Senate Calendar

TUESDAY, MARCH 31, 2009

84th DAY OF BIENNIAL SESSION

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ACTION CALENDAR

SPECIAL ORDER

FRIDAY, APRIL 3, 2009

TIME: 9:00 A.M.

(Third Reading per Chapter II, §72, Vermont Constitution and Senate Rule 83)

Proposed Amendment to the Constitution

PROPOSAL 5

Pursuant to Rule 83 of the Senate Rules, the proposed amendment to the Constitution, Proposal 5, set forth below, will be read the third time and acted upon. The question is: "Shall the Senate concur in the proposal and request the concurrence of the House?" [majority of whole Senate is required for passage]

SUBJECT: Elections; voter's oath; self-administration

PENDING ACTION: Third reading of the proposal (second biennium)

PROPOSAL 5

Sec. 1. PURPOSE

This proposal would amend the Constitution of the State of Vermont to provide that a person who will attain the age of 18 by the date of the general election shall have the right to vote in the primary election.

Sec. 2. Section 42 of Chapter II of the Vermont Constitution is amended to read:

§ 42. [VOTER'S QUALIFICATIONS AND OATH]

Every person of the full age of eighteen years who is a citizen of the United States, having resided in this State for the period established by the General Assembly and who is of a quiet and peaceable behavior, and will take the following oath or affirmation, shall be entitled to all the privileges of a voter of this state:

> You solemnly swear (or affirm) that whenever you give your vote or suffrage, touching any matter that concerns the State of Vermont, you will do it so as in your conscience you shall judge will most conduce to

the best good of the same, as established by the Constitution, without fear or favor of any person.

Every person who will attain the full age of eighteen years by the date of the general election who is a citizen of the United States, having resided in this State for the period established by the General Assembly and who is of a quiet and peaceable behavior, and will take the oath or affirmation set forth in this section, shall be entitled to vote in the primary election.

Sec. 3. EFFECTIVE DATE

This proposal of amendment shall take effect from the date of its approval by a majority vote of the voters of the state.

Consideration Postponed until Tuesday, March 31, 2009

S. 127

An act relating to small school districts that pay tuition for their resident students.

Pending Question: Shall the bill be read the third time?

UNFINISHED BUSINESS OF TUESDAY, MARCH 24, 2009

Third Reading

S. 109

An act relating to brominated flame retardants.

UNFINISHED BUSINESS OF WEDNESDAY, MARCH 25, 2009

Third Reading

S. 99

An act relating to amending the Act 250 criteria relating to traffic, scattered development, and rural growth areas.

H. 11

An act relating to the disposition of property upon death, transfer of interest in vehicle upon death, and homestead exemption.

UNFINISHED BUSINESS OF FRIDAY, MARCH 27, 2009

Second Reading

Favorable with Recommendation of Amendment

S. 94

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

Reported favorably with recommendation of amendment by Senator Choate for the Committee on Agriculture.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec.1. MAPLE SUGAR LICENSES ON STATE FOREST LAND

The commissioner of forests, parks and recreation shall consult with the Vermont maple sugar makers association to develop a procedure under which the commissioner shall issue additional 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. In addition, the commissioner of forests, parks and recreation shall consult with the Vermont maple sugar makers association to develop guidelines for tapping maple trees.

(Committee vote: 5-0-0)

Committee Bills for Second Reading

S. 126

An act relating to digital forensic specialists.

By the Committee on Economic Development, Housing and General Affairs. (Senator Miller for the Committee)

S. 128

An act relating to workers' compensation benefits and misclassification.

By the Committee on Economic Development, Housing and General Affairs. (Senator Illuzzi for the Committee)

UNFINISHED BUSINESS OF FRIDAY, MARCH 27, 2009

Second Reading

Favorable

H. 31

An act relating to approval of amendments to the charter of the town of Williston.

Reported favorably by Senator Flanagan for the Committee on Government Operations.

(Committee vote: 5-0-0)

H. 95

An act relating to the approval of an amendment to the charter of the city of Burlington.

Reported favorably by Senator Flanagan for the Committee on Government Operations.

(Committee vote: 5-0-0)

Favorable with Recommendation of Amendment

S. 19

An act relating to extension of filing deadlines for homestead declarations and property tax adjustment claims.

Reported favorably with recommendation of amendment by Senator Hartwell for the Committee on Finance.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. DEADLINE FOR CERTAIN 2008 HOMESTEAD DECLARATIONS AND PROPERTY TAX ADJUSTMENT CLAIMS

Notwithstanding any other provision of law, a claimant residing in a town that sent its 2008 property tax bill on September 15, 2008 and who, within 21 days of such date, filed a declaration of homestead and a property tax adjustment claim for that homestead shall be entitled to any refund resulting from the corrected property classification and education property tax adjustment claim. The commissioner of taxes shall pay any refund due under this section with respect to an education property tax adjustment to a claimant who applies in writing to the commissioner on or before July 17, 2009. A refund due a claimant due to reclassification of property as homestead property under this section shall be refunded by the town.

(Committee vote: 7-0-0)

S. 58

An act relating to electronic payment of wages.

Reported favorably with recommendation of amendment by Senator Carris for the Committee on Economic Development, Housing and General Affairs.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 21 V.S.A. §§ 342 and 343 are amended to read:

§ 342. WEEKLY PAYMENT OF WAGES

(a) Any person having employees ~~in his service~~ doing and transacting business within the state shall ~~pay~~:

(1) Pay to those employees each week, in lawful money or checks~~, each of his employees~~, the wages earned by ~~such~~ each employee to a day not more than six days prior to the date of ~~such~~ payment.

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

~~(c)(1)~~(b) An employee who ~~voluntarily~~:

(1) Voluntarily leaves ~~his~~ employment shall be paid on the last regular pay day, or if there is no regular pay day, on the following Friday.

(2) ~~An employee who is~~ Is discharged from employment shall be paid within 72 hours of ~~his~~ discharge.

(3) ~~If an employee is~~ Is absent from his or her regular place of employment on the employer's regular scheduled date of wages or salary payment ~~such employee~~ shall be entitled to ~~such~~ payment upon demand.

~~(d)~~(c) With the written authorization of an employee, an employer may pay wages due the employee by ~~deposit~~ any of the following methods:

(1) Deposit through electronic funds transfer or other direct deposit systems to a checking, savings, or other deposit account maintained by or for the employee in any financial institution within or without the state.

(2) Credit to a payroll card account directly or indirectly established by an employer in a financial institution to which electronic fund transfers of the employee's wages, salary, or other employee compensation are made on a recurring basis, other than a checking, savings, or other deposit account described in subdivision (1) of this subsection, provided all the following:

(A) The employer provides the employee written disclosure in plain language, in at least 10-point type of both the following:

(i) All the employee's wage payment options.

(ii) The terms and conditions of the payroll card account option, including a complete list of all known fees that may be deducted from the

employee's payroll card account by the employer or the card issuer and whether third parties may assess fees in addition to the fees assessed by the employer or issuer.

(B) The employee voluntarily consents in writing to payment of wages by payroll card account after receiving the disclosures described in subdivision (A) of this subdivision (2), and this consent is not a condition of hire or continued employment.

(C) The employer provides that during each pay period the employee has at least three free withdrawals from the payroll card, one of which permits withdrawal of the full amount of the balance, at a financial institution, credit union, or other location convenient to the place of employment.

(D) None of the employer's costs associated with the payroll card account are passed on to the employee, and the employer shall not receive any financial remuneration for using the pay card at the employee's expense.

(E) At least 21 days before any change takes effect, the employer provides the employee with written notice in plain language, in at least 10 point type, of any change to any of the terms and conditions of the payroll card account, including any changes in the itemized list of fees. The employer may not charge the employee any additional fees until the employer has notified the employee in writing of the changes.

(F) The employer provides the employee the option to discontinue receipt of wages by a payroll card account at any time and without penalty to the employee.

(G) The payroll card issued to the employee shall be a branded-type payroll card that complies with all the following:

(i) Can be used at a PIN-based or a signature-based outlet.

(ii) The payroll card agreement prevents withdrawals in excess of the account balance and to the extent possible protects against the account being overdrawn.

(iii) The payroll card has no expiration date, unless the employer agrees to provide a replacement payroll card at no cost to the employee before the expiration date.

(H) A nonbranded payroll card may be issued for temporary purposes and shall be valid for no more than 60 days.

§ 343. FORM OF PAYMENT

~~Such~~ An employer shall not pay ~~its~~ employees with any form of evidence of indebtedness, including~~, without limitation,~~ all scrip, vouchers, due bills, or

store orders, unless the employer is in compliance with one or both of the following:

(1) ~~the~~ The employer is a cooperative corporation in which the employee is a stockholder~~. However,~~ ~~such~~ , in which case, the cooperative corporation shall, upon request of any ~~such~~ shareholding employee, pay ~~him~~ the shareholding employee as provided in section 342 of this title~~; or~~ .

(2) ~~payment~~ Payment is made by check as defined in Title 9A or by electronic fund transfer as provided in section 342 of this title.

Sec. 2. 8 V.S.A. § 2707(6) is added to read:

(6) A payroll card account issued pursuant to and in full compliance with 21 V.S.A. § 342(c).

Sec. 3. EFFECTIVE DATE

This act shall take effect upon passage.

(Committee vote: 5-0-0)

NEW BUSINESS

Third Reading

S. 38

An act relating to requiring the Department of Finance and Management to annually publish on its website a report on grants issued by executive branch agencies.

S. 125

An act relating to expanding the sex offender registry.

AMENDMENT TO S. 125 TO BE OFFERED BY SENATOR SEARS, ON BEHALF OF THE COMMITTEE ON JUDICIARY, BEFORE THIRD READING

Senator Sears, on behalf of the Committee on Judiciary, moves to amend the bill by adding Secs. 10 and 11 to read as follows:

Sec. 10. 13 V.S.A. § 7031 is amended to read:

§ 7031. FORM OF SENTENCES; MAXIMUM AND MINIMUM TERMS

(a) When a respondent is sentenced to any term of imprisonment, other than for life, the court imposing the sentence shall not fix the term of imprisonment, unless such term is definitely fixed by statute, but shall establish a maximum and may establish a minimum term for which such respondent may be held in imprisonment. The maximum term shall not be

more than the longest term fixed by law for the offense of which the respondent is convicted and the minimum term shall be not less than the shortest term fixed by law for such offense. If the court suspends a portion of said sentence, the unsuspended portion of such sentence shall be the minimum term of sentence solely for the purpose of any reductions of term for good behavior as provided for in section 811 of Title 28.

(b) The sentence of imprisonment of any person convicted of an offense shall commence to run from the date on which the person is received at the correctional facility for service of the sentence. The court shall give the person credit toward service of his or her sentence for any days spent in custody in connection with the offense for which sentence was imposed. The commissioner of corrections shall award credit for time served as ordered by the court in the mittimus pursuant to any plea agreement approved by the court, except that no such credit shall be awarded for any time not served in a correctional center or residential treatment facility.

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

Sec. 11. 13 V.S.A. § 7044 is amended to read:

§ 7044. SENTENCE CALCULATION; NOTICE TO DEFENDANT

(a) Within 30 days after sentencing in all cases where the court imposes a sentence which includes a period of incarceration to be served, the commissioner of corrections shall provide to the court and the office of the defender general a calculation of the potential shortest and longest lengths of time the defendant may be incarcerated taking into account the provisions for reductions of term pursuant to 28 V.S.A. § 811 based on the sentence or sentences the defendant is serving, and the effect of any credit for time served as ordered by the court pursuant to 13 V.S.A. § 7031. The commissioner's calculation shall be a public record.

(b) In all cases where the court imposes a sentence which includes a period of incarceration to be served, the department of corrections shall provide the defendant with a copy and explanation of the sentence calculation made pursuant to subsection (a) of this section.

and by renumbering the remaining sections to be numerically correct and adjusting the internal references in the Effective Date clause accordingly.

Second Reading

Favorable with Recommendation of Amendment

S. 28

An act relating to the regulation of landscape architects.

Reported favorably with recommendation of amendment by Senator Ayer for the Committee on Government Operations.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 26 V.S.A. chapter 46 is added to read:

Chapter 46. Landscape Architects

Subchapter 1. General Provisions

§ 2611. DEFINITIONS

As used in this chapter:

(1) "Director" means the director of the office of professional regulation.

(2) "Disciplinary action" means any action taken against a licensed landscape architect for unprofessional conduct.

(3) "Landscape architect" means a person who complies with all provisions of this chapter and is licensed by the director to engage in the practice of landscape architecture.

(4) "License" means an authorization granted by the director to practice landscape architecture.

(5) "Practice of landscape architecture" means any service where landscape architectural education, training, experience and the application of mathematical, physical, and social science principles are applied in consultation, evaluation, planning, and design, including the preparation and filing of drawings, plans, specifications and other contract documents and the administration of contracts relative to projects principally directed at the functional and aesthetic development, use, or preservation of land that directly affects the health, safety and welfare of the public. These services include the implementation of land development concepts and natural resource management plans through the design or grading of: land forms; on-site, surface, and storm water drainage; soil conservation and erosion control; small water features; pedestrian, bicycle, and local motor vehicular circulation systems; and related construction details.

§ 2612. PROHIBITION AND ENFORCEMENT

(a) No person shall:

(1) Practice or attempt to practice landscape architecture or hold himself or herself as being able to do so in this state without first obtaining a valid license as required by this chapter.

(2) Use the title "landscape architect," "landscape architecture," or "landscape architectural" in connection with the person's name without being duly licensed under this chapter.

(b) No person licensed under this chapter shall:

(1) Stamp or seal documents with his or her landscape architect seal if his or her license has expired or is revoked or suspended.

(2) Practice or attempt to practice landscape architecture during license revocation or suspension.

(3) Engage in unprofessional conduct.

(4) Violate any provisions of this chapter.

(c) A person who willfully violates any provisions of subsection (a) of this section shall be subject to the penalties provided in subsection 127(c) of Title 3.

(d) The administrative law officer may bring an action for injunctive relief to enforce the provisions of this chapter.

§ 2613. EXEMPTIONS

(a) This chapter shall not affect or prevent:

(1) The practice of architecture, land surveying, engineering, or other licensed profession by persons not licensed under this chapter;

(2) Drafters, clerks, project managers, superintendents, students, and other employees or interns from acting under the instructions, control, or supervision of their employers;

(3) The construction, alteration, or supervision of sites by contractors or superintendents employed by contractors or the preparation of shop drawings in connection with the construction, alteration, or supervision;

(4) Owners or contractors from engaging persons who are not landscape architects to observe and supervise site construction of a project;

(5) The preparation of construction documents showing plantings, other horticulture-related elements, or landscape materials unrelated to horticulture;

(6) Individuals from making plans, drawings, or specifications for any property owned by them and for their own personal use;

(7) The design of irrigation systems; and

(8) Officers or employees of the federal government from working in connection with their employment.

(b) This section shall not be construed to permit a person not licensed as provided in this chapter to use the title landscape architect or any title, sign, card, or device to indicate that the person is a landscape architect.

(c) This chapter shall not be construed to limit or restrict in any manner the right of a practitioner of another profession or occupation from carrying on in the usual manner any of the functions of that profession or occupation as their experience, education, and training allow them to practice, including the professions of landscape design, garden design, planning, forestry, and forestry management.

Subchapter 2. Administration

§ 2621. OFFICE OF PROFESSIONAL REGULATION

(a) The director shall:

(1) Provide general information to applicants for licensure as landscape architects.

(2) Explain appeal procedures to licensed landscape architects and applicants, and complaint procedures to the public.

(3) Administer fees as established by law.

(4) Receive applications for licensure, administer examinations, provide licenses to applicants qualified under this chapter, renew, revoke and reinstate licenses as ordered by an administrative law officer.

(5) Refer all disciplinary matters to an administrative law officer.

(b) The director may adopt rules necessary to perform his or her duties under this section.

§ 2622. ADVISOR APPOINTEES

(a) The secretary of state shall appoint two landscape architects for

four-year terms to serve at the secretary's pleasure as advisors in matters relating to landscape architecture. One of the initial appointments may be for less than a four-year term. An appointee shall have not less than three years' experience as a landscape architect immediately preceding appointment, shall be licensed as a landscape architect in Vermont or be in the process of

applying for licensure, and shall be actively engaged in the practice of landscape architecture in this state during incumbency.

(b) The director shall seek the advice of the landscape architect advisors in carrying out the provisions of this chapter.

§ 2623. APPLICATIONS

Applications for licensure shall be on forms provided by the director. Each application shall contain a statement under oath showing the applicant's education, experience, and other pertinent information and shall be accompanied by the required fee.

§ 2624. QUALIFICATIONS

(a) A person shall be eligible for licensure as a landscape architect if the person qualifies under one of the following provisions:

(1) Comity or endorsement. A person holding a registration or license to engage in the practice of landscape architecture issued on the basis of an examination administered by the council of landscape architectural registration boards, by the appropriate regulatory authority of a state, territory, or possession of the United States, the District of Columbia, or another country based on requirements and qualifications shown by the application to be equal to or greater than the requirements of this chapter may be examined on landscape architecture matters peculiar to Vermont and granted a license at the discretion of the director. The director shall accept evidence that an applicant holds a valid certificate from the council of landscape architectural registration boards as proof of qualification for licensure under this subdivision.

(2) Graduation and examination. An applicant who has graduated, having completed a landscape architecture curriculum approved by the landscape architectural accreditation board, followed by at least three years of diversified experience in landscape architecture under the supervision of a licensed, registered, or certified landscape architect and who has passed an examination administered by the council of landscape architectural registration boards may be granted a license. The director may accept experience received under the supervision of a licensed or registered architect, professional engineer, or land surveyor for one year of the experience required under this subdivision. All applicants shall have at least two years of experience under the supervision of a licensed, certified, or registered landscape architect.

(3) Experience and examination. An applicant who has completed nine or more years' diversified experience in landscape architecture under the supervision of a licensed, certified, or registered landscape architect and who has passed an examination administered by the council of landscape

architectural review boards may be granted a license. Experience received under the supervision of a licensed or registered architect, professional engineer, or land surveyor may be substituted for no more than three years of this requirement. Credits from a landscape architecture program accredited by the landscape architectural accreditation board may be substituted for up to no more than three years of this requirement.

(b) Upon application for licensure, an applicant qualifying for licensure under subdivision (a)(2) or (3) of this section shall file a report with the director certifying the practical experience requirements completed. The director shall certify that, to the best of the director's knowledge, the report is correct.

(c) An applicant may submit experience accrued for a period of three years in the practice of landscape architecture, as defined in subdivision 2612(5) of this title, in order to meet the experience requirements set forth in subsection (a) of this section if the experience was obtained in Vermont on or before December 31, 2011. Evidence of experience shall be reviewed and approved by the director.

(d) An applicant qualifying for licensure under subdivision (a)(2) or (3) of this section shall pass a written examination administered by the council of landscape architectural boards on technical and professional subjects as may be prescribed by the council of landscape architectural boards. Applicants may apply for examination before completing the experience requirement as long as the experience requirements will be fulfilled by the examination date. Notification of the results of examinations shall be mailed to each candidate within 30 days of the date the results are received by the director. A candidate failing to pass the examination may apply for reexamination and may sit for a regularly scheduled examination as many times as the candidate chooses to do so. If an applicant does not pass the entire examination, the applicant shall not be required to retake any section of an examination that the applicant has previously passed. No license shall be granted to an applicant until he or she passes all sections of the exam.

(e) Licensing standards and procedures adopted by the director by rule shall be fair and reasonable. Those standards and procedures shall be designed and implemented to ensure that all applicants are admitted to practice unless there is a good reason to believe that practice by a particular applicant would be inconsistent with the public health, safety, or welfare. Licensing standards shall not be designed or implemented for the purpose of limiting the number of licensed landscape architects.

§ 2625. LICENSURE; GENERALLY

The director shall issue a license, upon payment of the fees required in this chapter, to an applicant who has satisfactorily met all the requirements of this chapter.

§ 2626. LICENSE RENEWAL

(a) A license shall be renewed every two years upon application and payment of the required fee. Failure to comply with the provisions of this section shall result in suspension of all privileges granted to the licensee, beginning on the expiration date of the license. A license which has lapsed shall be renewed upon payment of the biennial renewal fee and the late renewal penalty.

(b) The director may adopt rules necessary for the protection of the public to assure the director that an applicant whose license has lapsed or who has not worked for more than three years is professionally qualified. Conditions imposed under this subsection shall be in addition to the requirements of subsection (a) of this section.

§ 2627. FEES

Applicants and persons regulated under this chapter shall pay the following fees:

(1) Application for licensure: $150.00

(2) Initial license issuance: $40.00

(3) Biennial license renewal: $250.00

§ 2628. SEAL

Each licensed landscape architect shall obtain a seal of a design as the director shall authorize and direct. Plans and specifications prepared by or under the direct supervision of a licensed landscape architect shall be stamped with the licensed landscape architect's seal.

§ 2629. UNPROFESSIONAL CONDUCT

Unprofessional conduct means the following conduct and the conduct by a licensee or applicant for licensure as set forth in section 129a of Title 3:

(1) Accepting and performing responsibilities which the licensed landscape architect knows or has reason to know that he or she is not competent to perform, or undertaking to perform professional services in specific technical areas in which the licensed landscape architect is not qualified by education, training, and experience;

(2) Failing to practice with reasonable care and competence and to apply the technical knowledge and skill ordinarily applied by licensed landscape architects practicing in the same locality;

(3) Assisting in the application for licensure of a person known by the licensed landscape architect to be unqualified in respect to education, training, or experience;

(4) Accepting compensation for services from more than one party on a project unless the circumstances are fully disclosed and agreed to by all interested parties;

(5) Failing to disclose fully in writing to a client or employer the nature of any business association or direct or indirect financial interest substantial enough to influence the licensed landscape architects judgment in the performance of professional services;

(6) Soliciting or accepting compensation from material or equipment suppliers in return for specifying or endorsing their products;

(7) Failing to disclose compensation for making public statements on landscape architectural questions;

(8) Offering or making a payment or gift to an elected or appointed government official with the intent to influence the official's judgment in connection with a prospective or existing project in which the licensed landscape architect is interested;

(9) Offering or making a gift of other than nominal value, including reasonable entertainment and hospitality, with the intent to influence the judgment of an existing or prospective client in connection with a project in which the licensed landscape architect is interested;

(10) Knowingly designing a project in violation of applicable state and local laws and regulations;

(11) Making a willful material misrepresentation with respect to the qualifications or experience of an applicant or otherwise in the practice of the profession, whether by commission or omission;

(12) Acting, while serving as a advisor to the director, in any way to contravene willfully the provisions of this chapter and thereby artificially restricting the entry of qualified persons into the profession;

(13) Using the licensed landscape architect's seal on drawings prepared by others not in the his or her employ, or using the seal of another;

(14) Inaccurately representing to a prospective or existing client or employer the licensed landscape architect's qualifications and scope of responsibility for work for which he or she claims credit;

(15) Signing or sealing technical submissions unless they were prepared by or under the responsible control of the licensed landscape architect, except that the licensed landscape architect may sign or seal those portions of the technical submissions that were prepared by or under the responsible control of persons who are licensed under this chapter if the licensed landscape architect has reviewed and adopted in whole or in part those portions and has either coordinated their preparation or integrated them into his or her work; and

(16) In each office maintained for preparation of drawings, specifications, reports, or other professional work, failing to have a licensed landscape architect with direct knowledge and supervisory control of such work resident and regularly employed in that office.

Sec. 2. TRANSITIONAL PROVISIONS

The director shall establish a procedure so that residents of Vermont who have been engaged in the practice of landscape architecture in Vermont, and who are not licensed as landscape architects in other states prior to the effective date of this act, may become licensed without examination. To accomplish this, the director shall establish that these candidates shall provide evidence to the director and a special temporary panel, consisting of five Vermont landscape architects licensed under the provisions of chapter 46 of Title 26, to review the evidence regarding the qualifications for licensure without examination of candidates under this procedure. Only those applicants who can establish a record of landscape architectural practice for nine or more years shall be eligible for licensure under this section. A degree from an accredited landscape architecture program may substitute for years of the experience requirement under this section at the rate of two years of accredited school work for one year of landscape architectural work experience.

Sec. 3. REPEAL

Sec. 2 of this act shall be repealed on July 1, 2014.

(Committee vote: 5-0-0)

Reported favorably with recommendation of amendment by Senator Ayer for the Committee on Finance.

The Committee recommends that the bill be amended as recommended by the Committee on Government Operations with the following amendment thereto: In Sec. 1, by striking out 26 V.S.A. § 2627 in its entirety and inserting in lieu thereof a new 26 V.S.A. § 2627 to read:

§ 2627. FEES

Applicants and persons regulated under this chapter shall pay those fees set forth in subsection 125(b) of Title 3.

(Committee vote: 7-0-0)

S. 77

An act relating to the disposal of electronic waste.

Reported favorably with recommendation of amendment by Senator McDonald for the Committee on Natural Resources and Energy.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. LEGISLATIVE FINDINGS

The general assembly finds:

(1) According to the U.S. Environmental Protection Agency, discarded computers, computer monitors, televisions, and other consumer electronics—collectively referred to as e-waste—are the fastest growing portion of the waste stream growing by approximately eight percent from 2004 to 2005.

(2) Televisions and computers are prevalent in modern society and contribute significantly to the waste generated in Vermont.

(3) Televisions, computers, laptop computers, and computer monitors contain lead, mercury, and other hazardous substances that pose a threat to human health and the environment if improperly disposed of at the end of the useful life of these products.

(4) The state of Vermont has committed to providing its citizens with a safe and healthy environment and has actively undertaken efforts such as mercury reduction programs to reduce the potential for contamination.

(5) The appropriate recycling of televisions and computers protects public health and the environment by reducing the potential for the release of heavy metals and mercury from landfills into the environment, consistent with other state initiatives, and also conserving valuable landfill space.

(6) The establishment of a system to provide for the collection and recycling of electronic devices in Vermont is consistent with the state's duty to protect the health, safety, and welfare of its citizens; maintain and enhance the quality of the environment; conserve natural resources; prevent pollution of air, water, and land; and stimulate economic growth.

Sec. 2. 10 V.S.A. chapter 166 is added to read:

CHAPTER 166. DISPOSAL OF ELECTRONIC DEVICES

§ 7301. DEFINITIONS

For the purposes of this chapter, the following terms shall have the following meanings:

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

(2) "Cathode-ray tube" or "CRT" means a vacuum tube or picture tube used to convert an electronic signal into a visual image.

(3) "Collection" means the aggregation of covered electronic devices from covered entities and includes all the activities up to the time the covered electronic devices are delivered to a recycler.

(4) "Collector" means a public or private entity that receives covered electronic devices from covered entities and arranges for the delivery of the devices to a recycler on behalf of a manufacturer for the purpose of fulfilling a manufacturer's responsibilities under this chapter.

(5) "Computer" means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions, but does not include an automated typewriter or typesetter, a portable handheld calculator, or other similar device.

(6) "Computer monitor" means a display device without a tuner that can display pictures and sound and is used with a computer. "Computer monitor" includes a laptop computer.

(7) "Covered electronic device" means computers; peripherals; video display devices; personal electronics such as personal digital assistants and personal music players; electronic game consoles; printers; fax machines; cell phones; telephones; answering machines; videocassette recorders; digital versatile disc players; digital converter boxes; stereo equipment; and power supply cords (as used to charge electronic devices) that are sold to a consumer.

(8) "Covered entity" means any household, charity, or school district in the state, business that employs ten or fewer individuals, or any person giving seven or fewer covered electronic devices to a collector at any one time.

(9) "Manufacturer" means a person who:

(A) Has a physical presence and legal assets in the United States of America, and:

(i) Manufactures or manufactured a video display device under its own brand or label;

(ii) Sells under its own brand or label a video display device produced by another supplier; or

(iii) Owns a brand that it licenses or licensed to another person for use on a video display device; or

(B) Imports or imported a video display device into the United States that is manufactured by a person without a presence in the United States.

(10) "Peripheral" means a keyboard, printer, or any other device sold exclusively for external use with a computer that provides input or output into or from a computer.

(11) "Printer" means desktop printers, multifunction printer copiers, and printer ax combinations taken out of service that are designed to reside on a work surface, and include various print technologies, including without limitation laser and LED (electrographic), ink jet, dot matrix, thermal, and digital sublimation, and "multi-function" or "all-in-one" devices that perform different tasks, including without limitation copying, scanning, faxing, and printing. Printers do not include floor-standing printers, printers with optional floor stand, point of sale (POS) receipt printers, household printers such as a calculator with printing capabilities or label makers, or nonstand-alone printers that are embedded into products that are not covered electronic products.

(12) "Program year" means the period from July 1 through June 30.

(13) "Recycler" means a person who accepts covered electronic devices from covered entities and collectors for the purpose of recycling. A person who takes products solely for refurbishment or repair is not a recycler.

(14) "Recycling" means the process of collecting and preparing video display devices or covered electronic devices for use in manufacturing processes or for recovery of useable materials followed by delivery of such materials for use. Recycling does not include destruction by incineration, waste-to-energy incineration, or other such processes; land disposal; or reuse, repair, or any other process through which video display devices or covered electronic devices are returned to use in their original form.

(15) "Recycling credits" means the number of pounds of covered electronic devices recycled by a manufacturer during a program year, less the product of the number of pounds of video display devices sold during the same program year, multiplied by the proportion of sales a manufacturer is required to recycle. The calculation and uses of recycling credits are as specified in section 7307 of this title.

(16) "Retailer" means a person who sells, rents, or leases to a household, through sales outlets, catalogues, or the Internet a video display device that is not for resale in any form.

(17) "Sell" or "sale" means any transfer for consideration of title or of the right to use by lease or sales contract of a video display device to a consumer in the state. "Sell" or "sale" does not include a manufacturer's or distributor's wholesale transaction with a distributor or a retailer.

(18) "Television" means any telecommunications system or device that can broadcast or receive moving pictures and sound over a distance and includes a television tuner or a display device peripheral to a computer that contains a television tuner.

(19) "Transporter" means a person or entity that moves covered electronic devices from a collector to a recycler.

(20) "Video display device" means a printer or a unit capable of presenting images electronically on a screen, with a video display greater than four inches when measured diagonally, that are viewed by the user, and includes televisions, computer monitors, laptop computers, cathode ray tubes, plasma displays, liquid crystal displays, rear and front enclosed projection devices, and other similar displays that may be developed. "Video display device" does not include any of the following:

(A) a video display device that is part of a motor vehicle or any component of a motor vehicle assembled by, or for, a vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle;

(B) a video display device, including a touch-screen display, that is functionally or physically part of a larger piece of equipment or is designed and intended for use in an industrial, commercial, or retail setting;

(C) a video display device that is contained within a clothes washer, clothes dryer, refrigerator, freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier; or

(D) a telephone of any type unless it contains a video display greater than nine inches when measured diagonally.

§ 7302. PROHIBITIONS; REQUIREMENTS FOR THE SALE OF COVERED ELECTRONIC DEVICES; RETAILER OBLIGATIONS

(a) Sale prohibited. No manufacturer shall sell or offer for sale or deliver to retailers for subsequent sale a new video display device unless:

(1) the video display device is labeled with the manufacturer's brand, which label is permanently affixed and readily visible; and

(2) the manufacturer has filed a registration with the agency, as specified in section 7303 of this title.

(b) Retailer obligations.

(1) A retailer who sells or offers for sale a new video display device to a household shall, before the initial offer of sale, review the agency website specified in subdivision 7303(7) of this title to determine that all new video display devices that the retailer is offering for sale are labeled with the manufacturer's brands that are registered with the agency.

(2) A retailer is not responsible for an unlawful sale under this subdivision if the manufacturer's registration expired or was revoked, the retailer took possession of the video display device prior to the expiration or revocation of the manufacturer's registration, and the unlawful sale occurred within six months after the expiration or revocation.

(3) A retailer who sells new video display devices shall provide information to customers describing where and how they may recycle video display devices and advising them of opportunities and locations for the convenient collection of video display devices for the purpose of recycling. This requirement may be met by providing the agency's toll-free number and website address. Retailers selling through catalogues or the Internet may meet this requirement by including the information in a prominent location on the retailer's website.

§ 7303. MANUFACTURER'S PROGRAM RESPONSIBILITY

(a) Manufacturer registration and reporting requirements.

(1)(A) No manufacturer shall sell or offer for sale a video display device in this state without first submitting a registration to the agency on a form provided by the agency. The form shall include:

(i) a list of the manufacturer's brands of video display devices offered for sale by the manufacturer in this state;

(ii) the name, address, and contact information of a person responsible for ensuring compliance with this chapter; and

(iii) a certification that the manufacturer has complied and will continue to comply with the requirements of this chapter.

(B) A renewal of a registration without changes may be accomplished through notifying the agency on a form provided by the agency.

(2)(A) Beginning July 1, 2011, each manufacturer shall report by July 1 of each year to the agency the aggregate total weight of video display devices

sold during the previous program year. This information may be provided by one of the following:

(i) the aggregate total weight of its video display devices sold during the previous program year; or

(ii) an estimate of the aggregate total weight of its video display devices sold during the previous program year based on national sales data. A manufacturer shall submit with the report required under this subsection a description of how the information or estimate was calculated.

(B) By July 1 of each year, beginning July 1, 2011, each manufacturer shall report to the agency the aggregate total weight of covered electronic devices the manufacturer recycled during the preceding program year.

(3) A manufacturer who begins to sell or offer for sale video display devices to households and has not filed a registration under this subsection shall submit a registration to the agency within ten days of beginning to sell or offer for sale video display devices.

(4) A registration shall be amended within ten days after a change to any information included in the registration submitted by the manufacturer under this section.

(5) A registration is effective upon receipt by the agency and is valid for a period of five years.

(6) The agency shall notify the manufacturer of any information required by this title that is omitted from the registration. Upon receipt of a notification from the agency, the manufacturer shall submit a revised registration providing the information noted by the agency.

(7) The agency shall maintain on its website the names of manufacturers and the manufacturers' brands listed in registrations filed with the agency. The agency shall update the website information within 10 days of receipt of a complete registration.

(b) Manufacturer's program responsibilities. Manufacturers shall comply with the following:

(1) A manufacturer shall annually recycle or arrange and pay for the collection and recycling of an amount of covered electronic devices equal to the total weight of its video display devices sold during the preceding program year, multiplied by the proportion of sales of video display devices required to be recycled as established by the agency under subdivision 7307(a)(3)(B) of this title. Manufacturers or entities with whom they contract may not charge

fees at the time of collecting the unwanted covered electronic devices if those devices will be counted toward the manufacturer's recycling requirement.

(2) Manufacturers may only count covered electronic devices received from covered entities toward their recycling requirements listed under subdivision 7307(a)(3)(B) of this title.

(3) A manufacturer shall certify that a facility recycling covered electronic devices in order to meet the manufacturer's obligation under subdivision (1) of this subsection complies with the recycling standards contained in subdivision 7306(9) of this title. A manufacturer is responsible for maintaining, for a period of three years, documentation of the information relied upon as the basis for the certification under this subdivision.

(4) A manufacturer registered under this section or a collector operating on behalf of a manufacturer under this section shall not charge a fee to covered entities for the collection, transportation, or recycling of covered electronic devices.

§ 7304. RECYCLER PROGRAM RESPONSIBILITY

(a)(1) Recycler registration. No person may recycle a covered electronic device unless that person has submitted a registration with the agency on a form prescribed by the secretary. A registration is effective upon receipt by the agency and is valid for a period not to exceed five years. An electronics recycling facility registered under this section is not required to obtain a solid waste certification pursuant to chapter 159 of this title. Registration information shall include:

(A) the name, address, telephone number, and location of all recycling facilities under the direct control of the recycler that may receive covered electronic devices;

(B) evidence that the financial assurance requirements of section 6611 of this title have been satisfied.

(2) A registration shall be amended within ten days after a change to any information included in the registration submitted by the recycler under this section.

(b) Recycler's reporting requirements. By July 1 of each year, beginning July 1, 2011, a recycler of covered electronic devices shall report to the agency the total weight of covered electronic devices recycled during the preceding program year and shall certify that the recycler has complied with subdivision 7306(8) of this title.

(c) Approved vendors. A recycler of covered electronic devices shall only contract for transport, transport to, or dispose of covered electronic devices

through a manufacturer mail back or take back program or with a vendor listed by the agency of natural resources on its approved vendor list.

§ 7305. COLLECTOR AND TRANSPORTER PROGRAM RESPONSIBILITY

(a)(1) Collector and transporter registration. No person may operate as a collector or transporter of covered electronic devices unless that person has submitted a registration with the agency on a form prescribed by the secretary. A registration is effective upon receipt by the agency and is valid for a period not to exceed five years. An electronics collector or transporter registered under this section shall not be required to obtain a solid waste certification or a solid waste hauler permit pursuant to chapter 159 of this title.

(2) A registration shall be amended within ten days after a change to any information included in the registration submitted by the collector under this section.

(b) Transporter's reporting requirements. By July 1 of each year, beginning July 1, 2011, a transporter of covered electronic devices not destined for recycling in Vermont shall report to the agency the total pounds of covered electronic devices collected and the manufacturer who received credits from the covered electronic devices.

§ 7306. AGENCY PROGRAM RESPONSIBILITIES

The agency shall:

(1) Administer this chapter.

(2) Establish procedures for:

(A) the registration statements and certifications filed with the agency under this chapter; and

(B) making the statements and certifications easily available to manufacturers, retailers, and members of the public.

(3) Collect the data submitted annually by each manufacturer on the total aggregate weight of video display devices sold and the total aggregate weight of covered electronic devices collected which are recycled.

(4) Annually review the value of the variables used to calculate a manufacturer's variable recycling fee under subdivision 7307(a)(3) of this title. If the agency determines that any of these values shall be changed in order to improve the efficiency or effectiveness of the activities regulated under this chapter or if the revenues in the account exceed the amount that the agency determines is necessary, the agency shall submit recommended changes to the senate and house committees on natural resources and energy.

(5) Based on the data provided by a manufacturer regarding the sales of video display devices, estimate by July 1 of each year each registered manufacturer's sales of video display devices during the previous year.

(6) Beginning December 1, 2011, report to the senate and house committees on natural resources and energy regarding the implementation of this chapter. For each program year, the report shall provide the total weight of covered electronic devices recycled and a summary of information in the reports submitted by manufacturers, collectors, and recyclers under this chapter. The report shall also discuss the various collection programs used by manufacturers to collect covered electronic devices; information regarding covered electronic devices that are being collected by persons other than registered manufacturers, collectors, and recyclers; and information about covered electronic devices, if any, being disposed of in landfills in this state. The report shall include a description of enforcement actions under this chapter. The agency may include in its report other information received by the agency regarding the implementation of this chapter.

(7) Promote public participation in the activities regulated under this chapter through public education and outreach efforts.

(8) Post on its website the contact information provided by each manufacturer under subdivision 7303(a)(1)(A)(ii) of this title.

(9) In consultation with interested parties, establish guidelines for the environmentally sound management of consumer electronics, including specific requirements for collectors, transporters, and recyclers.

(10) Identify approved transporters, collectors, recyclers, and other downstream vendors of covered electronic devices and list such entities on its website.

§ 7307. MANUFACTURER'S REGISTRATION FEE; CREATION OF ACCOUNT

(a) Registration fee.

(1) By July 1 of each year, all manufacturers who register under subsection 7303(a) of this title shall pay to the agency an annual registration fee as established under this section. The secretary shall deposit the fee into the account established by this section.

(2) The annual registration fee for a manufacturer who sells video display devices in the state is $5,000.00 for the initial program year. In years following the initial program year, the annual registration fee for a manufacturer who sells video display devices in the state is $5,000.00 plus the variable recycling fee calculated according to the formula in subdivision (3) of

this subsection. The annual registration fee for a manufacturer who produces fewer than 100 video display devices for sale is $1,250.00.

(3) Using quantities from the preceding program year, the variable recycling fee shall be calculated according to the formula—variable recycling fee = (A × B) – (C + D) × E, where:

(A) A = the number of pounds of a manufacturer's video display device sold during the previous program year, as reported to the agency under section 7303 of this title;

(B) B = the proportion of sales of video display devices required to be recycled, set at 0.6 for the first program year and at 0.8 for the second program year and every year thereafter;

(C) C = the number of pounds of covered electronic devices recycled by a manufacturer during the previous program year, as reported to the agency under section 7303 of this title;

(D) D = the number of recycling credits a manufacturer elects to use during the current program year to calculate the variable recycling fee, as reported to the agency under section 7303 of this section;

(E) E = the estimated per-pound cost of recycling used to calculate the variable recycling fee initially set at $0.50 per pound for manufacturers who recycle less than 50 percent of the product required to be recycled under this chapter (A × B); $0.40 per pound for manufacturers who recycle at least 50 percent but less than 90 percent of the product required to be recycled under this chapter (A × B); and $0.30 per pound for manufacturers who recycle at least 90 percent of the product required to be recycled under this chapter (A × B).

(4) For the purpose of calculating a manufacturer's variable recycling fee for a given year, a manufacturer may carry recycling credits forward from any of the three preceding program years to be added, in whole or in part, to the number of pounds reported recycled. Recycling credits are created when the number of pounds reported recycled exceeds the number of pounds required to have been recycled under this chapter according to the formula: credit = C-(A × B), where A, B, and C are defined in subdivision (3) of this subsection. A manufacturer may sell any portion of its recycling credits to another manufacturer, at a price negotiated by the parties, who may use the credits in the same manner and may carry recycling credits forward from any of the three preceding program years.

(b) Creation of electronic waste management fund. The electronic waste management fund is established in the state treasury pursuant to subchapter 5

of chapter 7 of Title 32. The fund shall be administered by the department of environmental conservation to administer and implement the programs authorized by this chapter. This shall include funding administrative costs to the agency, and may include as funding allows providing grants to entities recycling electronics waste and education and outreach costs. The fund shall consist of the fees collected under subsection (a) of this section and any gifts, donations, and appropriations by the general assembly. All balances in the fund at the end of any fiscal year shall be carried forward and remain part of the fund. Interest earned by the fund shall be deposited in the fund.

§ 7308. OTHER RECYCLING PROGRAMS

A municipality or other public agency may not require covered entities to use public facilities to recycle their covered electronic devices to the exclusion of other lawful programs available. A municipality and other public agencies are encouraged to work with manufacturers to assist them in meeting their recycling obligations under this chapter. Nothing in this chapter prohibits or restricts the operation of any program recycling covered electronic devices in addition to those provided by manufacturers or prohibits or restricts any persons from receiving, collecting, transporting, or recycling covered electronic devices, provided that those persons are registered under section 7303 of this title.

§ 7309. ANTICOMPETITIVE CONDUCT

Manufacturers or industry trade groups may work together and pool resources and collection activities to meet the requirements of this chapter.

§ 7310. MULTISTATE IMPLEMENTATION

The agency is authorized to participate in the establishment of a regional multistate organization or compact to assist in carrying out the requirements of this chapter.

§ 7311. LIMITATIONS

If a federal law or combination of federal laws takes effect that is applicable to all video display devices sold in the United States and establishes a program for the collection and recycling or reuse of video display devices that is applicable to all discarded video display devices, the agency will evaluate whether the laws provide a solution that is equal to or better than the program established under this chapter. The agency shall report its findings to the general assembly.

§ 7312. BAN ON PRISON LABOR

No facility that recycles covered electronic products, including downstream recycling operations, shall use prison labor in the state of Vermont to recycle covered electronic products.

Sec. 3. 10 V.S.A. § 6621a(a) is amended to read:

(a) In accordance with the following schedule, no person shall knowingly dispose of the following solid waste in landfills:

* * *

(8) Covered electronic devices, as defined in chapter 166 of this title, after July 1, 2011.

Sec. 4. 10 V.S.A. § 8003(a) is amended to read:

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

* * *

(17) 10 V.S.A. § 2625, relating to heavy cutting of timber; ~~and~~

(18) 10 V.S.A. chapter 164, relating to comprehensive mercury management;

(19) 10 V.S.A. chapter 166, relating to disposal of covered electronic devices.

Sec. 5. 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:

* * *

(O) chapter 166 (disposal of covered electronic devices).

* * *

Sec. 6. EFFECTIVE DATE

This act shall take effect July 1, 2010.

Sec. 7. ANR REPORT ON ADDITIONAL INCENTIVES FOR RECYCLING ELECTRONIC WASTE

On or before January 15, 2011, the secretary of natural resources shall report to the senate and house committees on natural resources and energy with

recommended incentives to increase the rate of recycling of covered electronic devices and video display devices, as those terms are defined in 10 V.S.A. § 7301.

(Committee vote: 6-1-0)

Reported favorably by Senator MacDonald for the Committee on Finance.

(Committee vote: 6-1-0)

Committee Bills for Second Reading

S. 121

An act relating to miscellaneous election laws.

By the Committee on Government Operations. (Senator White for the Committee)

S. 129

An act relating to containing health care costs by decreasing variability in health care spending and utilization.

By the Committee on Health and Welfare (Senator Racine for the Committee)

Reported favorably by Senator Bartlett for the Committee on Appropriations.

(Committee vote: 5-0-2)

Joint Resolutions for Action

J.R.S. 26

Joint resolution relating to the legalization of industrial hemp.

(For text of Resolution, see Senate Journal of March 27, 2009, page 474)

J.R.H. 14

Joint resolution relating to the closure and rehabilitation of the Vilas Bridge.

(For text of Resolution, see Senate Journal of March 27, 2009, page 476)

NOTICE CALENDAR

S. 51

An act to Vermont's motor vehicle franchise laws.

Reported favorably with recommendation of amendment by Senator Scott for the Committee on Transportation.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 9 V.S.A. chapter 108 is amended to read:

CHAPTER 108. MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS, AND DEALERS FRANCHISING

§ 4083. TITLE OF CHAPTER

This chapter may be known and cited as the "Motor Vehicle Manufacturers, Distributors, and Dealers Franchising Practices Act."

§ 4084. LEGISLATIVE FINDINGS

(a) The legislature finds and declares that the distribution and sale of vehicles within this state vitally affects the general economy of the state and the public interest and the public welfare, and that in order to promote the public interest and the public welfare, and in the exercise of its police power, it is necessary to regulate vehicle manufacturers, distributors or wholesalers and factory or distributor representatives, and to regulate franchises issued by the aforementioned who are doing business in this state in order to prevent frauds, impositions and other abuses upon its citizens and to protect and preserve the investments and properties of the citizens of this state.

(b) The legislature further finds that there continues to exist an inequality of bargaining power between motor vehicle franchisors and motor vehicle franchisees. This inequality of bargaining power enables motor vehicle franchisors to compel motor vehicle franchisees to execute franchises and related agreements that contain terms and conditions that would not routinely be agreed to by the motor vehicle franchisees if this inequality did not exist. Furthermore, as the result of the inequality of bargaining power, motor vehicle franchisees have not had the opportunity to have disputes with their motor vehicle franchisors arising out of the franchisor-franchisee relationship heard in an appropriate venue, convenient to both parties, by tribunals established by statute for the resolution of these disputes. It therefore is in the public interest to enact legislation to prevent unfair or arbitrary treatment of motor vehicle franchisees by motor vehicle franchisors. It is the legislature's intent to have this chapter liberally construed in order to achieve its purpose.

§ 4085. DEFINITIONS

The following words, terms, and phrases when used in this chapter shall have the meanings respectively ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Board" means the transportation board as established in section 3 of Title 19.

(2) "Coerce" means the failure to act in a fair and equitable manner in performing or complying with any terms or provisions of a franchise or agreement; provided, however, that recommendation, persuasion, urging, or argument shall not be synonymous with coerce or lack of good faith.

(3) "Dealership facilities" means the real estate, buildings, fixtures, and improvements which have been devoted to the conduct of business under the franchise by the new motor vehicle dealer~~;~~.

~~(2)~~(4) "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of the owner of a new motor vehicle dealer who, in the case of the owner's death, is entitled to inherit the ownership interest in the new motor vehicle dealer under the terms of the owner's will, or who has been nominated in any other written instrument, or who, in the case of an incapacitated owner of a new motor vehicle dealer, has been appointed by a court as the legal representative of the new motor vehicle dealer's property~~;~~.

~~(3)~~(5) "Established place of business" means a permanent, commercial building located within this state easily accessible and open to the public at all reasonable times and at which the business of a new motor vehicle dealer, including the display and repair of vehicles, may be lawfully carried on in accordance with the terms of all applicable building codes, zoning, and other land-use regulatory ordinances~~;~~.

~~(4)~~(6) "Franchise" means ~~the agreement or contract~~ all agreements and contracts between any new motor vehicle manufacturer, written or otherwise, and any new motor vehicle dealer which ~~purport~~ relate to the operation of the franchise and purports to fix the legal rights and liabilities of the parties to such ~~agreement~~ agreements or ~~contract,~~ contracts, including agreements pursuant to which the dealer purchases and resells the franchise product, performs warranty and other service on the manufacturer's products, leases or rents the dealership premises~~;~~ or agreements concerning the dealership premises or construction or renovation of the dealership premises.

(A) "Franchisee" means a motor vehicle dealer who enters into or is currently a party to a franchise with a franchisor.

(B) "Franchisor" means any manufacturer, distributor, distributor branch or factory branch, importer or other person, partnership, corporation, association, or entity, whether resident or nonresident, which enters into or is currently a party to a franchise with a motor vehicle dealer.

(7) "Fraud" means, in addition to its common law connotation, the misrepresentation, in any manner, of a material fact; a promise or representation not made honestly and in good faith, and the intentional failure to disclose a material fact.

~~(5)~~(8) "Good faith" means honesty in fact and the observation of reasonable commercial standards of fair dealing in the trade as defined and interpreted in section 2-103(1)(b) of the Uniform Commercial Code~~;~~.

(9) "Line-make" means motor vehicles that are offered for sale, lease, or distribution under a common name, trademark, service mark, or brand name of the franchisor or manufacturer of the motor vehicle.

~~(6)~~(10)(A) "Manufacturer" means any person, resident, or nonresident~~,~~ who manufactures or assembles new motor vehicles, or imports for distribution through distributors of motor vehicles, or any partnership, firm, association, joint venture, corporation or trust, resident or nonresident, which is controlled by the manufacturer~~;~~.

(B) Additionally, the term manufacturer shall include the following terms:

~~(A)~~(i) "Distributor" means any person, resident or nonresident, who in whole or in part offers for sale, sells or distributes any new motor vehicle to new motor vehicle dealers or who maintains factory representatives or who controls any person, firm, association, corporation or trust, resident or nonresident, who in whole or in part offers for sale, sells or distributes any new motor vehicle to new motor vehicle dealers; and

~~(B)~~(ii) "Factory branch" means a branch office maintained by a manufacturer for the purpose of selling, or offering for sale, vehicles to a distributor or new motor vehicle dealer, or for directing or supervising in whole or in part factory or distributor representatives~~;~~.

~~(7)~~(11) "Motor vehicle" means every vehicle intended primarily for use and operation on the public highways which is self-propelled, not including farm tractors and other machines and tools used in the production, harvesting and care of farm products~~;~~.

~~(8)~~(12) "New motor vehicle" means a vehicle which has been sold to a new motor vehicle dealer and which has not been used for other than demonstration purposes and on which the original title has not been issued from the new motor vehicle dealer~~;~~.

~~(9)~~(13) "New motor vehicle dealer" means any person engaged in the business of selling, offering to sell, soliciting or advertising the sale of new motor vehicles and who holds, or held at the time a cause of action under this chapter accrued, a valid sales and service agreement, franchise or contract, granted by the manufacturer or distributor for the retail sale of said manufacturer's or distributor's new motor vehicles~~;~~.

~~(10)~~(14) "Owner" means any person holding an ownership interest in the business entity operating as a new motor vehicle dealer or under a franchise as defined in this chapter either as a corporation, partnership ~~or~~, sole proprietorship, or other legal entity. To the extent that the rights of any owner under this chapter conflict with the rights of any other owner, such rights shall accrue in priority order based on the percentage of ownership interest held by each owner; with the owner having the greatest ownership interest having first priority and succeeding priority accruing to other owners in the descending order of percentage of ownership interest~~;~~.

~~(11)~~(15) "Person" means every natural person, partnership, corporation, association, trust, estate, or any other legal entity~~;~~.

~~(12)~~(16) "Relevant market area" means the area within a radius of 25 miles around an existing dealer or the area of responsibility defined in the franchise, whichever is greater; except that, where a manufacturer is seeking to establish an additional new motor vehicle dealer and there are one or more existing new motor vehicle dealers of the same line-make within a 10-mile radius of the proposed dealer site, the "relevant market area" shall in all instances be the area within a radius of 10 miles around an existing dealer.

§ 4086. WARRANTY AND PREDELIVERY OBLIGATIONS TO NEW MOTOR VEHICLE DEALERS

(a) Each new motor vehicle manufacturer shall specify in writing to each of its new motor vehicle dealers licensed in this state the dealer's obligations for predelivery preparation and warranty service on its products, shall compensate the new motor vehicle dealer for such service required of the dealer by the manufacturer, and shall provide the dealer the schedule of compensation to be paid the dealer for parts, work and service in connection therewith, and the time allowance for the performance of the work and service.

(b) A schedule of compensation shall not fail to include reasonable compensation for diagnostic work, as well as for repair service and labor. Time allowances for the diagnosis and performance of predelivery and warranty service shall be reasonable and adequate for the work to be performed. The hourly rate paid to a new motor vehicle dealer shall not be less than the rate charged by the dealer to customers for nonwarranty service and repairs. Each manufacturer shall compensate each of its dealers for parts used to fulfill warranty, predelivery and recall obligations of repair and servicing at ~~rates~~ amounts not less than the ~~rates~~ retail amounts customarily charged by the dealer to its retail customers for like parts for nonwarranty work. The amounts established by a dealer to its retail customers for labor and like parts for nonwarranty work are deemed to be fair and reasonable compensation; provided, however, a manufacturer may rebut such a presumption by showing

that such amount so established is unfair and unreasonable in light of the practices of at least four other franchised motor vehicle dealers in the vicinity offering the same line-make or a similar competitive line-make. A manufacturer may not otherwise recover all or any portion of its costs for compensating its motor vehicle dealers licensed in this state for warranty parts and service either by reduction in the amount due to the dealer or by separate charge, surcharge, or other imposition.

(c) For purposes of this section, the "retail amounts customarily charged" by the franchisee for parts may be established by submitting to the manufacturer 100 sequential nonwarranty customer-paid service repair orders or 60 days of nonwarranty customer-paid service repair orders, whichever is less in terms of total cost, covering repairs made no more than 180 days before the submission and declaring the average percentage markup. The average percentage markup so declared is the retail amount, which goes into effect 30 days following the declaration, subject to audit of the submitted repair orders by the manufacturer and adjustment of the average percentage markup based on that audit. Only retail sales not involving warranty repairs, not involving state inspection, not involving routine maintenance such as changing the oil and oil filter, and not involving accessories may be considered in calculating the average percentage markup. A manufacturer may not require a new motor vehicle dealer to establish the average percentage markup by an unduly burdensome or time-consuming method or by requiring information that is unduly burdensome or time-consuming to provide, including part-by-part or transaction-by-transaction calculations. A new motor vehicle dealer may not change the average percentage markup more than two times in one calendar year. Further, the manufacturer shall reimburse the new motor vehicle dealer for any labor performed at the retail rate customarily charged by that franchisee for the same labor when not performed in satisfaction of a warranty, provided the franchisee's rate for labor not performed in satisfaction of a warranty is routinely posted in a place conspicuous to its service customer.

(d) It is a violation of this section for any new motor vehicle manufacturer to fail to perform any warranty obligations or to fail to include in written notices of factory recalls to new motor vehicle owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of such defects, or to fail to compensate any of the new motor vehicle dealers in this state for repairs effected by a recall.

~~(d)~~(e) All claims made by new motor vehicle dealers pursuant to this section for labor and parts shall be paid within ~~30~~ 45 days following their approval; provided, however, that the manufacturer retains the right to audit the claims and to charge back the dealer for fraudulent claims for a period of two years following payment. All claims shall be either approved or

disapproved within ~~30~~ 45 days after their receipt on forms and in the manner specified by the manufacturer, and any claim not specifically disapproved in writing within ~~30~~ 45 days after the receipt shall be construed to be approved and payment must follow within ~~30~~ 45 days. No claim which has been approved and paid may be charged back to the dealer unless it can be shown that the claim was false or fraudulent, that the repairs were not made properly or were unnecessary to correct the defective condition, or that the dealer failed to reasonably substantiate the claim either in accordance with the manufacturer's reasonable written procedures or by other reasonable means.

(f) A manufacturer shall retain the right to audit warranty claims for a period of one year after the date on which the claim is paid.

(g) A manufacturer shall retain the right to audit all incentive and reimbursement programs and charge back any amounts paid on claims that are false or unsubstantiated for a period of 18 months from the date on which the claim is paid or one year from the end of a program that gave rise to the payment, whichever is later.

(h) Any chargeback resulting from any audit shall not be made until a final order is issued by the transportation board if a protest to the proposed chargeback is filed within 30 days of the notification of the final amount claimed by the manufacturer, to be due after exhausting any procedure established by the manufacturer to contest the chargeback, other than arbitration. The manufacturer has the burden of proof in any proceeding filed at the board under this section.

(i) It is unlawful for a franchisor, manufacturer, factory branch, distributor branch, or subsidiary to own, operate, or control, either directly or indirectly, a motor vehicle warranty or service facility located in the state except on an emergency or interim basis or if no qualified applicant has applied for appointment as a dealer in a market previously served by a new motor vehicle dealer of that manufacturer's line-make.

§ 4087. TRANSPORTATION DAMAGES

(a) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, the manufacturer is liable for all damages to motor vehicles before delivery to a carrier or transporter.

(b) If a new motor vehicle dealer determines the method of transportation, the risk of loss passes to the dealer upon delivery of the vehicle to the carrier.

(c) In every other instance, the risk of loss remains with the manufacturer until such time as the new motor vehicle dealer or his designee accepts the vehicle from the carrier.

(d)(1) On any new motor vehicle, a manufacturer or distributor shall disclose in writing to a dealer and a dealer shall disclose in writing to the ultimate purchaser any uncorrected damage or any corrected damage to the vehicle, as measured by retail repair costs, if the corrected damage exceeds the following percentage of the manufacturer's suggested retail price, as defined in 15 U.S.C. §§ 1231–1233:

(A) five percent up to the first $10,000.00; and

(B) two percent on any amount over $10,000.00.

(2) Damage to glass, tires, wheels and bumpers shall be excluded from the calculation required in this subsection when replaced by identical manufacturer's original equipment.

§ 4088. PRODUCT LIABILITY INDEMNIFICATION

Notwithstanding the terms of any franchise agreement, it shall be a violation of this law for any new motor vehicle manufacturer to fail to indemnify and hold harmless its franchised dealers against any judgment or settlement for damages, after reasonable notice of the proposed settlement to the manufacturer, including, but not limited to, court costs and reasonable attorneys' fees of the new motor vehicle dealer, arising out of complaints, claims or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, warranty (express or implied), or rescission of the sale as is defined in section 2-608 of the Uniform Commercial Code, to the extent that the judgment or settlement relates to the alleged defective or negligent manufacture, assembly or design of new motor vehicles, parts or accessories or other functions by the manufacturer, beyond the control of the dealer.

§ 4089. TERMINATION; CANCELLATION OR NONRENEWAL

(a) Notwithstanding the terms, provisions or conditions of any franchise or notwithstanding the terms or provisions of any waiver, no manufacturer shall cancel, terminate or fail to renew any franchise with a licensed new motor vehicle dealer unless the manufacturer has:

(1) satisfied the notice requirement of section 4090 of this title;

(2) has good cause for cancellation, termination, or nonrenewal;

(3) has acted in good faith as defined in this chapter; and

(4)(A) The transportation board finds after a hearing that the manufacturer has acted in good faith and there is good cause for cancellation, termination, failure to renew, or refusal to continue any franchise relationship. The new motor vehicle dealer may file a protest with the board within 45 days after receiving the 90-day notice. A copy of the protest shall be served by the

new motor vehicle dealer on the manufacturer. When a protest is filed to challenge the cancellation, termination, or nonrenewal of a franchise agreement under this section, such franchise agreement shall remain in full force and effect, and such franchisee shall retain all rights and remedies pursuant to the terms and conditions of such franchise agreement, including the right to sell or transfer such franchisee's ownership interest until a final determination by the board and any appeal; or

(B) The manufacturer, distributor, or branch or division thereof has received the written consent of the new motor vehicle dealer; or

(C) The appropriate period for filing a protest has expired.

(b) For purposes of this act, good cause for terminating, canceling, or failing to renew a franchise shall be limited to failure by the franchisee to substantially comply with those requirements imposed upon the franchisee by the franchise as set forth in subdivision (c)(1) of this section.

(c) Notwithstanding the terms, provisions or conditions of any agreement or franchise or the terms or provisions of any waiver, good cause shall exist for the purposes of a termination, cancellation, or nonrenewal when:

(1) there is a failure by the new motor vehicle dealer to comply with a provision of the franchise which provision is both reasonable and of material significance to the franchise relationship, provided that ~~the dealer has been notified in writing of the failure within~~ compliance on the part of the new motor vehicle dealer is reasonably possible; or if the failure by the new motor vehicle dealer to comply with a provision of the franchise is pursuant to a notice issued under 4090(a)(3); and the manufacturer, distributor, or branch or division thereof first acquired actual or constructive knowledge of such failure not more than 180 days ~~after the manufacturer first acquired knowledge of such failure~~ prior to the date on which notification is given pursuant to section 4090 of this title;

(2) if the failure by the new motor vehicle dealer, defined in subdivision (1) of this subsection, relates to the performance of the new motor vehicle dealer in sales or service, then good cause shall be defined as the failure of the new motor vehicle dealer to comply with reasonable performance criteria established by the manufacturer if the new motor vehicle dealer was apprised by the manufacturer in writing of such failure; and~~:~~

(A) ~~said~~ the notification stated that notice was provided ~~of~~ for failure of performance pursuant to this section;

(B) the new motor vehicle dealer was afforded a reasonable opportunity, for a period of not less than six months, to comply with such criteria; ~~and~~

(C) the new motor vehicle dealer did not demonstrate substantial progress towards compliance with the manufacturer's performance criteria during such period and the new motor vehicle dealer's failure was not primarily due to economic or market factors within the dealer's relevant market area beyond the dealer's control; and

(D) the performance criteria established by the manufacturer are fair, reasonable, and equitable as applied to all same line-make franchisees of the manufacturer in the state.

~~(c)~~(d) The manufacturer shall have the burden of proof under this section for showing that it has acted in good faith, that all notice requirements have been satisfied, and that there was good cause for the franchise termination, cancellation, nonrenewal, or noncontinuance.

(e) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, or the terms or provisions of any waiver, the following do not constitute good cause for the termination, cancellation, nonrenewal, or noncontinuance of a franchise:

(1) The change of ownership of the new motor vehicle dealer's dealership, excluding any change in ownership which would have the effect of the sale of the franchise without the reasonable consent of the manufacturer, distributor, or branch or division thereof.

(2) The fact that the new motor vehicle dealer refused to purchase or accept delivery of any new motor vehicle parts, accessories, or any other commodity or services not ordered by the new motor vehicle dealer.

(3) The fact that the new motor vehicle dealer owns, has an investment in, participates in the management of, or holds a license for the sale of another make, line, or brand of new motor vehicle, or that the new motor vehicle dealer has established another make, line, or brand of new motor vehicle in the same dealership facilities as those of the manufacturer, distributor, or branch or division thereof, provided that the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicle and that the new motor vehicle dealer remains in substantial compliance with any reasonable facilities requirements of the manufacturer, distributor, or branch or division thereof.

(4) The fact that the new motor vehicle dealer sells or transfers ownership of the dealership or sells or transfers capital stock in the dealership

to the new motor vehicle dealer's spouse, son, or daughter. The manufacturer, distributor, or branch or division thereof shall give effect to such change in ownership unless the transfer of the new motor vehicle dealer's license is denied or the new owner is unable to license, as the case may be.

§ 4090. NOTIFICATION OF TERMINATION; CANCELLATION AND NONRENEWAL

(a) Notwithstanding the terms, provisions, or conditions of any franchise prior to the termination, cancellation, or nonrenewal of any franchise, the manufacturer shall furnish notification of such termination, cancellation or nonrenewal to the new motor vehicle dealer as follows:

(1) in the manner described in subsection (b) of this section; and

(2) not less than 90 days prior to the effective date of such termination, cancellation, or nonrenewal; or

(3) not less than 15 days prior to the effective date of such termination, cancellation, or nonrenewal ~~with respect to any of the following~~ which occurs as a result of:

(A) insolvency of the new motor vehicle dealer, or filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;

(B) failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business hours for seven consecutive business days, except for acts of God or circumstances beyond the direct control of the new motor vehicle dealer;

(C) conviction of the new motor vehicle dealer, or any owner or operator thereof, of any crime which is punishable by imprisonment;

(D) revocation of any license which the new motor vehicle dealer is required to have to operate a dealership.

(4) ~~not less than 180 days prior to the effective date of such termination or cancellation where the manufacturer or distributor is discontinuing the sale of the product line~~ Not less than 180 prior to the effective date of such termination, cancellation, or nonrenewal which occurs as a result of:

(A) any change in ownership, operation, or control of all or any part of the business of the manufacturer, whether by sale or transfer of assets, corporate stock, or other equity interest, assignment, merger, consolidation, combination, joint venture, redemption, operation of law, or otherwise; or

(B) the termination, suspension, or cessation of a part or all of the business operations of the manufacturer; or

(C) discontinuance of the sale of the product line or a change in distribution system by the manufacturer whether through a change in distributors or through the manufacturer's decision to cease conducting business through a distributor altogether.

(b) Notification under this section shall be in writing; shall be by certified mail or personally delivered to the new motor vehicle dealer; and shall contain:

(1) a statement of intention to terminate, cancel, or not to renew the franchise; and

(2) a statement of the reasons for the termination, cancellation, or nonrenewal; and

(3) the date on which the termination, cancellation, or nonrenewal takes effect.

§ 4091. PAYMENTS

(a) ~~Upon~~ Within 90 days of the termination, nonrenewal, or cancellation of any franchise~~,~~ pursuant to ~~this chapter~~ section 4089 of this title or to the termination, nonrenewal, or cancellation of a franchise by the franchisee or by mutual agreement, the new motor vehicle dealer shall be ~~allowed fair and reasonable compensation~~ paid by the manufacturer for the:

(1) ~~new motor vehicle inventory which has been acquired from the manufacturer;~~

~~(2) supplies and parts which have been acquired from the manufacturer;~~

~~(3) equipment and furnishings provided the new motor vehicle dealer purchased from the manufacturer or its approved sources; and~~

~~(4) special tools.~~ dealer cost plus any charges by the manufacturer thereof for distribution, delivery, and taxes paid by the dealer, less all allowances paid to the dealer by the manufacturer for all new and undamaged motor vehicle inventory purchased from the manufacturer or distributor or from another new motor vehicle dealer of the same line-make in the ordinary course of business if the vehicles have 500 miles or less on the odometer and:

(A) were purchased within the previous 12 months; or

(B) are of the current model year or one-year-prior model year.

A motor vehicle shall be "undamaged" under this subsection if any corrected damage to the vehicle does not exceed the amounts set forth in subsection 4087(d) of this title;

(2) the dealer cost of each new, unused, undamaged, and unsold part or accessory if such part or accessory is in the current parts catalogue and is still

in the original, resaleable merchandising package and acquired from the manufacturer or distributor or from another new motor vehicle dealer of the same line-make in the ordinary course of business;

(3) the fair market value of all special tools owned by the dealer which were recommended in writing and designated as special tools and equipment by the manufacturer, distributor, or branch or division thereof and purchased from or at the request of the manufacturer or distributor, if the tools and equipment are in usable and good condition, normal wear and tear excepted;

(4) the fair market value of each undamaged sign owned by the dealer which bears a trademark, trade name, or commercial symbol used or claimed by the manufacturer if the sign was purchased from or at the request of the manufacturer, distributor, or branch or division thereof;

(5) the cost of transporting, handling, packing, and loading of motor vehicles, parts, signs, and special tools, subject to repurchase by the manufacturer.

(b) In addition to the other payments set forth in this section, if a termination, cancellation, or nonrenewal is premised upon any of the occurrences set forth in subdivision 4090(a)(4) of this title, then the manufacturer shall be liable to the dealer for an amount equivalent to the fair market value of the motor vehicle franchise on the day before the date the franchisor announces the action which results in termination, cancellation, or nonrenewal.

~~(b)~~(c) Payment is contingent on the new motor vehicle dealer having clear title to the inventory and other items and having the ability to convey the title to the manufacturer excepting any liens or encumbrances on the inventory and other items that will be released when the manufacturer pays the motor vehicle dealer and lien holder for the inventory and other items.

(d) The manufacturer may avoid paying fair market value of the motor vehicle franchise to the dealer under subsection (b) of this section if the franchisor, or another motor vehicle franchisor pursuant to an agreement with the franchisor, offers the franchisee a replacement motor vehicle franchise substantially similar to the existing motor vehicle franchise which takes effect no later than the date of the termination, cancellation, or nonrenewal of the franchisee's existing motor vehicle franchise.

§ 4092. DEALERSHIP FACILITIES ASSISTANCE UPON TERMINATION, CANCELLATION, OR NONRENEWAL

(a) In the event of a termination, cancellation, or nonrenewal under this chapter~~,~~; and

(1) the new motor vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the rent for the unexpired term of the lease or one year's rent, whichever is less; or

(2) if the new motor vehicle dealer owns the dealership facilities, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the reasonable rental value of the dealership facilities for one year.

(b) If the termination, cancellation, or nonrenewal is pursuant to ~~subsection~~ subdivision 4090~~(b)~~(a)(4) of this title, then, with respect to such facilities as were required as a condition of the franchise and used to conduct sales and service operations related to the franchise product, the manufacturer or distributor shall in addition to the relief described in subsection (a) of this section:

(1) assume the obligations for any lease of the dealership facilities for the unexpired term of the lease or three years' rent, whichever is less; or

(2) arrange for a new lease of any dealership facilities; or

(3) negotiate a lease termination for the dealership facilities at the manufacturer's expense.

(c) If, in an action for damages under this section, the manufacturer or distributor fails to prove either that the manufacturer or distributor has acted in good faith or that there was good cause for the franchise termination, cancellation or nonrenewal, then the court, agency or commission shall order, in addition to any other damages under this section, that the manufacturer or distributor pay the new motor vehicle dealer an amount equal to the value of the dealership, as an ongoing business location.

§ 4093. RIGHT OF DESIGNATED FAMILY MEMBER TO SUCCEED IN OWNERSHIP

(a) Any owner of a new motor vehicle dealer may appoint by will, or any other written instrument, a designated family member to succeed in the ownership interest of the new motor vehicle dealer.

(b) Unless there exists good cause for refusal to honor succession on the part of the manufacturer or distributor, any designated family member of a deceased or incapacitated owner of a new motor vehicle dealer may succeed to the ownership of the new motor vehicle dealer under the existing franchise provided that:

(1) the designated family member gives the manufacturer or distributor written notice of his or her intention to succeed to the ownership of the new motor vehicle dealer within 120 days of the owner's death or incapacity; and

(2) the designated family member agrees to be bound by all the terms and conditions of the franchise.

(c) The manufacturer or distributor may request, and the designated family member shall provide, promptly upon said request, personal and financial data that are reasonably necessary to determine whether the succession should be honored.

§ 4094. REFUSAL TO HONOR SUCCESSION TO OWNERSHIP; NOTICE REQUIRED

(a) If a manufacturer or distributor believes that good cause exists for refusing to honor the succession to the ownership of a new motor vehicle dealer by a family member of a deceased or incapacitated owner of a new motor vehicle dealer under the existing franchise agreement, the manufacturer or distributor may, not more than 60 days following receipt of notice of the designated family member's intent to succeed to the ownership of the new motor vehicle dealer, or any personal or financial data which it has requested, serve upon the designated family member notice of its refusal to honor the succession and of its intent to discontinue the existing franchise with the dealer no sooner than 90 days from the date the notice is served.

(b) The notice must state the specific grounds for the refusal to honor the succession and of its intent to discontinue the existing franchise with the new motor vehicle dealer no sooner than 90 days from the date the notice is served.

(c) If notice of refusal and discontinuance is not timely served upon the family member, the franchise shall continue in effect subject to termination only as otherwise permitted by this chapter.

(d) In the event of a conflict between the written instrument filed by the motor vehicle dealer with the manufacturer designating a certain person as his or her successor and the provisions of this section, the written instrument filed with the manufacturer shall govern.

§ 4095. BURDEN OF PROOF

In determining whether good cause for the refusal to honor the succession exists, the manufacturer, distributor, factory branch, or importer has the burden of proving that the successor is a person who is not of good moral character or does not meet the franchisor's existing and reasonable standards and, considering the volume of sales and service of the new motor vehicle dealer, uniformly applied minimum business experience standards in the market area.

§ 4096. UNLAWFUL ACTS BY MANUFACTURERS OR DISTRIBUTORS

It shall be a violation of this chapter~~,~~ for any manufacturer, as defined under this chapter, to require ~~or to~~, attempt to require, coerce, or attempt to coerce any new motor vehicle dealer in this state:

(1) to order or accept delivery of any new motor vehicle, part or accessory thereof, equipment or any other commodity not required by law or a recall campaign which shall not have been voluntarily ordered by the new motor vehicle dealer; except that this subdivision is not intended to modify or supersede any terms or provisions of the franchise requiring new motor vehicle dealers to market a representative line of those motor vehicles which the manufacturer or distributor is publicly advertising;

(2) to order or accept delivery of any new motor vehicle with special features, accessories or equipment not included in the list price of such motor vehicles as publicly advertised by the manufacturer or distributor;

(3) to participate monetarily in an advertising campaign or contest, or to purchase any promotional materials, training materials, showroom or other display decorations or materials at the expense of the new motor vehicle dealer, or to require any dealer without his or her prior written agreement to participate in any manufacturer's rebate program or to require a dealer to contribute to a manufacturer's warranty rebate program, either by discount or otherwise without prior notification and prior written consent of the dealer;

(4) to enter into any agreement with the manufacturer or to do any other act prejudicial to the new motor vehicle dealer by threatening to terminate or cancel a franchise or any contractual agreement existing between the dealer and the manufacturer; except that this subdivision is not intended to preclude the manufacturer or distributor from insisting on compliance with the reasonable terms or provisions of the franchise or other contractual agreement, and notice in good faith to any new motor vehicle dealer of the new motor vehicle dealer's violation of such terms or provisions shall not constitute a violation of the chapter;

(5) to change the capital structure of the new motor vehicle dealer or the means by or through which the new motor vehicle dealer finances the operation of the dealership provided that the new motor vehicle dealer at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria; and also provided that no change in the capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor; said consent shall not be unreasonably withheld;

(6) to refrain from participation in the management of, investment in, or the acquisition of any other ~~line~~ line-make of new motor vehicle or related

products; provided, however, that this subdivision does not apply unless the new motor vehicle dealer maintains a reasonable line of credit for each make or ~~line~~ line-make of new motor vehicle, the new motor vehicle dealer remains in compliance with any reasonable facilities requirements of the manufacturer, and no change is made in the principal management of the new motor vehicle dealer. For purposes of this act, "reasonable facilities requirements" shall not include a requirement that a motor vehicle dealer establish or maintain exclusive facilities, personnel or display space.

(A) The new motor vehicle dealer shall provide written notice to the manufacturer and the board no less than 90 days prior to the dealer's intent to participate in the management of, investment in, or acquisition of another line-make of new motor vehicles or related products.

(B) Within 45 days of receipt of the notice from the dealer, the manufacturer may file with the board a protest alleging specific facts to support its claim that the new motor vehicle dealer cannot maintain a reasonable line of credit for each make or line-make of new motor vehicle, the new motor vehicle dealer cannot remain in compliance with any reasonable facilities requirements of the manufacturer, or that a change is being made in the principal management of the new motor vehicle dealer. The manufacturer shall also serve the protest on the new motor vehicle dealer within the 45-day period. If the manufacturer does not file a protest with the board within 45 days, then the dealer may participate in the management of, investment in, or acquisition of another line-make of new motor vehicles or related products as set forth in its written notice of intent.

(C) Within 45 days of the receipt of a protest from a manufacturer, the board shall meet, hear and take evidence limited to the claims set forth in the manufacturer's protest and make a determination on each of the manufacturer's claims. The burden of proof shall be on the manufacturer. The decision of the board shall be final and no appeal may be taken;

(7) to ~~prospectively~~ assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability to be imposed by this law or to require any controversy between a new motor vehicle dealer and a manufacturer, distributor, or representative, to be referred to any person other than the duly constituted courts of the state or the United States of America, if such referral would be binding upon the new motor vehicle dealer;

(8) to change location of the dealership or to make any substantial alterations to the dealership premises or facilities when to do so would be unreasonable or without written assurance of a sufficient supply of new motor vehicles so as to justify such an expansion in light of the current market and economic conditions.

§ 4097. MANUFACTURER VIOLATIONS

It shall be a violation of this chapter for any manufacturer defined under this chapter:

(1) to delay, refuse, or fail to deliver new motor vehicles or new motor vehicle parts or accessories in a reasonable time, and in reasonable quantity relative to the new motor vehicle dealer's facilities and sales potential in the new motor vehicle dealer's relevant market area, after acceptance of an order from a new motor vehicle dealer having a franchise for the retail sale of any new motor vehicle sold or distributed by the manufacturer, any new motor vehicle, parts or accessories to new vehicles as are covered by such franchise, if such vehicle, parts, accessories are publicly advertised as being available for delivery or actually being delivered. This subdivision is not violated, however, if failure is caused by acts or causes beyond the control of the manufacturer;

(2) to refuse to disclose to any new motor vehicle dealer, handling the same line-make, the manner and mode of distribution of that line-make within the ~~relevant market area~~ state;

(3) to obtain money, goods, service, or any other benefit from any other person with whom the new motor vehicle dealer does business, on account of, or in relation to, the transaction between the new motor vehicle dealer and such other person, other than for compensation for services rendered, unless such benefit is promptly accounted for, and transmitted to, the new motor vehicle dealer;

(4) to increase prices of new motor vehicles which the new motor vehicle dealer had ordered for private retail consumers prior to the new motor vehicle dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer shall constitute evidence of each such order provided that the vehicle is in fact delivered to that consumer. In the event of manufacturer price reductions or cash rebates paid to the new motor vehicle dealer, the amount of any reduction or rebate received by a new motor vehicle dealer shall be passed on to the private retail consumer by the new motor vehicle dealer. Price reductions shall apply to all vehicles in the dealer's inventory which were subject to the price reduction. Price differences applicable to a new model or series shall not be considered a price increase or price decrease. Price changes caused by either the addition to a motor vehicle of required or optional equipment; or revaluation of the United States dollar, in the case of foreign-make vehicles or components; or an increase in transportation charges due to increased rates imposed by common carriers shall not be subject to the provisions of this subdivision;

(5) to offer any refunds or other types of inducements to any person for the purchase of new motor vehicles of a certain line or make to be sold to the state or any political subdivision thereof without making the same offer available upon request to all other new motor vehicle dealers in the same line-make within the ~~relevant market area~~ state;

(6) to release to any outside party, except under subpoena or as otherwise required by law or in an administrative, judicial or arbitration proceeding involving the manufacturer or new motor vehicle dealer, any business, financial, or personal information which may be from time-to-time provided by the new motor vehicle dealer to the manufacturer, without the express written consent of the new motor vehicle dealer;

(7) to deny any new motor vehicle dealer the right of free association with any other new motor vehicle dealer for any lawful purpose;

(8) to ~~unfairly~~ compete with a new motor vehicle dealer in the same line-make operating under an agreement or franchise from the aforementioned manufacturer in the relevant market area. A manufacturer shall not, however, be deemed to be competing when operating a dealership either temporarily for a reasonable period, or in a bona fide retail operation which is for sale to any qualified independent person at a fair and reasonable price, or in a bona fide relationship in which an independent person has made a significant investment subject to loss in the dealership and can reasonably expect to acquire full ownership of the dealership on reasonable terms and conditions;

(9) to unfairly discriminate among its new motor vehicle dealers with respect to warranty reimbursement;

(10) to unreasonably withhold consent to a change in executive management or the sale, transfer, or exchange of the franchise to a qualified buyer capable of being licensed as a new motor vehicle dealer in this state. If a new motor vehicle dealer desires to make a change in its executive management or ownership or to sell its principal assets, the new motor vehicle dealer will give the franchisor written notice of the proposed change or sale. The franchisor shall not arbitrarily refuse to agree to such proposed change or sale and may not disapprove or withhold approval of such change or sale unless the franchisor can prove that:

(A) its decision is not arbitrary; and

(B) the new management, owner, or transferee is unfit or unqualified to be a dealer based on the franchisor's prior written, reasonable, objective standards or qualifications which directly relate to the prospective transferee's business experience, moral character, and financial qualifications;

(11) to fail to respond in writing to a request for consent as specified in subdivision (10) of this section within 60 days of receipt of a written request on the forms, if any, generally utilized by the manufacturer or distributor for such purposes and containing the information required therein. Such failure to respond shall be deemed to be consent to the request;

(12) to unfairly prevent a new motor vehicle dealer from receiving fair and reasonable compensation for the value of the new motor vehicle dealership;

(13) to engage in any predatory practice ~~against a new motor vehicle dealer~~ or in any action or failure to act with respect to a dealer if the action or failure to act is arbitrary, in bad faith, or discriminatory compared to similarly situated dealers;

(14) to terminate any franchise solely because of the death or incapacity of an owner who is not listed in the franchise as one on whose expertise and abilities the manufacturer relied in the granting of the franchise~~.~~;

(15) to require a motor vehicle franchisee to agree to a term or condition in a franchise, or in any lease related to the operation of the franchise or agreement ancillary or collateral to a franchise, as a condition to the offer, grant, or renewal of the franchise, lease, or agreement, that:

(A) Requires the motor vehicle franchisee to waive trial by jury in actions involving the motor vehicle franchisor;

(B) Specifies the jurisdictions, venues, or tribunals in which disputes arising with respect to the franchise, lease, or agreement shall or shall not be submitted for resolution or otherwise prohibits a motor vehicle franchisee from bringing an action in a particular forum otherwise available under the law of this state;

(C) Requires that disputes between the motor vehicle franchisor and motor vehicle franchisee be submitted to arbitration or to any other binding alternate dispute resolution procedure; provided, however, that any franchise, lease, or agreement may authorize the submission of a dispute to arbitration or to binding alternate dispute resolution if the motor vehicle franchisor and motor vehicle franchisee voluntarily agree to submit the dispute to arbitration or binding alternate dispute resolution at the time the dispute arises;

(D) Provides that in any administrative or judicial proceeding arising from any dispute with respect to the agreements in this section that the franchisor shall be entitled to recover its costs, reasonable attorney's fees and other expenses of litigation from the franchisee; or

(E) Grants the manufacturer an option to purchase the franchise, or real estate or business assets of the franchisee;

(16) to impose unreasonable standards of performance or unreasonable facilities, financial, operating, or other requirements upon a motor vehicle franchisee;

(17) to fail or refuse to sell or offer to sell to all motor vehicle franchisees of a line-make, all models manufactured for that line-make, or requiring a dealer to pay any extra fee; require a dealer to execute a separate franchise agreement, purchase unreasonable advertising displays or other materials, or relocate, expand, improve, remodel, renovate, recondition, or alter the dealer's existing facilities; or provide exclusive facilities as a prerequisite to receiving a model or series of vehicles. However, a manufacturer may require reasonable improvements to the existing facility that are necessary to accommodate special or unique features of a specific model or line. The failure to deliver any such motor vehicle, however, shall not be considered a violation of this section if the failure is due to a lack of manufacturing capacity or to a strike or labor difficulty, a shortage of materials, a freight embargo, or other cause over which the franchisor has no control;

(18) to prevent or attempt to prevent any motor vehicle dealer or any officer, partner, or stockholder of any motor vehicle dealer from transferring any part of the interest of any of them to any other person; provided, however, that no dealer, officer, partner, or stockholder shall have the right to sell, transfer, or assign the franchise or power of management or control without the consent of the manufacturer or distributor unless such consent is unreasonably withheld. Failure to respond within 60 days of receipt of a written request and applicable manufacturer application forms and related reasonable information customarily required for consent to a sale, transfer, or assignment shall be deemed consent to the request. Within 20 days of receipt of notice from the dealer, the manufacturer shall provide the dealer with a copy of all application forms and all other required reasonable information necessary to evaluate the dealer's request;

(19) to provide any term or condition in any lease or other agreement ancillary or collateral to a franchise, which term or condition directly or indirectly violates this title;

(20) to use a promotional program or device or an incentive, payment, or other benefit, whether paid at the time of sale of the new motor vehicle to the dealer or later, that results in the sale of or offer to sell a new motor vehicle at a lower price, including the price for vehicle transportation, than the price at which the same model similarly equipped is offered or is available to another dealer in the state during a similar time period. This subdivision shall not

prohibit a promotional or incentive program that is available functionally and equally to competing dealers of the same line-make in the state;

(21) to vary the price charged to any of its franchised new motor vehicle dealers located in this state for new motor vehicles based on the dealer's purchase of new facilities, supplies, tools, equipment, or other merchandise from the manufacturer, the dealer's relocation, remodeling, repair, or renovation of existing dealerships or construction of a new facility, the dealer's participation in training programs sponsored, endorsed, or recommended by the manufacturer, whether or not the dealer is dualed with one or more other line-makes of new motor vehicles, the dealer's sales penetration, the dealer's sales volume, the dealer's level of sales or customer service satisfaction, the dealer's purchase of advertising materials, signage, nondiagnostic computer hardware or software, communications devices, or furnishings, or the dealer's participation in used motor vehicle inspection or certification programs sponsored or endorsed by the manufacturer. The price of the vehicle, for purposes of this subdivision, shall include the manufacturer's use of rebates, credits, or other consideration that has the effect of causing a variance in the price of new motor vehicles offered to its franchised dealers located in the state;

(22) to modify a franchise during the term of the franchise or upon its renewal if the modification substantially and adversely affects the new motor vehicle dealer's rights, obligations, investment, or return on investment without giving 60 days' written notice of the proposed modification to the new vehicle dealer unless the modification is required by law, court order, or the board. Within the 60-day notice period, the new vehicle dealer may file with the board and serve notice upon the manufacturer a protest requesting a determination of whether there is good cause for permitting the proposed modification. Multiple protests pertaining to the same proposed modification shall be consolidated for hearing. The proposed modification shall not take effect pending the determination of the matter. The manufacturer shall have the burden of establishing good cause for the proposed modification. In determining whether there is good cause for permitting a proposed modification, the board shall consider any relevant factors, including:

(A) The reasons for the proposed modification.

(B) Whether the proposed modification is applied to or affects all new vehicle dealers in a nondiscriminatory manner.

(C) Whether the proposed modification will have a substantial and adverse effect upon the new vehicle dealer's investment or return on investment.

(D) Whether the proposed modification is in the public interest.

(E) Whether the proposed modification is necessary to the orderly and profitable distribution of products by the manufacturer.

(F) Whether the proposed modification is offset by other modifications beneficial to the new vehicle dealer;

(23) to engage in any action which is arbitrary, in bad faith, or unconscionable;

(24) to change the relevant market area set forth in the franchise agreement without good cause. For purposes of this subdivision, good cause shall include changes in the dealer's registration pattern, demographics, customer convenience, and geographic barriers.

§ 4098. LIMITATIONS ON ESTABLISHING OR RELOCATING DEALERS

(a) In the event that a manufacturer seeks to enter into a franchise establishing an additional new motor vehicle dealer or relocating an existing new motor vehicle dealer within or into a relevant market area where the same line-make is then represented, the manufacturer shall in writing first give notice to the transportation board and notify each new motor vehicle dealer in such line-make in the relevant market area of the intention to establish an additional dealer or to relocate an existing dealer within or into that market area. Within 20 days of receiving such notice or within 20 days after the end of any appeal procedure provided by the manufacturer, any such new motor vehicle dealer may file ~~with a court having jurisdiction an action~~ a protest with the board opposing the establishing or relocating of the new motor vehicle dealer. A copy of the protest shall be served on the manufacturer within the 20-day period. When such a protest is filed, ~~the court shall inform the manufacturer that a timely protest has been filed, and that~~ the manufacturer shall not establish or relocate the proposed new motor vehicle dealer until the ~~court~~ board has held a hearing, nor thereafter, if the ~~court~~ board has determined that there is not good cause for ~~not~~ permitting the addition or relocation of such new motor vehicle dealer.

(b) This section does not apply:

(1) to the relocation of an existing dealer within that dealer's relevant market area, provided that the relocation not be at a site within six miles of a licensed new motor vehicle dealer for the same line-make of motor vehicle; or

(2) if the proposed new motor vehicle dealer is to be established at or within two miles of a location at which a former licensed new motor vehicle

dealer for the same line-make of new motor vehicle had ceased operating within the previous two years.

(c) In determining whether good cause has been established for ~~not~~ entering into or relocating an additional new motor vehicle dealer for the same line-make, the ~~court~~ board shall take into consideration the existing circumstances, including, but not limited to:

(1) permanency of the investment of both the existing and proposed new motor vehicle dealers;

(2) growth or decline in population and new car registrations in the relevant market area;

(3) effect on the consuming public in the relevant market area;

(4) whether it is injurious or beneficial to the public welfare for an additional new motor vehicle dealer to be established;

(5) whether the new motor vehicle dealers of the same line-make in that relevant market area are providing adequate competition and convenient customer care for the motor vehicles of the line-make in the market area which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel;

(6) whether the establishment of an additional new motor vehicle dealer would increase competition, and therefore be in the public interest; and

(7) the effect that the proposed franchise would have on the stability of existing franchisees in the same line-make in the relevant market area.

(d) At any hearing conducted by the board under this section, the manufacturer seeking to establish an additional new motor vehicle dealership or relocate an existing new motor vehicle dealership shall have the burden of proof in establishing that good cause exists.

§ 4099. CIVIL ACTIONS FOR VIOLATIONS

Notwithstanding the terms, provisions, or conditions of any agreement or franchise or the terms or provisions of any waiver, any consumer who is injured by a violation of this chapter, or any party to a franchise who is so injured in his business or property by a violation of this chapter relating to that franchise, or any person so injured because he or she refuses to accede to a proposal for an arrangement which, if consummated, would be in violation of this chapter, may bring a civil action in a court having jurisdiction to enjoin further violations, and to recover the actual damages sustained by him or her together with the costs of the suit, including a reasonable attorney's fee. An action, filed in a court of competent jurisdiction, that gives rise or could give

rise to a claim or defense under this chapter must be stayed if, within 60 days after the date of filing of the complaint or service of process, whichever is later, a party to the action files a complaint with the board asserting the claims or defenses under this chapter.

§ 4100. APPLICABILITY

The provisions of this chapter shall apply to the conduct of all persons affected by the presumptions of this chapter situated in this state. Any person who engages directly or indirectly in purposeful contacts within this state in connection with the offering or advertising for sale of, or has business dealings with respect to, a motor vehicle within the state shall be subject to the provisions of this chapter and the jurisdiction of the courts of this state. Any and all amendments to this chapter shall apply to existing franchise agreements and franchise agreements entered into on or after the effective date of this act.

§ 4100a. AGREEMENTS GOVERNED

(a) All written agreements between a manufacturer or distributor and a motor vehicle dealer shall be subject to the provisions of this chapter, and provisions of such agreements that are inconsistent with this chapter shall be void as against public policy and unenforceable in court or with the board.

(b) Every new selling agreement or amendment made to such agreement between a motor vehicle dealer and a manufacturer or distributor shall include, and if omitted, shall be presumed to include, the following language: "If any provision herein contravenes the valid laws or rules of the state of Vermont, such provision shall be deemed to be modified to conform to such laws or rules; or if any provision herein, including arbitration provisions, denies, or purports to deny access to the procedures, forums, or remedies provided for by such laws or rules, such provision shall be void and unenforceable; and all other terms and provisions of this agreement shall remain in full force and effect."

§ 4100b. ENFORCEMENT; TRANSPORTATION BOARD

(a) The transportation board established in section 3 of title 19 shall enforce the provisions of this chapter.

(b) The board shall adopt rules to implement the provisions of this chapter.

(c) Except for civil actions filed in superior court pursuant to section 4099 of this title, the board shall have the following exclusive powers:

(1) Any person may file a written protest with the board complaining of conduct governed by and in violation of this chapter. The board shall hold a public hearing in accordance with the rules adopted by the board.

(2) The board shall issue written decisions and may issue orders to any person in violation of this chapter.

(d) The parties to protests shall be permitted to conduct and use the same discovery procedures as are provided in civil actions in the superior court.

(e) The board shall be empowered to determine the location of hearings, appoint persons to serve at the deposition of out-of-state witnesses, administer oaths, and authorize stenographic or recorded transcripts of proceedings before it. Prior to the hearing on any protest, but no later than 45 days after the filing of the protest, the board shall require the parties to the proceeding to attend a prehearing conference in which the chair or designee shall have the parties address the possibility of settlement. If the matter is not resolved through the conference, the matter shall be placed on the board's calendar for hearing. Conference discussions shall remain confidential and shall not be disclosed or used as an admission in any subsequent hearing.

(f) Compliance with the discovery procedures authorized by subsection (d) of this section may be enforced by application to the board. Obedience to subpoenas issued to compel witnesses or documents may be enforced by application to the superior court in the county where the hearing is to take place.

(g) Any party to any proceeding under this chapter who recklessly or knowingly fails, neglects, or refuses to comply with an order issued by the board shall be fined a civil penalty not to exceed $2,500.00. Each day of noncompliance shall be considered a separate violation of such order.

(h) Within 20 days after any order or decision of the board, any party to the proceeding may apply for a rehearing with respect to any matter determined in the proceeding or covered or included in the order or decision. The application for rehearing shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable. No appeal from any order or decision of the board shall be taken unless the appellant makes an application for rehearing as provided in this subsection, and when such application for rehearing has been made, no ground not set forth in the application shall be urged, relied on, or given any consideration by the board unless the board for good cause shown allows the appellant to specify additional grounds. Any party to the proceeding may appeal the final order, including all interlocutory orders or decisions, to the superior court within 30 days after the date the board rules on the application for reconsideration of the final order or decision. All findings of the board upon all questions of fact properly before the court shall be prima facie lawful and reasonable. The order or decision appealed from shall not be set aside or vacated except for errors of

law. No additional evidence shall be heard or taken by the superior court on appeals from the board.

(i) In cases where the board finds that a violation of this chapter has occurred or there has been a failure to show good cause under section 4089 or 4098 of this title, the superior court, upon petition, shall determine reasonable attorney's fees and costs and award them to the prevailing party.

§ 4100c. FINANCING; VERMONT TRANSPORTATION BOARD FUND

(a) The transportation board fund is established as a special fund in the state treasury for the sole purpose of enforcing this act. The fund shall be revolving, continually appropriated, and nonlapsing. Except as otherwise provided in this chapter, all fees and civil penalties collected pursuant to this chapter shall be paid into the state treasury immediately upon collection and credited to the transportation board fund.

(b) To fund the transportation board fund and to pay the start-up expenses of administration and enforcement of this chapter, the board shall impose an initial start-up fee upon each new motor vehicle dealer of $200.00 for each dealer license held by that dealer and an initial start-up fee of $2,000.00 for each line-make of new motor vehicles that a manufacturer sells or distributes within the state. Upon the filing of a protest under this chapter, the protesting party shall pay into the fund a fee of $1,500.00.

(c) The secretary of the agency of transportation may draw upon the fund established in subsection (a) of this section to pay the expenses of administration and enforcement of this chapter.

(d) The secretary of the agency of transportation shall have the authority to impose an additional operational fee upon any motor vehicle dealer or manufacturer which sells or distributes new motor vehicles within the state in addition to the initial start-up fee imposed pursuant to this section, if the commissioner determines that the imposition of such fee is necessary to fund the ongoing operations of the board solely related to enforcing this chapter.

§ 4100d. STATUTE OF LIMITATIONS

(a) Actions arising out of any provision of this chapter shall be commenced within four years of the date the cause of action accrues; provided, however, that if a person conceals the cause of action from the knowledge of the person entitled to bring it, the period prior to the discovery of the cause of action by the person so entitled shall be excluded in determining the time limited for commencement of the action.

(b) Notwithstanding any provision in a franchise agreement, if a dispute covered by this chapter or any other law is submitted to mediation or

arbitration, the time for the dealer to file a complaint, action, petition, or protest is tolled until the mediation or arbitration proceeding is completed.

§ 4100e. RIGHT OF FIRST REFUSAL

In the event of a proposed sale or transfer of all or substantially all ownership or transfer of all or substantially all dealership assets, and if the franchise agreement has a right of first refusal in favor of the manufacturer, distributor or franchisor, then notwithstanding the terms of the franchise agreement, the manufacturer, distributor, or franchisor shall be permitted to exercise a right of first refusal to acquire the motor vehicle dealer's assets or ownership only if all of the following requirements are met:

(1) In order to exercise the right of first refusal, the manufacturer or distributor shall notify the motor vehicle dealer in writing of its intent to exercise its right of first refusal within the 60-day notice limit provided in subdivision 4097(11) of this title.

(2) The exercise of the right of first refusal will result in the owner of the dealership receiving the same or greater consideration as the owner has contracted to receive in connection with the proposed change of ownership or transfer.

(3) The proposed change in the dealership's ownership or transfer of assets does not involve the transfer or sale to any of the following members of the family of one or more owners:

(A) A designated family member or members, including any of the following members of one or more dealer owners:

(i) The spouse.

(ii) A child.

(iii) A grandchild.

(iv) The spouse of a child or a grandchild.

(v) A sibling.

(vi) A parent.

(B) A manager:

(i) employed by the dealer in the dealership during the previous two years; and

(ii) who is otherwise qualified as a dealer operator.

(C) A partnership or corporation controlled by any of the family members described in subdivision (A) of this subdivision (3).

(D) A trust arrangement established or to be established:

(i) for the purpose of allowing the new vehicle dealer to continue to qualify as such under the manufacturer's or distributor's standards; or

(ii) to provide for the succession of the franchise agreement to designated family members or qualified management in the event of the death or incapacity of the dealer or its principal owner or owners.

(4) The manufacturer or distributor agrees to pay the reasonable expenses, including attorney fees which do not exceed the usual, customary and reasonable fees charged for similar work done for other clients, incurred by the proposed owner or proposed transferee prior to the manufacturer's or distributor's exercise of its right of first refusal in negotiating and implementing the contract for the proposed sale or transfer of the dealership or dealership assets.

§ 4100f. SEVERABILITY

If any provision in this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provisions and applications, and to this end, the provisions of this chapter are severable.

Sec. 2. 19 V.S.A. § 3 is amended to read:

§ 3. TRANSPORTATION BOARD; CREATION; MEMBERS

A transportation board is formed to be attached to the agency of transportation. There shall be seven members of the board, appointed by the governor with the advice and consent of the senate. The governor shall so far as is possible appoint board members whose interests and expertise lie in various areas of the transportation field. The governor shall appoint the chair. The members of the board shall be appointed for terms of three years. Board members may be appointed for two additional three-year terms but shall not be eligible for further reappointment. No more than four members of the board shall belong to the same political party. No member of the board shall:

(1) Have an ownership interest in or be employed by a manufacturer, factory branch, distributor, or distributor branch as defined in chapter 108 of Title 9.

(2) Have an ownership interest in or be a motor vehicle dealer or an employee of a motor vehicle dealer as defined in chapter 108 of Title 9.

(3) Be employed by an association of motor vehicle dealers, manufacturers, or distributors as defined in chapter 108 of Title 9.

Sec. 3. 19 V.S.A. § 5 is amended to read:

§ 5. TRANSPORTATION BOARD; POWERS AND DUTIES

* * *

(d) The board shall:

* * *

(11) enforce all provisions and hear and determine all disputes arising out of 9 V.S.A. chapter 108, the Motor Vehicle Manufacturers, Distributors, and Dealers Franchising Practices Act.

(Committee vote: 5-0-0)

Reported favorably with recommendation of amendment by Senator Illuzzi for the Committee on Economic Development, Housing and General Affairs.

The Committee recommends that the bill be amended as recommended by the Committee on Transportation, with the following amendments thereto:

First: In Sec. 1, in 9 V.S.A. § 4091(a), after the words "cancellation of any franchise", by inserting the following: by the manufacturer, and, after the words "by the franchisee", by striking out the words "or by mutual agreement"

Second: In Sec. 1, in 9 V.S.A. § 4096(6), after "requirements of the manufacturer," by striking out the word "and" and after the words "management of the new motor vehicle dealer", by inserting , and the acquisition is not unreasonable in light of existing circumstances and striking out the words "For the purposes of this act, "reasonable facilities requirements" shall not include a requirement that a motor vehicle dealer establish or maintain exclusive facilities, personnel or display spaces."

Third: In Sec. 1, in 9 V.S.A. § 4096(6)(B), after "requirements of the manufacturer," by striking out the word "or" and after "management of the new motor vehicle dealer", by inserting the words , or that the acquisition is not unreasonable in light of existing circumstances

(Committee vote: 4-0-1)

Reported favorably with recommendation of amendment by Senator Carris for the Committee on Finance.

The Committee recommends that the recommendation of amendment of the Committee on Transportation be amended as follows:

First: In Sec. 1, by striking out 9 V.S.A. § 4100c in its entirety and inserting in lieu thereof the following:

§ 4100c. FINANCING; VERMONT TRANSPORTATION BOARD SPECIAL FUND

(a) The transportation board special fund is established in the state treasury and shall be administered by the secretary of transportation in accordance with the provisions of subchapter 5 of chapter 7 of Title 32, except that interest earned on the fund shall be retained in the fund. The fund shall be used only for transportation board costs and for administration and enforcement of the provisions of this chapter. The secretary of the agency of transportation may draw upon the fund for authorized payments.

(b) On July 1, 2010, and every two years thereafter, there is imposed a biennial fee upon each new motor vehicle dealer of $60.00 for each dealer license held by that dealer, and there is imposed upon each manufacturer a biennial fee of $600.00 for each line-make of new motor vehicles that the manufacturer sells or distributes within this state.

(c) Upon the filing of a protest under this chapter, the protesting party shall pay to the board a filing fee of $1,500.00.

(d) The transportation board shall administer the fees imposed under this section, and the fees shall be deposited into the transportation board special fund.

Second: By adding a Sec. 1a to read as follows:

Sec. 1a. START-UP FEES FOR INITIAL FUNDING OF THE VERMONT TRANSPORTATION BOARD SPECIAL FUND

For initial funding of the transportation board special fund created under chapter 108 of Title 9, start-up fees are imposed as follows: On July 1, 2009, there is imposed upon each new motor vehicle dealer a start-up fee of $200.00 for each dealer license held by that dealer, and there is imposed upon each manufacturer a start-up fee of $2,000.00 for each line-make of new motor vehicles that the manufacturer sells or distributes within the state. The transportation board shall administer the fees imposed under this section, and the fees shall be deposited into the transportation board special fund.

(Committee vote: 6-1-0)

S. 54

An act relating to clean energy assessment districts.

Reported favorably with recommendation of amendment by Senator Hartwell for the Committee on Natural Resources and Energy.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The general assembly finds that it is in the public interest for municipalities to finance renewable energy projects and energy efficiency projects in light of the goals set forth in section 578 of Title 10 (greenhouse gas reduction goals), section 580 of Title 10 (25 by 25 state goal), and section 581 of Title 10 (building efficiency goals).

Sec. 2. 24 V.S.A. § 1751(3) is amended to read:

(3) "Improvement," shall include, apart from its ordinary signification~~,~~:

(A) ~~the~~ The acquiring of land for municipal purposes, the construction of, extension of, additions to, or remodeling of buildings or other improvements thereto, also furnishings, equipment or apparatus to be used for or in connection with any existing or new improvement, work, department or other corporate purpose, and also shall include the purchase or acquisition of other capital assets, including licenses and permits, in connection with any existing or new improvement benefiting the municipal corporation, and all costs incurred by the municipality in connection with the construction or acquisition of the improvement and the financing thereof, including without limitation capitalized interest, underwriters discount, the funding of reserves and the payment of contributions to establish eligibility and participation with respect to loans made from any state revolving fund, to the extent such payment is consistent with federal law;

(B) Pursuant to subchapter 2 of chapter 87 of this title, projects relating to renewable energy, as defined in subdivision 8002(2) of Title 30, or to eligible energy efficiency projects undertaken by owners of real property within the boundaries of the town, city, or incorporated village. Energy efficiency projects shall be those that are eligible under section 3267 of this title.

Sec. 3. 24 V.S.A. § 2291 is amended to read:

§ 2291. ENUMERATION OF POWERS

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

* * *

(23) Acting individually or in concert with other towns, cities, or incorporated villages and pursuant to subchapter 2 of chapter 87 of this title, to incur indebtedness for or otherwise finance by any means permitted under chapter 53 of this title projects relating to renewable energy, as defined in subdivision 8002(2) of Title 30, or to eligible energy efficiency projects

undertaken by owners of real property within the boundaries of the town, city, or incorporated village. Energy efficiency projects shall be those that are eligible under section 3267 of this title.

Sec. 4. SUBCHAPTER DESIGNATION

24 V.S.A. chapter 87 §§ 3251 – 3256 shall be designated as:

Subchapter 1. General Provisions

Sec. 5. 24 V.S.A. § 3252 is amended to read:

§ 3252. PURPOSE OF ASSESSMENTS

Special assessments may be made for the purchase, construction, repair, reconstruction, or extension of a water system or sewage system, or any other public improvement which is of benefit to a limited area of a municipality to be served by the improvement, including those projects authorized under subchapter 2 of this chapter.

Sec. 6. 24 V.S.A. chapter 87, subchapter 2 is added to read:

Subchapter 2. Clean Energy Assessments

§ 3261. CLEAN ENERGY ASSESSMENT DISTRICTS; APPROVAL OF VOTERS

(a) The legislative body of a town, city, or incorporated village may submit to the voters of the municipality the question of whether to designate the municipality as a clean energy assessment district. In a clean energy assessment district, only those property owners who have entered into written agreements with the municipality under section 3262 of this title would be subject to a special assessment, as set forth in section 3255 of this title.

(b) Upon a vote of approval by a majority of the qualified voters of the municipality voting at an annual or special meeting duly warned for that purpose, the municipality may incur indebtedness for or otherwise finance projects relating to renewable energy, as defined in subdivision 8002(2) of Title 30, or to eligible projects relating to energy efficiency as defined by section 3267 of this title, undertaken by owners of real property within the boundaries of the town, city, or incorporated village.

§ 3262. WRITTEN AGREEMENTS; CONSENT OF PROPERTY OWNERS; ENERGY SAVINGS ANALYSIS

(a) Upon an affirmative vote made pursuant to section 3261 of this title and the performance of an energy savings analysis pursuant to subsection (b) of this section, an owner of real property within the boundaries of a clean energy assessment district may enter into a written agreement with the municipality

that shall constitute the owner's consent to be subject to a special assessment, as set forth in section 3255 of this title. A participating municipality may establish underwriting or other qualifying criteria it deems necessary to provide an adequate level of assurance that property owners will have the ability to meet assessment payment obligations. A participating municipality may refuse to enter into a written agreement if it determines that the property owner will not have the ability to meet his or her assessment payment obligations.

(b) Prior to entering into a written agreement, a property owner shall have an analysis performed to quantify the project costs and energy savings and estimated carbon impacts of the proposed energy improvements, including an annual cash-flow analysis. This analysis shall be conducted by the entities appointed as energy efficiency utilities under subdivision 209(d)(2) of Title 30, or conducted by another entity deemed qualified by the participating municipality. All analyses shall be reviewed and approved by the entities appointed as energy efficiency utilities.

(c) A written agreement shall provide that:

(1) the length of time allowed for the property owner to repay the assessment shall not exceed the lifetime of the project. In instances where multiple projects have been installed, the length of time shall not exceed the average lifetime of all projects, weighted for cost. Lifetimes of projects shall be determined by the entities appointed as energy efficiency utilities under subdivision 209(d)(2) of Title 30 or another qualified technical entity designated by a participating municipality;

(2) At the time of foreclosure or a transfer of property ownership, the past due balances of any special assessment under this subchapter shall be due for payment, but future payments shall continue as a lien on the property.

(d) A written agreement and the analysis performed pursuant to subsection (b) of this section shall be filed with the clerk of the municipality for recording in the land records of the municipality and shall be disclosed to potential buyers prior to transfer of property of ownership.

(e) At least 14 days prior to entering into a written agreement, the property owner shall provide to the holders of any existing mortgages on the property notice of his or her intent to enter into the written agreement.

(f) The amount of an assessment under this subchapter shall not exceed more than 15 percent of the assessed value of the property.

§ 3263. COSTS OF OPERATION OF DISTRICT

The owners of real property who have entered into written agreements with the municipality under section 3262 of this title shall be obligated to cover the costs of operating the district. A municipality may use other available funds to operate the district.

§ 3264. RIGHTS OF PROPERTY OWNERS

A property owner who has entered into a written agreement with the municipality under section 3262 of this title may enter into a private agreement for the installation or construction of a project relating to renewable energy, as defined in subdivision 8002(2) of Title 30, or relating to energy efficiency as defined by section 3267 of this title.

§ 3265. LIABILITY OF MUNICIPALITY

A municipality that incurs indebtedness for or otherwise finances projects under this subchapter shall not be liable for the failure of performance of a project.

§ 3266. INTERMUNICIPAL AGREEMENTS

Two or more municipalities, by resolution of their respective legislative bodies or boards, may establish and enter into agreements for incurring indebtedness or otherwise financing projects under this subchapter.

§ 3267. ELIGIBLE ENERGY EFFICIENCY PROJECTS

Those entities appointed as energy efficiency utilities under subsection 209(d) of Title 30 shall develop a list of eligible energy efficiency projects and shall make the list available to the public on or before July 1 of each year.

§ 3268. RESERVE FUND

A participating municipality shall create a reserve fund for use in the event of a foreclosure upon an assessed property. The reserve fund shall be funded by participating property owners at a level sufficient to provide for the payment of any outstanding assessment balances that exist in the event of a foreclosure upon any participating properties.

Sec. 7. 24 V.S.A. § 4592 is amended to read:

§ 4592. SUPPLEMENTARY POWERS

The bank, in addition to any other powers granted in this chapter, has the following powers:

* * *

(8) To the extent permitted under its contracts with the holders of bonds or notes of the bank, to consent to any modification of the rate of interest, time

and payment of any installment of principal or interest, security or any other term of bond or note, contract or agreement of any kind to which the bank is a party; ~~and~~

(9) To issue its bonds or notes which are secured by neither the reserve fund nor the revenue bond reserve fund, but which may be secured by such other funds and accounts as may be authorized by the bank from time to time;

(10) To issue bonds, other forms of indebtedness, or other financing obligations for projects relating to renewable energy, as defined in subdivision 8002(2) of Title 30, or to energy efficiency projects under subchapter 2 of chapter 87 of this title.

(Committee vote: 4-1-0)

Reported favorably with recommendation of amendment by Senator Cummings for the Committee on Finance.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The general assembly finds that it is in the public interest for municipalities to finance renewable energy projects and energy efficiency projects in light of the goals set forth in section 578 of Title 10 (greenhouse gas reduction goals), section 580 of Title 10 (25 by 25 state goal), and section 581 of Title 10 (building efficiency goals).

Sec. 2. 24 V.S.A. § 1751(3) is amended to read:

(3) "Improvement," shall include, apart from its ordinary signification~~,~~:

(A) ~~the~~ The acquiring of land for municipal purposes, the construction of, extension of, additions to, or remodeling of buildings or other improvements thereto, also furnishings, equipment or apparatus to be used for or in connection with any existing or new improvement, work, department or other corporate purpose, and also shall include the purchase or acquisition of other capital assets, including licenses and permits, in connection with any existing or new improvement benefiting the municipal corporation, and all costs incurred by the municipality in connection with the construction or acquisition of the improvement and the financing thereof, including without limitation capitalized interest, underwriters discount, the funding of reserves and the payment of contributions to establish eligibility and participation with respect to loans made from any state revolving fund, to the extent such payment is consistent with federal law;

(B) Pursuant to subchapter 2 of chapter 87 of this title, projects relating to renewable energy, as defined in subdivision 8002(2) of Title 30, or to eligible energy efficiency projects undertaken by owners of real property within the boundaries of the town, city, or incorporated village. Energy efficiency projects shall be those that are eligible under section 3267 of this title.

Sec. 3. 24 V.S.A. § 2291 is amended to read:

§ 2291. ENUMERATION OF POWERS

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

* * *

(23) Acting individually or in concert with other towns, cities, or incorporated villages and pursuant to subchapter 2 of chapter 87 of this title, to incur indebtedness for or otherwise finance by any means permitted under chapter 53 of this title projects relating to renewable energy, as defined in subdivision 8002(2) of Title 30, or to eligible energy efficiency projects undertaken by owners of real property within the boundaries of the town, city, or incorporated village. Energy efficiency projects shall be those that are eligible under section 3267 of this title.

Sec. 4. SUBCHAPTER DESIGNATION

24 V.S.A. chapter 87 §§ 3251 – 3256 shall be designated as:

Subchapter 1. General Provisions

Sec. 5. 24 V.S.A. § 3252 is amended to read:

§ 3252. PURPOSE OF ASSESSMENTS

Special assessments may be made for the purchase, construction, repair, reconstruction, or extension of a water system or sewage system, or any other public improvement which is of benefit to a limited area of a municipality to be served by the improvement, including those projects authorized under subchapter 2 of this chapter.

Sec. 6. 24 V.S.A. chapter 87, subchapter 2 is added to read:

Subchapter 2. Clean Energy Assessments

§ 3261. CLEAN ENERGY ASSESSMENT DISTRICTS; APPROVAL OF VOTERS

(a) The legislative body of a town, city, or incorporated village may submit to the voters of the municipality the question of whether to designate the municipality as a clean energy assessment district. In a clean energy assessment district, only those property owners who have entered into written agreements with the municipality under section 3262 of this title would be subject to a special assessment, as set forth in section 3255 of this title.

(b) Upon a vote of approval by a majority of the qualified voters of the municipality voting at an annual or special meeting duly warned for that purpose, the municipality may incur indebtedness for or otherwise finance projects relating to renewable energy, as defined in subdivision 8002(2) of Title 30, or to eligible projects relating to energy efficiency as defined by section 3267 of this title, undertaken by owners of real property within the boundaries of the town, city, or incorporated village.

§ 3262. WRITTEN AGREEMENTS; CONSENT OF PROPERTY OWNERS; ENERGY SAVINGS ANALYSIS

(a) Upon an affirmative vote made pursuant to section 3261 of this title and the performance of an energy savings analysis pursuant to subsection (b) of this section, an owner of real property within the boundaries of a clean energy assessment district may enter into a written agreement with the municipality that shall constitute the owner's consent to be subject to a special assessment, as set forth in section 3255 of this title. A participating municipality shall follow underwriting criteria, consistent with responsible underwriting and credit standards as established by the department of banking, insurance, securities, and health care administration, and shall establish other qualifying criteria to provide an adequate level of assurance that property owners will have the ability to meet assessment payment obligations. A participating municipality shall refuse to enter into a written agreement with a property owner who fails to meet the underwriting or other qualifying criteria.

(b) Prior to entering into a written agreement, a property owner shall have an analysis performed to quantify the project costs and energy savings and estimated carbon impacts of the proposed energy improvements, including an annual cash-flow analysis. This analysis shall be conducted by the entities appointed as energy efficiency utilities under subdivision 209(d)(2) of Title 30, or conducted by another entity deemed qualified by the participating municipality. All analyses shall be reviewed and approved by the entities appointed as energy efficiency utilities.

(c) A written agreement shall provide that:

(1) the length of time allowed for the property owner to repay the assessment shall not exceed the life expectancy of the project. In instances

where multiple projects have been installed, the length of time shall not exceed the average lifetime of all projects, weighted by cost. Lifetimes of projects shall be determined by the entities appointed as energy efficiency utilities under subdivision 209(d)(2) of Title 30 or another qualified technical entity designated by a participating municipality;

(2) At the time of a transfer of property ownership excepting foreclosure, the past due balances of any special assessment under this subchapter shall be due for payment, but future payments shall continue as a lien on the property.

(d) A written agreement and the analysis performed pursuant to subsection (b) of this section shall be filed with the clerk of the municipality for recording in the land records of the municipality and shall be disclosed to potential buyers prior to transfer of property of ownership.

(e) At least 30 days prior to entering into a written agreement, the property owner shall provide to the holders of any existing mortgages on the property notice of his or her intent to enter into the written agreement.

(f) The total amount of assessments under this subchapter shall not exceed more than 15 percent of the assessed value of the property. The combined amount of the assessment plus any outstanding mortgage obligations for the property shall not exceed 90 percent of the assessed value of that property.

(g) In the case of an agreement with the resident owner of a dwelling, as defined in Section 103(v) of the federal Truth in Lending Act:

(1) the assessments to be repaid under the agreement, when calculated as the repayment of a loan, shall not violate chapter 4 of Title 9;

(2) the maximum length of time for the owner to repay the loan shall not exceed 20 years; and

(3) the maximum amount to be repaid for the project shall not exceed $30,000.00 or 15 percent of the assessed value of the property, whichever is less.

§ 3263. COSTS OF OPERATION OF DISTRICT

The owners of real property who have entered into written agreements with the municipality under section 3262 of this title shall be obligated to cover the costs of operating the district. A municipality may use other available funds to operate the district.

§ 3264. RIGHTS OF PROPERTY OWNERS

A property owner who has entered into a written agreement with the municipality under section 3262 of this title may enter into a private agreement

for the installation or construction of a project relating to renewable energy, as defined in subdivision 8002(2) of Title 30, or relating to energy efficiency as defined by section 3267 of this title.

§ 3265. LIABILITY OF MUNICIPALITY

A municipality that incurs indebtedness for or otherwise finances projects under this subchapter shall not be liable for the failure of performance of a project.

§ 3266. INTERMUNICIPAL AGREEMENTS

Two or more municipalities, by resolution of their respective legislative bodies or boards, may establish and enter into agreements for incurring indebtedness or otherwise financing projects under this subchapter.

§ 3267. ELIGIBLE ENERGY EFFICIENCY PROJECTS

Those entities appointed as energy efficiency utilities under subsection 209(d) of Title 30 shall develop a list of eligible energy efficiency projects and shall make the list available to the public on or before July 1 of each year.

§ 3268. RESERVE FUND

A participating municipality shall create a reserve fund for use in the event of a foreclosure upon an assessed property. The reserve fund shall be funded by participating property owners at a level sufficient to provide for the payment of any past due balances on assessments under this subchapter, and any remaining principal balances on those assessments in the event of a bank or tax foreclosure upon any participating properties. Upon proper demand from a party to foreclosure action on an assessed property, the participating municipality shall pay from the reserve fund any past due balances of the participating property owner and any remaining principal balances of the participating property owner relating to the assessment. The reserve fund shall be capitalized in accordance with standards and procedures approved by the commissioner of banking, insurance, securities, and health care administration.

Sec. 7. 24 V.S.A. § 4592 is amended to read:

§ 4592. SUPPLEMENTARY POWERS

The bank, in addition to any other powers granted in this chapter, has the following powers:

* * *

(8) To the extent permitted under its contracts with the holders of bonds or notes of the bank, to consent to any modification of the rate of interest, time and payment of any installment of principal or interest, security or any other

term of bond or note, contract or agreement of any kind to which the bank is a party; ~~and~~

(9) To issue its bonds or notes which are secured by neither the reserve fund nor the revenue bond reserve fund, but which may be secured by such other funds and accounts as may be authorized by the bank from time to time;

(10) To issue bonds, other forms of indebtedness, or other financing obligations for projects relating to renewable energy, as defined in subdivision 8002(2) of Title 30, or to energy efficiency projects under subchapter 2 of chapter 87 of this title. Bonds shall be supported by both the general obligation and the assessment payment revenues of the participating municipality.

(Committee vote: 6-1-0)

Committee Bills for Notice

S. 132

An act relating to agricultural funding education and outreach.

By the Committee on Agriculture.

S. 134

An act relating to the reduction and consolidation of certain nonstanding legislative committees.

By the Committee on Government Operations.

CONSENT CALENDAR

Concurrent Resolutions for Adoption Under Joint Rule 16a

The following concurrent resolutions have been introduced for approval by the Senate and House and will be adopted automatically unless a Senator or Representative requests floor consideration before today's adjournment. Requests for floor consideration in either chamber should be communicated to the Secretary's office and/or the House Clerk's office, respectively. For text of resolutions, see Addendum to Senate Calendar of Friday, March 27, 2009

H.C.R. 83

House concurrent resolution congratulating the 2009 Essex High School Hornets Division I championship girls' ice hockey team

H.C.R. 84

House concurrent resolution congratulating the 2009 Essex High School Hornets state gymnastics championship team

H.C.R. 85

House concurrent resolution congratulating Essex High School gymnast Mary Krug on winning four consecutive all-around state championship competitions

H.C.R. 86

House concurrent resolution congratulating the 2009 Proctor High School Phantoms' Division IV championship boys' basketball team

H.C.R. 87

House concurrent resolution honoring Olympic runner and model sportsman Andrew Wheating of Norwich

H.C.R. 88

House concurrent resolution celebrating the success of the education-based after-school programs in Vermont

H.C.R. 89

House concurrent resolution commending the leadership of Green Mountain Power Corporation and other electric companies and state offices in restoring electric power in southern Vermont following the December 2008 ice storm

CONFIRMATIONS

The following appointments will be considered by the Senate, as a group, under suspension of the Rules, as moved by the President *pro tempore,* for confirmation together and without debate, by consent thereby given by the Senate. However, upon request of any senator, any appointment may be singled out and acted upon separately by the Senate, with consideration given to the report of the Committee to which the appointment was referred, and with full debate; and further, all appointments for the positions of Secretaries of Agencies, Commissioners of Departments, Judges, Magistrates, and members of the Public Service Board shall be fully and separately acted upon.

Susan D. Plausteiner of Brownsville – Member of the Vermont Economic Development Authority – By Sen. Maynard for the Committee on Finance. (1/21)

Rachel Schumacher of North Bennington – Member of the Vermont Economic Development Authority – By Sen. Hartwell for the Committee on Finance. (1/21)

Steven J. Bourgeois of Swanton – Member of the Vermont Economic Development Authority – By Sen. Carris for the Committee on Finance. (1/28)

Thomas Pelletier of Montpelier – Member of the Vermont Housing Finance Agency – By Sen. Cummings for the Committee on Finance. (1/28)

Neale F. Lunderville of Burlington – Secretary of the Agency of Administration – By Sen. Flanagan for the Committee on Government Operations. (2/17)

Neale F. Lunderville of Burlington – Secretary of the Agency of Administration – By Sen. Flanagan for the Committee on Government Operations. (2/17)

Michael Welch of St. Johnsbury – Member of the Valuation Appeals Board – By Sen. McCormack for the Committee on Finance. (2/18/09)

David R. Coates of Colchester – Member of the Vermont Municipal Bond Bank – By Sen. Carris for the Committee on Finance. (2/18/09)

Sonia D. Alexander of Wilmington – Member of the Valuation Appeals Board – By Sen. Hartwell for the Committee on Finance. (2/25/09)

Paulette Thabault of South Burlington – Commissioner of the Department of Banking, Insurance, Securities and Health Care Administration – By Sen. Cummings for the Committee on Finance. (3/3/09)

Kathryn T. Boardman of Shelburne – Member of the Vermont Municipal Bond Bank – By Sen. Maynard for the Committee on Finance. (3/4/09)

John D. Burke of Castleton – Member of the Public Service Board – By Sen. Maynard for the Committee on Finance. (3/24/09)

Kenneth Linsley of Danville – Member of the Vermont Educational and Health Buildings Financing Agency – By Sen. Maynard for the Committee on Finance. (3/26/09)

Gary Moore of Bradford – Member of the Vermont State Colleges Board of Trustees – By Sen. Starr for the Committee on Education. (3/31/09)

Linda R. Milne of Montpelier – Member of the Vermont State Colleges Board of Trustees – By Sen. Doyle for the Committee on Education. (3/31/09)

Mark Young of Orwell – Member of the University of Vermont Board of Trustees – By Sen. Giard for the Committee on Education. (3/31/09)

Donald Collins of Swanton – Member of the State Board of Education – By Sen. Brock for the Committee on Education. (3/31/09)