of employee misclassification, information sharing, enforcement, and any other subject necessary to implement the provisions of this section.

(d) The department of labor shall conduct public education and outreach concerning employee misclassification.

(e) The department of banking, insurance, securities, and health care administration and the department of labor shall make an annual report on or before January 15th to the house committee on commerce and economic development and the senate committee on economic development, housing and

general affairs regarding their investigation and enforcement efforts as they relate to employee misclassification and the enforcement of Vermont labor standards more generally, including all the following:

- (1) The number and outcome of departmental audits and investigations.
- (2) An assessment of the efficacy of the new workers' compensation fraud staff positions created in Sec. 106 of No. 54 of the Acts of 2009.
- (3) The financial costs of misclassification and miscoding.
- (4) The success of employee misclassification public education and outreach.

Sec. 12. DEPARTMENT OF LABOR EMPLOYEE MISCLASSIFICATION REPORTING SYSTEM

The department of labor shall create and maintain an online employee misclassification reporting system. The system shall be designed to allow citizens to make reports of suspected cases of employee misclassification to the department. The department shall ensure that the name of a citizen making a report is kept confidential.

Sec. 13. INSURANCE COMPLIANCE AND FRAUD TASK FORCE

(a) There is created an insurance compliance and fraud task force to be composed of nine members to include the following:

- (1) The commissioner of banking, insurance, securities, and health care administration or designee.
- (2) The commissioner of the department of labor or designee.
- (3) The commissioner of the department of public safety or designee.
- (4) The attorney general or designee.
- (5) Two members of the house to be appointed by the speaker.
- (6) Two members of the senate to be appointed by the committee on committees.
- (7) A member of the insurance industry appointed by the American Insurance Association.

(b) The speaker of the house of representatives and the president pro tempore of the senate, in consultation, shall select a chair of the task force from among its appointed members.

(c) The task force shall meet as needed. Legislative council and the joint fiscal office shall provide administrative support.

(d) The task force shall:

(1) Solicit broad-based input from insurers and members of law enforcement on the development of an insurance compliance and fraud bureau similar to the Massachusetts model and analyze the following issues and make recommendations regarding:

(A) The feasibility of creating an insurance compliance and fraud bureau in Vermont, including the costs to the state to implement, administer, and oversee the bureau.

(B) The likely impact of an insurance compliance and fraud bureau on the incidence of insurance fraud in the state.

(C) The structure of an insurance compliance and fraud bureau, including how it would be created, how it would operate, and its relationship to state agencies, law enforcement, and private insurers.

(D) The types of insurance fraud that the bureau would investigate.

(E) The costs and benefits of creating a tri-state insurance and compliance fraud bureau with New Hampshire and Maine.

(F) The timeline for the creation and implementation of an insurance compliance and fraud bureau.

(G) The fines and penalties for insurance fraud, including debarment, and whether they should be changed.

(H) Any other relevant issues regarding the creation and operation of an insurance compliance and fraud bureau.

(2) Issue a final report on or before January 15, 2011. The final report shall be provided to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs and shall outline the task force's findings and recommendations.

Sec. 14. EFFECTIVE DATES

This section and Secs. 11, 12, and 13 shall take effect July 1, 2010. The remaining sections shall take effect on January 1, 2011.

(Committee Vote: 11-0-0)

H. 695

An act relating to definition of premises for award of liquor license

Rep. Baker of West Rutland, for the Committee on **General, Housing and Military Affairs**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 7 V.S.A. § 2(15) is amended to read:

(15) “Manufacturer’s or rectifier’s license”: a license granted by the liquor control board that permits the holder to manufacture or rectify, as the case may be, malt beverages and vinous beverages for export and for sale to bottlers or wholesale dealers, or spirituous liquors for export and for sale to the liquor control board, upon application of a manufacturer or rectifier and the payment to the liquor control board of the license fee as required by subdivision 231(1) of this title for either license. The liquor control board may grant to a licensed manufacturer or rectifier a first class restaurant or cabaret license or first and third class restaurant or cabaret license permitting the licensee to sell alcoholic beverages to the public only at the manufacturer’s premises. A manufacturer of malt beverages who also holds a first class restaurant or cabaret license may serve to a customer malt beverages by the glass, not to exceed eight glasses at one time and not to exceed four ounces in each glass. The liquor control board may grant to a licensed manufacturer or a rectifier of malt or vinous beverages a second class license permitting the licensee to sell alcoholic beverages to the public only at the manufacturer’s or rectifier’s premises, which for the purposes of a manufacturer of malt beverages, includes any licensed establishment that is located on the contiguous real estate of the holder of the manufacturer’s license, provided the manufacturer owns or has direct control over those establishments. A licensed manufacturer or rectifier of vinous beverages may serve, with or without charge, at an event held on premises of the licensee or the vineyard property vinous and malt beverages, provided the licensee gives the department written notice of the event, including details required by the department, at least 15 days before the event. Any beverages not manufactured by the licensee and served at the event shall be purchased on invoice from a licensed manufacturer or wholesale dealer. Upon application and payment of the license fee as required by subdivision 231(11) of this title, the liquor control board may grant to a licensed manufacturer or rectifier of vinous beverages fourth class or farmers’ market licenses permitting the licensee to sell fortified wines and vinous beverages by the bottle to the public at the licensed premises or at a farmers’ market, provided that the beverages were produced by the manufacturer or rectifier. No more than a combined total of ten fourth class and farmers’ market licenses may be granted to any licensed manufacturer or rectifier. An application for a farmers’ market license shall include copies of the farmers’ market regulations, the agreement between the farmers’ market and the applicant, and the location and dates of operation of the farmers’ market. A farmers’ market license shall be valid for all dates of operation for a specific farmers’ market location. However, in no case may a person with an interest in more than one manufacturer’s or rectifier’s license have an interest

in more than four fourth class licenses. The manufacturer or rectifier shall pay directly to the commissioner of taxes the sum of \$0.265 cents per gallon for every gallon of malt beverage and the sum of \$0.55 cents per gallon for each gallon of vinous beverage manufactured by the manufacturer or rectifier and provided for sale pursuant to the first class license or the second class license or the fourth class license or combination thereof held by the manufacturer or rectifier. Holders of a manufacturer's or rectifier's second class license for malt beverages may distribute, with or without charge, malt beverages by the glass, not to exceed two ounces per product and eight ounces in total, to all persons of legal drinking age. The malt beverages must be consumed upon the premises of the holder of the license. At the request of a person holding a first class or second class license, a holder of a manufacturer's or rectifier's license for malt beverages may distribute without charge to the management and staff of the license holder, provided they are of legal drinking age, no more than four ounces per person of a malt beverage for the purpose of promoting the beverage. Written notice shall be provided to the department of liquor control at least 10 days prior to the date of the tasting. A licensed manufacturer or rectifier of spirits may do either or both of the following only on the manufacturer's or rectifier's premises:

(A) Sell by the glass or bottle to the public spirits manufactured by the licensee.

(B) Dispense by the glass, with or without charge, spirits manufactured by the licensee, provided that no more than one quarter ounce per product and no more than one ounce in total is dispensed to each individual of legal age.

Sec. 2. EFFECTIVE DATE

This bill shall take effect on passage.

(**Committee Vote: 8-0-0**)

Action Postponed Until May 28, 2010

Governors Veto

H. 436

An act relating to decommissioning funds of nuclear energy generation plants.

Pending Question: Shall the House sustain the Governor's veto?

NOTICE CALENDAR
Committee Bill for Second Reading
H. 769

An act relating to the licensing and inspection of plant and tree nurseries.
(Rep. Taylor of Barre City will speak for the Committee on Agriculture.)

Favorable with Amendment
H. 614

An act relating to the regulation of composting

Rep. McCullough of Williston, for the Committee on **Fish, Wildlife & 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. § 6001(3)(D) is amended to read:

(D) The word “development” does not include:

* * *

(vii) The construction of improvements below the elevation of 2,500 feet for the onsite storage, preparation, and sale of compost, provided that the chair of the district commission does not determine, in his or her discretion, that action has been taken to circumvent the requirements of this chapter and:

(I) The compost is produced from no more than 100 cubic yards of material per year; or

(II) The compost is principally produced from inputs grown or produced on the farm; or

(III) The compost is principally used on the farm where it was produced; or

(IV) The compost is produced on a farm primarily used for the raising, feeding, or management of livestock, only from:

(aa) manure produced on the farm; and

(bb) unlimited clean, dry, high-carbon bulking agents from any source; or

(V) The compost is produced on a farm primarily used for the raising, feeding, or management of livestock, only from:

(aa) manure produced on the farm;

(bb) up to 2,000 cubic yards per year of organic inputs allowed under the agency of natural resources' acceptable management practices, including food residuals or manure from off the farm, or both; and

(cc) unlimited clean, dry, high-carbon bulking agents from any source; or

(VI) The compost is produced on a farm primarily used for the cultivation or growing of food, fiber, horticultural, or orchard crops, that complies with the agency of natural resources' solid waste management rules, only from up to 5,000 cubic yards per year of total organic inputs allowed under the agency of natural resources' acceptable management practices, including up to 2,000 cubic yards per year of food residuals.

Sec. 2. 10 V.S.A. § 6001(3)(E) is amended to read:

(E) When development is proposed to occur on a parcel or tract of land that is devoted to farming activity as defined in subdivision 6001(22) of this section, only those portions of the parcel or the tract that support the development shall be subject to regulation under this chapter. Permits issued under this chapter shall not impose conditions on other portions of the parcel or tract of land which do not support the development and that restrict or conflict with accepted agricultural practices adopted by the secretary of agriculture, food and markets. Any portion of the tract that is used to produce compost ingredients for a composting facility located elsewhere on the tract shall not constitute land which supports the development unless it is also used for some other purpose that supports the development.

Sec. 3. 10 V.S.A. § 6001(31) and (32) are added to read:

(31) "Farm," for purposes of subdivisions (3)(D)(vii)(V) and (VI) of this section, means a parcel of land devoted primarily to farming, as farming is defined in subdivision (22)(A) or (B) of this section, and from which parcel, annual gross income from farming, as defined in subdivision 6001(22) of this title, exceeds the annual gross income from a composting operation on that parcel; and

(A) for purposes of subdivision 6001(3)(D)(vii)(V) of this title, uses no more than 10 acres or 10 percent of the parcel, whichever is smaller, for commercial compost management, not including land used for liquid nutrients management;

(B) for purposes of subdivision 6001(3)(D)(vii)(VI) of this title, uses no more than four acres or 10 percent of the parcel, whichever is smaller, for commercial compost management, not including land used for liquid nutrients management.

(32) “Livestock” means cattle, sheep, goats, equines, fallow deer, red deer, American bison, swine, water buffalo, poultry, pheasant, chukar partridge, courtnix quail, camelids, ratites (ostriches, rheas, and emus), llamas, alpacas, yaks, rabbits, cultured trout propagated by commercial trout farmers, or other animal types designated by the secretary of agriculture, food and markets by procedure.

Sec. 4. EFFECTIVE DATE

This act shall take effect upon passage.

(**Committee Vote: 9-0-0**)

H. 709

An act relating to creating a prekindergarten–16 council

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

Sec. 1. POLICY

It is the policy of the state of Vermont to encourage and enable all Vermonters to acquire the postsecondary education and training necessary for the state to develop and maintain a highly educated and engaged citizenry and a competitive workforce.

Sec. 2. 16 V.S.A. § 2905 is added to read:

§ 2905. PREKINDERGARTEN–16 COUNCIL

(a) A prekindergarten–16 council (the “council”) is created to help coordinate and better align the efforts of the prekindergarten–12 educational system with the higher education community in order to increase:

- (1) postsecondary aspirations;
- (2) the enrollment of Vermont high school graduates in higher education programs;
- (3) the postsecondary degree completion rates of Vermont students; and
- (4) public awareness of the economic, intellectual, and societal benefits of higher education.

(b) The council shall be composed of:

- (1) the commissioner of education or designee;
- (2) the commissioner of labor or designee;
- (3) the president of the University of Vermont or designee;

- (4) the chancellor of the Vermont State Colleges or designee;
 - (5) the president of the Vermont Student Assistance Corporation or designee;
 - (6) the president of the Association of Vermont Independent Colleges or designee;
 - (7) a principal of a secondary school selected by the Vermont Principals' Association;
 - (8) a member of a school board selected by the Vermont School Boards Association;
 - (9) a superintendent selected by the Vermont Superintendents Association;
 - (10) a teacher selected by the Vermont-National Education Association;
 - (11) a member of the Building Bright Futures Council or designee;
 - (12) a technical education director selected by the Vermont Association of Career and Technical Center Directors;
 - (13) a representative from the business and industry community selected by the Vermont Business Roundtable;
 - (14) an advocate for low income children selected by Voices for Vermont's Children;
 - (15) a member of the house of representatives, who shall be selected by the speaker and shall serve until the beginning of the biennium immediately after the one in which the member is appointed;
 - (16) a member of the senate, who shall be selected by the committee on committees and shall serve until the beginning of the biennium immediately after the one in which the member is appointed; and
 - (17) a member of the faculty of the Vermont State Colleges, the University of Vermont, or a Vermont independent college selected by United Professions AFT Vermont, Inc.
- (c) The council shall develop and regularly update a statewide plan to increase postsecondary aspirations among students of all ages and otherwise advance the purposes for which the council is created, which shall include strategies to:
- (1) increase the percentage of Vermonters who earn an associate's or higher level degree or a postsecondary certification;

(2) identify and address areas of educator preparation that could benefit from improved collaboration between the prekindergarten–12 educational system and the higher education community;

(3) promote early career awareness and nurture postsecondary aspirations;

(4) develop programs that guarantee college admission and financial aid for low income students who successfully complete early commitment requirements;

(5) enhance student engagement in secondary school, ensuring that learning opportunities are relevant, rigorous, and personalized and that all students aspire to and prepare for success in postsecondary learning opportunities;

(6) expand access to dual enrollment programs in order to serve students of varying interests and abilities, including those who are likely to attend college, those who are from groups that attend college at disproportionately low rates, and those who are prepared for a postsecondary curriculum prior to graduation from secondary school;

(7) develop proposals for statewide college and career readiness standards and assessments;

(8) create incentives for adults to begin or continue their postsecondary education that consider, in part, emerging labor markets; and

(9) ensure implementation of a prekindergarten–16 longitudinal data system, which it shall use to assess the success of the plan required by this subsection.

(d) Together with the secretary of administration or the secretary's designee, a higher education subcommittee of the council shall perform any statutory duties required of it in connection with the higher education endowment trust fund. The following members of the council shall be the members of the higher education subcommittee: the president of the University of Vermont, the chancellor of the Vermont State Colleges, the president of the Vermont Student Assistance Corporation, the president of the Association of Vermont Independent Colleges, the representative from the business and industry community, the member of the house of representatives, and the member of the senate.

(e) The legislative and higher education staff shall provide support to the council as appropriate to accomplish its tasks. Primary administrative support shall be provided by the legislative council.

(f) For attendance at meetings during adjournment of the general assembly, legislative members of the council shall be entitled to compensation and reimbursement for expenses as provided in 2 V.S.A. § 406, which shall be paid

for by the general assembly. Members of the council identified in subdivisions (b)(7)–(14) of this section who are not state employees and whose participation is not otherwise reimbursed shall be entitled to compensation and reimbursement for expenses for attending meetings at the per-diem rate established in 32 V.S.A. § 1010, which shall be paid on a pro-rata basis by the University of Vermont, the Vermont State Colleges, the Vermont Student Assistance Corporation, and the Association of Vermont Independent Colleges.

(g) The council shall annually elect one of its members to be chair.

(h) The council shall meet at least six times yearly.

(i) The council shall report on its activities to the house and senate committees on education each year in January.

Sec. 3. 16 V.S.A. § 2885 is amended to read:

§ 2885. VERMONT HIGHER EDUCATION ENDOWMENT TRUST FUND

* * *

(d) During the first quarter of each fiscal year, ~~beginning in the year 2000, the commission on higher education funding~~ secretary of administration or the secretary's designee and the higher education subcommittee of the prekindergarten–16 council created in section 2905 of this title may authorize the state treasurer to make an amount equal to up to two percent of the assets available to Vermont public institutions for the purpose of creating or increasing a permanent endowment. In this subsection, “assets” means the average of the fund’s market values at the end of each quarter for the most recent 12 quarters, or all quarters of operation, whichever is less. Therefore, up to two percent of the fund assets are hereby annually allocated pursuant to this section, provided that the amount allocated shall not exceed an amount which would bring the fund balance below the initial funding made in fiscal year 2000 plus any additional contributions to the principal. One-half of the amount allocated shall be available to the University of Vermont and one-half shall be available to the Vermont ~~state colleges~~ State Colleges. The University of Vermont or Vermont ~~state colleges~~ State Colleges may withdraw funds upon certification by the withdrawing institution to the commissioner of finance and management that it has received private donations which are double the amount it plans to withdraw.

(e) Annually, by September 30, the state treasurer shall render a financial report on the receipts, disbursements and earnings of the fund for the preceding fiscal year to the ~~commission on higher education funding~~ secretary of administration or the secretary's designee and the higher education subcommittee.

(f) All balances in the fund at the end of any fiscal year shall be carried forward and used only for the purposes set forth in this section. Earnings of the fund which are not withdrawn pursuant to this section shall remain in the fund.

(g) The University of Vermont, the Vermont State Colleges, and the Vermont Student Assistance Corporation shall review expenditures made from the fund, evaluate the impact of the expenditures on higher education in Vermont, and report this information to the state treasurer each year in January.

Sec. 4. REPEAL

16 V.S.A. § 2886 (commission on higher education funding) is repealed, and the commission shall cease to exist on the effective date of this act.

Sec. 5. IMPLEMENTATION

(a) All members of the prekindergarten–16 council created in Sec. 2 of this act shall be selected before August 1, 2010.

(b) The commissioner of education shall convene the first meeting of the prekindergarten–16 council before September 1, 2010.

(c) The strategies developed by the prekindergarten–16 council pursuant to subdivision 2(c)(1) of this act shall include the goal of ensuring that at least 60 percent of the adult population will have earned an associate’s or higher-level degree by 2020.

Sec. 6. EFFECTIVE DATE

This act shall take effect on passage.

(Committee Vote: 9-1-1)

S. 280

An act relating to prohibiting texting while operating on a highway

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 2010.”

* * * 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 and Prevention, 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 these 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 increase incrementally with one, two, three, or more passengers. With three or more passengers, fatal crash risk is about three times higher than if a beginner were 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 9:00 p.m. and 6:00 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 2:00 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 one involving 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) Traffic crashes are not just an enforcement issue.

* * * Nighttime Restrictions * * *

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 midnight and 5:00 a.m. except when accompanied by a parent or guardian or when carrying the signed and dated written permission of a parent or guardian that contains the parent's or guardian's home and work addresses and telephone numbers.

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

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

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

§ 1095a. USE OF WIRELESS TELEPHONES AND HANDHELD ELECTRONIC DEVICES

(a)(1) For the purposes of this section, "wireless telephone" shall mean a telephone that is:

(A) capable of sending or receiving telephone communications without being physically connected to a telephone wire or cord; and

(B) used pursuant to a subscription with a commercial entity that provides wireless telephone service.

(2) "Wireless telephone" shall not be construed to include:

(A) a two-way radio that is operated by using a push-to-talk feature and does not require proximity to the ear of the user; or

(B) a communication feature of a voice-activated global positioning or navigation system that is affixed within the passenger compartment of a motor vehicle.

(b) For the purposes of this section, "hands-free use" shall refer to the use of 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.

(c) Subject to the exceptions set forth in subsection (b) of this section, for the purposes of this section, the term “use,” when referring to the utilization of a wireless telephone or handheld electronic device, shall include telephone calls, texting, and all other functions.

(d) A person under 18 years of age shall not use any wireless telephone or handheld electronic device while operating a moving motor vehicle on a highway. This prohibition shall not apply if it is necessary to place an emergency 911 call.

(e) A person 18 years of age or older shall not use a wireless telephone or electronic communication device while operating a moving motor vehicle on a highway. This prohibition shall not apply to:

(1) hands-free use;

(2) placement of an emergency 911 call; or

(3) use by the following persons for the purpose of and during the course of performing their official duties:

(A) law enforcement officers;

(B) firefighters;

(C) operators of authorized emergency vehicles as defined in section 4 of this title; and

(D) state or municipal employees and their contractors who are actively engaged in road maintenance activities.

Sec. 5. WIRELESS TELEPHONE AND HANDHELD ELECTRONIC DEVICE REPORT

By July 1, 2012, the Vermont League of Cities and Towns, Inc., the Vermont state firefighters association, and the Vermont department of public safety, after consulting with their constituents and other appropriate entities whether or not under their direct control, shall submit to the house committee on judiciary a report regarding their constituents’ progress toward utilization of hands-free communications technology in the course of motor vehicle operation.

* * * Texting Prohibition, Penalties, and Educational Campaign * * *

Sec. 6. 23 V.S.A. § 1099 is added to read:

§ 1099. TEXTING PROHIBITED

(a) As used in this section, “texting” means the composing, reading, or sending of electronic communications including text messages, instant messages, or e-mails using a portable electronic device. As used in this section, “portable electronic device” means a portable electronic or computing device including a cellular telephone, personal digital assistant (PDA), or laptop computer.

(b) A person operating a moving motor vehicle, electric personal mobility device, or farm tractor on a highway; or operating a moving snowmobile, all-terrain vehicle (as defined in section 3501 of this title), or all-surface vehicle on or off a highway; or operating a moving motorboat (as defined in section 3302 of this title) shall not engage in texting.

(c) A person who violates this section commits a traffic violation as defined in section 2302 of this title and shall be subject to a penalty of \$100.00 upon adjudication of a first violation and \$250.00 upon adjudication of a second or subsequent violation within any two-year period.

Sec. 7. 23 V.S.A. § 607a is amended to read:

§ 607a. RECALL OF LEARNER’S PERMIT OR JUNIOR OPERATOR’S LICENSE

(a) A learner’s permit or junior operator’s license shall contain an admonition that it is recallable and that the later procurement of an operator’s license is conditional on the establishment of a record which is satisfactory to the commissioner and showing compliance with the motor vehicle laws of this and other states. The commissioner may recall any license issued to a minor whenever he or she is satisfied, from information provided by a credible person and upon investigation, that the operator is mentally or physically unfit or, because of his or her habits or record as to accidents or convictions, is unsafe to be trusted with the operation of motor vehicles. On recommendation of a diversion or reparative board, the commissioner may recall the learner’s permit or junior operator’s license of a person in a diversion or reparative program for up to 30 days. The commissioner shall also recall any learner’s permit or junior operator’s license for 30 days when an operator is adjudicated of a single texting violation under section 1099 of this title, 90 days following adjudication of a single speeding violation resulting in a three-point assessment ~~or, 90 days when a total of six points has been accumulated, or 90 days when an operator is convicted for~~ adjudicated of a violation of section 678 of this title. When a learner’s permit or junior operator’s license is so recalled, it shall be reinstated upon expiration of a specific term, and, if required by the

commissioner, when the person has passed a reexamination approved by the commissioner.

* * *

Sec. 8. 23 V.S.A. § 2502 are amended to read:

§ 2502. POINT ASSESSMENT; SCHEDULE

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

(1) Two points assessed for:

* * *

(LL)	§ 1095.	Operating with television set installed;
<u>(MM)</u>	<u>§ 1099.</u>	<u>Texting prohibited—first offense;</u>
(MM) <u>(NN)</u>	§ 1113.	Illegal backing;
(NN) <u>(OO)</u>	§ 1114.	Illegal riding on motorcycles;
(OO) <u>(PP)</u>	§ 1115.	Illegal operation of motorcycles on roadways laned for traffic;
(PP) <u>(QQ)</u>	§ 1116.	Clinging to other vehicles;
(QQ) <u>(RR)</u>	§ 1117.	Illegal footrests and handlebars;
(RR) <u>(SS)</u>	§ 1118.	Obstructing the driver's view;
(SS) <u>(TT)</u>	§ 1119.	Improper opening and closing vehicle doors;
(TT) <u>(UU)</u>	§ 1121.	Coasting prohibited;
(UU) <u>(VV)</u>	§ 1122.	Following fire apparatus prohibited;
(VV) <u>(WW)</u>	§ 1123.	Driving over fire hose;
(WW) <u>(XX)</u>	§ 1124.	Position of operator;
(XX) <u>(YY)</u>	§ 1127.	Unsafe control in presence of horses and cattle;
(YY) <u>(ZZ)</u>	§ 1131.	Failure to give warning signal;
(ZZ) <u>(AAA)</u>	§ 1132.	Illegal driving on sidewalk;
(AAA) <u>(BBB)</u>	§ 1243.	Lighting requirements;

- ~~(BBB)~~(CCC) § 1256. Motorcycle headgear;
 - ~~(CCC)~~(DDD) § 1257. Face protection;
 - ~~(DDD)~~(EEE) § 800. Operating without financial responsibility;
 - ~~(EEE)~~(FFF) All other moving violations which have no specified points;
- * * *

(4) Five points assessed for:

- (A) § 1050. Failure to yield to emergency vehicles;
 - (B) § 1075. Illegal passing of school bus;
 - (C) § 1099. Texting prohibited—second and subsequent offenses;
 - ~~(C)~~(D) § 676. Operating after suspension, revocation or refusal—civil violation;
- * * *

Sec. 9. EDUCATIONAL CAMPAIGN

The commissioner of motor vehicles, in consultation with the commissioner of education, shall formulate a plan to educate operators as to the dangers of operating while texting and the penalties that may be imposed pursuant to this act.

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

Sec. 10. 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. 11. 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. 12. EFFECTIVE DATE

This act shall take effect on July 1, 2010.

and that after passage, the title of the bill be amended to read: "An act relating to the operation of motor vehicles by junior operators, operating with wireless or handheld devices, prohibiting texting, and primary safety belt enforcement"

(**Committee Vote: 10-0-1**)

Ordered to Lie

H.R. 19

House resolution urging the agency of natural resources to retain delegated authority to administer the federal Clean Water Act in Vermont.

Pending Question: Shall the House adopt the resolution?

Public Hearings

Wednesday, March 10, 2010 - Room 11 - - 5:00 - 8:00 PM - House and Senate Education Committees - S. 252 Consolidation - School Districts

Thursday, March 11, 2010 – Room 11 – 3:30 – 5:00 PM and 6:00 – 8:00 PM –
House Ways and Means – Tax Expenditure Bill

Information Notice

CROSS OVER GUIDELINES

The following are the guidelines concerning cross over :

1. All bills should be reported out of committee and brought into the Clerk's office by Friday March 12, 2010. This does not apply to the Appropriations bill, the Capital Construction bill or the Transportation Construction bill.
2. The Appropriations and Ways & Means committees need to have their bills reported out and brought into the Clerk's office by Friday, March 19, 2010.