ADDENDUM

TO THE

SENATE CALENDAR

OF

FRIDAY, May 1, 2009

S. 137.

An act relating to the Vermont recovery and reinvestment act of 2009.

Committee Bill As Introduced

S.137.

Introduced by Committee on Economic Development, Housing and General Affairs

Date:

Subject: Economic development

Statement of purpose: This bill proposes to establish programs and policies designed to promote economic development within Vermont.

An act relating to the Vermont recovery and reinvestment act of 2009.

It is hereby enacted by the General Assembly of the State of Vermont:

* * * Opportunity Zones * * *

Sec. 1. OPPORTUNITY ZONES; PILOT PROGRAM

(a) For purposes of this section:

(1) "Opportunity zone" means an area within the town of Springfield designated to accommodate a significant amount of industrial activity, high technology, or other job-producing activity; it includes one or more industrial facilities that have been vacant or substantially underutilized for more than ten years; and it has at least 15,000 square feet or a minimum of five acres if the site includes an older structure.

(2) "Qualified business" means any business that intends to locate in or expand into an opportunity zone and:

(A) Is in compliance with applicable local zoning and development criteria for locating in the opportunity zone.

(B) Is in compliance with applicable federal, state, and local regulations.

(C) Will employ at least ten new full-time employees in positions that are not retail sales within a year of approval.

(D) Will pay wages and benefits to all full-time employees that meet or exceed the prevailing compensation level for that particular employment.

(3) "Qualified redeveloper" means any taxpayer that purchases and redevelops an industrial building in an opportunity zone for sale or lease to a qualified business.

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

(5) "Substantially underutilized" means a property or facility of which less than ten percent has been occupied for uses other than storage or warehousing for at least ten years and for which active and sustained marketing has produced no significant employment.

(b) There is created an opportunity-zones pilot program which shall be administered as follows:

(1) The town of Springfield may apply to the secretary for designation of an opportunity zone authorized by this subchapter.

(2) Qualified businesses and qualified redevelopers may apply to the secretary for the benefits provided by this subchapter.

(3) A designation of an opportunity zone under this section shall be for a period of ten years and may be extended by the secretary, upon application by the municipality, for one additional ten-year period.

(4) Applications from the town of Springfield for a designated opportunity zone and from qualified businesses and qualified redevelopers for approval of benefits shall be made in accordance with guidelines established by the secretary.

(5) The secretary shall issue a written decision granting or denying an application within 45 days of receipt of a completed application. If the secretary denies an application the decision shall state the reasons for the denial. The town of Springfield, a qualified business, and a qualified redeveloper denied designation or approval may submit a new application at any time.

(6) Decisions of the secretary are not subject to chapter 25 of Title 3 and shall be final and not reviewable.

(7) Beginning no later than 12 months after approval by the secretary, qualified businesses and qualified redevelopers shall annually submit a written report to the secretary verifying that the business continues to meet all the requirements of this section.

(8) The secretary is authorized to designate one opportunity zone in the town of Springfield in accordance with this subchapter.

(c) Qualified businesses and qualified redevelopers located in an opportunity zone are eligible for the following benefits:

(1) The sales tax exemption provided under 32 V.S.A. § 9741(48) for the building materials, machinery, equipment, or trade fixtures purchased for use in the opportunity zone.

(2) A ten-year exemption from the education tax imposed under 32 V.S.A. § 5402 on the nonresidential value of the redeveloped property.

(3) An annual income tax credit equal to three percent of the total wages and salaries paid during the taxable year to employees for services performed within the opportunity zone.

(4) Expedited processing of applications for state permits and other state approvals, with all applications being decided, where legally permissible, within 30 days of the receipt of a completed application.

(5) Priority consideration by any state agency for eligibility for state or federal funding or other aid to industrial development based on a cost-benefit analysis.

(6) Priority consideration for financing programs available through the Vermont economic development authority under chapter 12 of this title.

(7) Technical support from the department of public safety and the division for historic preservation for the rehabilitation of older and historic buildings.

(d) Property tax exemptions under this subchapter shall commence in the first tax year in which the qualified business or qualified redeveloper has made expenditures in the designated opportunity zone.

(e) Any benefits received by a qualified redeveloper related to the redevelopment, sale, or lease of improved space to a qualified business within an opportunity zone shall not also be separately available to a qualified business that purchases or leases all or part of the facility improved by the redeveloper.

(f) Benefits shall not be available for either of the following:

(1) Retail sales activities; or

(2) Relocating a business within Vermont to an opportunity zone.

(g) Benefits granted to a qualified business or a qualified redeveloper may be terminated and recaptured by the secretary upon determination that the qualified business or a qualified redeveloper is no longer in compliance with, or has failed to meet, the requirements of this section. A decision to terminate or recapture benefits shall not be subject to chapter 25 of Title 3 and shall be final and not reviewable.

(h) The secretary, on or before January 15, 2011, and biennially thereafter, shall report to the general assembly on the progress of the opportunity zone designated under this subchapter and its impact on new economic development and the creation of new jobs.

Sec. 2. 32 V.S.A. § 9741(48) is added to read:

(48) Sales of building materials, machinery, equipment, or trade fixtures incorporated into an opportunity zone designated by the secretary of commerce and community development.

* * * Green Growth Zones: Two Pilot Projects * * *

Sec. 3. FINDINGS AND PURPOSE

The general assembly finds that:

(1) The state of Vermont seeks to ensure that Vermonters obtain a greater measure of control over energy costs and the associated environmental impacts of energy use.

(2) The state of Vermont seeks to increase its efforts to limit its greenhouse gas emissions.

(3) The state of Vermont seeks to establish economic development opportunities within definable sites anchored with energy generation infrastructure that is renewable or efficiently utilized.

(4) The state of Vermont seeks to establish incentives to encourage energy generation that is renewable or efficiently utilized and seeks to establish incentives for enterprises or housing within defined areas for these purposes.

(5) The state of Vermont seeks to establish incentives for communities to host generation that is renewable or efficiently utilized.

(6) The 2009 comprehensive energy plan cites local and distributed generation as one of the policy directives that can make a difference.

(7) Local generation of the type envisioned by this legislation can serve to reduce electrical system losses associated with energy delivery and can effectively complement energy efficiency and demand response efforts, promoting the goal of meeting reliability needs in a least-cost manner.

(8) Advances in smart grid and advanced metering infrastructure can enable more creative and effective uses of distributed generation.

Sec. 4. 30 V.S.A. chapter 93 is added to read:

CHAPTER 93. GREEN GROWTH ZONES

§ 8101. DEFINITIONS

For purposes of this chapter:

(1) "District heating" means a system for distributing heat generated in a centralized location to multiple residential or commercial end-users. The source of heat may be a dedicated heat-only facility using renewable energy as

a fuel, waste heat from electrical generation to form a combined heat and power system, or waste heat from industry.

(2) "Economic incentive review board" or "board" shall have the meaning as defined in 32 V.S.A. § 5930a.

(3) "Electrical generation" means the production of electricity using renewable energy as a fuel source, or a combined heat and power system in compliance with 10 V.S.A. § 6523(b)(2).

(4) "Financing district" means a green growth zone tax increment financing district as defined in section 8103 of this chapter.

(5) "Green growth zone" means an identifiable, designated area in which electrical generation or district heating will be sited for the benefit of industrial, commercial, residential, or mixed-use development or of business retention within that area. A green growth zone shall be limited to properties that are directly served by the electrical or district heating facility, and encompass all or a portion of one or more of the following:

(A) a downtown development district designated as such pursuant to 24 V.S.A. § 2793;

(B) a growth center designated as such pursuant to 24 V.S.A. § 2793c;

(C) an existing industrial park that has received a land-use permit pursuant to chapter 151 of Title 10 or that was in existence prior to the enactment of chapter 151 of Title 10;

(D) an institutional campus, such as a college, university, or medical center.

(E) a downhill ski area as defined in 24 V.S.A. § 4412(8)(B).

(6) "Host community" means the municipality in which the green growth zone is located.

(7) "Regional development corporation" shall have the meaning as used in 24 V.S.A. § 2781(1).

(8) "Renewable energy" shall have the meaning as used in subdivision 8002(2) of this title.

§ 8102. PILOT PROJECTS; DESIGNATION PROCESS

(a) The economic incentive review board shall authorize no more than two green growth zone pilot projects that meet the requirements of this chapter. At least one of the two pilot projects shall generate energy using a combined heat and power system.

(b) The host community and the appropriate regional development corporation shall file jointly an application for a green growth zone designation with the economic incentive review board in a form and manner prescribed by the board. No application for a green growth zone shall be considered by the board unless and until it contains the following:

(1) A description and map of the physical boundaries of the proposed green growth zone, showing its location within the host community.

(2) A complete description of the existing industrial, commercial, and residential properties and the existing economic activity within the green growth zone; the proposed industrial, commercial, and residential development to occur within the green growth zone; and the proposed new economic activity to occur within the green growth zone, including the electrical generation or district heating.

(3) A complete description of how the proposed development within the green growth zone would be served by and benefit from the electrical generation, combined heat and power, or district heating.

(4) A letter submitted by the regional development corporation and the host community in support of the application and, if the host community has a town plan, the letter shall confirm that the proposed project is consistent with that plan.

(5) A letter issued by the department of public service confirming that the proposed electric generation project is consistent with the purposes of the clean energy development fund as established in 10 V.S.A. § 6523.

(6) A letter issued by the appropriate regional planning commission indicating that the regional impacts of the proposed project and selected site have been considered, and the project conforms with the applicable regional plan.

(c) The board may approve an application for a green growth zone on finding that each of the following is true:

(1) The application satisfies the requirements of subsection (a) of this section and all other applicable requirements of this chapter.

(2) If tax increment financing is used, as provided in section 8103 of this chapter:

(A) the green growth zone application includes a financing-district plan;

(B) the infrastructure to be financed by financing-district debt serves the district;

(C) the costs of the infrastructure to be paid using revenues from tax increment financing are reasonably proportional to the extent to which the infrastructure serves the district; and

(D) the boundaries of the green growth zone and financing district are reasonable and contained to include existing or new commercial, industrial, or residential units that will be directly served by the provision of electricity or building heat from the proposed electrical generation or district heating. Properties not served by the proposed electrical generation or district heating facility shall not be included within a green growth zone.

(d) Beginning January 1, 2010, and annually thereafter, the executive director of the economic incentive review board and the commissioner of public service shall submit a report to the senate committees on economic development, housing and general affairs and on finance, the house committees on ways and means and on commerce and economic development, and the governor, which shall include an update on progress made in the development of the pilot programs authorized under this chapter. The report also shall include an analysis of the costs and benefits of the projects as well as any recommendations consistent with the purposes of this chapter.

§ 8103. GREEN GROWTH ZONE TAX INCREMENT FINANCING

A municipality may create a tax increment financing district within the boundaries of a green growth zone, notwithstanding the approval criteria required under 32 V.S.A. § 5404a(h), but subject to the requirements and limitations of 32 V.S.A. § 5404a(f),(g), (i), and (j) and 24 V.S.A. subchapter 5.

§ 8104. RATES FOR ELECTRICITY AND HEAT

(a) Green growth zone rates are intended to retain or to attract new or expanded business activity to the green growth zone. All or a portion of the electricity and all of the heat generated by the electric generation and district heating within a green growth zone shall be made available to commercial enterprises or housing within the green growth zone. The pricing of the electricity and heat within the green growth zone shall be consistent with the goal of establishing lower energy bills or delivering premium environmental products for green growth zone customers.

(b) The public service board shall, by rule or order, establish a process for the green growth zone end-users to receive a discounted rate for the electricity generated within a green growth zone, and, for commercial or industrial end-users, a process for receiving an equitable back-up-rate.

(c) Excess electricity may be sold to the electric utility at the market rate or by contract.

§ 8105. PERMITTING

Electrical generation projects located within green growth zones that require a certificate of public good under section 248 of this title shall benefit from a rebuttable presumption that the criteria of subsection 248(b) of this title have been satisfied, except for the following enumerated subdivisions of that subsection:

(1) 248(b)(3) — the project will not adversely affect system stability and reliability;

(2) 248(b)(5) — the project will not have an undue adverse effect on historic sites, air and water purity, the natural environment, and the public health and safety, with due consideration having been given to the criteria specified in subdivisions 6086(a)(1)–(4) and (8) of Title 10 (excluding "scenic or natural beauty of the area, aesthetics");

(3) 248(b)(8) — the project does not involve a facility affecting or located on any segment of the waters of the state that has been designated as outstanding resource waters by the water resources board, except that with respect to a natural gas or electric transmission facility, the facility does not have an undue adverse effect on those outstanding water resources;

(4) 248(b)(10) — the project can be served economically by existing or planned transmission facilities without undue adverse effect on Vermont utilities or customers.

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

(h) Employment growth incentive for green growth zone businesses.

(1) For purposes of this subsection, a "green growth zone business" means a business that is subject to income taxation in Vermont and whose prospective economic activity in Vermont for which incentives are sought under this section will occur within the boundaries of a green growth zone as defined in 30 V.S.A. § 8101(1).

(2) Any application for an employment growth incentive under this section for a green growth zone business shall be considered and administered pursuant to all provisions of this section.

* * * Excess Meals and Rooms Tax; Travel and Tourism * * *

Sec. 6. ADDITIONAL FUNDING FOR TRAVEL AND TOURISM

(a) For fiscal year 2010, and in addition to any other funds appropriated to the department of tourism and marketing, it is the intent of the general assembly that an amount equal to 75 percent of the excess of the amount collected during fiscal year 2008 from meals and rooms tax over the amount

collected during the prior fiscal year shall be appropriated to the department of tourism and marketing.

(b) For fiscal years 2011 through 2016, and in addition to any other funds appropriated to the department of tourism and marketing, it is the intent of the general assembly that an amount equal to 75 percent of the excess of the amount collected during the immediately preceding fiscal year from meals and rooms tax over the amount collected during the prior fiscal year shall be appropriated to the department of tourism and marketing.

(c) Monies appropriated to the department of tourism and marketing under this section shall be used to support the promotion of Vermont's tourism industry.

(d) The additional amounts appropriated under this section shall not exceed $2,500,000.00 annually.

* * * Purchase of Firearms * * *

Sec. 7. 13 V.S.A. § 4014 is amended to read:

§ 4014. PURCHASE OF FIREARMS IN ~~CONTIGUOUS~~ OTHER STATES

Residents of the state of Vermont may purchase rifles and shotguns in ~~a~~ another state ~~contiguous to the state of Vermont~~ provided that such residents conform to the applicable provisions of the Gun Control Act of 1968, and regulations thereunder, as administered by the United States ~~Secretary of the Treasury~~ Bureau of Alcohol, Tobacco, Firearms and Explosives, and provided further that such residents conform to the provisions of law applicable to such purchase in the state of Vermont and in the ~~contiguous~~ state in which the purchase is made.

Sec. 8. 13 V.S.A. § 4015 is amended to read:

§ 4015. PURCHASE OF FIREARMS BY NONRESIDENTS

Residents of a state ~~contiguous to~~ other than the state of Vermont may purchase rifles and shotguns in the state of Vermont, provided that such residents conform to the applicable provisions of the Gun Control Act of 1968, and regulations thereunder, as administered by the United States ~~Secretary of the Treasury~~ Bureau of Alcohol, Tobacco, Firearms and Explosives, and provided further that such residents conform to the provisions of law applicable to such purchase in the state of Vermont and in the state in which such persons reside.

* * * Pet Vendors * * *

Sec. 9. FINDINGS AND INTENT

The general assembly finds that increased regulation of sales of domestic pets is needed to better protect the welfare of animals and to ensure that such transactions are fair and consistent with both the seller's and buyer's intent. In addition, enhanced regulatory oversight over pet sales through licensing requirements will increase the potential for the collection of tax revenue generated by such sales. In the 2004 pet merchant survey authorized by the Vermont general assembly, the Center for Research and Public Policy estimated that there could be up to $1,242,000.00 in uncollected sales tax revenue from the sale of dogs and cats.

Sec. 10. 20 V.S.A. § 3681 is amended to read:

§ 3681. PERMIT

The owner or keeper of ~~two~~ one or more domestic pets or wolf-hybrids four months of age or older kept for sale or for breeding purposes~~, except for his or her own use,~~ shall apply to the municipal clerk of the town or city in which the domestic pets or wolf-hybrids are kept for a kennel permit to be issued on forms prescribed by the ~~commissioner~~ secretary and pay the clerk a fee of $10.00 for the same. The provisions of subchapters 1, 2, and 4 of this chapter not inconsistent with this subchapter, shall apply to the permit which shall be in addition to other permits required. A kennel permit shall expire on March 31 next after issuance, and shall be displayed prominently on the premises on which the domestic pets or wolf-hybrids are kept. If the permit fee is not paid by April 1, the owner or keeper may thereafter procure a permit for that license year by paying a fee of ~~fifty~~ 50 percent in excess of that otherwise required. Municipal clerks shall maintain a record of the type of animals being kept by the permit holder. A person convicted of animal cruelty under section 352 of Title 13 shall not be eligible for a kennel permit under this section.

Sec. 11. 20 V.S.A. chapter 194 is amended to read:

CHAPTER 194. WELFARE OF ANIMALS; SALE OF ANIMALS

Subchapter 1. Generally

§ 3901. DEFINITIONS

As used in this chapter, unless the context clearly requires otherwise:

(1) "Adequate feed" means the provision at suitable intervals, not exceeding 24 hours, of a quantity of wholesome foodstuff suitable for the species and age, sufficient to maintain a reasonable level of nutrition in each animal. All foodstuff shall be served in a clean and sanitary manner.

(2) "Adequate water" means a constant access to a supply of clean, fresh, potable water provided in a sanitary manner or provided at suitable intervals for the species and not to exceed 24 hours at any interval.

(3) "Ambient temperature" means the temperature surrounding the animal.

(4) "Animal" means any dog or cat, rabbit, rodent, ~~nonhuman primate,~~ bird, or other warm-blooded vertebrate but shall not include horses, cattle, sheep, goats, swine, and domestic fowl.

(5) "Animal shelter" means a facility which is used to house or contain animals and is owned, operated, or maintained by a duly incorporated humane society, animal welfare society, society for the prevention of cruelty to animals, or other nonprofit organization devoted to the welfare, protection, and humane treatment of animals.

(6) "Secretary" means the secretary of agriculture, food and markets.

(7) "~~Dealer~~ Pet dealer" means any person, other than a pet shop, who sells, exchanges, or donates, or offers to sell, exchange, or donate animals~~, but shall not include a person who makes disposition only of offspring from animals maintained by him only as household pets~~.

(8) "Euthanize" means to humanely destroy an animal by a method producing instantaneous unconsciousness and immediate death, or by anesthesia produced by an agent which causes painless loss of consciousness and death during the loss of consciousness. "Euthanasia" means the humane destruction of animals in accordance with this subdivision.

(9) "Housing facility" means any room, building, or area used to contain a primary enclosure or enclosures.

(10) "Person" means any individual, partnership, firm, joint stock company, corporation, association, trust, estate, or other legal entity.

(11) "Pet shop" means a place of retail or wholesale business that is not part of a private dwelling where animals are bought, sold, exchanged, or offered for sale or exchange to the general public.

(12) "Primary enclosure" means any structure used to immediately restrict an animal or animals, excluding household pets, to a limited amount of space, such as a room, pen, cage, compartment, or hutch.

(13) "Public auction" means any place or establishment where dogs or cats are sold at auction to the highest bidder whether individually, as a group, or by weight.

(14) "Fair" means any public or privately operated facility where animals are confined for the purpose of display ~~and/or~~ or sale or both or for viewing.

(15) ~~"Pet merchant" means any person who operates a pet shop or who acts as a dealer.~~

(16) "Rescue organization" means an organization that accepts more than five animals in a calendar year for the purpose of finding adoptive homes for the animals and that:

(A) holds a license as a pet shop;

(B) is qualified as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code, but is not an animal shelter; or

(C) is registered as an animal shelter with the agency of agriculture, food and markets under section 3903 of this title.

(17) "Consumer" means an individual who purchases an animal from a person licensed or registered under this chapter.

Subchapter 2. Animal Welfare

§ 3902. REGISTRATION OF FAIRS

No person may operate a fair as defined under section 3901 of this title unless a certificate of registration for the fair has been granted by the secretary. Application for the certificate shall be made in a manner provided by the secretary. No fee shall be required for the certificate. Certificates of registration shall be valid for a period of one year or until revoked, and may be removed for like periods upon application in the manner provided.

§ 3903. REGISTRATION OF ANIMAL SHELTERS AND RESCUE ORGANIZATIONS

(a) No person may operate an animal shelter ~~after the expiration of six months following the effective date of this chapter~~ or rescue organization unless a certificate of registration for the animal shelter or rescue organization has been granted by the secretary. Application for the certificate shall be made in the manner provided by the secretary. No fee shall be required for the certificate. Certificates of registration shall be valid for a period of one year or until revoked, and may be renewed for like periods upon application in the manner provided.

(b) An animal shelter or rescue organization registered under this ~~chapter~~ subchapter shall not accept an animal unless the ~~donor~~ person transferring the animal to the animal shelter provides the following information: the name and address of the ~~donor~~ person transferring the animal and, if known, the name of the animal, its vaccination history, and other information concerning the

background, temperament, and health of the animal.

§ 3905. PUBLIC AUCTIONS

No person may operate a public auction as defined in this chapter after the expiration of six months following the effective date of this chapter unless a license to operate the auction has been granted by the secretary. The license period shall be April 1 to March 31 and the license fee shall be $10.00 for each license period or part thereof.

§ 3906. LICENSING OF PET ~~MERCHANTS~~ SHOPS

(a) No person may transact business as a pet ~~merchant~~ shop, as defined in this chapter, unless a license for that purpose has been granted by the secretary to that person. Application for the license shall be made in the manner provided by the secretary. The license period shall be April 1 to March 31 and the license fee shall be $150.00 for each license period or part thereof.

(b) [Repealed.]

§ 3907. DENIAL OR REVOCATION OF REGISTRATION OR LICENSE

Issuance of a certificate of registration may be denied to any animal shelter, rescue organization, or fair, or a license denied to any public auction, ~~or~~ pet ~~merchants~~ shop, or any certificate or license previously granted under this ~~chapter,~~ subchapter may be revoked by the secretary if, after public hearing, it is determined that the housing facilities or primary enclosures are inadequate for the purposes of this ~~chapter~~ subchapter, or if the feeding, watering, sanitizing, and housing practices of the animal shelter, rescue organization, fair, public auction, pet ~~merchant~~ shop, as the case may be, are not consistent with this ~~chapter~~ subchapter or with rules adopted under this ~~chapter~~ subchapter.

§ 3908. ADOPTION OF ~~REGULATIONS~~ RULES

The secretary may as he or she deems necessary adopt, amend, revise and repeal rules consistent with this ~~chapter~~ subchapter for the purpose of carrying out its purposes. The rules may include, but need not be limited to, provisions relating to humane transportation to and from registered or licensed premises, records of purchase and sale, identification of animals, primary enclosures, housing facilities, sanitation, euthanasia, ambient temperatures, feeding, watering, and adequate veterinary medical care, with respect to animals kept or cared for at premises licensed or registered under this ~~chapter~~ subchapter. The secretary may at his or her discretion, adopt in whole or in part those portions of the rules of the secretary of agriculture under Public Law 89-544, commonly known as the Laboratory Animal Welfare Act, which are consistent with the purposes of this ~~chapter~~ subchapter.

§ 3909. SALE OF ANIMALS BY HUMANE SOCIETY

The board of directors of an incorporated humane society shall determine the method of disposition of animals released by it. Any proceeds derived from the sale of animals by the society shall be paid to the clerk or treasurer of the humane society and no part of the proceeds shall accrue to any individual. Proceeds from the sale of animals by any person authorized by a municipality to dispose of such animals shall revert to the treasury of the municipality.

§ 3910. EXCEPTIONS

This ~~chapter~~ subchapter shall not apply to any place or establishment operated as an animal hospital under the supervision of a duly licensed veterinarian in connection with the treatment, alleviation, or prevention of diseases.

§ 3911. PENALTIES

(a) Any person licensed or registered under this ~~chapter,~~ subchapter who fails to provide animals under the person's care or custody with adequate food or adequate water, as defined in section 3901 of this title, or who fails to house animals in the person's care or custody in a manner which is adequate for their welfare, shall be fined not more than $500.00.

(b) Any person who operates a fair~~,~~ or public auction~~,~~ or who transacts business as a pet ~~merchant,~~ shop, animal shelter, or rescue organization without being duly licensed or without possessing a proper certificate of registration, as the case may be, as required under this ~~chapter~~ subchapter, or who violates any provision of this chapter or of any rule lawfully adopted under its authority for which no other penalty is provided~~,~~ shall be fined not more than $300.00 or imprisoned for not more than six months~~,~~ or both.

(c) The secretary may assess administrative penalties under sections 15–17 of Title 6, not to exceed $1,000.00, for violations of this chapter.

* * *

§ 3914. SPECIAL FUNDS

Fees collected under this chapter shall be credited to a special fund and shall be available to the agency of agriculture, food and markets to offset the cost of providing the services.

Subchapter 3. Sale of Dogs and Cats

§ 3921. SALE OF A DOG OR CAT; RESTITUTION

(a) If, within seven days following the sale of a dog or cat, a veterinarian of the consumer's choosing certifies the dog or cat to be unfit for purchase due to illness or the presence of signs of contagious or infectious disease or if, within

one year, the veterinarian certifies the existence of congenital malformation or hereditary disease, the consumer may act under subdivision (1) of this subsection, or if mutually agreed upon, under subdivision (2) or (3) of this subsection. The consumer may have:

(1) the right to return the dog or cat and receive a full refund of the purchase price, including sales tax, and reasonable veterinary fees related to certification under this section. A veterinary finding of common intestinal parasites in an otherwise healthy pet is not grounds for declaring a dog or cat unfit, nor is an injury or illness sustained subsequent to the consumer taking possession of a dog or cat;

(2) the right to return the dog or cat and receive an exchange dog or cat of the consumer's choice of equivalent value and reasonable veterinary costs related to certification under this subsection;

(3) the right to retain the dog or cat and receive reimbursement from the pet dealer or pet shop for reasonable veterinary service for the purpose of curing or attempting to cure the dog or cat. In no case shall this service exceed the purchase price of the dog or cat. Value of service is reasonable if it compares to similar service rendered by other veterinarians in the area, but in no case may it cover costs not directly related to the certification of unfitness.

(b) The secretary shall prescribe a form for and the content of the certificate to be used under subsection (a) of this section. The form shall include an identification of the type of dog or cat, the owner, date, and diagnosis, the treatment recommended, if any, and an estimated cost of the treatment. The form shall also include notice of the provisions of subsection (a) of this section.

(c) Every pet dealer or pet shop who sells a dog or cat to a consumer shall provide the consumer at the time of sale with the written form prescribed by the secretary. The notice may be included in a written contract, in a certificate of the history of the dog or cat, or in another separate document.

(d) The secretary shall prescribe by rule other information which shall be provided in writing by the pet dealer or pet shop to the consumer at the time of sale. Such information shall include a description of the dog or cat, including breed and date of purchase; the name, address, and telephone number of the consumer; and the purchase price. Certification of this document occurs when signed by the pet dealer or pet shop.

(e) Refund or reimbursement required under subsection (a) of this section shall be made within ten business days following receipt of the signed veterinary certification. The certification shall be presented to the pet dealer or pet shop within three business days by the consumer.

§ 3922. CHALLENGE BY PET DEALER OR PET SHOP

A pet dealer or pet shop may contest a demand for reimbursement, refund, or exchange under section 3921 of this title by requiring the consumer to produce the dog or cat for examination by a licensed veterinarian of the pet dealer's or pet shop's designation. If the consumer and the pet dealer or pet shop are unable to reach an agreement under provisions of this section within ten business days of an examination, the consumer may initiate an action in a court of competent jurisdiction in the locality where the consumer resides to obtain a refund, exchange, or reimbursement. Nothing in this section shall limit the rights or remedies which are otherwise available to the consumer under any other law.

§ 3923. ADMINISTRATIVE PENALTIES

The secretary may assess administrative penalties under sections 15–17 of Title 6, not to exceed $1,000.00, for violations of this chapter.

§ 3924. EXEMPTIONS

A duly incorporated humane society, rescue organization, or animal shelter which makes dogs or cats available for adoption is exempt from the requirements of this subchapter, except that dogs or cats that are imported into the state for sale, resale, exchange, or donation are not exempt when offered for adoption by a humane society, rescue organization, or animal shelter.

Subchapter 4. Health Certificates for Importation

§ 3931. HEALTH CERTIFICATE FOR TRANSPORT INTO STATE

A dog, cat, ferret, or wolf-hybrid imported into the state for sale, resale, exchange, or donation shall be accompanied by an official health certificate or similar certificate of inspection for the dog, cat, ferret, or wolf-hybrid issued by a veterinarian licensed in the state or country of origin. The certificate of health inspection shall certify that:

(1) the dog, cat, ferret, or wolf-hybrid has been inspected and is free of visible signs of infections or contagious or communicable disease; and

(2) if the dog, cat, ferret, or wolf-hybrid is more than three months of age, the dog, cat, ferret, or wolf-hybrid has a current rabies vaccination or is a specific breed for which a rabies vaccination is not age-appropriate.

§ 3932. RULEMAKING

The agency of agriculture, food and markets may adopt rules regarding the issuance and contents of a health certificate required under this subchapter.

Sec. 12. 20 V.S.A. § 3815 is amended to read:

§ 3815. DOG, CAT, AND WOLF-HYBRID SPAYING AND NEUTERING PROGRAM

(a) The agency of agriculture, food and markets shall establish by rule a process by which a qualified organization shall administer a program providing reduced-cost spaying and neutering services and presurgical immunization for dogs, cats, and wolf-hybrids owned by low income individuals.

(b) The program shall reimburse veterinarians who voluntarily consent to spay or neuter dogs, cats, and wolf-hybrids under the auspices of the program. The reimbursement shall be less any co-payment by the owner of a dog, cat, or wolf-hybrid for the cost of each spaying or neutering procedure.

(c) Only a dog, cat, or wolf-hybrid acquired by adoption shall be eligible for funding from the animal spaying and neutering program established under this section, except that a dog, cat, or wolf-hybrid imported into the state for sale, resale, exchange, or donation shall not be eligible for funding from the animal spaying and neutering program established under this section. For purposes of this subsection, a nominal fee or donation required for adoption of a dog, cat, or wolf-hybrid shall not constitute the purchase of the animal.

Sec. 13. REPEAL

Chapter 199 of Title 20 (sale of dogs and cats) is repealed on January 1, 2010.

Sec. 14. 20 V.S.A. § 3546 is amended to read:

§ 3546. INVESTIGATION OF ~~VICIOUS~~ DOMESTIC PETS OR WOLF-HYBRIDS; ORDER

* * *

~~(e) The procedures provided in this section shall not apply if the voters of a municipality, at a special or annual meeting duly warned for the purpose, have authorized the legislative body of the municipality to regulate domestic pets or wolf-hybrids by ordinances that are inconsistent with this section, in which case those ordinances shall apply.~~

Sec. 15. 20 V.S.A. § 3549 is amended to read:

§ 3549. DOMESTIC PETS OR WOLF-HYBRIDS, REGULATION BY TOWNS

The legislative body of a city or town by ordinance may regulate the keeping, leashing, muzzling, restraint, impoundment, and, in conformance with section 3546 of this title, destruction of domestic pets or wolf-hybrids and their running at large.

Sec. 16. 24 V.S.A. § 2291is 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:

* * *

(10) To regulate the keeping of dogs, and to provide for their leashing, muzzling, restraint, and impoundment~~, and destruction~~.

Sec. 17. EFFECTIVE DATES

(a) This section and Secs. 12 (spaying and neutering eligibility), 14 (investigation of pets), 15 (municipal regulation of domestic pets), and 16 (municipal authority to authorize destruction of pets) of this act shall take effect July 1, 2009.

(b) Secs. 10 (commercial kennel permit), 11 (sale of animals; health certificate), and 13 (repeal of 20 V.S.A. chapter 199) shall take effect January 1, 2010.

* * * Animal Control Officers * * *

Sec. 18. 13 V.S.A. § 351(4) is amended to read:

(4) "Humane officer" or "officer" means any law enforcement officer as defined in 23 V.S.A. § 4(11), auxiliary state police officers, deputy game wardens, humane society officer, elected or appointed animal control officer, employee or agent, local board of health officer or agent, or any officer authorized to serve criminal process.

* * * Next Generation of Workforce Development * * *

Sec. 19. REPEAL

Sec. 7(a)(3)(A) and (B) of No. 46 of the Acts of 2007 (specifying how monies appropriated for workforce development is to be apportioned between career exploration programs and alternative and intensive vocations/academic programs) is repealed.

Sec. 20. Sec. 6 of No. 46 of the Acts of 2007 is amended to read:

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

(a) The commissioner of labor shall be the leader of workforce development strategy and accountability. The commissioner of labor shall consult with ~~and chair a subcommittee of the workforce development council consisting of the secretary of human services, the commissioner of economic~~

~~development, the commissioner of education, four business members appointed by the governor, and a higher education member appointed by the governor. Membership on the subcommittee shall be coincident with the members' terms on the workforce development council~~ the workforce development council executive committee in developing the strategy, goals, and accountability measures. The workforce development council shall provide administrative support. The ~~subcommittee~~ executive committee shall assist the leader. The duties of the leader include all the following:

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

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

(A) a description of the mission and programs relating to preparing individuals for employment and meeting the needs of employers for skilled workers;

(B) the measurable accomplishments that have contributed to achieving the overarching goals;

(C) identification of any innovations made to improve delivery of services;

(D) future plans that will contribute to the achievement of the goals;

(E) the successes of programs to establish working partnerships and collaborations with other organizations that reduce duplication or enhance the delivery of services, or both; and

(F) any other information that the committee may deem necessary and relevant.

(3) reviewing information pursuant to subdivision (2) of this section that is voluntarily provided by education and training organizations that are not required to report this information but want recognition for their contributions;

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

(A) a compilation of the systemwide accomplishments made toward achieving the overarching goals, specific notable accomplishments,

innovations, collaborations, grants received, or new funding sources developed by participating agencies, institutions, and other education and training organizations;

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

(C) identification of areas needing improvement, including time frames, expected annual participation, and contributions, and the overarching goals; and

(D) recommendations for the allocating of next generation funds and other public resources.

(5) developing an integrated workforce strategy that incorporates economic development, workforce development, and education to provide all Vermonters with the best education and training available in order to create a strong, appropriate, and sustainable economic environment that supports a healthy state economy; and

(6) developing strategies for both the following:

(A) coordination of public and private workforce programs to assure that information is easily accessible to students, employees, and employers, and that all information and necessary counseling is available through one contact; and

(B) more effective communications between the business community and educational institutions, both public and private.

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

(c) Other entities, including public and private institutions of higher education, postsecondary and secondary programs, and other training providers who wish to participate in the process under subsection (b) of this section may do so by making a request in writing to the commissioner of labor and the

commissioner of economic development who shall make a decision regarding inclusion of such programs and the process for the collection of the necessary data.

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

Sec. 21. REPEAL

The following are repealed:

(1) Sec. 7(d) of No. 46 of the Acts of 2007 (accountability);

(2) 10 V.S.A. § 543(g) (accountability); and

(3) Section 5.801.1 of No. 192 of the Acts of the 2007 Adj. Sess. (2008).

* * * Report on Work-based Learning * * *

Sec. 22. WORK-BASED LEARNING REPORT

(a) On or before January 1, 2010, the career and technical education coordinator within the department of education, the commissioner of economic development or his or her designee, and the commissioner of labor or his or her designee, shall submit a report to the senate committee on economic development, housing and general affairs, the house committee on commerce and economic development, and the governor regarding work-based learning programs in Vermont.

(b) The report shall include an inventory of existing career and technical education (CTE) work-based learning programs and other non-CTE work-based learning opportunities, such as registered apprenticeships, high school internships, and postsecondary internships, as well as community-based learning programs. The report also shall include the amount and source of funding for each program; the number of personnel hired to administer each program; participation in each program; categorization of learning opportunities offered; and other relevant standards and outcomes. Finally, the report shall include recommendations relative to statewide and regional

coordination; creation of timely skill standards based on emerging or growing industry sectors; credentials that articulate postsecondary training and education; and the expansion, restructuring, or elimination of existing programs.

* * * Energy Workforce Stimulus * * *

Sec. 23. 16 V.S.A. chapter 37, subchapter 7 is added to read:

Subchapter 7. Energy Efficiency Training

§ 1594. ENERGY EFFICIENCY CURRICULUM

(a) The president of Vermont Technical College, director of the office of economic opportunity, commissioner of public service, commissioner of labor, assistant director for adult education, and Efficiency Vermont shall plan for and develop curriculum modules and deliver energy efficiency and renewable energy education and training at all levels, in order to develop a highly skilled workforce in Vermont that is prepared to participate in a growing energy-oriented industry sector.

(b) In all applicable content areas, the curriculum modules shall be designed to meet, at a minimum, the certification standards of the Building Performance Institute, other widely recognized certification standards, or a Vermont-specific certification developed in a process led by Vermont Technical College in collaboration with the aforementioned parties.

(c) The curriculum modules shall be offered through the Center for Sustainable Practices at Vermont Technical College and, on a regional basis, through the regional technical centers and the comprehensive high schools, including adult technical education programs, under agreed-upon terms where they can be appropriately incorporated into the curriculum, which will help prepare students of all ages for careers in the energy-efficiency industry.

(d) The department of labor shall not fund any single-service contract for the implementation of the modules developed in subsection (a) of this section or for the delivery of electrical and plumbing training programs offered under this section.

(e) Vermont Technical College and the regional technical centers shall request state fiscal stabilization funds available through the American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5, as well as other state or federal workforce training funds available through the Vermont departments of education and of labor, and through the Vermont Energy Investment Corporation. If sufficient funds are not received, then the Vermont Technical College and the regional technical centers are not required to offer the education and training programs outlined in this section.

* * * Time of Sale: Energy Efficiency Standards * * *

Sec. 24. Chapter 74A of Title 9 is added to read:

CHAPTER 74A. ENERGY EFFICIENCY RATING OF BUILDINGS

§ 2801. DEFINITIONS

For the purposes of this chapter:

(1) "Building" means all the buildings on a property.

(2) "Department" means the department of public safety.

§ 2802. ENERGY RATING REQUIRED; TRANSFER OF TITLE

(a) Beginning January 1, 2011, the seller of real property on which are located one or more buildings shall have the energy performance of all buildings on the property rated prior to transfer of title. Energy ratings required by this chapter shall be performed according to the technical specification established by the department and by individuals who meet the training and certification requirements established by the department. The following transfers of title are exempt from this requirement:

(1) Foreclosure.

(2) Between co-owners of property, spouses, or person related within the third degree on consanguinity.

(3) By a person who takes temporary possession of the property solely to facilitate the sale on behalf of another person who is unavailable because of relocation prior to transfer of title.

(4) Of a hunting camp.

(5) Of a building that is not heated and has no heating system.

(6) Of a building with very low every use, designed for a peak energy use of less than 3.4 Btu/hour per square foot of floor area.

(7) Of a property on which is a building that has a building energy rating that meets the requirement of the department that was completed no more than 15 years prior to the transfer of title.

(8) Of a property otherwise subject to this section, provided the buyer or the seller chooses not to avail himself or herself of the requirement of this section.

(b) A seller of a property subject to the requirements of subsection (a) of this section shall disclose to the prospective buyer the rating results and any recommendations for cost-effective energy improvements subject to specifications required by the department.

(c) Property transfer documents for property subject to the requirements of subsection (a) of this section shall include standard building energy rating forms provided by the department. These forms shall record the energy rating and labeling information required by the department. No property subject to the requirements of subsection (a) of this section shall be recorded by a municipal clerk with the inclusion of the energy rating forms.

Sec. 25. ENERGY EFFICIENCY RATING; FORMS; DEPARTMENT OF PUBLIC SERVICE

(a) The department of public service, in consultation with stakeholders, shall develop procedures, standards, and forms necessary to implement chapter 74A of Title 9. With the approval of the Vermont public service board, the department may delegate development of these procedures, standards, and forms to "energy efficiency utilities" appointed by the Vermont public service board. The procedures, standards, and forms shall include, at a minimum, the following:

(1) Technical standards for a building energy rating system.

(2) Training and certification standards and requirements for people providing time-of-sale building energy ratings. The training and certification shall be offered by regional technical education centers, comprehensive high schools, and adult training programs throughout the state.

(3) Specifications for standard building energy performance labels.

(4) Building energy rating forms to be included in property transfer documents and filed with municipal clerks at the time of transfer.

(5) Cost-effective standards for improving building energy performance.

(b) The department of public service shall:

(1) Complete the development of initial procedures, standards, and forms, no later than December 1, 2009.

(2) Monitor the implementation of time-of-sale building energy rating and labeling.

(3) Update procedures, standards, and forms as necessary.

Sec. 26. 32 V.S.A. § 9606(c) is amended to read:

(c) The property transfer return required under this section shall also contain a certificate in ~~such~~ a form ~~as~~ jointly prescribed by the secretary of the agency of natural resources and the commissioner of taxes ~~jointly shall prescribe~~ and shall be signed under oath or affirmation by each of the parties or their legal representatives. The certificate shall indicate all the following:

(1) ~~whether~~ Whether the transfer is in compliance with or is exempt from regulations governing potable water supplies and wastewater systems under chapter 64 of Title 10~~; and~~ .

(2) ~~that~~ That the seller has advised the purchaser that local and state building regulations, zoning regulations, subdivision regulations, and potable water supply and wastewater system requirements pertaining to the property may significantly limit the use of the property.

(3) That the seller has provided to the buyer a home energy rating performed within 15 years preceding the date of closing by a home energy rating organization accredited under 21 V.S.A. § 267.

* * * Downtown and Village Center Program Tax Credits * * *

Sec. 27. 32 V.S.A. § 5930ee is amended as follows:

§ 5930ee. LIMITATIONS

Beginning in fiscal year ~~2008~~ 2010 and thereafter, the state board may award tax credits to all qualified applicants under this subchapter, provided that:

(1) The total amount of tax credits awarded annually, together with sales tax reallocated under section 9819 of this title, does not exceed ~~$1,600,000.00~~ $2,000,000.00.

* * *

* * * CFED and the Unified Economic Development Budget * * *

Sec. 28. REPEAL

Section 1 of Title 10 (establishing the commission on the future of economic development) is repealed on July 1, 2009.

Sec. 29. 10 V.S.A. § 2(a) is amended to read:

(a) For purposes of evaluating the effect on economic development in this state, the ~~commissioner of finance and management, in collaboration with the~~ secretary of commerce and community development~~,~~ shall submit a unified economic development budget as part of the annual budget report to the general assembly under 32 V.S.A. § 306.

* * * Miscellaneous VEGI Amendments * * *

Sec. 30. 32 V.S.A. § 5930b(b)(2) is amended to read:

(2) The council shall review each application in accordance with section 5930a of this title, except that the council may provide for ~~a preliminary~~ an initial approval pursuant to the conditions set forth in subsection 5930a(c),

followed by a final approval at a later date, before December 31 of the calendar year in which the economic activity commences.

Sec. 31. RETROACTIVE APPLICATION

Sec. 30 of this act shall apply retroactively to all applications received on or after January 1, 2007.

Sec. 32. 32 V.S.A. § 5930a is amended to read:

§ 5930a. VERMONT ECONOMIC PROGRESS COUNCIL

* * *

(b)(1) The Vermont economic progress council, within 60 days of receipt of a complete application, shall approve or deny the following economic incentives:

~~(1)~~(A) tax stabilization agreements and exemptions under subdivision 5404a(a)(2) of this title;

~~(2) applications for allocation to municipalities of a portion of education grand list value and municipal liability from new economic development under subsection 5404a(e) of this title;~~ and

~~(3)~~(B) Vermont employment growth incentives (VEGI) under section 5930b of this title.

(2) All incentives are subject to application of the incentive ratio as determined under subdivision 5930b(b)(3) of this title and no tax stabilization agreement~~,~~ or exemption ~~or allocation~~ shall be approved except in conjunction with the approval of an incentive under subdivision (3) of this subsection.

* * *

(d) The council shall apply the cost-benefit model in reviewing applications under subdivisions (b)(1)~~,~~ and (2)~~, and (3)~~ of this section to determine the net fiscal benefit to the state. The cost-benefit model shall be a uniform and comprehensive methodology for assessing and measuring the projected net fiscal benefit or cost to the state of proposed economic development activities. Any modification of the cost-benefit model shall be subject to the approval of the joint fiscal committee. The cost-benefit analysis shall include consideration of the effect of the passage of time and inflation on the value of multi-year fiscal benefits and costs.

(1) In determining the projected net fiscal benefit or cost of the incentives considered under ~~subdivisions~~ subdivision (b)(1) ~~and (2)~~ of this section, the council shall calculate the net present value of the enhanced or forgone statewide education tax revenues, reflecting both direct and indirect economic activity. If the council approves an incentive pursuant to this

section, the net fiscal costs, if any, to the state shall be counted as if all those costs occurred in the year in which the council first approved the incentive and that cost shall reduce the amount of the annual authorization for such approvals established by the legislature for the applicable calendar year.

(2) In determining the projected net fiscal benefit or cost of the incentives considered under subdivision ~~(b)(3)~~ (b)(2) of this section, the council shall calculate the net present value of the enhanced or forgone state tax revenues attributable to the incentives, reflecting both direct and indirect economic activity over the five-year award period. If the council approves an incentive, the net fiscal costs, if any, to the state shall be counted as if all of those costs occurred in the year in which the council first approved the incentive and that cost shall reduce the amount of the council's annual authorization for approval of economic incentives as established by the legislature for the applicable calendar year.

(e) Only a business may apply for approval under subdivision ~~(b)(3)~~ (b)(2) of this section. A municipality and a business must apply jointly for approval of a tax stabilization agreement pursuant to ~~subdivisions~~ subdivision (b)(1) ~~and (2)~~ of this section.

* * *

Sec. 33. 32 V.S.A. § 5930b(f) is amended to read:

(f) The property of a business whose authority to earn, apply or retain incentives under this section has been revoked is ineligible for property tax stabilization under subdivision ~~5404a(a)(2)~~ 5404a(a)(1) of this title ~~or allocation of property tax value under subsection 5404a(e) of this title for any education property tax grand list~~ after the date of revocation.

* * * Small-Scale Hydroelectric Projects * * *

Sec. 34. FINDINGS

The general assembly finds and declares that:

(1) The generation of renewable power within Vermont is critical to the economic development, energy independence, and financial security of the state.

(2) Section 401 of the federal Clean Water Act, 33 U.S.C. § 1341, requires any applicant for a federal permit that may involve a discharge to navigable waters to obtain certification from the state that the permitted activity does not violate the state's water quality standards.

(3) As set forth in 10 V.S.A. § 1004, the secretary of natural resources is the agent that the U.S. Environmental Protection Agency delegated to conduct Clean Water Act § 401 certifications in the state of Vermont.

(4) The secretary of natural resources should be required to adopt rules establishing an application process for certification of hydroelectric projects in a timely manner that allows for the predictable and affordable development of small-scale hydroelectric power projects.

Sec. 35. 10 V.S.A. § 1006 is added to read:

§ 1006. CERTIFICATION OF HYDROELECTRIC PROJECTS; APPLICATION PROCESS

(a) As used in this section:

(1) "Bypass reach" means that area in a waterway between the initial point where water has been diverted through turbines or other mechanical means for the purpose of water-powered generation of electricity and the point at which water is released into the waterway below the turbines or other mechanical means of electricity generation.

(2) "Conduit" means any tunnel, canal, pipeline, aqueduct, flume, ditch, or similar constructed water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.

(3) "Hydroelectric project" means a facility, site, or conduit planned or operated for the generation of water-powered electricity that has a generation capacity of no more than five megawatts and does not create a new impoundment.

(4) "Impoundment" means any artificial structure used to collect water in a pond, reservoir or similar collection area for the purpose of water-powered generation of electricity.

(b) On or before December 15, 2009, the agency of natural resources, after opportunity for public review and comment, shall adopt by procedure a streamlined application process for the certification of hydroelectric projects in Vermont under Section 401 of the federal Clean Water Act.

(c) The application process adopted by the agency of natural resources under subsection (a) of this section shall include an application form for a federal Clean Water Act § 401 certification for a hydroelectric project that meets the requirements of the Vermont water pollution control permit rules. The application form shall require information about the hydroelectric project, including:

(1) A description of the location, manner, volume, nature, frequency, and duration of the discharge at the hydroelectric project;

(2) The name of the watershed and information related to the size, flow, and water quality of the impacted watershed;

(3) A description of the proposed hydroelectric project, including the location of the project and its design.

(d) The application process adopted by the agency of natural resources shall in the application form required under subsection (c) or in supplementary material describe the preliminary terms and conditions that an applicant shall be subject to if a federal Clean Water Act § 401 certification is issued for a proposed hydroelectric project.

(e) The application process adopted by the agency of natural resources under subsection (a) of this section shall include the following time frames for agency review of and response to an application for a federal Clean Water Act § 401 certification of a hydroelectric project:

(1) Within 30 days of receipt of an application, the agency of natural resources shall inform the applicant that the application has been received and that the application is administratively complete or the application is not administratively complete and must be amended to provide information required by the application form.

(2) Within 60 days of receipt of an administratively complete application, inform the applicant of all additional information that the agency shall require for review of the certification application. The agency of natural resources shall not subsequently amend or supplement this request for information, unless the proposal for the hydroelectric project is amended or altered by the applicant, the Federal Energy Regulatory Commission, or another applicable regulatory entity.

(3) Within 180 days of receipt of an administratively complete application, notify the applicant of its preliminary decision regarding the Clean Water Act § 401 certification. If the agency's preliminary decision is to issue the Clean Water Act § 401 certification, the agency shall provide notice to the public of the preliminary decision and the opportunity for public review and comment and the opportunity to request a hearing on the certification. Any request for a hearing under this subdivision shall be held within 30 days of the agency's notice of preliminary decision.

(4) Within one year of receipt of an administratively complete application for a Clean Water Act § 401 certification, the agency shall grant the Clean Water Act § 401 certification, grant the certification with conditions, or deny the certification. If an application for a Clean Water Act § 401 certification is denied, the agency shall provide the applicant with a detailed summary of the reasons for the denial and recommendations, if any, for amending the certification application. If the agency fails to act within one year from receipt of an administratively complete application, the state

expressly waives the requirement for a Clean Water Act § 401 certification consistent with its authority under 33 U.S.C. § 1341(a)(1).

(f) In adopting the Clean Water Act § 401 certification application process required by subsection (a) of this section, the agency may, consistent with its authority to waive certifications under 33 U.S.C. § 1341(a)(1), adopt an expedited certification process for:

(1) hydroelectric projects when data provided by an applicant provide reasonable assurance that the project will comply with the state water quality standards; and

(2) hydroelectric projects utilizing conduits; hydroelectric projects without a bypass reach; and hydroelectric projects with a de minimis bypass reach, as defined by the agency of natural resources.

(3) Previously certified hydroelectric projects operating in compliance with the terms of a Clean Water Act § 401 certification as demonstrated by existing administrative, monitoring, reporting, or enforcement data.

Sec. 36. AGENCY OF NATURAL RESOURCES REPORT ON APPLICATION PROCESS FOR CERTIFICATIONS ONHYDROELECTRIC PROJECTS

(a) On or before January 15, 2010, the agency of natural resources shall submit to the senate committee on economic development, housing and general affairs, the house committee on commerce and economic development, the house committee on fish, wildlife and water resources, and the house and senate committees on natural resources and energy a copy of the application process required under 10 V.S.A. § 1006 for the certification of hydroelectric projects.

(b) If the agency of natural resources fails to submit to the general assembly a final copy of the hydroelectric project application process required under 10 V.S.A. § 1006 by January 15, 2010, the state shall, consistent with its authority under 33 U.S.C. § 1341(a)(1), expressly waive the requirement for a hydroelectric project, as that term is defined in 10 V.S.A. § 1006, to obtain a Clean Water Act § 401 certification when the agency of natural resources fails within six months of receipt of a request by a hydroelectric project for a Clean Water Act § 401 certification to grant the hydroelectric project a certification, grant the certification with conditions, or deny the certification.

* * * Stormwater Permitting * * *

Sec. 37. 10 V.S.A. § 1264(f)(1) is amended to read:

(f)(1) In a stormwater-impaired water, the secretary may issue:

* * *

(C) ~~A general~~ General or individual ~~permit~~ permits that ~~is implementing~~ implement a TMDL or water quality remediation plan; or

* * *

Sec. 38. EXTENSION OF SUNSET

Sec. 10 of No. 140 of the Acts of the 2003 Adj. Sess. (2004), as amended by Sec. 8 of No. 154 of the Acts of the 2005 Adj. Sess. (2006), as amended by Sec. 3 of No. 43 of the Acts of 2007, is further amended to read:

Sec. 10. SUNSET

(a) Sec. 2 of this act (interim permitting authority for regulated stormwater runoff), except for subsection 1264a(e) of Title 10, shall be repealed on January 15, ~~2010~~ 2012.

(b) Sec. 4 of this act (local communities implementation fund) shall be repealed on September 30, 2012.

(c) Sec. 6 of this act (stormwater discharge permits during transition period) shall be repealed on January 15, ~~2010~~ 2012.

Sec. 39. ALTERNATIVE GUIDANCE FOR STORMWATER PERMITTING; WIND FACILITIES

To facilitate development of renewable energy projects in high-elevation settings, the Vermont department of environmental conservation shall consult with project developers and interested stakeholders and, by January 15, 2010, amend its rules or the stormwater management manual, pursuant to chapter 25 of Title 3, to include alternative guidance for construction and operational-phase stormwater permitting of renewable energy projects located in high-elevation settings. Such alternative guidance shall include consideration of measures that minimize the extent and footprint of stormwater-treatment practices so as to preserve vegetation and trees and limit disturbances; and that reflect the temporary nature and infrequent use of construction and access roads to such projects.

* * * Wireless Permitting: Certificates of Public Good * * *

Sec. 40. 30 V.S.A. § 248a is amended to read:

§ 248a. CERTIFICATE OF PUBLIC GOOD FOR MULTIPLE TELECOMMUNICATIONS FACILITIES

(a) Notwithstanding any other provision of law, if the applicant ~~in a single application~~ seeks approval for the construction or installation ~~within three years~~ of ~~three or more~~ telecommunications facilities ~~as part of an interconnected network~~ which are to be interconnected with other telecommunications facilities proposed or already in existence, the applicant

may obtain a certificate of public good issued by the public service board under this section, ~~which the~~ and shall not be required to obtain a permit or amendment under 10 V.S.A. chapter 151 even if jurisdiction under that chapter previously applied to the facility. The board may grant a certificate of public good if it finds that the facilities will promote the general good of the state consistent with subsection 202c(b) of this title. A single application may seek approval of one or more telecommunications facilities.

(b) For the purposes of this section:

(1) "Telecommunications facility" means ~~any~~ a communications facility that transmits and receives signals to and from a local, state, national, or international network used primarily for two-way communications for commercial, industrial, municipal, county, or state purposes and any associated support structure ~~extending more than 50 feet above the ground~~ that is proposed for construction or installation which is primarily for communications purposes ~~and which supports facilities that transmit and receive communications signals for commercial, industrial, municipal, county, or state purposes~~, and any ancillary improvements which are proposed for construction or installation and which are primarily intended to serve the communications facilities or support structure.

(2) ~~Telecommunications facilities are "part of an interconnected network" if those facilities would allow one or more communications services to be provided throughout a contiguous area of coverage created by means of the proposed facilities or by means of the proposed facilities in combination with other facilities already in existence~~ An applicant may seek approval of replacement, construction, installation, enhancement, or improvement of a telecommunications facility, whether or not the telecommunications facility is attached to a preexisting structure.

(c) Before the public service board issues a certificate of public good under this section, it shall find that~~, in the aggregate~~:

(1) the proposed facilities will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, and the public health and safety, with due consideration having been given to the relevant criteria specified in subsection 1424a(d) and subdivisions 6086(a)(1) through (8) and (9)(K) of Title 10; ~~and~~

(2) unless there is good cause to find otherwise, substantial deference has been given to the land conservation measures in the plans of the affected municipalities and the recommendations of the municipal and regional planning commissions regarding the municipal and regional plans, respectively; and

(3) the proposed telecommunications facility does not exceed 200 feet in height.

(d) When issuing a certificate of public good under this section, the board shall give due consideration to all conditions in an existing state or local permit and shall harmonize the conditions in the certificate of public good with the existing permit conditions to the extent feasible.

(e) No less than 45 days prior to filing a petition for a certificate of public good under this section, the applicant shall serve written notice of an application to be filed with the board pursuant to this section to the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities; the secretary of the agency of natural resources; the commissioner of the department of public service and its director for public advocacy; and the landowners of record of property adjoining the project sites, unless the board determines that good cause exists to waive or modify the notice requirement with respect to such landowners. In addition, at least one copy of each application shall be filed with each of these municipal and regional planning commissions. Upon motion or otherwise, the public service board shall direct that further public or personal notice be provided if the board finds that such further notice will not unduly delay consideration of the merits and that additional notice is necessary for fair consideration of the application.

(f) Unless the public service board identifies that an application raises a substantial issue, the board shall issue a final determination on an application filed pursuant to this section within 90 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 90 days of the date on which the clerk of the board notifies the applicant that the filing is complete. If the board rules that an application raises a substantial issue, it shall issue a final determination on an application filed pursuant to this section within 180 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 180 days of the date on which the clerk of the board notifies the applicant that the filing is complete.

(g) Nothing in this section shall be construed to prohibit an applicant from executing a letter of intent or entering into a contract before the issuance of a certificate of public good under this section, provided that the obligations under that letter of intent or contract are made subject to compliance with the requirements of this section.

(h) An applicant using the procedures provided in this section shall not be required to obtain a ~~local zoning~~ permit or a permit amendment under the provisions of Title 24, including chapters 83 and 117, or chapter 151 of Title 10 for the facilities subject to the application or to a certificate of public

good issued pursuant to this section. Ordinances adopted pursuant to subdivision 2291(19) of Title 24 or a municipal charter that would otherwise apply to the construction or installation of facilities subject to this section are preempted. Disputes over jurisdiction under this section shall be resolved by the public service board, subject to appeal as provided by section 12 of this title. An applicant that has obtained or been denied a permit amendment under the provisions of Title 24 (including chapters 83 and 117) or chapter 151 of Title 10 for the construction of a telecommunications facility may not apply for approval from the board for the same or substantially the same facility, except that an applicant may seek approval for a modification to any such permitted facility. In modifying a permitted facility, the board shall give due notice and consideration to the relevant municipal or district commission decision.

(i) ~~Effective July 1, 2010, no new applications for certificates of public good under this section may be considered by the board.~~ Repealed.

(j)(1) Minor applications. The board may, subject to such conditions as it may otherwise lawfully impose, issue a certificate of public good in accordance with the provisions of this subsection and without the notice and hearings otherwise required by this chapter if the board finds that the facilities will be of limited size and scope, and the petition does not raise a significant issue with respect to the substantive criteria of this section. If an applicant requests approval of multiple telecommunications facilities in a single application under this section, the board may issue a certificate of public good in accordance with the provision of this subsection for all or some of the telecommunications facilities described in the petition.

(2)(A) Any party seeking to proceed under the procedures authorized by this subsection shall file a proposed certificate of public good and proposed findings of fact with its petition, and provide notice and a copy of the petition, proposed certificate of public good, and proposed findings of fact to the commissioner of the department of public service and its director for public advocacy, the secretary of the agency of natural resources, and each of the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities. The applicant shall give written notice of the proposed certificate to the landowners of record of property adjoining the project site or sites, unless the board determines that good cause exists to waive or modify the notice requirement with respect to such landowners, and to any other person to which the board has directed by rule or order to receive such notices. Such notice shall request comment to the board within 21 days of the notice on the question of whether the petition raises a substantial issue with respect to the substantive criteria of this section.

(B) If a party makes a request under the procedures authorized by this subsection, and if the board does not find that the petition raises a substantial issue, the board shall issue a final determination on an application filed pursuant to this section within 45 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 45 days of the date on which the clerk of the board notifies the applicant that the filing is complete.

(C) If the board denies a request to consider an application under the procedures of this subsection, a filing made under this subsection that the board has found to be complete shall be deemed to satisfy notice requirements of subsection (e) of this section, and to have been made 45 days after receipt by the board for purposes of subsections (e) and (f).

(k) The public service board may issue rules or orders implementing and interpreting this section. In developing such rules and orders the board shall encourage collocation on existing support structures and seek to simplify the application and review process as appropriate, and may by rule or order waive the requirements of this section that the board determines are not applicable to telecommunication facilities of limited size or scope. Determination by the board that a petition raises a substantial issue with regard to one or more substantive criteria of this section shall not prevent the board from waiving other substantive criteria that it has determined are not applicable to such a telecommunications facility.

(l)(1) An application or permit under this section shall be subject to all authorities of the department and the board relating to sanctions, costs, enforcement, and injunctive relief, including sections 9, 10(f), 11(a), 30, and 32 of this title.

(2) The board shall reject an application under this section that misrepresents a material fact and may award reasonable attorney's fees and costs to any party or person who may have become a party but for the misrepresented fact, or who has incurred attorney's fees or costs in connection with the application.

(3) The board may revoke a permit issued under this section on a determination, after notice and opportunity for hearing, that the permittee violated the terms of the permit or an applicable statute or board rule or order or obtained the permit based on misrepresentation of material fact.

Sec. 41. 10 V.S.A. § 6001c is amended to read:

§ 6001c. JURISDICTION OVER BROADCAST AND COMMUNICATION SUPPORT STRUCTURES AND RELATED IMPROVEMENTS

In addition to other applicable law, any support structure proposed for

construction, which is primarily for communication or broadcast purposes and which will extend vertically 20 feet~~,~~ or more~~,~~ above the highest point of an attached existing structure or 50 feet~~,~~ or more~~,~~ above ground level in the case of a proposed new support structure, in order to transmit or receive communication signals for commercial, industrial, municipal, county, or state purposes, shall be a development under this chapter, independent of the acreage involved. If jurisdiction is triggered for such a support structure, then jurisdiction will also extend to the construction of improvements ancillary to the support structure, including buildings, broadcast or communication equipment, foundation pads, cables, wires, antennas, or hardware, and all means of ingress and egress to the support structure. To the extent that future improvements are not ancillary to the support structure and do not involve an additional support structure, those improvements shall not be considered a development, unless they would be considered a development under this chapter in the absence of this section. The criteria and procedures for obtaining a permit under this section shall be the same as for any other development, and the same authorities for revocation, enforcement, sanctions, or award of costs shall apply as for any other development, including sections 6003 and 6027 and chapters 201 and 211 of this title and subsection 1001(b) of Title 4.

Sec. 42. 10 V.S.A. § 6027 is amended to read:

§ 6027. POWERS

* * *

(l) A district commission shall reject an application under this chapter that misrepresents any material fact and may after notice and opportunity for hearing award reasonable attorney's fees and costs to any party or person who may have become a party but for the false or misleading information, or who has incurred attorney's fees or costs in connection with the application.

Sec. 43. 24 V.S.A. § 4455 is added to read:

§ 4455. ENFORCEMENT; REVOCATION; TELECOMMUNICATIONS

All authorities for enforcement, sanctions, and award of costs applicable to a municipal land use permit issued under chapter, including sections 1974a, 4551, 4452, and 4454 of this title, shall apply to telecommunications facilities requiring such permits. On petition by the municipality and after notice and opportunity for hearing, the environmental court may revoke a municipal land use permit issued under this chapter, including a permit for a telecommunications facility, on a determination that the permittee violated the terms of the permit or obtained the permit based on misrepresentation of material fact.

Sec. 44. 24 V.S.A. § 4470a is added to read:

§ 4470a. MISREPRESENTATION, MATERIAL FACT

An administrative officer or appropriate municipal panel shall reject an application under this chapter, including an application for a telecommunication facility, that misrepresents any material fact. After complying with section 809 of Title 3, an appropriate municipal panel may award reasonable attorney's fees and costs to any party or person who may have become a party but for the false or misleading information, or who has incurred attorney's fees or costs in connection with the application.

* * * Wireless Permitting: Act 250 and Municipal Regulation * * *

Sec. 45. 10 V.S.A. § 6081(m) is amended to read:

(m) No permit is required for the replacement of a preexisting telecommunications facility~~, in existence prior to July 1, 1997, provided the facility is not a development as defined in subdivision 6001(3) of this title, unless the replacement would constitute a substantial change to the telecommunications facility being replaced, or to improvements ancillary to the telecommunications facility, or both~~ of any height, in existence for at least ten years, provided that the replacement facility is of equal or lesser size and that there are no more than eight new antennae attached to the facility, of which two may be no more than 13 square feet each and the remainder no more than five square feet each. No permit is required for repair or routine maintenance of a preexisting telecommunications facility or of those ancillary improvements associated with the telecommunications facility.

Sec. 46. 10 V.S.A. § 6081(n) is amended to read:

(n)(1) No permit amendment is required for the replacement of a permitted telecommunications facility ~~unless~~ of any height, provided that the replacement ~~would constitute a material or substantial change to the permitted telecommunications~~ facility ~~to be replaced, or to improvements ancillary to the telecommunications facility, or both~~ is of equal or lesser size and that there are no more than eight new antennae attached to the facility, of which two may be no more than 13 square feet each and the remainder no more than five square feet each. No permit is required for repair or routine maintenance of a permitted telecommunications facility or of those ancillary improvements associated with the telecommunications facility.

(2) No permit or permit amendment is required for:

(A) up to eight new antennae attached to an existing structure, of which two may be no more than 13 square feet each and the remainder may be no more than five square feet each, and which do not extend more than 12 feet above the highest point of the existing structure to which they are attached; or

(B) ancillary improvements not exceeding 50 cubic feet on a foundation not exceeding 100 square feet.

Sec. 47. 24 V.S.A. § 4412(8) is amended to read:

(8)(A) Communications antennae and facilities. Except to the extent bylaws protect historic landmarks and structures listed on the state or national register of historic places, no permit shall be required for:

(i) placement of antennae used to transmit, receive, or transmit and receive communications signals on that property owner's premises if ~~the aggregate area of the largest faces of the antennae is not more than eight square feet~~ there are no more than eight new antennae attached to the facility, of which two may be no more than 13 square feet each and the remainder no more than five square feet each, and if the antennae and any ~~mast~~ support ~~does~~ structure do not extend more than 12 feet above the ~~roof of that portion~~ highest point of the ~~building~~ existing structure to which ~~the mast is~~ they are attached; or

(ii) ancillary improvements not exceeding 50 cubic feet on a foundation not exceeding 100 square feet.

(B) If an antenna structure is less than 20 feet in height and its primary function is to transmit or receive communication signals for commercial, industrial, institutional, nonprofit, or public purposes, it shall not be regulated under this chapter if it is located on a structure located within the boundaries of a downhill ski area and permitted under this chapter. For the purposes of this subdivision, "downhill ski area" means an area with trails for downhill skiing served by one or more ski lifts and any other areas within the boundaries of the ski area and open to the public for winter sports.

(C) The regulation of communications antennae and facilities that are part of a telecommunications facility, as defined in 30 V.S.A. § 248a, shall be exempt from municipal bylaw review under this chapter when and to the extent jurisdiction is assumed by the public service board according to the provisions of that section.

* * *

Sec. 48. 24 V.S.A. § 2291(19) is amended to read:

(19) To regulate the construction, alteration, development, and decommissioning or dismantling of wireless telecommunications facilities and ancillary improvements where the city, town, or village has not adopted zoning or where those activities are not regulated pursuant to a duly adopted zoning bylaw. Regulations regarding the decommissioning or dismantling of telecommunications facilities and ancillary structures may include requirements that bond be posted, or other security acceptable to the legislative

body, in order to finance facility decommissioning or dismantling activities. These regulations are not intended to prohibit seamless coverage of wireless telecommunications services. With respect to the construction or alteration of wireless telecommunications facilities subject to regulation granted in this section, the town, city, or incorporated village shall vest in its local regulatory authority the power to determine whether the installation of a wireless telecommunications facility, whatever its size, will impose no impact or merely a de minimis impact on the surrounding area and the overall pattern of land development, and if the local regulatory authority, originally or on appeal, determines that the facility will impose no impact or a de minimis impact, it shall issue a permit. No ordinance authorized by this section, except to the extent structured to protect historic landmarks and structures listed on the state or national register of historic places may have the purpose or effect of limiting or prohibiting a property owner's ability to place or allow placement of:

(A) antennae used to transmit, receive, or transmit and receive communications signals on that property owner's premises if ~~the aggregate area of the largest faces of the antennae is not more than eight square feet~~ there are no more than eight new antennae attached to the facility, or which two may be no more than 13 square feet each and the remainder may be no more than five square feet, and if the antennae and ~~the mast to which they are attached~~ any support structure do not extend more than 12 feet above the ~~roof of that portion~~ highest point of the ~~building~~ existing structure to which they are attached; or

(B) ancillary improvements not exceeding 50 cubic feet on a foundation not exceeding 100 square feet.

* * * Indirect Air Source: Repeal of Permit Requirements * * *

Sec. 49. 10 V.S.A. § 556(i) is added to read:

(i) Notwithstanding any provisions of this section, any rule of the secretary requiring permits for the construction or modification of indirect sources, including any building, structure, facility, installation, or combination thereof that has or leads to associated mobile source activity as a result of which any air contaminant is or may be emitted, is hereby repealed.

* * * Act 250 Exemptions: Hazardous Materials Remediation; Telecommunications Facilities * * *

Sec. 50. 10 V.S.A. § 6001(3)(D) is amended to read:

(D) The word "development" does not include:

(i) The construction of improvements for farming, logging or forestry purposes below the elevation of 2,500 feet.

(ii) The construction of improvements for an electric generation or transmission facility that requires a certificate of public good under ~~section~~ 30 V.S.A. § 248 ~~or~~, a natural gas facility as defined in ~~subdivision~~ 30 V.S.A. § 248(a)(3), or a telecommunications facility issued a certificate of public good under 30 V.S.A. § 248a.

(iii) [Repealed.]

(iv) The construction of improvements for agricultural fairs that are open to the public for 60 days per year, or fewer, provided that any improvements constructed do not include one or more buildings.

(v) The construction of improvements for the exhibition or showing of equines at events that are open to the public for 60 days per year, or fewer, provided that any improvements constructed do not include one or more buildings.

(vi) The construction of improvements for any one of the following:

(I) A remedial or removal action for which the secretary of natural resources has authorized disbursement under section 1283 of this title.

(II) Abating a release or threatened release, as directed by the secretary of natural resources under section 6615 of this title.

(III) A remedial or removal action directed by the secretary of natural resources under section 6615 of this title.

(IV) A corrective action authorized in a corrective action plan approved by the secretary of natural resources under section 6615b of this title.

(V) A corrective action authorized in a corrective action plan approved by the secretary of natural resources under subchapter 3 of chapter 159 of this title.

* * * Agency of Natural Resources General Permits * * *

Sec. 51. 10 V.S.A. chapter 165 is added to read:

CHAPTER 165. GENERAL PERMIT AUTHORITY

§ 7500. PURPOSE AND DEFINITIONS

(a) This chapter is intended to provide for the protection of human health and the environment while allowing the secretary to utilize general permits as appropriate to streamline permitting processes and gain administrative efficiencies.

(b) When used in this chapter:

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

(2) "Commissioner" means the commissioner of the department or the commissioner's duly authorized representative.

(3) "Department" means the department of environmental conservation.

(4) "General permit" means a permit that applies to a class or category of discharges, emissions, disposal, facilities, or activities within a common geographic area, including the entire state or a region of the state. For a class or category to be eligible to be placed under a general permit under this chapter, the class or category must meet each of the following:

(A) The discharges, emissions, disposal, facilities, or activities must share the same or substantially similar qualities.

(B) Those qualities must be such that the requirements of statute and rule applicable to the discharges, emissions, disposal, facilities, or activities can be met and human health and the environment protected by imposition of the same or substantially similar permit conditions on the class or category.

(5) "Individual permit" means a permit that authorizes a specific discharge, emission, disposal, facility, or activity that contains terms and conditions that are specific to the discharge, emission, disposal, facility, or activity.

(6) "Secretary" means the secretary of the agency or the secretary's duly authorized representative.

§ 7501. GENERAL PERMITS

(a) When the secretary deems it to be appropriate and consistent with the purpose of this chapter, the secretary may issue a general permit under the following chapters, as specified, of this title: chapter 23 (air pollution control) for stationary source construction and operation permits; chapter 37 (water resources management) for aquatic nuisance control permits; chapter 41 (regulation of stream flow) for stream alteration permits; chapter 56 (public water supply) for construction permits; and chapter 159 (waste management) for solid waste transfer station and recycling certifications and categorical certifications.

(b) A general permit issued under this chapter shall contain those terms and conditions necessary to ensure that the category or class subject to the general permit will comply with the provisions of the statutes and the rules adopted under those statutes applicable to the category or class. These terms and conditions may include providing for specific emission or effluent limitations and levels of treatment technology; monitoring, recording, or reporting; the right of access for the secretary; and any additional conditions or requirements the secretary deems necessary to protect human health and the environment.

(c) This chapter is in addition to any other authority granted to the agency or department.

(d) The secretary may adopt rules to implement this chapter.

§ 7502. ISSUANCE OF GENERAL PERMITS; PUBLIC PARTICIPATION

(a) When, under section 7501 of this title, the secretary determines to issue a general permit, the secretary shall prepare a proposed general permit and shall provide for public notice of the permit in a manner designed to inform interested and potentially interested persons of the proposed general permit.

(1) Notice of the proposed general permit shall be circulated within each geographic area to which the permit would apply and shall include at least all of the following:

(A) Written notice to the clerk of each municipality within the geographic area.

(B) Written notice to each affected Vermont state agency and such other government agencies as the secretary deems appropriate.

(C) Publication of notice of the proposed permit in a newspaper or newspapers that circulate generally within each geographic area to which the permit would apply.

(D) Posting of notice and a copy of the proposed general permit prominently on the web page of the department.

(E) Mailing of notice and a copy of the proposed general permit to any individual, group, or organization upon request.

(F) The inclusion in any notice issued under this subsection of a summary of the proposed general permit, including a summary of the activities to which it would apply and its terms and conditions; the deadlines by which comments are to be submitted and a public information meeting requested; the procedure for submitting comments and requesting a public information meeting; the contact information for the agency or department concerning the proposed permit; and a statement of how a copy of the proposed general permit may be obtained.

(2) The secretary shall provide a period of not less than 30 days following the date of publication in a newspaper or newspapers of general circulation during which any person may submit written comments on the proposed general permit.

(b) The secretary shall provide an opportunity for any person, state, province, or country potentially affected by the proposed general permit to request a public informational meeting with respect to the proposed permit.

(1) The deadline for any request under this subsection shall be no earlier than the deadline for submitting written comments set under subdivision (a)(2) of this section. The secretary shall hold an informational meeting if there is a significant public interest in holding a meeting.

(2) The secretary shall provide public notice of any informational meeting in at least the same manner as public notice of the proposed general permit was given under subsection (a) of this section, except that the secretary need not set a new comment deadline or provide, with the notice of the meeting, a copy of the proposed general permit to any person or entity to which the secretary has already provided a copy.

(3) Any person shall be permitted to submit oral or written statements and data concerning the proposed general permit at the informational meeting.

(4) All statements, comments, and data presented at the meeting shall be retained by the secretary and considered in the formulation of the secretary's determinations regarding the final general permit.

(c) Whether or not requested, the secretary may hold a public informational meeting on a proposed general permit at any time prior to final decision on and issuance of the general permit. The provisions of subdivisions (b)(2) through (4) of this section shall apply to such a meeting.

(d) The secretary may finally adopt a general permit following consideration of any written comments submitted on the general permit and any statements, comments, and data presented at a public information meeting on the permit. Where the secretary decides, in finally adopting a proposed general permit, to overrule substantial arguments and considerations raised for or against the original proposal, the secretary's final adoption of the general permit shall include a responsiveness summary stating the reasons for the secretary's decision.

(e) On final adoption of a general permit, the secretary shall provide notice of the permit's final adoption and an accompanying responsiveness summary in at least the same manner as notice of the proposed general permit was issued under subdivision (a)(1) of this section, except that the secretary need not set or include further deadlines for comment or requesting an informational meeting.

§ 7503. AUTHORIZATION UNDER A GENERAL PERMIT

(a) Any person wishing to discharge, emit, dispose, or operate a facility or engage in activity subject to a general permit under this chapter shall file an application for authorization under the general permit on a form provided by the secretary. Each application shall be accompanied by a fee as specified by section 2822 of Title 3.

(b) For each application under this section, the applicant shall provide notice, on a form provided by the secretary, to the clerk of the municipality in which the discharge, emission, disposal, facility, or activity is located. The applicant shall provide a copy of this notice to the secretary, with such confirmation as the secretary deems adequate to demonstrate that the clerk has received the notice. Following receipt of that confirmation, the secretary shall provide an opportunity of at least ten working days for written comment regarding whether the application complies with the terms and conditions of the general permit under which coverage is sought.

(c) The secretary may grant an application for authorization to discharge, emit, dispose, operate a facility, or engage in activity to which a general permit under this chapter applies only after determining that each of the following applies:

(1) The filings required in subsections (a) and (b) of this section are complete.

(2) The discharge, emission, disposal, facility, or activity is eligible for coverage under and will meet the terms and conditions of the general permit.

(d) The secretary may:

(1) Allow a transfer from one person or entity to another of an authorization to discharge, emit, dispose, operate a facility, or engage in activity under a general permit issued under this chapter.

(2) Require notification to the secretary for changes to a discharge, emission, disposal, facility, or activity for which authorization has been issued under a general permit under this chapter.

(3) Under the procedures specified in subsection 814(c) of Title 3, revoke or suspend authorization to discharge, emit, dispose, operate a facility, or engage in activity under a general permit issued under this chapter.

§ 7504. REQUIRING AN INDIVIDUAL PERMIT

The secretary may require any applicant for or permittee authorized under a general permit issued under this chapter to apply for an individual permit. Any interested person may petition the secretary to take action under this section. The secretary may require an individual permit if any one of the following applies:

(1) The discharge, emission, disposal, facility, or activity is a significant contributor of pollution as determined by consideration of each of the following factors:

(A) The location of the discharge with respect to waters of the state of Vermont.

(B) The size and scope of the applicant's or permittee's activities or operation.

(C) The quantity and nature of the pollutants.

(D) Other relevant factors.

(2) The permittee is not in compliance with the terms and conditions of a general permit issued under this chapter.

(3) The application does not qualify for a general permit issued under this chapter.

(4) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of wastes or pollutants applicable to the discharge, emission, disposal, facility, or activity.

(5) Federal requirements have been adopted that conflict with one or more provisions of a general permit issued under this chapter.

§ 7505. REQUIRING AUTHORIZATION UNDER A GENERAL PERMIT

The secretary may require that a discharge, emission, disposal, facility, or activity for which issuance or reissuance of an individual permit is sought be subject to a general permit issued under this chapter if the secretary finds that the discharge, emission, disposal, facility, or activity is eligible for coverage under and will meet the terms and conditions of the general permit and that authorization of the discharge, emission, disposal, facility, or activity under a general permit will protect human health and the environment.

Sec. 52. REPORT AND SUNSET

(a) On April 1, 2011, and again on April 1, 2014, the secretary of natural resources shall submit a report to the senate committees on natural resources and on economic development, housing and general affairs, the house committees on natural resources and on commerce and economic development, and the governor regarding the implementation, compliance, and enforcement of general permits under chapter 165 of Title 10.

(b) Chapter 165 of Title 10 shall sunset on July 1, 2014; however, the sunset shall not affect any permit granted prior to July 1, 2014 under chapter 165 of Title 10.

* * * Environmental Ticketing * * *

Sec. 53. 10 V.S.A. § 8019 is added to read:

§ 8019. ENVIRONMENTAL TICKETING

(a) The secretary and the board each shall have the authority to adopt rules for the issuance of civil complaints for violations of their respective enabling

statutes or rules adopted under those statutes that are enforceable in the judicial bureau pursuant to the provisions of chapter 29 of Title 4. Any proposed rule under this section shall include both the full and waiver penalty amounts for each violation. The maximum civil penalty for any violation brought under this section shall not exceed $3,000.00 exclusive of court fees.

(b) A civil complaint issued under this section shall preclude the issuing entity from seeking an additional monetary penalty for the violation specified in the complaint when any one of the following occurs: the waiver penalty is paid, judgment is entered after trial or appeal, or a default judgment is entered. Notwithstanding this preclusion, the agency and the board may issue additional complaints or initiate an action under chapter 201 of this title, including a monetary penalty when a violation is continuing or is repeated, and may also bring an enforcement action to obtain injunctive relief or remediation and, in such additional action, may recover the costs of bringing the additional action and the amount of any economic benefit the respondent obtained as a result of the underlying violation in accordance with 10 V.S.A. § 8010(b)(7) and (c)(1).

(c) The secretary or board chair and his or her duly authorized representative shall have the authority to amend or dismiss a complaint by so marking the complaint and returning it to the judicial bureau or by notifying the judge at the hearing.

(d) Subsequent to the issuance of a civil complaint under this section and the conclusion of any hearing and appeal regarding that complaint, the following shall be considered part of the respondent's record of compliance when calculating a penalty under section 8010 of this title:

(1) The respondent's payment of the full or waiver penalty stated in the complaint.

(2) The respondent's commission of a violation after the hearing before the judicial bureau on the complaint.

(3) The respondent's failure to appear or answer the complaint resulting in the entry of a default judgment.

(4) A finding, after appeal, that the respondent committed a violation.

Sec. 54. 4 V.S.A. § 1102 is amended to read:

§ 1102. JUDICIAL BUREAU; JURISDICTION

* * *

(b) The judicial bureau shall have jurisdiction of the following matters:

* * *

(17) Violations of the statutes listed in 10 V.S.A. § 8003, any rules or permits issued under those statutes, and any assurances of discontinuance or orders issued under chapter 201 of Title 10, provided that a rule has been adopted and a civil complaint issued concerning such a violation under 10 V.S.A. § 8019.

* * *

(d) Three hearing officers appointed by the court administrator shall determine waiver penalties to be imposed for violations within the judicial bureau's jurisdiction, except ~~that~~:

(1) Municipalities shall adopt full and waiver penalties for civil ordinance violations pursuant to section 1979 of Title 24. For purposes of municipal violations, the issuing law enforcement officer shall indicate the appropriate full and waiver penalty on the complaint.

(2) The agency of natural resources and the natural resources board shall include full and waiver penalties in each rule that is adopted under 10 V.S.A. § 8019. For purposes of environmental violations, the issuing entity shall indicate the appropriate full and waiver penalties on the complaint.

Sec. 55. 4 V.S.A. § 1106 is amended to read:

§ 1106. HEARING

* * *

(b) The hearing shall be held before a hearing officer and conducted in an impartial manner. The hearing officer may, by subpoena, compel the attendance and testimony of witnesses and the production of books and records. All witnesses shall be sworn. The burden of proof shall be on the state or municipality to prove the allegations by clear and convincing evidence. As used in this section, "clear and convincing evidence" means evidence which establishes that the truth of the facts asserted is highly probable. Certified copies of records supplied by the department of motor vehicles, the agency of natural resources, or the natural resources board and presented by the issuing officer or other person shall be admissible without testimony by a representative of the department of motor vehicles, the agency of natural resources, or the natural resources board.

* * *

(e) A state's attorney may dismiss or amend a complaint, except that dismissal or amendment of a complaint subject to subdivision 1102(b)(17) of this title shall be governed by 10 V.S.A. § 8019(c).

(f) The supreme court shall establish rules for the conduct of hearings under this chapter.

Sec. 56. 4 V.S.A. § 1107 is amended to read:

§ 1107. APPEALS

(a) A decision of the hearing officer may be appealed to the district court, except for a decision in a proceeding under subdivision 1102(b)(17) of this title. The proceeding before the district court shall be on the record, or at the option of the defendant, de novo. The defendant shall have the right to trial by jury. An appeal shall stay payment of a penalty and the imposition of points.

(b) ~~If a decision is appealed, the state's attorney of the county in which the violation occurred shall represent the state and the state's attorney, grand juror or municipal attorney shall represent the municipality~~ A decision of the hearing officer in a proceeding under subdivision 1102(b)(17) of this title may be appealed to the environmental court created under chapter 27 of this title. The proceedings before the environmental court shall be on the record. The defendant shall not have a right to a jury trial. An appeal shall stay the payment of a penalty.

(c) If a decision is appealed, the state's attorney of the county in which the violation occurred shall represent the state, and the state's attorney, grand juror, or municipal attorney shall represent the municipality. In an appeal to the environmental court from a decision under subdivision 1102(b)(17) of this title, an attorney from the agency of natural resources or the natural resources board shall represent the state.

(d) No appeal as of right exists to the supreme court. On motion made to the supreme court by a party, the supreme court may allow an appeal to be taken to it from the district court or environmental court.

Sec. 57. 20 V.S.A. § 2063 is amended to read:

§ 2063. CRIMINAL HISTORY RECORD FEES; CRIMINAL HISTORY RECORD CHECK FUND

* * *

(b) Requests made by criminal justice agencies for criminal justice purposes or other purposes authorized by state or federal law shall be exempt from all record check fees. The following types of requests shall be exempt from the Vermont criminal record check fee:

* * *

(5) Requests made by environmental enforcement officers employed by the agency of natural resources.

* * *

* * * Act 250, Other Permitting, and Federal Stimulus * * *

Sec. 58. 10 V.S.A. § 6081(d) is amended to read:

(d) For purposes of this section, the following construction of improvements to preexisting municipal, county, or state projects shall not be considered to be substantial changes~~, regardless of the acreage involved,~~ and shall not require a permit as provided under subsection (a) of this section:

(1) ~~essential~~ municipal, county, or state wastewater treatment facility enhancements that do not expand the capacity of the facility by more than ~~10~~ 25 percent, excluding the extension of a wastewater collection system or an expansion of the service-area boundaries of a wastewater treatment facility.

(2) ~~essential~~ municipal ~~waterworks~~, county, or state water supply enhancements that do not expand the capacity of the facility by more than ~~10~~ 25 percent.

(3) ~~essential~~ public school reconstruction or expansion that does not expand the student capacity of the school by more than ~~10~~ 25 percent.

(4) ~~essential~~ municipal, county, or state building renovations or reconstruction ~~or expansion~~ that does not expand the floor space of the building by more than ~~10~~ 25 percent.

(5) construction of improvements to preexisting municipal, county, or state roads and bridges, provided such construction receives funding through the federal American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5.

Sec. 59. SUNSET

Sec. 58 of this act shall sunset on July 1, 2011. However, the construction of improvements commenced prior to July 1, 2011 shall not require a permit by operation of this subsection if such construction was exempt under Sec. 66 of this act.

Sec. 60. 10 V.S.A. § 6081(e) is amended to read:

(e) For purposes of this section, the replacement of preexisting municipal, county, or state water and sewer lines, ~~as part of a municipality's regular maintenance or replacement~~ of existing facilities, shall not be considered to be substantial changes and shall not require a permit as provided under subsection (a) of this section, provided that the replacement does not expand the service capacity of the relevant facility by more than ~~10~~ 25 percent.

Sec. 61. 10 V.S.A. § 6081(t) is added to read:

(t) No permit amendment is required for existing gravel pits, quarries, and asphalt plants for an increase in volume of product or related truck traffic up to

10 percent over permitted volumes provided that the increase is based solely on a compelling need to serve a project that has or will receive any of its funding through the federal American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5, as determined by the district environmental commission in its discretion following a hearing convened for that purpose.

Sec. 62. PERMIT EXPEDITING; FEDERAL STIMULUS

Notwithstanding any other provision of law, the following shall apply to an application for a permit, certificate, or other approval to the agency of natural resources, the agency of transportation, an appropriate municipal panel under 24 V.S.A. chapter 117, or a district environmental commission under 10 V.S.A. chapter 151 with respect to a project for municipal, county, or state purposes that will receive any of its funding through the federal American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5:

(1) The application shall be given priority over any other pending application.

(2) An appropriate municipal panel shall adjourn the hearing promptly after all parties have submitted evidence and argument and issue a decision within 45 days after the adjournment of the hearing, and failure of the panel to issue a decision within this period shall be deemed approval and shall be effective on the 46th day.

(3) A district commission shall adjourn the hearing promptly after all parties have submitted evidence and argument and issue a decision within 90 days after the adjournment of the hearing, and failure of the commission to issue a decision within this period shall be deemed approval and shall be effective on the 91st day.

Sec. 63. EXPIRED PERMITS; FEDERAL STIMULUS

A permit, certificate, or approval that, by operation of law or other means, has lapsed or expired because the project subject to the permit, certificate, or approval has not been constructed shall be deemed effective if all of the following apply:

(1) The project subject to the permit, certificate, or other approval will receive any of its funding through the federal American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5.

(2) The permit, certificate, or other approval was issued within the five-year period preceding the date this section is enacted by the agency of natural resources, the agency of transportation, a municipality or appropriate municipal panel under 24 V.S.A. chapter 117, a district commission under 10 V.S.A. chapter 151, or an appellate court or other tribunal on appeal from such an agency, municipality, panel, or commission.

(3) No change is proposed to the project as approved by the permit, certificate, or other approval.

Sec. 64. 10 V.S.A. § 6086(d) is amended to read:

(d)(1)(A) In a proceeding before a district commission on a development or subdivision, a technical determination made by the agency of natural resources in issuing any of the following permits or approvals pertaining to the development or subdivision shall be dispositive of the same determination if the district commission otherwise would have to make that determination under the criteria of subsection (a) of this section.

(i) An individual direct stormwater discharge issued under chapter 47 of this title.

(ii) An authorization to discharge under a stormwater general permit under chapter 47 of this title.

(iii) A conditional use determination under section 1272 of this title and rules of the board adopted under subdivision 6025(d)(7) of this title.

(B) In the case of a permit or approval issued by the agency of natural resources that is not listed in subdivision (d)(1)(A) of this section, a technical determination of the agency shall be accorded substantial deference by the district commission.

(2) The land use panel may by rule allow the acceptance of a permit or permits or approval of any state agency with respect to subdivisions (1) through (5) of subsection (a) or a permit or permits of a specified municipal government with respect to subdivisions (1) through (7) and (9) and (10) of subsection (a), or a combination of such permits or approvals, in lieu of evidence by the applicant. A district commission, in accordance with rules adopted by the land use panel, shall accept determinations issued by a development review board under the provisions of 24 V.S.A. § 4420, with respect to local Act 250 review of municipal impacts. The acceptance of such approval, positive determinations, permit, or permits shall create a presumption that the application is not detrimental to the public health and welfare with respect to the specific requirement for which it is accepted. ~~In the case of approvals and permits issued by the agency of natural resources, technical determinations of the agency shall be accorded substantial deference by the commissions.~~ The acceptance of negative determinations issued by a development review board under the provisions of 24 V.S.A. § 4420, with respect to local Act 250 review of municipal impacts shall create a presumption that the application is detrimental to the public health and welfare with respect to the specific requirement for which it is accepted. Any determinations, positive or negative, under the provisions of 24 V.S.A. § 4420 shall create presumptions only to the extent that the impacts under the criteria

are limited to the municipality issuing the decision. Such a rule may be revoked or amended pursuant to the procedures set forth in 3 V.S.A., chapter 25, the Vermont Administrative Procedure Act. The rules adopted by the land use panel shall not approve the acceptance of a permit or approval of such an agency or a permit of a municipal government unless it satisfies the appropriate requirements of subsection (a) of this section.

Sec. 65. 3 V.S.A. § 2829 is added to read:

§ 2829. NOTICE; DISPOSITIVE TECHNICAL DETERMINATIONS

At the cost of the applicant, the agency shall comply with the notice requirements of 10 V.S.A. § 6084 in processing an application to the agency for a permit or other approval to be issued by the agency when all of the following apply:

(1) The project for which the permit or other approval is sought is also subject to 10 V.S.A. chapter 151.

(2) The agency's technical determinations in connection with the permit or other approval are dispositive in proceedings under 10 V.S.A. chapter 151.

* * * Legislative Priorities for Stimulus * * *

Sec. 66. LEGISLATIVE PRIORITIES FOR ARRA FUNDS

(a) With respect to federal monies available to the state of Vermont under the American Recovery and Reinvestment Act (ARRA) of 2009, Pub.L. 111-5, the general assembly establishes the following priorities as outlined in this section.

(b) Burlington International Airport (BTV). The general assembly recognizes the importance of maintaining and upgrading the programs and facilities at BTV, Vermont's primary commercial airport. BTV has an estimated economic impact of over a half billion dollars annually. The general assembly finds that the development of the following list of planned airport projects is a legislative priority:

(1) A new aviation technical center facility.

(2) A new customs border protection office.

(3) The following three south-end taxiway projects:

(A) Completion of taxiway K connection from the new general aviation apron to the end of runway 33;

(B) Rehabilitation of portions of taxiways C and G and construction of a new intersection; and

(C) Completion of a parallel taxiway G from existing taxiway C to runway 1-19.

(4) The building of a green roof on the parking structure.

(c) Agriculture. Agriculture is one of the major drivers of the state's economy. For that reason the general assembly recognizes the crucial role of agriculture in the state of Vermont and expresses the following priorities for federal funding that may become available through ARRA:

(1) The agency of agriculture, food and markets, Vermont agricultural credit corporation, and the Vermont housing and conservation board's farm viability program shall cooperate in seeking ARRA funding from the USDA Farm Service Agency, the USDA Rural Development Program, and other appropriate federal programs and shall prioritize applications for federal stimulus funding based on the goals established in this act. The agency shall further work to educate relevant entities about funding opportunities, provide technical application assistance to priority applicants, and develop a single, common application to be used by applicants for agency funding.

(2) The following are specific agriculture priorities and include the state entities to which funding for these priorities should be directed:

(A) Stabilization of spring planting with loans through the Vermont agricultural credit corporation and the Vermont economic development authority.

(B) Support for in-state slaughter and processing facilities through grants and technical assistance from the agency of agriculture, food and markets.

(C) Funding for regional food hubs and dairy transition through the Vermont housing and conservation board farm viability program and support for the Vermont farm-to-plate investment program, established by Sec. 111 of this act, through the Vermont sustainable jobs fund.

(D) Environmental protection and energy conservation including power modernization and methane digesters through grants and technical assistance from the agency of agriculture, food and markets.

(d) Municipal communications services. Since passage of an act relating to establishing the Vermont telecommunications authority and to advancing broadband and wireless communications infrastructure throughout the state of Vermont, No. 79 of the Acts of 2007, many Vermont towns and cities have affiliated themselves to promote, sponsor, develop, and provide a range of communications services to their respective inhabitants, governments, schools, and businesses. Through local volunteer initiatives, resources have been collected and directed toward the design, construction, operation, and

management of publicly owned communications plants, with minimal dependency on the resources, finances, and credit of the state of Vermont. Access to various forms of public and private credit enhancement will assist towns and cities in further developing and constructing communications plant improvements through lower capital interest and financing costs. Under the ARRA, financial resources will be made available to the state that are suitable for application in assisting municipalities in their communications goals. With respect to these local efforts and the federal stimulus monies, the general assembly establishes the following priorities:

(1) Public projects and enterprises entitled to receive direct and indirect benefits of ARRA initiatives shall include municipal communications plants whose economic feasibility, need, and readiness to serve Vermont's rural regions have been demonstrated, such as the North-link project launched by Northern Enterprises, Inc. in 2007, the broadband initiative of East Central Vermont Community Fiber, and replacement of the Burke Mountain power line owned and operated by Vermont Public Television.

(2) The eligibility and allocation of ARRA initiatives available to Vermont shall include direct and indirect credit enhancement assistance to municipalities seeking capital to fund communications plant improvements.

(3) The development, promotion, construction, and operation of public communications plants is declared to be in the best interest of Vermont and an infrastructure priority among capital improvements eligible to receive benefits under the ARRA.

(e) Sterling College. Sterling College is the only independent, liberal arts college in Vermont's Northeast Kingdom. Its four major areas of study include conservation ecology; circumpolar studies; outdoor education and leadership; and sustainable agriculture. The college now has the opportunity to build a new and environmentally innovative residency and program center. Of the $500,000.00–$600,000.00 total cost of this project, $215,000.00 has already been secured or committed. The project's construction start date is mid-August and is projected to employ between 10 and 14 people, in various capacities, for six months. Therefore, the general assembly finds that up to $350,000.00 in ARRA monies for this Sterling College project is a priority.

(f) Vermont Youth Conservation Corps (VYCC). By hiring young people to work on high-priority conservation projects, the VYCC seeks to instill in individuals the values of personal responsibility, hard work, education, and respect for the environment. The VYCC seeks to establish a new program, the Civilian Conservation Corps 2.0, which will enroll 100 young men and women between the ages of 18 and 24 to rehabilitate the Vermont state parks infrastructure and complete high-priority recreation, forest, wildlife, and other

natural resource work. The general assembly finds that spending on such a project is a legislative priority.

* * * Stimulus Funds: Legislative Oversight and Transparency * * *

Sec. 67. STIMULUS OVERSIGHT COMMITTEE; TRANSPARENCY

(a) The general assembly seeks to ensure a coordinated and efficient means to maximize the use and positive impact of federal stimulus funds in Vermont, pursuant to the American Reinvestment and Recovery Act of 2009 (ARRA), Pub.L. No. 111-5, and consistent with the priorities of Vermonters as determined by the general assembly.

(b) All unencumbered monies made available to Vermont under ARRA, including state fiscal stabilization funds, shall be appropriated to the office of economic stimulus and recovery within the agency of administration.

(c) The director of the office of economic stimulus and recovery shall establish a competitive process for receiving, reviewing, and approving proposals and requests for ARRA monies, subject to the requirements of this section.

(d) The stimulus oversight committee is created. Members shall include three legislators appointed by the speaker of the house; three senators appointed by the president pro tempore of the senate; and two members appointed by the governor. The committee shall meet as often as necessary to capitalize on the use of federal funds under ARRA. Legislative members shall be entitled to reimbursement under 2 V.S.A. § 406. All other members who are not state employees shall be entitled to reimbursement under 32 V.S.A. § 1010. The committee shall cease to exist upon the complete disbursement and expenditure of ARRA monies.

(e) The director shall provide the stimulus oversight committee a detailed list of all proposals and requests received by the office of economic and stimulus recovery and shall make project- or program-specific recommendations for the disbursement of ARRA funds. No disbursement of funds shall be made unless reviewed and approved by the committee.

(f) The director of economic stimulus and recovery and the stimulus oversight committee shall report monthly to the general assembly and the governor regarding the disbursement and expenditure of federal funds under ARRA. The report shall include an itemized list of all recipients of federal funds, the amount of the disbursement, the purpose for which the funds were disbursed, a complete accounting by the recipient with respect to the expenditure of federal funds, and other reporting requirements required by Title XV of ARRA, or, if disbursements are made to a state agency, the reporting requirements of § 1512 of Title XV of ARRA.

* * * Federal Stimulus and SBA Loan Programs * * *

Sec. 68. SMALL BUSINESS LENDING GROUP; SBA LOAN PROGRAMS

(a) Significant changes have been made to the Small Business Association (SBA) loan programs pursuant to the American Recovery and Reinvestment Act of 2009 (ARRA), Pub.L. No. 111-5. These changes create an opportune time for Vermont entrepreneurs seeking to start, expand, or acquire a small business. Time is of the essence, however, because the new opportunities created by ARRA will sunset at the end of 2009.

(b) The commissioner of economic development, in cooperation with the director of the Vermont district office of the United States SBA, shall work with small business lending companies such as the Vermont economic development authority, the Vermont small business development center, the Vermont bankers association, and the association of Vermont credit unions, to promote favorable SBA-loan program changes among potential borrowers.

(c) Some of the SBA-loan program changes under ARRA include a one-time opportunity at very low risk to lenders (90 percent guaranty) and very low cost for small businesses (no guarantee fee, prime at a low of 3.25 percent) to access lines of credit, contract financing (such as government contracts with the agency of transportation), export financing, and long-term fixed-asset financing of real estate and equipment.

* * * RFPs for Cloud-Computing E-mail Systems * * *

Sec. 69. LEGISLATIVE RFP FOR EVALUATION OF A CLOUD-COMPUTING E-MAIL SYSTEM

The legislative information technology committee established in section 751 of Title 2, with the assistance of the legislative staff information systems team established in section 753 of Title 2, shall issue a request for proposals no later than September 1, 2009 to evaluate a cloud-computing e-mail system for use by members of the general assembly.

Sec. 70. EXECUTIVE RFP FOR EVALUATION OF A CLOUD-COMPUTING EMAIL SYSTEM

The technology advisory board established in section 2294 of Title 3 shall issue a request for proposals no later than September 1, 2009 to evaluate a cloud-computing e-mail system for use by one or more agencies or departments of state government.

* * * Clean Energy Development Fund: Board; Fund Administrator * * *

Sec. 71. 10 V.S.A. § 6523 is hereby amended to read:

§ 6523. VERMONT CLEAN ENERGY DEVELOPMNET FUND

* * *

(d) Expenditures authorized.

~~(1) This fund shall be administered by the department of public service to facilitate the development and implementation of clean energy resources.~~

~~(2) The department shall assure an open public process in the administration of the fund for the purposes established in this subchapter.~~

~~(3) By January 15 of each year, commencing in 2007, the department of public service shall provide to the house and senate committees on natural resources and energy, the senate committee on finance, and the house committee on commerce a report detailing the revenues collected and the expenditures made under this subchapter, together with recommended principles to be followed in the allocation of funds and a proposed five-year plan for future expenditures from the fund.~~

~~(4)~~(1) Projects for funding may include the following:

(A) projects that will sell power in commercial quantities;

(B) among those projects that will sell power in commercial quantities, funding priority will be given to those projects that commit to sell power to Vermont utilities on favorable terms;

(C) projects to benefit publicly owned or leased buildings;

(D) renewable energy projects on farms, which may include any or all costs incurred to upgrade to a three-phase line to serve a system on a farm;

(E) small scale renewable energy in Vermont residences and businesses;

(F) projects under the agricultural economic development special account established under 6 V.S.A. § 4710(g) to harvest biomass, convert biomass to energy, or produce biofuel;

(G) until December 31, 2008 only, super-efficient buildings; and

(H) effective projects that are not likely to be established in the absence of funding under the program.

~~(5)~~(2) If during a particular year, the ~~department~~ oversight board determines that there is a lack of high value projects eligible for funding, as identified in the five-year plan, or as otherwise identified, the ~~department~~ oversight board may consult with the board, and shall consider transferring funds to the energy efficiency fund established under the provisions of 30 V.S.A. § 209(d). Such a transfer may take place only in response to an opportunity for a particularly cost-effective investment in energy efficiency,

and only as a temporary supplement to funds collected under that subsection, not as replacement funding.

~~(6)~~(3) The sum of $20,000.00 shall be transferred annually from the clean energy development fund to the general fund to support the cost of the solar energy income tax credits.

(4) During fiscal years after FY 2009, up to five percent of amounts from the fund not to exceed $300,000.00 in any fiscal year shall be transferred to the secretary of the agency of agriculture, food and markets for agricultural and farm-based energy project development activities.

(e) Management of fund.

(1)~~(A)~~ There is created the clean energy development fund ~~advisory committee~~ oversight board, which shall consist of ~~the commissioner of public service, or a designee, and the chairs of the house and senate committees on natural resources and energy, or their designees~~ eight directors selected as follows:

(A) three at-large directors appointed by the speaker of the house;

(B) three at-large directors appointed by the president pro tempore of the senate; and

(C) two at-large directors appointed by the governor.

~~(B) There is created the clean energy development fund investment committee, which shall consist of seven persons appointed by the clean energy development fund advisory committee.~~

~~(2) The commissioner of public service shall:~~

~~(A) by no later than October 30, 2006:~~

~~(i) develop a five year strategic plan and an annual program plan, both of which shall be developed with input from a public stakeholder process;~~

~~(ii) develop an annual operating budget;~~

~~(iii) develop proposed program designs to facilitate clean energy market and project development (including use of financial assistance, investments, competitive solicitations, technical assistance, and other incentive programs and strategies); and~~

~~(iv) submit the plans, budget, and program designs to the clean energy development fund advisory committee for review and to the clean energy development fund investment committee for approval;~~

~~(B) adopt rules by no later than January 1, 2007 to carry out the program approved under this subdivision;~~

~~(C) explore pursuing joint investments in clean energy projects with other state funds and private investors to increase the effectiveness of the clean energy development fund;~~

~~(D) acting jointly with the members of the clean energy development fund investment committee, make decisions with respect to specific grants and investments, after the plans, budget, and program designs have been approved by the clean energy development fund investment committee. This subdivision (D) shall be repealed upon the effective date of rules adopted under subdivision (2)(B) of this subsection.~~

~~(3) During fiscal years after FY 2006, up to five percent of amounts appropriated to the public service department from the fund may be used for administrative costs related to the clean energy development fund and after FY 2007, another five percent of amounts appropriated to the public service department from the fund not to exceed $300,000.00 in any fiscal year shall be transferred to the secretary of the agency of agriculture, food, and markets for agricultural and farm-based energy project development activities.~~

(2) The oversight board's powers are vested in the board of directors, and a quorum shall consist of four members. No action of the oversight board shall be considered valid unless the action is supported by a majority vote of the directors present and voting. The directors shall select a chair and vice chair.

(3) In making appointments of at-large directors, the appointing authorities shall give consideration to citizens of the state with knowledge of relevant technology, regulatory law, infrastructure, finance, and environmental permitting. However, the at-large directors may not be persons with a financial interest in or owners or employees of an enterprise that has as its primary business purpose the generation, transmission, distribution, or sale of electric energy or that is seeking in-kind or financial support from the fund. The at-large directors shall serve terms of four years beginning July 1 of the year of appointment. However, one at-large director appointed by the speaker and one at-large director appointed by the president pro tempore shall serve an initial term of two years. Any vacancy occurring among the at-large directors shall be filled by the respective appointing authority and be filled for the balance of the unexpired term. A director may be reappointed.

(4) Except for those directors otherwise regularly employed by the state, the compensation of the directors shall be the same as that provided by subsection 1010(a) of Title 32. All directors of the oversight board, including those directors otherwise regularly employed by the state, shall receive their actual and necessary expenses when away from home or office upon their official duties.

(5) At least every three years, the oversight board shall commission a detailed financial audit by an independent third party of the fund and the activities of the fund administrator, which shall make available to the auditor its books, records, and any other information reasonably requested by the board or the auditor for the purpose of the audit.

(6) In performing its duties, including the consideration of a potential fund administrator and negotiation of administrator contracts pursuant to subsection (f) of this section, the oversight board may utilize the legal and technical resources of the department of public service or, alternatively, may utilize reasonable amounts from the clean energy development fund to retain qualified private legal and technical service providers.

(7) By January 15 of each year, commencing in 2010, the oversight board shall provide to the house and senate committees on natural resources and energy, the senate committee on finance, and the house committee on commerce a report detailing the revenues collected and the expenditures made under this subchapter, together with recommended principles to be followed in the allocation of funds and a proposed five-year plan for future expenditures from the fund.

(8) At least quarterly the oversight board shall hold a public meeting to review and discuss the status of the fund, fund projects, the performance of the fund administrator, any reports, information, or inquiries submitted by the fund administrator or the public, and any additional matters the oversight board deems necessary to fulfill its obligations under this section.

(f) Clean energy development fund administrator.

(1) The oversight board shall, after public notice and opportunity for hearing, enter into one or more contracts with a qualified private individual or organization which shall serve as the clean energy development fund administrator.

(2) The fund administrator shall have primary responsibility for the allocation of amounts from the clean energy development fund and shall exercise best reasonable efforts to promote, solicit, identify, and approve clean energy projects that further the purposes of the fund as articulated in this section. The administrator may pursue joint investments with other state funds or private persons and otherwise may work collaboratively with project proponents to enhance the proposed benefits and contributions toward clean energy development consistent with the purposes of this section.

(3) The administrator shall, subject to the review of the board:

(A) Prepare an annual program plan and budget.

(B) Prepare and maintain a loan and credit policy that details underwriting criteria for all loans, grants, and investments made by the fund.

(C) Distribute information on the fund to the public in order to promote awareness and understanding of the fund, the purposes for which amounts may be allocated, and the process for applying for funds.

(D) Draft and issue proposal solicitations, review proposals, and award funding.

(E) Monitor and manage all financial assistance.

(F) Prepare program and financial reports to be submitted to the oversight board.

(4) The administrator, at least as often as the quarterly meetings of the oversight board, shall prepare and submit a report to the oversight board providing detailed information on the administrator's duties and activities in administering the fund in such form and content as the board may direct.

* * * Film Tax Credit * * *

Sec. 72. 32 V.S.A. chapter 151, subchapter 11K is added to read:

Subchapter 11K. Other Tax Credits

§ 5930gg. MOTION PICTURE INDUSTRY TAX CREDIT

(a) As used in this section:

(1) "Commission" means the Vermont film commission.

(2) "Director" means the director of the Vermont film commission.

(3) "Eligible expense" means preproduction, production, and postproduction expenditures directly incurred in Vermont in the taxable year by an eligible production company for the production of a qualified motion picture. This term includes wages and salaries paid to individuals employed in Vermont in the production of the motion picture, but does not include wages or salaries in excess of $1,000,000.00 for any one individual for any one motion picture; and includes expenditures for the following activities: set construction and operation, editing and related services, photography, sound synchronization, lighting, wardrobe, make-up, and accessories, film processing, transfer, mixing, special and visual effects, music, screenplay purchase, location fees, purchase or rental of facilities and equipment, pre-production, production and post-production expenses incurred in Vermont that may be determined by the commission to be an eligible expense. This term does not include expenses incurred for marketing or advertising a motion picture or any amounts paid to persons as a result of their participation in profits from the exploitation of the production.

(4) "Eligible production company" means a company, including its subsidiaries, engaged in the business of producing qualified motion pictures; but shall not include any company which is in default, or which is affiliated with, or owned or controlled, in whole or in part, by any person in default, on taxes owed to the state or on a loan made or guaranteed by the state.

(5) "Principal photography" means the phase of production during which the motion picture is actually filmed. The term shall not include preproduction or postproduction.

(6) "Qualified motion picture" means a feature-length film, video, digital/new media projects, television series of 27 or more episodes, pilot, video on demand, or commercial made in whole or in part in Vermont, for commercial distribution, theatrical or television viewing and content for the world wide web, or mobile or wireless platforms. "Qualified motion picture" does not mean a television production featuring news, current events, weather, financial market reports, a sporting event, an award show, a production solely for fundraising, a long-form production primarily intended to market a product or service, or a production containing obscene material.

(7) "Director" means the executive director of the Vermont film commission.

(8) "State-certified production" means a qualified motion picture certified by the Vermont film commission, pursuant to rules adopted by the commission, and produced by an eligible production company that has signed a viable distribution plan with either a major theatrical exhibitor, a television network, or a cable television program.

(b)(1) Qualified motion picture payroll credit. A taxpayer engaged in the making of a qualified motion picture shall be allowed a transferable credit against the taxes imposed by parts 3, 4, and 5 of subtitle 2 of this title for the employment of persons within the state in connection with the filming or production of one or more qualified motion pictures in the state within any consecutive 12-month period when total production costs incurred in the state within a taxable year equal or exceed $50,000.00 and such payments for employment constitute Vermont source income. The credit shall be:

(A) equal to 25 percent of the total aggregate payroll paid by an eligible production company for employees not residents of this state; and

(B) equal to 30 percent of the total aggregate payroll paid by an eligible production company for employees who are residents of this state.

(2) For purposes of this subsection, the term "total aggregate payroll" shall not include the salary of any employee whose salary is equal to or greater than $1,000,000.00.

(3) Dollar limit on qualified motion picture tax credit. Transferable tax credits available under this subchapter shall not exceed $9,000,000.00 in any one taxable year and the awards shall be made for state-certified productions chronologically in the order in which they qualify for the credits, until the $9,000,000.00 is fully awarded; and credits earned in any year which exceed the $9,000,000.00 may not be transferred or carried forward.

(c) Qualified motion picture expense credit. A taxpayer shall be allowed an additional transferable credit against the taxes imposed by parts 3, 4, and 5 of subtitle 2 of this title equal to 25 percent of all Vermont production expenses, not including the payroll expenses used to claim a credit pursuant to subsection (b) of this section, where the motion picture is also eligible for a credit pursuant to subsection (b) and either Vermont production expenses exceed 50 percent of the total production expenses for a motion picture, or at least 50 percent of the total principal photography days of the film take place in the state.

(d) The department of taxes, in consultation with the film commission, shall determine what expenses are eligible for the tax credit.

(e) Upon completion of a state-certified production, the director shall review the production expenses and certify the amount of expenses qualified for credit under this section.

(f) Any taxpayer applying for a credit of $100,000.00 or more shall hire a third-party certified public accountant and such accountant shall use Agreed Upon Procedures, as defined by the Auditing Standards Board of the American Institute of Certified Public Accountants, to certify the taxpayer's credit to the director.

(g) The transferable tax credit shall be taken only against taxes imposed under parts 3, 4, and 5 of subtitle 2 of this title and shall be refundable to the extent provided for in subsection (i) of this section. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the taxpayer or its transferee, buyer, or assignee to any of the five subsequent taxable years.

(h)(1) All or any portion of tax credits issued in accordance with this subsection may be transferred, sold, or assigned to another taxpayer only once. Any tax credit that is transferred, sold, or assigned and taken against taxes imposed by parts 3, 4, and 5 of subtitle 2 of this title shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the transferee, buyer, or assignee to any of the three subsequent taxable years from which a certificate is initially issued by the commissioner.

(2) An owner or transferee desiring to make a transfer, sale, or assignment shall submit to the commissioner a statement which describes the amount of tax credit for which the transfer, sale, or assignment of tax credit is eligible. The owner or transferee shall provide to the commissioner information as the commissioner may require for the proper allocation of the credit. The commissioner shall provide to the taxpayer a certificate of eligibility to transfer, sell, or assign the tax credit. The commissioner shall not issue a certificate to a taxpayer that has an outstanding tax obligation with the state for any prior taxable year. A tax credit shall not be transferred, sold, or assigned without a certificate.

(i)(1) The commissioner may require substantiation of a taxpayer's claim for refund under this subsection before payment of the refund. Notwithstanding any law to the contrary, no interest shall accrue on the refund before the commissioner's receipt of the substantiation he or she requested.

(2) The commissioner may adopt regulations or other guidelines as he or she deems necessary to implement this subsection.

(j) A film production company which receives a credit under this section shall acknowledge the state of Vermont in the end credits of the film.

(k) The commissioner, in consultation with the director, shall adopt regulations necessary for the administration of this subchapter.

(l) This section shall apply to qualified motion picture projects begun on or after July 1, 2009 as certified by the director.

Sec. 73. 32 V.S.A. § 9701(45) is added to read:

(45) Manufacturing: shall not include motion picture or film production for which a credit has been or will be granted under subchapter 11K of chapter 151 of this title.

Sec. 74. 10 V.S.A. § 650h is added to read:

§ 650h. FEE

Each taxpayer, transferee, buyer, or assignee of tax credits granted under subchapter 11K of Title 32 shall pay a fee equal to one-half of one percent of the aggregate value of such credits to the program fund created by section 650g of this title.

* * * Sales Tax Holiday * * *

Sec. 75. SALES TAX HOLIDAY

(a) Notwithstanding the provisions of chapter 233 of Title 32 and section 138 of Title 24, no sales and use tax or local option sales tax shall be imposed or collected on sales to individuals for personal use of items of tangible

personal property at a sales price of $2,000.00 or less from July 11, 2009 through July 12, 2009.

(b) A vendor in good standing shall be entitled to claim reimbursement for its expenditures for reprogramming of cash registers and computer equipment which were in use at the place of business on and after July 11, 2009. Claims must be filed on or before November 1, 2009 with the department of taxes with receipts or such other documentation the department may require. The amount of reimbursement to each vendor shall not exceed the least of the three following amounts: the actual cost to the vendor of reprogramming its cash registers and computer equipment; $50.00; or $50,000.00 divided by the number of qualified vendor applicants.

(c) Any municipality with a local option sales tax affected by the sales tax holidays imposed by this section shall be reimbursed from the department of taxes for the amount of local option sales tax revenues lost to the municipality. The commissioner of taxes shall develop a methodology for determining such reimbursement. The commissioner shall also adjust the deposit in the PILOT special fund for lost deposits due to the sales tax holidays. Should the amount appropriated for these purposes under subsection (e) of this section be insufficient to fully reimburse the municipalities and adjust the PILOT special fund, reimbursements to municipalities shall take priority.

(d) In fiscal year 2010, $50,000.00 in general funds is appropriated for payments for reprogramming under subsection (b) of this section, and $100,000.00 in general funds is appropriated for reimbursement to municipalities and adjustments under subsection (c) of this section.

* * * Tax-Credit Bond Financing for Schools * * *

Sec. 76. 16 V.S.A. chapter 125, subchapter 5 is added to read:

Subchapter 5. Tax-Credit Bond Financing

§ 3597. TAX-CREDIT BOND FINANCING; QUALIFIED SCHOOL ACADEMY ZONES; QUALIFIED SCHOOL CONSTRUCTION BONDS

The American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, expanded existing and created new tax-credit bond programs available to public schools. Accordingly, school districts are authorized to issue bonds to finance public school building construction and rehabilitation, the purchase of equipment, the development of course materials, and teacher and personnel training, consistent with sections 1397E and 54F of the Internal Revenue Code, pertaining to qualified school academy zones and qualified school construction bonds.

* * * Transportation: Necessity/Condemnation Proceedings * * *

Sec. 77. 19 V.S.A. § 501 is amended to read:

§ 501. DEFINITIONS

The following words and phrases as used in this chapter shall have the following meanings:

(1) "Necessity" shall mean a reasonable need which considers the greatest public good and the least inconvenience and expense to the condemning party and to the property owner. Necessity shall not be measured merely by expense or convenience to the condemning party. Due consideration shall be given to the adequacy of other property and locations and to the quantity, kind and extent of cultivated and agricultural land which may be taken or rendered unfit for use by the proposed taking. In this matter the ~~court~~ transportation board shall view the problem from both a long range agricultural land use viewpoint as well as from the immediate taking of agricultural lands which may be involved. Consideration also shall be given to the effect upon home and homestead rights and the convenience of the owner of the land; to the effect of the highway upon the scenic and recreational values of the highway; to the need to accommodate present and future utility installations within the highway corridor; to the need to mitigate the environmental impacts of highway construction; and to the effect upon town grand lists and revenues.

* * *

Sec. 78. 19 V.S.A. § 502 is amended to read:

§ 502. AUTHORITY; PRECONDEMNATION PROCEDURE

(a) The agency of transportation ~~board~~, when in its judgment the interest of the state requires, ~~shall request the agency~~ may initiate proceedings under this chapter to ~~take~~ acquire any land or rights in land, including easements of access, air, view, and light, deemed necessary to lay out, relocate, alter, construct, reconstruct, maintain, repair, widen, grade, or improve any state highway including affected portions of town highways. All property rights shall be ~~taken~~ acquired in fee simple whenever practicable. In furtherance of these purposes, the agency may enter upon land adjacent to the proposed highway or upon other lands for the purpose of examination and making necessary surveys. However, that work shall be done with minimum damage to the land and disturbance to the owners.

(b) The agency, in the construction and maintenance of limited access highway facilities, may also ~~take~~ acquire any land or rights of the landowner in land under 9 V.S.A. chapter 93, subchapter 2, relating to advertising on limited access highways.

(c)(1) A public hearing shall be held for the purpose of receiving suggestions and recommendations from the public prior to the agency's initiating proceedings under this chapter for the acquisition of any lands or rights. The hearing shall be conducted by the agency. Public notice shall be given by printing the official notice not less than 30 days prior to the hearing in a newspaper having general circulation in the area affected. A copy of the notice shall be mailed to the board, the legislative bodies of the municipalities affected and a copy sent by certified mail to all known owners of lands and rights in land affected by the proposed improvement.

(2) The notice shall set forth the purpose for which the land or rights are desired and shall generally describe the improvement to be made.

~~The board may designate one or more members to attend the hearing and shall do so if a written request is filed with the board at least 10 days prior to the public hearing.~~

(3) At the hearing the agency shall set forth the reasons for the selection of the route intended and shall hear and consider all objections, suggestions for changes and recommendations made by any person interested.

~~If no board member attended the hearing, a written request may be filed with the board within 30 days after the public hearing asking the board to review the project and the record of the hearing. In such event, the board shall complete its review within 30 days after the request.~~

(4) Following the hearing, ~~unless otherwise directed by the board,~~ the agency may proceed to lay out the highway and survey and acquire the land to be taken or affected, giving consideration to any objections, suggestions and recommendations received from the public.

(d) The agency shall not ~~take~~ acquire land or any right in land that is owned by a town or union school district and being used for school purposes until the voters of the district have voted on the issue of ~~taking~~ acquisition at a meeting called for that purpose. A special meeting of the town or union school district shall be called promptly upon receiving notice of a public hearing unless the annual meeting is to be held within 30 days after receiving the notice of public hearing. Due consideration shall be given by the ~~court~~ board to the result of the vote, in addition to the other factors referred to in section 501 of this title, in determining necessity.

* * *

Sec. 79. 19 V.S.A. § 504 is amended to read:

§ 504. PETITION FOR HEARING TO DETERMINE NECESSITY

Upon completion of the survey, the agency may petition ~~a superior judge~~ the transportation board, setting forth in the petition that it proposes to acquire

certain land, or rights in land, and describing the lands or rights, and the survey shall be attached to the petition and made a part of the petition. The petition shall set forth the purposes for which the land or rights are desired, and shall contain a request that the ~~judge~~ board fix a time and place when ~~he or she, or some other superior judge~~ the board, or a hearing examiner or single board member so appointed, will hear all parties concerned and determine whether the taking is necessary.

Sec. 80. 19 V.S.A. § 505 is amended to read:

§ 505. HEARING TO DETERMINE NECESSITY

(a) The ~~superior judge to whom the petition is presented~~ board shall fix the time for hearing, which shall not be more than 60 nor less than 40 days from the date ~~he or she~~ the board signs the order. Likewise, ~~he or she~~ the board shall fix the place for hearing, which shall be ~~the superior court or any other~~ at some place within the county in which the land in question is located. ~~If the superior judge to whom the petition is presented cannot hear the petition at the time set he or she shall call upon the administrative judge to assign another superior judge to hear the cause at the time and place assigned in the order.~~

(b) If the land proposed to be acquired extends into two or more counties, then a single hearing to determine necessity may be held in one of the counties. In fixing the place for hearing, the ~~superior judge to whom the petition is presented~~ board shall take into consideration the needs of the parties.

Sec. 81. 19 V.S.A. § 506(e) is amended to read:

(e) Unless an answer denying the necessity or propriety of the proposed taking is filed by one or more parties served or appearing in the proceedings on or before the date set in the notice of hearing on the petition, the necessity and propriety shall be deemed to be conceded, and the ~~court~~ board shall so find.

Sec. 82. 19 V.S.A. § 507 is amended to read:

§ 507. HEARING AND ORDER OF NECESSITY

~~(a)~~ At the time and place appointed for the hearing, the ~~court, consisting of the superior judge signing the order or the other superior judge as may be assigned and, if available within the meaning of 4 V.S.A. § 112, the assistant judges of the county in which the hearing is held~~ board shall hear all persons interested and wishing to be heard. If any person owning or having an interest in the land to be taken or affected appears and objects to the necessity of taking the land included within the survey or any part of the survey, then the ~~court~~ board shall require the agency of transportation to proceed with the introduction of evidence of the necessity of the taking. The burden of proof of the necessity of the taking shall be upon the agency of transportation and shall be established by a fair preponderance of the evidence, and the exercise of

reasonable discretion upon the part of the agency shall not be presumed. The ~~court~~ board may cite in additional parties including other property owners whose interest may be concerned or affected and shall cause to be notified, the legislative body of all adjoining cities, towns, villages, or other municipal corporations affected by any taking of land or interest in land based on any ultimate order of the ~~court~~ board. The ~~court~~ board shall make findings of fact and ~~file them and any party in interest may appeal under the rules of appellate procedure adopted by the supreme court~~ conclusions of law. The ~~court~~ board shall, by its order, determine whether the necessity of the state requires the ~~taking~~ acquisition of the land and rights as set forth in the petition and may find from the evidence that another route or routes are preferable in which case the agency shall proceed in accordance with section 502 of this title and this section and may modify or alter the proposed taking in such respects as to the ~~court~~ board may seem proper.

~~(b) By its order, the court may also direct the agency of transportation to install passes under the highway as specified in this chapter for the benefit of the large modern farm properties, the fee title of which is owned by any party to the proceedings, where a reasonable need is shown by the owner. The court may consider evidence relative to present and anticipated future highway traffic volume, future land development in the area, and the amount and type of acreage separated by the highway in determining the need for an underpass of larger dimensions than a standard cattle-pass of reinforced concrete, metal or other suitable material which provides usable dimensions five feet wide by six feet three inches high. Where a herd of greater than fifty milking cows is consistently maintained on the property, the court may direct that the dimensions of the larger underpass shall be eight feet in width and six feet three inches in height to be constructed of reinforced concrete, and the owner of the farm property shall pay one-fourth of the difference in overall cost between the standard cattle-pass and the larger underpass. Where the owner of the farm property desires an underpass of dimensions greater than eight feet in width and six feet three inches in height, the underpass may be constructed if feasible and in accordance with acceptable design standards, and the total additional costs over the dimensions specified shall be paid by the owner. The provisions of this section shall not be interpreted to prohibit the agency of transportation and the property owner from determining the specifications of a cattle pass or underpass by mutual agreement at any time, either prior or subsequent to the date of the court's order. The owner of a fee title shall be interpreted to include lessees of so-called lease land.~~

Sec. 83. 19 V.S.A. § 509 is amended to read:

§ 509. PROCEDURE

(a) The stipulation shall be filed with the ~~appropriate superior court~~ board, together with the petition for an order of necessity. Notice of the hearing on the petition shall be published in accordance with section 506 of this title. Other interested persons who have not stipulated to necessity shall be notified and served in accordance with section 506 of this title. The ~~court~~ board may also cite in additional parties in accordance with section 507 of this title.

(b) If a person claiming to be affected or concerned files a notice of objection to a proposed finding of necessity prior to the date of the hearing, the ~~court~~ board shall at the hearing determine if the person has an interest in lands or rights to be taken such as to be entitled to object to the proposed finding of necessity, and, if ~~he~~ the person is so affected or concerned, whether there is necessity for the taking, in accordance with section 507 of this title. Nothing in this section shall prohibit an interested person from consenting to necessity. The ~~court~~ board may continue the hearing to allow proper preparation by the agency of transportation and interested parties.

(c) If all interested persons and municipalities stipulate as to the necessity of the taking, the ~~court~~ board may immediately issue an order of necessity.

(d) Interested persons or municipalities who do not consent to necessity are entitled to a necessity hearing in accordance with the provisions of this chapter.

(e) A copy of the order finding necessity shall be mailed by the agency to each person and municipality who consented by stipulation to necessity, by certified mail, return receipt requested.

(f) The stipulation of necessity shall not affect the rights of the person with regard to fixing the amount of compensation to be paid in accordance with sections 511-514 of this title. However, the agency of transportation ~~board~~ may enter into an agreement for purchase of lands or rights affected, provided the agreement is conditioned upon the issuance of an order of necessity.

Sec. 84. 19 V.S.A. § 510 is amended to read:

§ 510. ~~APPEAL FROM ORDER OF NECESSITY~~ JUDICIAL REVIEW

(a) If the state, municipal corporation or any owner affected by the order of the ~~court~~ board is aggrieved by the order, an appeal may be taken to the ~~supreme~~ superior court pursuant to subsection 5(c) of this title. In the event an appeal is taken according to these provisions from an order of necessity, its effect may be stayed by the superior court or the supreme court where the person requesting the stay establishes:

(1) that he or she has a likelihood of success on the merits;

(2) that he or she will suffer irreparable harm in the absence of the requested stay;

(3) that other interested parties will not be substantially harmed if a stay is granted; and

(4) that the public interest supports a grant of the proposed stay.

(b) If no stay is granted or, if a stay is granted, upon final disposition of the appeal, a copy of the order of the court shall be recorded within 30 days in the office of the clerk of each town in which the land affected lies.

(c) Thereafter for a period of one year, the agency of transportation may request the transportation board to institute proceedings for the condemnation of the land included in the survey as finally approved by the ~~court~~ board without further hearing or consideration of any question of the necessity of the taking. ~~In no event shall title to or possession of the appealing landowner's property pass to the state until there is a final adjudication of the issue of the necessity and propriety of the proposed taking.~~

~~(b)~~(d) If the agency of transportation is delayed in requesting the transportation board to institute condemnation proceedings within the one-year period by court actions or federal procedural actions, the time lost pending final determination shall not be counted as part of the one-year necessity period.

Sec. 85. 19 V.S.A. § 520 is added to read:

§ 520. MUNICIPALITIES; USE OF 19 V.S.A. CHAPTER 5 PROCEDURES

When the construction, reconstruction, alteration, or repair of a town highway involves the acquisition of private lands or rights in private land, the legislative body of the municipality may elect to follow the procedures outlined in chapter 5 of this title to acquire private lands or rights in land for state highways. In such event, the legislative body of the municipality shall carry out the functions of the agency and the board.

* * * Stimulus Reimbursement for Utility Relocations * * *

Sec. 86. 19 V.S.A. § 1607 is added to read:

§ 1607. FEDERAL REIMBURSEMENT FOR CERTAIN UTILITY RELOCATIONS

(a) As a result of appropriations for infrastructure enhancement and development contained in the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, and other federal transportation-aid programs, significant highway construction projects are expected to be constructed in the near future.

(b) To ensure that the projects are not delayed or canceled because of the inability of utilities and municipalities to pay for underground utility relocation costs and to ensure that available federal funds are utilized on shovel-worthy projects, it is the intent of the general assembly to reimburse utilities with underground infrastructure, including municipally owned underground drinking water facilities and municipally owned underground wastewater infrastructure, up to 80 percent of the approved relocation costs.

(c) The relocation costs shall be reimbursed by the state agency or other entity primarily responsible for managing or directing the construction project on the condition that federal stimulus funds or other federal funds are available and eligible to pay for the relocation costs.

(d) The state and municipalities shall not be obligated to pay utilities the state or local share of a federally funded project.

(e) The state shall not be obligated to pay the state or local share to a municipality for the relocation of underground municipal drinking water and municipal wastewater infrastructure.

* * * School Construction Aid * * *

Sec. 87. Sec. 45(b) of No. 200 of the Acts of the 2007 Adj. Sess. (2008) is amended to read:

(b)(1) Notwithstanding subsection (a) of Sec. 36 of No. 52 of the Acts of 2007, if a school district declares its intent to pay for the cost of a school construction project without state aid provided pursuant to chapter 123 of Title 16 and has received voter approval for the project on or after March 7, 2007, then the commissioner of education shall review the project as a preliminary application upon the district's request. In this case, the commissioner shall use the standards and processes of chapter 123 for determining preliminary approval, and shall deduct the portion of education spending that is approved from the calculation of excess spending under 32 V.S.A. § 5401(12). Preliminary approval received pursuant to this subsection is to be used solely for purposes of:

(A) calculating whether the district has exceeded the excess spending threshold ~~and neither~~; or

(B) enabling the district to proceed with a project using funds other than those provided under chapter 123 of Title 16, or both.

(2) Neither preliminary approval nor the provision of technical assistance indicates that the district will receive state aid for school construction or preliminary approval for that aid when school construction aid is again available. Notwithstanding subsection (a) of Sec. 36 of No. 52 of the Acts of 2007, upon the request of the district, the department shall provide

technical assistance regarding the planning and implementation of school renovation and construction.

* * * Tax Increment Financing * * *

Sec. 88. 24 V.S.A. § 1891(7) is amended to read:

(7) "Financing" means the following types of debt incurred or used by a municipality to pay for improvements in a tax increment financing district:

* * *

(F) Conventional bank loans.

(G) Certificates of participation.

(H) Lease-purchase.

(I) Revenue-anticipation notes.

Sec. 89. 24 V.S.A. § 1894 is amended to read:

§ 1894. POWER AND LIFE OF DISTRICT

(a) Incurring indebtedness.

(1) A municipality may incur indebtedness against revenues of the tax increment financing district at any time during a period of up to 20 years following the creation of the district, if approved as required under subsection 5404a(h) of Title 32. The creation of the district shall occur at 12:01 a.m. on April 1 ~~of~~ following the year so voted by the legislative body of the municipality. Any indebtedness incurred during this 20-year period may be retired over any period authorized by the legislative body of the municipality under section 1898 of this title.

(2) If no indebtedness is incurred within the first ~~five~~ ten years after creation of the district, no indebtedness may be incurred unless the municipality obtains reapproval from the Vermont economic progress council under subsection 5404a(h) of Title 32.

(3) The district shall continue until the date and hour the indebtedness is retired.

(b) Use of the education property tax increment. For any debt incurred ~~within the first five years~~ after the creation of the district, or ~~within the first five years~~ after reapproval by the Vermont economic progress council, but for no other debt, the education tax increment may be retained for up to 20 years beginning with the initial date of the creation of the district or on the date of the first debt incurred ~~within the first five years~~, at the discretion of the municipality.

* * *

Sec. 90. 24 V.S.A. § 1897(a) is amended to read:

(a) The legislative body may pledge and appropriate in equal proportion any part or all of the state and municipal tax increments received from properties contained within the tax increment financing district for the financing for improvements and for related costs in the same proportion by which the infrastructure or related costs directly serve the district at the time of approval of the project financing by the council, and in the case of infrastructure essential to the development of the district that does not reasonably lend itself to a proportionality formula, the council shall apply a rough proportionality and rational nexus test; provided, that if any tax increment utilization is approved pursuant to 32 V.S.A. § 5404a(f), no more than 75 percent of the state property tax increment and no less than an equal percent of the municipal tax increment may be used to service this debt. Bonds shall only be issued if the legal voters of the municipality, by a majority vote of all voters present and voting on the question at a special or annual municipal meeting duly warned for the purpose, give authority to the legislative body to pledge the credit of the municipality for these purposes. Notwithstanding any provision of any municipal charter, the legal voters of a municipality~~, by a single vote,~~ shall authorize the legislative body to pledge the credit of the municipality up to a specified maximum dollar amount for all debt obligations to be financed with state property tax increment pursuant to approval by the Vermont economic progress council and subject to the provisions of this section and 32 V.S.A. § 5404a.

Sec. 91. EFFECTIVE DATE

Secs. 88, 89, and 90 shall be retroactive to July 1, 2008.

Sec. 92. 24 V.S.A. § 1902 is added to read:

§ 1902. OVERLAY OF PREEXISTING DISTRICT

(a) Purpose. Tax increment financing (TIF) is an indispensible tool to help finance public infrastructure. Private development that has followed has created hundreds of jobs for Vermonters; generated significant sales, rooms and meals, and income tax revenue for the state; and has helped stimulate the local, regional, and state economies.

(b) Pursuant to the provisions of this chapter, any municipality may create a new district that includes some or all properties contained within a preexisting district which is no longer eligible to incur debt.

(c) In such event the tax increment for the preexisting district for properties within both the preexisting and the new district shall be calculated as follows: the difference between the property taxes paid based upon the original taxable value (subject to the adjustment upon reappraisal provisions of 24 V.S.A.

§ 1896(b), where applicable) of real property within the preexisting district and the property taxes paid based upon the original taxable value (subject to the adjustment upon reappraisal provisions of 24 V.S.A. § 1896(b), where applicable) for that same real property as determined for the new district.

(d) Tax increment for the preexisting district, as calculated under this section, may be appropriated for the financing of debt incurred prior to the creation of the new district consistent with the provisions of this chapter. As provided in 24 V.S.A. § 1894(c)(3), the preexisting district shall expire when the indebtedness is retired.

Sec. 93. Sec. 2i of No. 184 of the Acts of the 2005 Adj. Sess. (2006), as amended by Sec. 67 of No. 190 of the 2007 Adj. Sess. (2008), is further amended to read:

Sec. 2i. TAX INCREMENT FINANCING DISTRICTS; CAP

Notwithstanding any other provision of law, the Vermont economic progress council may not approve the use of education tax increment financing for more than ~~six~~ ten tax increment financing districts and no more than one newly created tax increment financing district in any municipality within the period of ~~five~~ ten state fiscal years beginning July 1, 2008. Thereafter no tax increment financing districts may be approved without further authorization by the general assembly.

* * * Entrepreneurial Manifesto * * *

Sec. 94. FINDINGS AND PURPOSE

(a) Over the last decade, Vermont has made significant investments in business development and workforce training and, as a result, has begun to foster innovation and entrepreneurship and cultivate a skilled workforce.

(b) In order to fully reap the benefits of our prior investments, however, the general assembly finds that it is now time to expand upon our economic development initiatives. To that end, the general assembly seeks to encourage investments in young start-up companies specializing in technology, agricultural services and products, and clean energy, with the goal of creating both jobs and economic prosperity in this state and filling a gap in the capital financing spectrum for Vermont businesses.

* * * Entrepreneurs' Seed Capital Fund * * *

Sec. 95. 10 V.S.A. chapter 14A is amended to read:

CHAPTER 14A. THE ~~VERMONT~~ ENTREPRENEURS' SEED CAPITAL FUND

§ 290. DEFINITIONS

For purposes of this chapter:

(1) "Follow-on investment" means any investment in a Vermont firm following the initial investment.

(2) "Fund manager" means the investment management firm responsible for creating the fund, securing capital commitments, and implementing the fund's investment strategy, consistent with the requirements of this section. The fund manager shall be paid a fee which reflects a percentage of the fund's capital under management and a performance-fee share based on the fund's economic performance, as determined by the authority.

(3) "Seed capital" means first, nonfamily, nonfounder investment in the form of equity or convertible securities issued by a firm which had, in the 12 months preceding the date of the funding commitment, annual gross sales of less than $3,000,000.00.

§ 291. ~~VERMONT~~ ENTREPRENEURS' SEED CAPITAL FUND; AUTHORIZATION; LIMITATIONS

(a) The Vermont economic development authority shall cause to be formed a private investment equity fund to be named "the ~~Vermont~~ entrepreneurs' seed capital fund" or "the fund" ~~is authorized~~ for the purpose of increasing the amount of investment capital provided to new Vermont firms or to existing Vermont firms for the purpose of expansion. The authority may contract with for one or more persons for the operation of the fund as fund manager. The contract with the fund manager shall contain the terms and conditions pursuant to which the fund shall be managed to meet the fund's objective of providing seed capital to Vermont firms. The terms of the contract shall require that, if the fund manager does not meet the investment criteria specified in the contract, the fund manager may not be awarded the performance fee established under subdivision (c)(2) of this section.

(b) The ~~Vermont seed capital~~ fund shall be formed as ~~either a business corporation or~~ a limited partnership pursuant to Title 11 and shall be subject to all the following:

(1) The ~~Vermont seed capital~~ fund shall not invest in any firm in which ~~a total of more than a 25 percent~~ any interest in that firm is held by an investor of the ~~Vermont seed capital~~ fund ~~combined with any interest held in the firm~~ or by the spouse ~~or dependent~~, children, or other relative of the investor.

(2) The fund shall invest at least 40 percent of its total capital in initial investment in firms which had in the 12 months preceding the date of the funding commitment annual gross sales of less than $1,000,000.00 and may reserve the remainder of its capital for follow-on investments in these businesses, as appropriate.

(3) Before the fund makes any investments, the fund shall~~:~~

~~(A) If organized as a corporation, have and thereafter maintain a board of nine directors to be elected by the shareholders.~~

~~(B) If organized as a partnership,~~ have and maintain a board of ~~three~~ five advisors who shall be appointed ~~by the authority~~ as follows: two shall be appointed by the authority, two shall be appointed by the fund manager, and one shall be appointed jointly by the authority and the fund manager. The board of advisors shall represent solely the economic interest of the state with respect to the management of the fund and shall have no civil liability for the financial performance of the fund. The board of advisors shall be advised of investments made by the fund and shall have access to all information held by the fund with respect to investments made by the fund.

~~(3)~~(4) The ~~Vermont seed capital~~ fund, within 120 days after the close of each fiscal year of its operations, shall issue a report that includes an audited financial statement certified by an independent certified public accountant. The report also shall include a compilation of the firm data required by subsection (d) of this section. This data shall be reported in a manner that does not disclose competitive or proprietary information, as determined by the authority. This report shall be distributed to the governor and the ~~legislative council~~ senate committee on economic development, housing and general affairs and the house committee on commerce and economic development and made available to the public. The report shall include a discussion of the fund's impact on the Vermont economy and employment.

~~(4) The Vermont seed capital fund shall not make distributions of more than 75 percent of its net profit to its investors during its first five years of operation.~~

~~(5) No person shall be allocated more than 10~~ 20 ~~percent of the available tax credits. For the purposes of determining allocation, the attribution rules of Section 318 of the Internal Revenue Code in effect as of the effective date of this chapter shall apply.~~

~~(6) The first $5 million of capitalization of the Vermont seed capital fund raised from Vermont taxpayers on or before January 1, 2014, shall be eligible for partial tax credits as specified in 32 V.S.A. § 5830b.~~

~~(7)~~(5) All investments and related business dealings using funds ~~that qualify for partial tax credits under 32 V.S.A. § 5830b~~ shall be subject to the following restrictions:

(A) The investments shall be restricted to Vermont firms, which for the purposes of this chapter means that their Vermont apportionment equals or exceeds 50 percent, using the apportionment rules under 32 V.S.A. § 5833, and they maintain headquarters and a principal facility in Vermont. Any funds invested in Vermont firms shall be used for the purpose of enhancing their Vermont ~~investments~~ operations. Investment shall be restricted to firms that export the majority of their products and services outside the state or add substantial value to products and materials within the state. In its investments, the fund shall give priority to new firms and existing firms that are developing new products, and shall take into consideration any impact on in-state competition and also whether the investment will encourage economic activity that would not occur but for the fund investment.

(B) Each ~~Vermont seed capital~~ fund investment in any one firm, in any 12-month period shall be limited to a maximum of ten percent of the ~~Vermont seed capital~~ fund's capitalization and, for the life of the fund, to a maximum of 20 percent of the fund's total capitalization.

(C) At least two-thirds of the monies invested by the ~~Vermont seed capital~~ fund ~~and qualifying for a tax credit under 32 V.S.A. § 5830b~~ shall at all times be invested in the form of equity or convertible securities~~. This provision shall not prohibit~~ unless the fund manager determines it is reasonable and necessary to pursue, temporarily, the generally accepted business practice of earning interest on working funds deposited in relatively secure accounts such as savings and money market funds.

(c) Any firm receiving monies from the fund must report to the fund manager the following information regarding its activities in the state over the calendar year in which the investment occurred:

(1) The total amount of private investment received.

(2) The total number of persons employed as of December 31.

(3) The total number of jobs created and retained, which also shall indicate for each job the corresponding job classification, hourly wage and benefits, and whether it is part-time or full-time.

(4) Total annual payroll.

(5) Total sales revenue.

(d) The authority, in consultation with the fund manager, shall establish reasonable standards and procedures for evaluating potential recipients of fund monies. The authority shall make available to the general public a report of all firms that receive fund investments and also indicate the date of the investment, the amount of the investment, and a description of the firm's intended use of the investment. This report shall be updated at least quarterly.

(e) Information and materials submitted by a business receiving monies from the fund shall be available to the auditor of accounts in connection with the performance of duties under 32 V.S.A. § 163; provided, however, that the auditor of accounts shall not disclose, directly or indirectly, to any person any proprietary business information.

(f) In fiscal year 2010 and again in fiscal year 2011, in two installments of $5,000,000.00, an aggregate of $10,000,000.00 shall be appropriated from the state fiscal stabilization funds available under the American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5, to the entrepreneurs' seed capital fund for investment in eligible Vermont firms.

* * *

Sec. 96. REPEAL

10 V.S.A. § 292 (providing for the initial organization of the Vermont seed capital fund) is repealed.

Sec. 97. 32 V.S.A. § 5830b is amended to read:

§ 5830b. TAX CREDITS; ~~VERMONT~~ ENTREPRENEURS' SEED CAPITAL FUND

(a) The initial capitalization of the Vermont entrepreneurs' seed capital fund ~~comprising a maximum $5~~, as established in 10 V.S.A. § 291, up to $10 million raised from Vermont taxpayers on or before January 1, ~~2014~~ 2020, shall entitle those taxpayers to a credit against the tax imposed by sections 5822, 5832, 5836, or 8551 of this title and by 8 V.S.A. § 6014. The credit may be claimed for the taxable year in which a contribution is made and each of the four succeeding taxable years. The amount of the credit for each year shall be the lesser of ~~four~~ ten percent of the taxpayer's contribution or 50 percent of the taxpayer's tax liability for that taxable year prior to the allowance of this credit; provided, however, that in no event shall the aggregate credit allowable under this section for all taxable years exceed ~~20~~ 50 percent of the taxpayer's contribution to the initial ~~$5~~ $10 million capitalization of the ~~Vermont seed capital~~ fund. The credit shall be nontransferable except as provided in subsection (b) of this section.

(b) If the taxpayer disposes of an interest in the ~~Vermont seed capital~~ fund within four years after the date on which the taxpayer acquired that interest,

any unused credit attributable to the disposed-of interest is disallowed. This disallowance does not apply in the event of an involuntary transfer of the interest, including a transfer at death to any heir, devisee, legatee, or trustee, or in the event of a transfer without consideration to or in trust for the benefit of the taxpayer or one or more persons related to the taxpayer as spouse, descendant, parent, grandparent, or child.

Sec. 98. 10 V.S.A. § 291 is amended to read:

§ 291. ENTREPRENEURS' SEED CAPITAL FUND; AUTHORIZATION; LIMITATIONS

(a) The Vermont economic development authority shall cause to be formed a private investment equity fund to be named "the entrepreneurs' seed capital fund" or "the fund" for the purpose of increasing the amount of investment capital provided to new Vermont firms or to existing Vermont firms for the purpose of expansion. The authority may contract with for one or more persons for the operation of the fund as fund manager. The contract with the fund manager shall contain the terms and conditions pursuant to which the fund shall be managed to meet the fund's objective of providing seed capital to Vermont firms. The terms of the contract shall require that, if the fund manager does not meet the investment criteria specified in the contract, the fund manager may not be awarded the performance fee established under subdivision (c)(2) of this section.

(b) The fund shall be formed as a limited partnership pursuant to Title 11 and shall be subject to all the following:

(1) The fund shall not invest in any firm in which any interest in that firm is held by an investor of the or by the spouse, children, or other relative of the investor.

(2) The fund shall invest at least 40 percent of its total capital in initial investment in firms which had in the 12 months preceding the date of the funding commitment annual gross sales of less than $1,000,000.00 and may reserve the remainder of its capital for follow-on investments in these businesses, as appropriate.

(3) Before the fund makes any investments, the fund shall–have and maintain a board of five advisors who shall be appointed as follows: two shall be appointed by the authority, two shall be appointed by the fund manager, and one shall be appointed jointly by the authority and the fund manager. The board of advisors shall represent solely the economic interest of the state with respect to the management of the fund and shall have no civil liability for the financial performance of the fund. The board of advisors shall be advised of investments made by the fund and shall have access to all information held by the fund with respect to investments made by the fund.

(4) The fund, within 120 days after the close of each fiscal year of its operations, shall issue a report that includes an audited financial statement certified by an independent certified public accountant. The report also shall include a compilation of the firm data required by subsection (d) of this section. This data shall be reported in a manner that does not disclose competitive or proprietary information, as determined by the authority. This report shall be distributed to the governor and the senate committee on economic development, housing and general affairs and the house committee on commerce and economic development and made available to the public. The report shall include a discussion of the fund's impact on the Vermont economy and employment.

(5) The Vermont seed capital fund shall not make distributions of more than 75 percent of its net profit to its investors during its first five years of operation.

(6) No person shall be allocated more than 20 percent of the available tax credits. For the purposes of determining allocation, the attribution rules of Section 318 of the Internal Revenue Code in effect as of the effective date of this chapter shall apply.

(7) The first $5 million of capitalization of the Vermont seed capital fund raised from Vermont taxpayers on or before January 1, 2014, shall be eligible for partial tax credits as specified in 32 V.S.A. § 5830b.

(8) All investments and related business dealings using funds that qualify for partial tax credits under 32 V.S.A. § 5830b shall be subject to the following restrictions:

(A) The investments shall be restricted to Vermont firms, which for the purposes of this chapter means that their Vermont apportionment equals or exceeds 50 percent, using the apportionment rules under 32 V.S.A. § 5833, and they maintain headquarters and a principal facility in Vermont. Any funds invested in Vermont firms shall be used for the purpose of enhancing their Vermont operations. Investment shall be restricted to firms that export the majority of their products and services outside the state or add substantial value to products and materials within the state. In its investments, the fund shall give priority to new firms and existing firms that are developing new products, and shall take into consideration any impact on in-state competition and also whether the investment will encourage economic activity that would not occur but for the fund investment.

(B) Each fund investment in any one firm, in any 12-month period shall be limited to a maximum of ten percent of the fund's capitalization and, for the life of the fund, to a maximum of 20 percent of the fund's total capitalization.

(C) At least two-thirds of the monies invested by the ~~fund~~ Vermont seed capital fund and qualifying for a tax credit under 32 V.S.A. § 5830b shall at all times be invested in the form of equity or convertible securities unless the fund manager determines it is reasonable and necessary to pursue, temporarily, the generally accepted business practice of earning interest on working funds deposited in relatively secure accounts such as savings and money market funds.

(c) Any firm receiving monies from the fund must report to the fund manager the following information regarding its activities in the state over the calendar year in which the investment occurred:

(1) The total amount of private investment received.

(2) The total number of persons employed as of December 31.

(3) The total number of jobs created and retained, which also shall indicate for each job the corresponding job classification, hourly wage and benefits, and whether it is part-time or full-time.

(4) Total annual payroll.

(5) Total sales revenue.

(d) The authority, in consultation with the fund manager, shall establish reasonable standards and procedures for evaluating potential recipients of fund monies. The authority shall make available to the general public a report of all firms that receive fund investments and also indicate the date of the investment, the amount of the investment, and a description of the firm's intended use of the investment. This report shall be updated at least quarterly.

(e) Information and materials submitted by a business receiving monies from the fund shall be available to the auditor of accounts in connection with the performance of duties under 32 V.S.A. § 163; provided, however, that the auditor of accounts shall not disclose, directly or indirectly, to any person any proprietary business information.

Sec. 99. SEED CAPITAL FUND TAX CREDITS

Secs. 97 (tax credits for investments in the entrepreneurs' seed capital fund) and 98 (entrepreneurs' seed capital fund capitalized with private investments) shall be effective July 1, 2001 only if the entrepreneurs' seed capital fund has not been fully capitalized as authorized by 10 V.S.A. § 291(f).

* * * Licensed Lender Laws * * *

Sec. 100. 8 V.S.A. § 2201(c) is added to read:

(c) No license shall be required of:

* * *

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

(15) persons who make no more than three commercial loans in a calendar year.

* * * Clean Energy Development Fund * * *

Sec. 101. 10 V.S.A. § 6523 is amended to read:

§ 6523. VERMONT CLEAN ENERGY DEVELOPMENT FUND

* * *

(b) Definitions. For purposes of this section, the following definitions shall apply:

* * *

(4) "Emerging energy-efficient technologies" means technologies that are both precommercial but near commercialization and that have already entered the market but have less than five percent of current market share; that use less energy than existing technologies and practices to produce the same product or otherwise conserve energy and resources, regardless of whether or not they are connected to the grid; and that have additional non-energy benefits such as reduced environmental impact, improved productivity and worker safety, or reduced capital costs.

(5) "Renewable energy" has the meaning established under 30 V.S.A. § 8002(2), and shall include the following: solar photovoltaic and solar thermal energy; wind energy; geothermal heat pumps; farm, landfill, and sewer methane recovery; low emission, advanced biomass power, and combined heat and power technologies using biomass fuels such as wood, agricultural or food wastes, energy crops, and organic refuse-derived waste, but not municipal solid waste; advanced biomass heating technologies and technologies using biomass-derived fluid fuels such as biodiesel, bio-oil, and bio-gas.

(c) Purposes of fund. The purposes of the fund shall be to promote the development and deployment of cost-effective and environmentally sustainable electric power resources and emerging energy-efficient technologies, for the long-term benefit of Vermont electric customers, primarily with respect to renewable energy resources, and the use of combined heat and power technologies. The general assembly expects and intends that the public service board, public service department, and the state's power and efficiency utilities will actively implement the authority granted in Title 30 to acquire all reasonably available cost-effective energy efficiency resources and

technologies for the benefit of Vermont ratepayers and the power system. The fund shall be managed, primarily, to promote:

(1) the increased use of renewably produced electrical and thermal energy and combined heat and power technologies in the state;

(2) the growth of the renewable energy-provider and combined heat and power industries in the state;

(3) the creation of additional employment opportunities and other economic development benefits in the state through the increased use of renewable energy and combined heat and power technologies; ~~and~~

(4) the stimulation of increased public and private sector investment in renewable energy and combined heat and power and related enterprises, institutions, and projects in the state; and

(5) the increased use of energy-efficient technologies.

(d) Expenditures authorized.

(1) This fund shall be administered by the department of public service to facilitate the development and implementation of clean energy resources and energy-efficient products, regardless of whether or not they generate energy.

* * *

(4) Projects for funding may include the following:

* * *

(G) until December 31, 2008 only, super-efficient buildings; ~~and~~

(H) effective projects that are not likely to be established in the absence of funding under the program; and

(I) projects that make use of emerging energy-efficient technologies.

* * *

* * * Technology Loan Program * * *

Sec. 102. 10 V.S.A. chapter 12, subchapter 12 is added to read:

Subchapter 12. Technology Loan Program

§ 280aa. FINDINGS AND PURPOSE

(a) Technology-based companies are a vital source of innovation, employment, and economic growth in Vermont. The continued development and success of this increasingly important sector of Vermont's economy is dependent upon the availability of flexible, risk-based capital. Because the primary assets of technology-based companies sometimes consist almost entirely of intellectual property, such companies frequently do not have access

to conventional means of raising capital, such as asset-based bank financing.

(b) To support the growth of technology-based companies and the resultant creation of high-wage employment in Vermont, a technology loan program is established under this subchapter.

§ 280bb. TECHNOLOGY LOAN PROGRAM

There is created a technology (TECH) loan program to be administered by the Vermont economic development authority. The program shall seek to meet the working capital and capital-asset financing needs of technology-based companies. The Vermont economic development authority shall establish such policies and procedures for the program as are necessary to carry out the purposes of this subchapter. The authority's lending criteria shall include consideration of in-state competition and whether a company has made reasonable efforts to secure capital in the private sector.

§ 280cc. CREDIT OF THE STATE PLEDGED

An amount not to exceed $1,000,000.00 of the full faith and credit of the state pledged for the support of the activities of the Vermont economic development authority under section 223 of this title is authorized to be used by the authority for loss reserves in the TECH loan program established under this subchapter.

* * * Wage Threshold for VEGI Program * * *

Sec. 103. STUDY ON THE VEGI PROGRAM

The VEGI technical working group shall make recommendations to the general assembly regarding the following:

(1) whether the VEGI program should target job creation, in general, and not just the creation of new, high-paying jobs; and

(2) options that are consistent with the integrity of the VEGI cost-benefit model but allow for variation in wage thresholds based on regional prevailing wage rates and unemployment rates.

* * * Sustainable Jobs Fund: Loss Reserves * * *

Sec. 104. VERMONT SUSTAINABLE JOBS FUND PROGRAM; LOSS RESERVES; CREDIT OF THE STATE PLEDGED

The amount of $250,000.00 of the full faith and credit of the state pledged for the support of the activities of the Vermont economic development authority under section 223 of this title is authorized to be used by the Vermont sustainable jobs fund program established in 10 V.S.A. § 328 solely for loss reserves in the sustainable jobs fund's flexible capital fund program.

* * * Minimum Wage: Negative CPI * * *

Sec. 105. 21 V.S.A. § 384 is amended to read:

§ 384. PROHIBITION OF EMPLOYMENT

(a) An employer shall not employ an employee at a rate of less than $7.25, and, beginning January 1, 2007, and on each subsequent January 1, the minimum wage rate shall be increased by five percent or the percentage increase of the Consumer Price Index, CPI-U, U.S. city average, not seasonally adjusted, or successor index, as calculated by the U.S. Department of Labor or successor agency for the 12 months preceding the previous September 1, whichever is smaller, but in no event shall the minimum wage be decreased. The minimum wage shall be rounded off to the nearest $0.01. An employer in the hotel, motel, tourist place, and restaurant industry shall not employ a service or tipped employee at a basic wage rate less than $3.65 an hour, and beginning January 1, 2008, and on each January 1 thereafter, this basic tip wage rate shall be increased at the same percentage rate as the minimum wage rate. For the purposes of this subsection, "a service or tipped employee" means an employee of a hotel, motel, tourist place, or restaurant who customarily and regularly receives more than $120.00 per month in tips for direct and personal customer service. If the minimum wage rate established by the United States government is greater than the rate established for Vermont for any year, the minimum wage rate for that year shall be the rate established by the United States government.

(b) Notwithstanding subsection (a) of this section, an employer shall not pay an employee less than one and one-half times the regular wage rate for any work done by the employee in excess of 40 hours during a workweek. However, this subsection shall not apply to:

(1) Employees of any retail or service establishment. A "retail or service establishment" means an establishment 75 percent of whose annual volume of sales of goods or services, or of both, is not for resale and is recognized as retail sales or services in the particular industry.

(2) Employees of an establishment which is an amusement or recreational establishment, if:

(A) it does not operate for more than seven months in any calendar year, or

(B) during the preceding calendar year its average receipts for any six months of that year were not more than one-third of its average receipts for the other six months of the year.

(3) Employees of an establishment which is a hotel, motel, or restaurant.

(4) Employees of hospitals, public health centers, nursing homes, maternity homes, therapeutic community residences, and residential care homes as those terms are defined in Title 18, provided:

(A) the employer pays the employee on a biweekly basis; and

(B) the employer files an election to be governed by this section with the commissioner; and

(C) the employee receives not less than one and one-half times the regular wage rate for any work done by the employee:

(i) in excess of eight hours for any workday; or

(ii) in excess of 80 hours for any biweekly period.

(5) Those employees of a business engaged in the transportation of persons or property to whom the overtime provisions of the Federal Fair Labor Standards Act do not apply, but shall apply to all other employees of such businesses.

(6) Those employees of a political subdivision of this state.

(7) State employees~~,~~ who ~~shall be~~ are covered by the U.S. Federal Fair Labor Standards Act.

(c) However, an employer may deduct from the rates required in subsections (a) and (b) of this section the amounts for board, lodging, apparel, rent, or utilities paid or furnished or other items or services or such other conditions or circumstances as may be usual in a particular employer-employee relationship, including gratuities as determined by the wage order made under this subchapter.

* * * Stimulus Money and Unemployment Insurance * * *

Sec. 106. ARRA AND UNEMPLOYMENT INSURANCE

(a) The American Recovery and Investment Act of 2009 (ARRA), Pub.L. No. 111-5, authorizes the federal government to transfer up to $13,918,000.00 into Vermont's unemployment insurance (UI) trust fund for UI modernization incentive payments.

(b) Vermont already qualifies for one-third of its allotted incentive payments because the state allows for the use of an alternative base period in determining UI eligibility. In order to qualify for the remaining two-thirds of its allotted incentive payments, Vermont's UI program must meet two of four expanded-coverage requirements.

(c) The state already meets one expanded-coverage requirement: namely, coverage of part-time workers. It is the intent of the general assembly to adopt one additional expanded-coverage requirement, namely the training program

specified in Sec. 107 of this act, and to apply to the secretary of the United States Department of Labor for certification of UI modernization so that the state may receive its remaining allotment of incentive payments.

Sec. 107. 21 V.S.A. § 1423b is added to read:

§ 1423b. EXTENDED BENEFITS FOR WORKERS IN TRAINING PROGRAMS

Consistent with the requirements of this subchapter, the commissioner of labor shall extend unemployment compensation for workers who have exhausted regular unemployment compensation but who are enrolled in a state-approved training program or in a job-training program under the Workforce Investment Act of 1998. The training program must prepare workers for a "high-demand" occupation, as defined by the commissioner. Benefits must be equivalent to the recipient's average weekly benefit amount.

* * * Workers' Compensation State Contracts and Emergency Rules * * *

Sec. 108. AGENCY OF ADMINISTRATION; EMERGENCY RULES; CLASSIFICATION INFORMATION; WORKERS' COMPENSATION; STATE CONTRACTS; COMPLIANCE WITH DAVIS-BACON

(a) The agency of administration shall adopt emergency rules to minimize the incidents of misclassification of NCCI codes or employee or independent contractor status of workers and jobs by state contractors on projects with a total project cost of more than $250,000.00 by requiring those contractors to provide all the following:

(1) Detailed information including information relating to past violations, convictions, suspensions, and any other information required by the department. This information shall be included with the project bid.

(2) A list of subcontractors on the job along with lists of the subcontractor's subcontractors.

(3) A payroll process by which during every pay period the contractor collects from the subcontractors or independent contractors a list of all workers who were on the jobsite during the pay period, the work performed by those workers on the jobsite, and a daily census of the jobsite. This information and similar information for the subcontractors regarding their subcontractors shall also be provided to the department of labor and to the department of banking, insurance, securities, and health care administration, upon request.

(4) Any rules adopted to minimize instances of misclassification through enhanced reporting and greater transparency shall not be unduly burdensome on small businesses and may be flexibly designed to account for the size of the contractor and subcontractor.

(b) The agency shall require that any contractor that violates classification requirements shall be prohibited from bidding on future state contracts for a period of time that corresponds to the seriousness of the classification violation.

(c) The agency shall assure that any state contract funded in whole or in part with American Recovery and Reinvestment Act of 2009 monies shall comply with the payment of prevailing wages as required by the Davis-Bacon Act. In the event Davis-Bacon wages in any county have not been updated in the previous three years, the applicable Davis-Bacon wage for a state contract shall be that of the Vermont county that has most recently updated its Davis-Bacon wages, where not in contravention with federal requirements.

* * * Prejudgment Interest * * *

Sec. 109. Rule 37 of the Vermont Rules of Appellate Procedure is revised to read:

RULE 37. INTEREST ON JUDGMENTS

Unless otherwise provided by law, if a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable from the date the ~~judgment was entered~~ claim was filed in the superior or District Court. If a judgment is modified or reversed with a direction that a judgment for money be entered in the superior or District Court, the mandate shall contain instructions with respect to allowance of interest. In either event, the interest allowed shall be computed by the clerk of the superior or District Court.

Sec. 110. Rule 69 of the Vermont Rules of Civil Procedure is revised to read:

RULE 69. EXECUTION

Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. No execution running against the body shall be issued to enforce a judgment in any civil action for money damages. In addition to the procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on an in aid of execution, as provided by law, the judgment creditor or a successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules.

Executions shall be made returnable within sixty days from the date thereof. Executions may be issued so long as the judgment remains unsatisfied, but not after eight years from the date of rendition of the judgment. Actions or motions to renew or revive judgments shall not be a prerequisite to issuance of a writ of execution as long as the eight-year period has not expired.

The judgment creditor shall deliver to the officer levying execution a list of exemptions, which the officer shall serve on the judgment debtor, together with a copy of the writ of execution.

In the writ of execution, the clerk shall set forth the amount of prejudgment and post-judgment interest due per day, calculated on the full amount of principal included in the judgment at the maximum rate allowed by law. In levying execution, the officer shall collect per diem interest in the daily amount from the date ~~of entry of judgment~~ the claim was filed to and including the date of satisfaction. If an execution is returned partially satisfied, the return shall show the date of partial satisfaction. The amount collected shall be first applied to interest accrued to that date. Interest on the portion of the judgment remaining unsatisfied shall be computed from the date of partial satisfaction and collected in the same manner on any subsequent levy of execution.

Process to enforce a judgment for the delivery of possession of land shall be a writ of possession.

* * * Farm to Plate * * *

Sec. 111. 10 V.S.A. chapter 15A § 330 is added to read:

§ 330. THE FARM-TO-PLATE INVESTMENT PROGRAM; CREATION; GOALS; TASKS; METHODS

(a) Creation

(1) The sustainable jobs fund program shall establish the Vermont farm-to-plate investment program to fulfill the goals and carry out the tasks described in this section.

(2) If at least $100,000.00 in funding is not made available for the purpose of this section, the sustainable jobs fund program is encouraged but no longer required to fulfill the provisions of this section.

(b) Goals. The goals of the farm-to-plate investment program are to:

(1) Increase economic development in Vermont's food and farm sector.

(2) Create jobs in the food and farm economy.

(3) Improve access to healthy local foods.

(c) Tasks

(1) By June 30, 2010, the Vermont farm-to-plate investment program shall create a strategic plan for agricultural economic development, which may be periodically reviewed and updated, based upon the following:

(A) Inventory Vermont's food system infrastructure by gathering existing data, studies, and analysis about the components of Vermont's food system, including:

(i) The types of foods produced in Vermont, the number of producers of each type of food, the amount of each type of food produced, and the financial viability of each food-producing sector.

(ii) The types of food processors in Vermont, how much food produced in Vermont is purchased by Vermont processors, and the financial viability of the food processing sector in Vermont.

(iii) The current and potential markets in which Vermont food producers and processors can sell their products.

(iv) The extent of existing agricultural lands that could be expanded and the resources available to expand Vermont's food production.

(v) The potential for new farmers and food processors to enter the local food economy, the methods for new farmers to acquire land and other farm infrastructure, and the availability and barriers to farm and processing labor.

(vi) The potential for entirely new local products and the barriers to farmers and processors entering new markets.

(B) Identify gaps in the infrastructure and distribution systems and identify ways to address these gaps.

(2) By June 30, 2010, the Vermont farm-to-plate investment program shall distribute grant funding to support farm-to-table direct marketing, including farmers' markets and community-supported agriculture operations and to support regional community food hubs. Funding shall be provided only to applicants contributing at least 200 percent of the grant amount in matching funds.

(3) As an ongoing task, the farm-to-plate investment program shall use the information gathered for the strategic plan to identify methods and the funding necessary to strengthen the links among producers, processors, and markets including:

(A) Support of the work of existing farm-to-school programs to increase the purchase of local foods by Vermont schools, with a particular emphasis on procurement of nutrient-dense animal foods.

(B) Collaborating with the agency of agriculture, food and markets and the department of buildings and general services to increase procurement of local foods in accordance with 6 V.S.A. § 4601.

(C) Collaborating with the agency of agriculture, food and markets and the sustainable agriculture council to increase procurement of local foods by businesses and institutions.

(D) Supporting initiatives that improve direct marketing of foods from the farm to the consumer.

(E) Informing agricultural lenders of the information collected under subsection (c)(1) of this section in order to facilitate availability of agricultural financing.

(d) Methods. To accomplish the goals and carry out the ongoing tasks stated in this section, the Vermont farm-to-plate investment program may:

(1) Create an advisory panel with representatives from the agricultural and business communities.

(2) Hire or assign staff.

(3) Seek and accept funds from private and public entities.

(4) Utilize technical assistance, loans, grants, or other means approved by the board.

Sec. 112. 10 V.S.A. § 329 is amended to read:

§ 329. ANNUAL REPORT

Prior to January 31 of each year, the corporation formed under section 328 of this title shall submit a report concerning its activities to the governor and the legislative committees on commerce, general affairs, natural resources, ways and means, finance, institutions, and appropriations. The report shall include the following information:

* * *

(5) A summary of work completed in the farm-to-plate investment program, including progress toward meeting the program goals, information regarding any advisory panel meetings, an accounting of all revenues and expenses related to the program, and recommendations regarding future program activity. The report shall also include information regarding the status of state government procurement of local foods.

* * * VHFA: Moral Obligation for Pledged Equity Funds * * *

Sec. 113. FINDINGS AND INTENT

Moral obligation of the state is used by municipal bond insurers, such as the Vermont Housing and Finance Agency (VHFA), as a discretionary capitalization obligation. By expanding VHFA's ability to pledge the state's existing commitment of moral obligation without increasing the amount of the

state's existing potential obligation, the general assembly can provide VHFA with another tool to increase confidence and attract new financial partners so that the agency can continue its housing programs for low- and moderate-income Vermonters, even in these challenging economic times.

Sec. 114. 10 V.S.A. § 631(f) is amended to read:

(f) The agency, subject to such agreements with noteholders or bondholders as may then exist, shall have power out of any funds available therefor to purchase notes or bonds of the agency~~, which shall thereupon be cancelled,~~ at a price ~~not exceeding:~~ as shall be determined in the economic best interests of the agency.

~~(1) if the notes or bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment thereon, or~~

~~(2) if the notes or bonds are not then redeemable, the redemption price applicable on the first date after such purchase upon which the notes or bonds become subject to redemption plus accrued interest to such date.~~

Sec. 115. REPEAL

10 V.S.A. § 632 (authorizing the Vermont housing and finance agency to establish reserve funds) is repealed.

Sec. 116. 10 V.S.A. § 632a is added to read:

§ 632a. RESERVE AND PLEDGED EQUITY FUNDS

(a) The agency may create and establish one or more special funds, herein referred to as "debt service reserve funds" or "pledged equity funds."

(b) The agency shall pay into each debt service reserve fund:

(1) any moneys appropriated and made available by the state for the purpose of such fund;

(2) any proceeds of the sale of notes, bonds, or other debt instruments, to the extent provided in the resolution or resolutions of the agency authorizing the issuance thereof; and

(3) any other moneys or financial instruments such as surety bonds, letters of credit, or similar obligations, which may be made available to the agency for the purpose of such fund from any other source or sources. All moneys or financial instruments held in any debt service reserve fund created and established under this section, except as hereinafter provided, shall be used, as required, solely for the payment of the principal of the bonds, notes, or other debt instruments secured in whole or in part by such fund or of the payments with respect to the bonds, notes, or other debt instruments specified in any resolution of the agency as a sinking fund payment, the purchase or

redemption of the bonds, the payment of interest on the bonds, notes, or other debt instruments, or the payment of any redemption premium required to be paid when the bonds, notes, or other debt instruments are redeemed prior to maturity, or to reimburse the issuer of a liquidity or credit facility, bond insurance, or other credit enhancement for the payment by such party of any of the foregoing amounts on the agency's behalf; provided, however, that the moneys or financial instruments in any such debt reserve fund shall not be drawn upon or withdrawn therefrom at any time in such amounts as would reduce the amount of such funds to less than the debt service reserve requirement established by resolution of the agency for such fund as hereafter provided except for the purpose of paying, when due, with respect to bonds secured in whole or in part by such fund, the principal, interest, redemption premiums, and sinking fund payments and reimbursing, when due, the issuer of any credit enhancement for any such payments made by it, for the payment of which other moneys of the agency are not available. Any income or interest earned by, or increment to, any debt service reserve fund due to the investment thereof may be transferred by the agency to other funds or accounts of the agency to the extent it does not reduce the amount of such debt service reserve fund below the debt service reserve requirement for such fund.

(c) The agency shall pay into each pledged equity fund:

(1) any moneys appropriated and made available by the state for the purpose of such fund;

(2) any proceeds of the sale of notes, bonds, or other debt instruments, to the extent provided in the resolution or resolutions of the agency authorizing the issuance thereof; and

(3) any other moneys or financial instruments such as surety bonds, letters of credit, or similar obligations which may be made available to the agency for the purpose of such fund from any other source or sources. All moneys or financial instruments held in any pledged equity fund created and established under this section, except as hereinafter provided, shall be used, as required, solely to provide pledged equity or over-collateralization of any trust estate of the agency to the issuer of a liquidity or credit facility, bond insurance, or other credit enhancement obtained by the agency; provided, however, that the moneys or financial instruments in any such pledged equity fund shall not be drawn upon or withdrawn from such fund at any time in such amounts as would reduce the amount of such funds to less than the pledged equity requirement established by resolution of the agency for such fund as hereafter provided except for the purposes set forth in, and in accordance with, the governing resolution. Any income or interest earned by, or increment to, any pledged equity fund due to the investment thereof may be transferred by the agency to other funds or accounts of the agency to the extent it does not

reduce the amount of such pledged equity fund below the requirement for such fund. Anything in this subdivision to the contrary notwithstanding, upon the defeasance of the bonds, notes, or other debt instruments with respect to which the pledged equity requirement was established, the agency may transfer amounts in such fund to another fund or account of the agency proportionately to the amount of such defeasance; provided that the agency shall repay to the state any amount appropriated by the state pursuant to subsection (f) of this section.

(d) The debt service reserve and pledged equity requirements for any fund established under this section shall be established by resolution of the agency prior to the issuance of any bonds, notes, or other debt instruments secured in whole or in part by a debt service reserve fund or prior to entering into any credit enhancement agreement and shall be the amount determined by the agency to be reasonably required in light of the facts and circumstances of the particular debt issue or credit enhancement; provided that the maximum amount of the state's commitment with respect to any pledged equity fund shall be determined by the agency at or prior to entering into any credit enhancement agreement related to such pledged equity fund. The agency shall not at any time issue bonds, notes, or other debt instruments secured in whole or in part by a debt service reserve fund or enter into any credit enhancement agreement that requires establishment of a pledged equity fund created and established under this section unless:

(1) the agency at the time of such issuance or execution shall deposit in such fund from the proceeds of such bonds, notes, or other debt instruments, or from other sources, an amount which, together with the amount then in such fund, will not be less than the requirement established for such fund at that time;

(2) the agency has made a determination at the time of the authorization of the issuance of such bonds, notes, or other debt instruments or at the time of entering into such credit enhancement agreement that the agency will derive revenues or other income from the mortgage loans that secure such bonds, notes, or other debt instruments or that relate to any credit enhancement agreement sufficient to provide, together with all other available revenues and income of the agency, other than any amounts appropriated by the state pursuant to this section, for the payment or purchase of such bonds, notes, and other debt instruments and reimbursement to the issuer of any credit enhancement, the payment of any expected deposits into any pledged equity fund established with respect to such credit enhancement, and the payment of all costs and expenses incurred by the agency with respect to the program or purpose for which such bonds, notes, or other debt instruments are issued; and

(3) the state treasurer or his or her designee has provided written approval to the agency that the agency may issue such bonds, notes, or other debt instruments and enter into any related credit enhancement agreement.

(e) In computing the amount of the debt service reserve or pledged equity funds for the purpose of this section, securities in which all or a portion of such funds shall be invested shall be valued at par if purchased at par or at amortized value, as such term is defined by resolution of the agency, if purchased at other than par.

(f) In order to assure the maintenance of the debt service reserve fund requirement in each debt service reserve fund established by the agency under this section, there may be appropriated annually and paid to the agency for deposit in each such fund such sum as shall be certified by the chair of the agency to the governor, the president of the senate, and the speaker of the house as is necessary to establish or restore each such debt service reserve fund to an amount equal to the requirement for each such fund. The chair shall annually, on or about February 1, make, execute, and deliver to the governor, the president of the senate, and the speaker of the house a certificate stating the sum required to restore each such fund to the amount aforesaid, and the sum so certified may be appropriated, and if appropriated, shall be paid to the agency during the then current state fiscal year. In order to assure the funding of the pledged equity fund requirement in each pledged equity fund established by the agency under this section at the time and in the amount determined at the time of entering into any credit enhancement agreement related to a pledged equity fund, there may be appropriated and paid to the agency for deposit in each such fund such sum as shall be certified by the chair of the agency to the governor, the president of the senate, and the speaker of the house, as is necessary to establish each such pledged equity fund to an amount equal to the amount determined by the agency at the time of entering into any credit enhancement agreement related to a pledged equity fund; provided that the amount requested, together with any amounts previously appropriated pursuant to this subsection for a particular pledged equity fund, shall not exceed the maximum amount of the state's commitment, as determined by the agency pursuant to subsection (d) of this section. The chair shall, on or about the February 1 next following the designated date for fully funding a pledged equity fund, make, execute, and deliver to the governor, the president of the senate, and the speaker of the house a certificate stating the sum required to bring each such fund to the amount aforesaid or to otherwise satisfy the state's commitment with respect to each such fund, and the sum so certified may be appropriated, and if appropriated, shall be paid to the agency during the then-current state fiscal year. The combined principal amount of bonds, notes, and other debt instruments outstanding at any time and secured in whole or in part by a debt service reserve fund established under this section and the

aggregate commitment of the state to fund pledged equity funds pursuant to this subsection shall not exceed $155,000,000.00 at any time, provided that the foregoing shall not impair the obligation of any contract or contracts entered into by the agency in contravention of the Constitution of the United States. Notwithstanding anything in this section to the contrary, the state's obligation with respect to funding any pledged equity fund shall be limited to its maximum commitment, as determined by the agency pursuant to subsection (d) of this section, and the state shall have no other obligation to replenish or maintain any pledged equity fund.

Sec. 117. SAVINGS CLAUSE

Nothing in Sec. 116 of this act shall be construed to impair the obligation of any preexisting contract or contracts entered into by the agency or by the state.

* * * Municipal Revenue Bonds * * *

Sec. 118. 24 V.S.A. § 1898(b) is amended to read:

(b) A municipality shall have power to issue from time to time general obligation ~~and~~ bonds, revenue bonds ~~from time to time~~, or revenue bonds also backed by the municipality's full faith and credit in its discretion to finance the undertaking of any improvements wholly or partly within such district. If revenue bonds are issued, such bonds shall be made payable, as to both principal and interest, solely from the income proceeds, revenues, tax increments and funds of the municipality derived from, or held in connection with its undertaking and carrying out of improvements under this chapter. So long as any such bonds of a municipality are outstanding the local governing body may deduct, in any one or more years from any net increase in the aggregate taxable valuation of land and improvements in all areas covered by their district the amount necessary to produce tax revenues equal to the current debt service on such bonds, assuming the previous year's total tax rate and full collection. Only the balance, if any, of such net increase shall be taken into account in computing the sums which may be appropriated for other purposes under applicable tax rate limits. But all the taxable property in all areas covered by the district, including the whole of such net increase, shall be subject to the same total tax rate as other taxable property, except as may be otherwise provided by law. Such net increase shall be computed each year by subtracting, from the current aggregate valuation of the land and improvements in all areas covered by the district, the sum of the aggregate valuations of land and improvements in each such area on the date the district was approved under this section. An area shall be deemed to be covered as a district until the date all the indebtedness incurred by the municipality to finance the applicable improvements have been paid. Notwithstanding any provisions in this chapter to the contrary, any provision of a municipal charter of any municipality which specifies a different debt limit, or which requires a greater vote to authorize

bonds, or which prescribes a different computation of appropriations under tax rate limits, or which is otherwise inconsistent with this subsection, shall apply.

* * * Research and Development Tax Credit * * *

Sec. 119. 32 V.S.A. chapter 151 subchapter 11L is added to read:

Subchapter 11L. Research and Development Tax Credit

§ 5930ii. ENHANCEMENT TO THE FEDERAL RESEARCH AND DEVELOPMENT TAX CREDIT

(a) A credit against the income tax liability imposed under this chapter for the taxable year shall be an amount equal to 30 percent of the amount of the federal tax credit received for the same taxable year for eligible research and development expenses under 26 U.S.C. § 41(a).

(b) Any excess credit under this subchapter not used for the taxable year in which the credit is earned may be carried forward for up to ten years.

(c) For purposes of this section, "eligible research and development expenses" means expenditures:

(1) made within the state of Vermont;

(2) that meet the definition contained in 26 U.S.C. § 41(b); and

(3) that have been claimed as eligible expenditures for the same taxable year for a federal tax credit under 26 U.S.C. § 41(a), provided that the taxable year begins on or after January 1, 2010.

* * * Town Burials * * *

Sec. 120. 33 V.S.A. § 2301 is amended to read:

§ 2301. BURIAL RESPONSIBILITY

(a)(1) When a person dies in this state, or a resident of this state dies within the state or elsewhere, and the decedent was a recipient of assistance under Title IV or XVI of the Social Security Act, or nursing home care under Title XIX of the Social Security Act, or assistance under state aid to the aged, blind or disabled, or an honorably discharged veteran of any branch of the U.S. military forces, or when a resident dies in the town of domicile and is without sufficient known assets to pay for burial, to the extent funds are available and to the extent authorized by department regulations, the decedent's burial shall be arranged and paid for by the department if the decedent was without sufficient known assets to pay for burial. The department shall pay burial expenses when arrangements are made other than by the department to the maximum permitted by its regulations. In any case where other contributions are made these payments shall be deducted from the amount otherwise paid by the department but in no case is the department responsible for any payment

when the person arranging the burial selects a funeral the price of which exceeds the department's maximum.

(2) The department shall notify the directors of all funeral homes within the state and within close proximity to the state's borders of its regulations with respect to those services for which it shall make payment and the amount of payment authorized for such services. All payments shall be made directly to the appropriate funeral director.

(3) As a condition of payment when arrangements are made other than by the department, funeral directors shall be required to do the following:

(A) determine from the person making the arrangements if the decedent was a recipient of assistance or an eligible veteran as specified in subdivision (a)(1) of this section;

(B) If the decedent was such a recipient, give notice to the party making the arrangements of the department's regulations.

(4) If the funeral home director does not advise the person making the arrangements of the department's regulations then that person shall not be liable for expenses incurred.

(b) When a person dies while an inmate of a state institution and the inmate is without sufficient known assets to pay for burial, the burial shall be arranged and paid for by the state institution.

(c) When a person other than one described in subsection (a) or (b) of this section dies in the town of domicile without sufficient known assets to pay for burial, the burial shall be arranged and paid for by the town. The department shall reimburse the town up to $250.00 for expenses incurred.

(d) In all other cases the department shall arrange for and pay for the burial of persons who die in this state or residents of this state who die within the state or elsewhere when such persons are without sufficient known assets to pay for their burial.

(e) [Omitted.]

(f) In all cases where the department is responsible for funeral and/or burial expenses under this chapter, the department shall provide, by rule, the specific services that are to be provided at public expense, and on an itemized basis the maximum price to be paid by the department for each such service.

(g) For the purpose of this chapter, "burial" means the act of interring <u>or cremating</u> the human dead and the ceremonies directly related to that <u>cremation or</u> interment at the gravesite; and "funeral" means the ceremonies prior to burial of the body by interment, cremation or other method.

* * * Effective Date * * *

Sec. 121. EFFECTIVE DATE

This act is effective upon passage.

Finance Committee Report

TO THE HONORABLE SENATE

The Committee on Finance to which was referred Senate Bill No. 137, entitled "AN ACT RELATING TO THE VERMONT RECOVERY AND REINVESTMENT ACT AC OF 2009"

respectfully reports that it has considered the same and recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Opportunity Zones * * *

Sec. 1. OPPORTUNITY ZONES; PILOT PROGRAM

(a) For purposes of this section:

(1) "Opportunity zone" means an area within the town of Springfield designated to accommodate a significant amount of industrial activity, high technology, or other job-producing activity; it includes one or more industrial facilities that have been vacant or substantially underutilized for more than ten years; and it has at least 15,000 square feet or a minimum of five acres if the site includes an older structure.

(2) "Qualified business" means any business that intends to locate in or expand into an opportunity zone and:

(A) Is in compliance with applicable local zoning and development criteria for locating in the opportunity zone.

(B) Is in compliance with applicable federal, state, and local regulations.

(C) Will employ at least ten new full-time employees in positions that are not retail sales within a year of approval.

(D) Will pay wages and benefits to all full-time employees that meet or exceed the prevailing compensation level for that particular employment.

(3) "Qualified redeveloper" means any taxpayer that purchases and redevelops an industrial building in an opportunity zone for sale or lease to a qualified business.

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

(5) "Substantially underutilized" means a property or facility of which less than ten percent has been occupied for uses other than storage or warehousing for at least ten years and for which active and sustained marketing has produced no significant employment.

(b) There is created an opportunity-zones pilot program which shall be administered as follows:

(1) The town of Springfield may apply to the secretary for designation of an opportunity zone authorized by this subchapter.

(2) Qualified businesses and qualified redevelopers may apply to the secretary for the benefits provided by this subchapter.

(3) A designation of an opportunity zone under this section shall be for a period of ten years and may be extended by the secretary, upon application by the municipality, for one additional ten-year period.

(4) Applications from the town of Springfield for a designated opportunity zone and from qualified businesses and qualified redevelopers for approval of benefits shall be made in accordance with guidelines established by the secretary.

(5) The secretary shall issue a written decision granting or denying an application within 45 days of receipt of a completed application. If the secretary denies an application the decision shall state the reasons for the denial. The town of Springfield, a qualified business, and a qualified redeveloper denied designation or approval may submit a new application at any time.

(6) Decisions of the secretary are not subject to chapter 25 of Title 3 and shall be final and not reviewable.

(7) Beginning no later than 12 months after approval by the secretary, qualified businesses and qualified redevelopers shall annually submit a written report to the secretary verifying that the business continues to meet all the requirements of this section.

(8) The secretary is authorized to designate one opportunity zone in the town of Springfield in accordance with this subchapter.

(c) Qualified businesses and qualified redevelopers located in an opportunity zone are eligible for the following benefits:

(1) The sales tax exemption provided under 32 V.S.A. § 9741(48) for the building materials, machinery, equipment, or trade fixtures purchased for use in the opportunity zone.

(2) A ten-year exemption from the education tax imposed under 32 V.S.A. § 5402 on the nonresidential value of the redeveloped property.

(3) An annual income tax credit equal to three percent of the total wages and salaries paid during the taxable year to employees for services performed within the opportunity zone.

(4) Expedited processing of applications for state permits and other state approvals, with all applications being decided, where legally permissible, within 30 days of the receipt of a completed application.

(5) Priority consideration by any state agency for eligibility for state or federal funding or other aid to industrial development based on a cost-benefit analysis.

(6) Priority consideration for financing programs available through the Vermont economic development authority under chapter 12 of this title.

(7) Technical support from the department of public safety and the division for historic preservation for the rehabilitation of older and historic buildings.

(d) Property tax exemptions under this subchapter shall commence in the first tax year in which the qualified business or qualified redeveloper has made expenditures in the designated opportunity zone.

(e) Any benefits received by a qualified redeveloper related to the redevelopment, sale, or lease of improved space to a qualified business within an opportunity zone shall not also be separately available to a qualified business that purchases or leases all or part of the facility improved by the redeveloper.

(f) Benefits shall not be available for either of the following:

(1) Retail sales activities; or

(2) Relocating a business within Vermont to an opportunity zone.

(g) Benefits granted to a qualified business or a qualified redeveloper may be terminated and recaptured by the secretary upon determination that the qualified business or a qualified redeveloper is no longer in compliance with, or has failed to meet, the requirements of this section. A decision to terminate or recapture benefits shall not be subject to chapter 25 of Title 3 and shall be final and not reviewable.

(h) The secretary, on or before January 15, 2011, and biennially thereafter, shall report to the general assembly on the progress of the opportunity zone designated under this subchapter and its impact on new economic development and the creation of new jobs.

Sec. 2. 32 V.S.A. § 9741(48) is added to read:

(48) Sales of building materials, machinery, equipment, or trade fixtures incorporated into an opportunity zone designated by the secretary of commerce and community development.

* * * Purchase of Firearms * * *

Sec. 3. 13 V.S.A. § 4014 is amended to read:

§ 4014. PURCHASE OF FIREARMS IN ~~CONTIGUOUS~~ OTHER STATES

Residents of the state of Vermont may purchase rifles and shotguns in ~~a~~ another state ~~contiguous to the state of Vermont~~ provided that such residents conform to the applicable provisions of the Gun Control Act of 1968, and regulations thereunder, as administered by the United States ~~Secretary of the Treasury~~ Bureau of Alcohol, Tobacco, Firearms and Explosives, and provided further that such residents conform to the provisions of law applicable to such purchase in the state of Vermont and in the ~~contiguous~~ state in which the purchase is made.

Sec. 4. 13 V.S.A. § 4015 is amended to read:

§ 4015. PURCHASE OF FIREARMS BY NONRESIDENTS

Residents of a state ~~contiguous to~~ other than the state of Vermont may purchase rifles and shotguns in the state of Vermont, provided that such residents conform to the applicable provisions of the Gun Control Act of 1968, and regulations thereunder, as administered by the United States ~~Secretary of the Treasury~~ Bureau of Alcohol, Tobacco, Firearms and Explosives, and provided further that such residents conform to the provisions of law applicable to such purchase in the state of Vermont and in the state in which such persons reside.

* * * Next Generation of Workforce Development * * *

Sec. 5. REPEAL

Sec. 7(a)(3)(A) and (B) of No. 46 of the Acts of 2007 (specifying how monies appropriated for workforce development is to be apportioned between career exploration programs and alternative and intensive vocations/academic programs) is repealed.

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

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

(a) The commissioner of labor shall be the leader of workforce development strategy and accountability. The commissioner of labor shall consult with ~~and chair a subcommittee of the workforce development council~~

~~consisting of the secretary of human services, the commissioner of economic development, the commissioner of education, four business members appointed by the governor, and a higher education member appointed by the governor. Membership on the subcommittee shall be coincident with the members' terms on the workforce development council~~ the workforce development council executive committee in developing the strategy, goals, and accountability measures. The workforce development council shall provide administrative support. The ~~subcommittee~~ executive committee shall assist the leader. The duties of the leader include all the following:

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

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

(A) a description of the mission and programs relating to preparing individuals for employment and meeting the needs of employers for skilled workers;

(B) the measurable accomplishments that have contributed to achieving the overarching goals;

(C) identification of any innovations made to improve delivery of services;

(D) future plans that will contribute to the achievement of the goals;

(E) the successes of programs to establish working partnerships and collaborations with other organizations that reduce duplication or enhance the delivery of services, or both; and

(F) any other information that the committee may deem necessary and relevant.

(3) reviewing information pursuant to subdivision (2) of this section that is voluntarily provided by education and training organizations that are not required to report this information but want recognition for their contributions;

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

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

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

(C) identification of areas needing improvement, including time frames, expected annual participation, and contributions, and the overarching goals; and

(D) recommendations for the allocating of next generation funds and other public resources.

(5) developing an integrated workforce strategy that incorporates economic development, workforce development, and education to provide all Vermonters with the best education and training available in order to create a strong, appropriate, and sustainable economic environment that supports a healthy state economy; and

(6) developing strategies for both the following:

(A) coordination of public and private workforce programs to assure that information is easily accessible to students, employees, and employers, and that all information and necessary counseling is available through one contact; and

(B) more effective communications between the business community and educational institutions, both public and private.

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

(c) Other entities, including public and private institutions of higher education, postsecondary and secondary programs, and other training providers

who wish to receive grants under the WETF and the VTP may do so by making a request in writing to the commissioner of labor and the commissioner of economic development who shall make a decision regarding inclusion of such programs and the process for the collection of the necessary data.

(d) Confidentiality. Notwithstanding any other provision of law, the departments of labor and of economic development shall collect the Social Security numbers of students for the purposes of this section. The departments shall retain Social Security numbers collected from the entities listed in subsection (b) of this section for no more than five years from the date of receipt by the departments. Access to the Social Security numbers provided to the department of labor and department of economic development shall be limited to those department individuals creating the table required in subsection (b) of this section and shall be confidential. The departments shall prepare the tables in a way that ensures the confidentiality of all trainee and employer information. A department employee who intentionally communicates or otherwise makes available to the general public a Social Security number collected pursuant to this section or who otherwise disseminates the number for purposes other than those specified in this section shall be subject to the penalties of the Social Security Number Protection Act, subchapter 3 of chapter 62 of Title 9.

Sec. 7. REPEAL

The following are repealed:

(1) Sec. 7(d) of No. 46 of the Acts of 2007 (accountability);

(2) 10 V.S.A. § 543(g) (accountability); and

(3) Section 5.801.1 of No. 192 of the Acts of the 2007 Adj. Sess. (2008).

* * * Report on Work-based Learning * * *

Sec. 8. WORK-BASED LEARNING REPORT

(a) On or before January 1, 2010, the career and technical education coordinator within the department of education, the commissioner of economic development or his or her designee, and the commissioner of labor or his or her designee, shall submit a report to the senate committee on economic development, housing and general affairs, the house committee on commerce and economic development, and the governor regarding work-based learning programs in Vermont.

(b) The report shall include an inventory of existing career and technical education (CTE) work-based learning programs and other non-CTE work-based learning opportunities, such as registered apprenticeships, high school internships, and postsecondary internships, as well as community-based learning programs. The report also shall include the amount and source of

funding for each program; the number of personnel hired to administer each program; participation in each program; categorization of learning opportunities offered; and other relevant standards and outcomes. Finally, the report shall include recommendations relative to statewide and regional coordination; creation of timely skill standards based on emerging or growing industry sectors; credentials that articulate postsecondary training and education; and the expansion, restructuring, or elimination of existing programs.

* * * Energy Workforce Stimulus * * *

Sec. 9. 16 V.S.A. chapter 37, subchapter 7 is added to read:

Subchapter 7. Energy Efficiency Training

§ 1594. ENERGY EFFICIENCY CURRICULUM

(a) The president of Vermont Technical College, director of the office of economic opportunity, commissioner of public service, commissioner of labor, assistant director for adult education, and Efficiency Vermont shall plan for and develop curriculum modules and deliver energy efficiency and renewable energy education and training at all levels, in order to develop a highly skilled workforce in Vermont that is prepared to participate in a growing energy-oriented industry sector.

(b) In all applicable content areas, the curriculum modules shall be designed to meet, at a minimum, the certification standards of the Building Performance Institute, other widely recognized certification standards, or a Vermont-specific certification developed in a process led by Vermont Technical College in collaboration with the aforementioned parties.

(c) The curriculum modules shall be offered through the Center for Sustainable Practices at Vermont Technical College and, on a regional basis, through the regional technical centers and the comprehensive high schools, including adult technical education programs, under agreed-upon terms where they can be appropriately incorporated into the curriculum, which will help prepare students of all ages for careers in the energy-efficiency industry.

(d) The department of labor shall not fund any single-service contract for the implementation of the modules developed in subsection (a) of this section or for the delivery of electrical and plumbing training programs offered under this section.

(e) Vermont Technical College and the regional technical centers shall request state fiscal stabilization funds available through the American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5, as well as other state or federal workforce training funds available through the Vermont departments of education and of labor, and through the Vermont Energy

Investment Corporation. If sufficient funds are not received, then the Vermont Technical College and the regional technical centers are not required to offer the education and training programs outlined in this section.

* * * Miscellaneous VEGI Amendments * * *

Sec. 10. 32 V.S.A. § 5930b(b)(2) is amended to read:

(2) The council shall review each application in accordance with section 5930a of this title, except that the council may provide for ~~a preliminary~~ an initial approval pursuant to the conditions set forth in subsection 5930a(c), followed by a final approval at a later date, before December 31 of the calendar year in which the economic activity commences.

Sec. 11. RETROACTIVE APPLICATION

Sec. 10 of this act shall apply retroactively to all applications received on or after January 1, 2007.

Sec. 12. 32 V.S.A. § 5930a is amended to read:

§ 5930a. VERMONT ECONOMIC PROGRESS COUNCIL

* * *

(b)(1) The Vermont economic progress council, within 60 days of receipt of a complete application, shall approve or deny the following economic incentives:

~~(1)~~(A) tax stabilization agreements and exemptions under subdivision 5404a(a)(2) of this title;

~~(2) applications for allocation to municipalities of a portion of education grand list value and municipal liability from new economic development under subsection 5404a(e) of this title;~~ and

~~(3)~~(B) Vermont employment growth incentives (VEGI) under section 5930b of this title.

(2) All incentives are subject to application of the incentive ratio as determined under subdivision 5930b(b)(3) of this title and no tax stabilization agreement~~,~~ or exemption ~~or allocation~~ shall be approved except in conjunction with the approval of an incentive under subdivision ~~(3)~~(1)(B) of this subsection.

* * *

(d) The council shall apply the cost-benefit model in reviewing applications under subdivisions (b)(1)~~, (2), and (3)~~ (A) and (B) of this section to determine the net fiscal benefit to the state. The cost-benefit model shall be a uniform and comprehensive methodology for assessing and measuring the projected net

fiscal benefit or cost to the state of proposed economic development activities. Any modification of the cost-benefit model shall be subject to the approval of the joint fiscal committee. The cost-benefit analysis shall include consideration of the effect of the passage of time and inflation on the value of multi-year fiscal benefits and costs.

(1) In determining the projected net fiscal benefit or cost of the incentives considered under ~~subdivisions~~ subdivision (b)(1) ~~and (2)~~(A) of this section, the council shall calculate the net present value of the enhanced or forgone statewide education tax revenues, reflecting both direct and indirect economic activity. If the council approves an incentive pursuant to this section, the net fiscal costs, if any, to the state shall be counted as if all those costs occurred in the year in which the council first approved the incentive and that cost shall reduce the amount of the annual authorization for such approvals established by the legislature for the applicable calendar year.

(2) In determining the projected net fiscal benefit or cost of the incentives considered under subdivision ~~(b)(3)~~ (b)(1)(B) of this section, the council shall calculate the net present value of the enhanced or forgone state tax revenues attributable to the incentives, reflecting both direct and indirect economic activity over the five-year award period. If the council approves an incentive, the net fiscal costs, if any, to the state shall be counted as if all of those costs occurred in the year in which the council first approved the incentive and that cost shall reduce the amount of the council's annual authorization for approval of economic incentives as established by the legislature for the applicable calendar year.

(e) Only a business may apply for approval under subdivision ~~(b)(3)~~ (b)(1)(B) of this section. A municipality and a business must apply jointly for approval of a tax stabilization agreement pursuant to ~~subdivisions~~ subdivision (b)(1) ~~and (2)~~(A) of this section.

* * *

Sec. 13. 32 V.S.A. § 5930b(f) is amended to read:

(f) The property of a business whose authority to earn, apply or retain incentives under this section has been revoked is ineligible for property tax stabilization under subdivision 5404a(a)(2) of this title ~~or allocation of property tax value under subsection 5404a(e) of this title for any education property tax grand list~~ after the date of revocation.

* * * Stimulus Oversight and Transparency * * *

Sec. 14. STIMULUS OVERSIGHT COMMITTEE; TRANSPARENCY

(a) The general assembly seeks to ensure a coordinated and efficient means to maximize the use and positive impact of federal stimulus funds in Vermont,

pursuant to the American Reinvestment and Recovery Act of 2009 (ARRA), Pub.L. No. 111-5, and consistent with the priorities of Vermonters as determined by the general assembly.

(b) All unencumbered monies made available to Vermont under ARRA, including state fiscal stabilization funds, shall be appropriated to the office of economic stimulus and recovery within the agency of administration.

(c) The director of the office of economic stimulus and recovery shall establish a competitive process for receiving, reviewing, and approving proposals and requests for ARRA monies, subject to the requirements of this section.

(d) The stimulus oversight committee is created. Members shall include three legislators appointed by the speaker of the house; three senators appointed by the president pro tempore of the senate; and two members appointed by the governor. The committee shall meet as often as necessary to capitalize on the use of federal funds under ARRA. Legislative members shall be entitled to reimbursement under 2 V.S.A. § 406. All other members who are not state employees shall be entitled to reimbursement under 32 V.S.A. § 1010. The committee shall cease to exist upon the complete disbursement and expenditure of ARRA monies.

(e) The director shall provide the stimulus oversight committee a detailed list of all proposals and requests received by the office of economic and stimulus recovery and shall make project- or program-specific recommendations for the disbursement of ARRA funds. No disbursement of funds shall be made unless reviewed and approved by the committee.

(f) The director of economic stimulus and recovery and the stimulus oversight committee shall report monthly to the general assembly and the governor regarding the disbursement and expenditure of federal funds under ARRA. The report shall include an itemized list of all recipients of federal funds, the amount of the disbursement, the purpose for which the funds were disbursed, a complete accounting by the recipient with respect to the expenditure of federal funds, and other reporting requirements required by Title XV of ARRA, or, if disbursements are made to a state agency, the reporting requirements of § 1512 of Title XV of ARRA.

* * * Federal Stimulus and SBA Loan Programs * * *

Sec. 15. SBA LOAN PROGRAMS; STIMULUS PROGRAMS

(a) Significant changes have been made to the Small Business Association (SBA) loan programs pursuant to the American Recovery and Reinvestment Act of 2009 (ARRA), Pub.L. No. 111-5. These changes create an opportune time for Vermont entrepreneurs seeking to start, expand, or acquire a small

business. Time is of the essence, however, because the new opportunities created by ARRA will sunset at the end of 2009.

(b) The commissioner of economic development, in cooperation with the director of the Vermont district office of the United States SBA, shall work with small business lending companies such as the Vermont economic development authority, the Vermont small business development center, the Vermont bankers association, and the association of Vermont credit unions, to promote favorable SBA-loan program changes among potential borrowers.

(c) Some of the SBA-loan program changes under ARRA include a one-time opportunity at very low risk to lenders (90 percent guaranty) and very low cost for small businesses (no guarantee fee, prime at a low of 3.25 percent) to access lines of credit, contract financing (such as government contracts with the agency of transportation), export financing, and long-term fixed-asset financing of real estate and equipment.

* * * RFPs for Cloud-Computing E-mail Systems * * *

Sec. 16. LEGISLATIVE RFP FOR EVALUATION OF A CLOUD-COMPUTING E-MAIL SYSTEM

The legislative information technology committee established in section 751 of Title 2, with the assistance of the legislative staff information systems team established in section 753 of Title 2, shall issue a request for proposals no later than September 1, 2009 to evaluate a cloud-computing e-mail system for use by members of the general assembly.

Sec. 17. EXECUTIVE RFP FOR EVALUATION OF A CLOUD-COMPUTING E-MAIL SYSTEM

The technology advisory board established in section 2294 of Title 3 shall issue a request for proposals no later than September 1, 2009 to evaluate a cloud-computing e-mail system for use by one or more agencies or departments of state government.

* * * School Construction: Tax-credit Bond Financing * * *

Sec. 18. 16 V.S.A. chapter 125, subchapter 5 is added to read:

Subchapter 5. Tax-Credit Bond Financing

§ 3597. TAX-CREDIT BOND FINANCING; QUALIFIED SCHOOL ACADEMY ZONES; QUALIFIED SCHOOL CONSTRUCTION BONDS

The American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, expanded existing and created new tax-credit bond programs available to public schools. Accordingly, school districts are authorized to issue bonds to finance public school building construction and rehabilitation, the purchase of equipment, the development of course materials, and teacher and personnel

training, consistent with sections 1397E and 54F of the Internal Revenue Code, pertaining to qualified school academy zones and qualified school construction bonds.

* * * School Construction Aid * * *

Sec. 19. Sec. 45(b) of No. 200 of the Acts of the 2007 Adj. Sess. (2008) is amended to read:

(b)(1) Notwithstanding subsection (a) of Sec. 36 of No. 52 of the Acts of 2007, if a school district declares its intent to pay for the cost of a school construction project without state aid provided pursuant to chapter 123 of Title 16 and has received voter approval for the project on or after March 7, 2007, then the commissioner of education shall review the project as a preliminary application upon the district's request. In this case, the commissioner shall use the standards and processes of chapter 123 for determining preliminary approval, and shall deduct the portion of education spending that is approved from the calculation of excess spending under 32 V.S.A. § 5401(12). Preliminary approval received pursuant to this subsection is to be used solely for purposes of:

(A) calculating whether the district has exceeded the excess spending threshold ~~and neither~~; or

(B) enabling the district to proceed with a project using funds other than those provided under chapter 123 of Title 16, or both.

(2) Neither preliminary approval nor the provision of technical assistance indicates that the district will receive state aid for school construction or preliminary approval for that aid when school construction aid is again available. Notwithstanding subsection (a) of Sec. 36 of No. 52 of the Acts of 2007, upon the request of the district, the department shall provide technical assistance regarding the planning and implementation of school renovation and construction.

* * * Entrepreneurs' Seed Capital Fund * * *

Sec. 20. FINDINGS AND PURPOSE

(a) Over the last decade, Vermont has made significant investments in business development and workforce training and, as a result, has begun to foster innovation and entrepreneurship and cultivate a skilled workforce.

(b) In order to fully reap the benefits of our prior investments, however, the general assembly finds that it is now time to expand upon our economic development initiatives. To that end, the general assembly seeks to encourage investments in young start-up companies specializing in technology, agricultural services and products, and clean energy with the goal of creating

both jobs and economic prosperity in this state and of filling a gap in the capital financing spectrum for Vermont businesses.

Sec. 21. 10 V.S.A. chapter 14A is amended to read:

CHAPTER 14A. THE ~~VERMONT~~ ENTREPRENEURS' SEED CAPITAL FUND § 290. DEFINITIONS

For purposes of this chapter:

(1) "Follow-on investment" means any investment in a Vermont firm following the initial investment.

(2) "Fund manager" means the investment management firm responsible for creating the fund, securing capital commitments, and implementing the fund's investment strategy, consistent with the requirements of this section. The fund manager shall be paid a fee which reflects a percentage of the fund's capital under management and a performance-fee share based on the fund's economic performance, as determined by the authority.

(3) "Seed capital" means first, nonfamily, nonfounder investment in the form of equity or convertible securities issued by a firm which had, in the 12 months preceding the date of the funding commitment, annual gross sales of less than $3,000,000.00.

§ 291. ~~VERMONT~~ ENTREPRENEURS' SEED CAPITAL FUND; AUTHORIZATION; LIMITATIONS

(a) The Vermont economic development authority shall cause to be formed a private investment equity fund to be named "the ~~Vermont~~ entrepreneurs' seed capital fund" or "the fund" ~~is authorized~~ for the purpose of increasing the amount of investment capital provided to new Vermont firms or to existing Vermont firms for the purpose of expansion. The authority may contract with one or more persons for the operation of the fund as fund manager. Such contract shall contain the terms and conditions pursuant to which the fund shall be managed to meet the fund's objective of providing seed capital to Vermont firms. The terms of the contract shall require that, if the fund manager does not meet the investment criteria specified in the contract, the fund manager may not be awarded the performance fee established under subdivision (c)(2) of this section.

(b) The ~~Vermont seed capital~~ fund shall be formed as ~~either a business corporation or~~ a limited partnership pursuant to Title 11 and shall be subject to all the following:

(1) The ~~Vermont seed capital~~ fund shall not invest in any firm in which ~~a total of more than a 25 percent~~ any interest in that firm is held by an investor of the ~~Vermont seed capital~~ fund ~~combined with any interest held in the firm~~ or by the spouse ~~or dependent~~, children, or other relative of the investor.

(2) The fund shall invest at least 40 percent of its total capital in initial investment in firms which had in the 12 months preceding the date of the funding commitment annual gross sales of less than $1,000,000.00 and may reserve the remainder of its capital for follow-on investments in these businesses, as appropriate.

(3) Before the fund makes any investments, the fund shall:

~~(A) If organized as a corporation, have and thereafter maintain a board of nine directors to be elected by the shareholders.~~

~~(B) If organized as a partnership,~~ have and maintain a board of ~~three~~ five advisors who shall be appointed ~~by the authority~~ as follows: two shall be appointed by the speaker of the house, two shall be appointed by the president pro tempore of the senate, and one shall be appointed by the governor. The board of advisors shall represent solely the economic interest of the state with respect to the management of the fund and shall have no civil liability for the financial performance of the fund. The board of advisors shall be advised of investments made by the fund and shall have access to all information held by the fund with respect to investments made by the fund.

~~(3)~~(4) The ~~Vermont seed capital~~ fund, within 120 days after the close of each fiscal year of its operations, shall issue a report that includes an audited financial statement certified by an independent certified public accountant. The report also shall include a compilation of the firm data required by subsection (d) of this section. These data shall be reported in a manner that does not disclose competitive or proprietary information, as determined by the authority. This report shall be distributed to the governor and the ~~legislative council~~ senate committee on economic development, housing and general affairs and the house committee on commerce and economic development and made available to the public. The report shall include a discussion of the fund's impact on the Vermont economy and employment.

~~(4)~~(5) The ~~Vermont seed capital~~ fund shall not make distributions of more than 75 percent of its net profit to its investors during its first five years of operation.

~~(5)~~(6) No person shall be allocated more than ~~10~~ 20 percent of the available tax credits. For the purposes of determining allocation, the attribution rules of Section 318 of the Internal Revenue Code in effect as of the effective date of this chapter shall apply.

~~(6)~~(7) The capitalization of the fund is not limited under this section; however, only the first ~~$5~~ $10 million ~~of capitalization of the Vermont seed capital fund~~ raised from Vermont taxpayers on or before January 1, ~~2014~~ 2020, shall be eligible for partial tax credits as specified in 32 V.S.A. § 5830b.

~~(7)~~(8) All investments and related business dealings using funds that qualify for partial tax credits under 32 V.S.A. § 5830b shall be subject to the following restrictions:

(A) The investments shall be restricted to Vermont firms, which for the purposes of this chapter means that their Vermont apportionment equals or exceeds 50 percent, using the apportionment rules under 32 V.S.A. § 5833, and they maintain headquarters and a principal facility in Vermont. Any funds invested in Vermont firms shall be used for the purpose of enhancing their Vermont ~~investments~~ operations. Investment shall be restricted to firms that export the majority of their products and services outside the state or add substantial value to products and materials within the state. In its investments, the fund shall give priority to new firms and existing firms that are developing new products, and shall take into consideration any impact on in-state competition and also whether the investment will encourage economic activity that would not occur but for the fund investment.

(B) Each ~~Vermont seed capital~~ fund investment in any one firm, in any 12-month period shall be limited to a maximum of ten percent of the ~~Vermont seed capital~~ fund's capitalization and, for the life of the fund, to a maximum of 20 percent of the fund's total capitalization.

(C) At least two-thirds of the monies invested by the ~~Vermont seed capital~~ fund and qualifying for a tax credit under 32 V.S.A. § 5830b shall at all times be invested in the form of equity or convertible securities~~. This provision shall not prohibit~~ unless the fund manager determines it is reasonable and necessary to pursue temporarily the generally accepted business practice of earning interest on working funds deposited in relatively secure accounts such as savings and money market funds.

(c) Any firm receiving monies from the fund must report to the fund manager the following information regarding its activities in the state over the calendar year in which the investment occurred:

(1) The total amount of private investment received.

(2) The total number of persons employed as of December 31.

(3) The total number of jobs created and retained, which also shall indicate for each job the corresponding job classification, hourly wage and benefits, and whether it is part-time or full-time.

(4) Total annual payroll.

(5) Total sales revenue.

(d) The authority, in consultation with the fund manager, shall establish reasonable standards and procedures for evaluating potential recipients of fund monies. The authority shall make available to the general public a report of all

firms that receive fund investments and also indicate the date of the investment, the amount of the investment, and a description of the firm's intended use of the investment. This report shall be updated at least quarterly.

(e) Information and materials submitted by a business receiving monies from the fund shall be available to the auditor of accounts in connection with the performance of duties under 32 V.S.A. § 163; provided, however, that the auditor of accounts shall not disclose, directly or indirectly, to any person any proprietary business information.

(f) In fiscal year 2010 and again in fiscal year 2011, in two installments of $4,000,000.00, an aggregate of $8,000,000.00 shall be appropriated from the state fiscal stabilization funds available under the American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5, to the entrepreneurs' seed capital fund for investment in eligible Vermont firms pursuant to this section. If, however, at the end of fiscal years 2010 and 2011, the Vermont economic development authority determines that the public monies appropriated under this subsection have not been invested within a reasonable period of time, the authority shall have the discretion to transfer any remaining unobligated funds to the technology loan program created under Sec. 16 of this act or to the small business loan program.

Sec. 22. REPEAL

10 V.S.A. § 292 (providing for the initial organization of the Vermont seed capital fund) is repealed.

Sec. 23. 32 V.S.A. § 5830b is amended to read:

§ 5830b. TAX CREDITS; ~~VERMONT~~ ENTREPRENEURS' SEED CAPITAL FUND

(a) The initial capitalization of the Vermont entrepreneurs' seed capital fund ~~comprising a maximum $5~~, as established in 10 V.S.A. § 291, up to $10 million raised from Vermont taxpayers on or before January 1, ~~2014~~ 2020, shall entitle those taxpayers to a credit against the tax imposed by sections 5822, 5832, 5836, or 8551 of this title and by 8 V.S.A. § 6014. The credit may be claimed for the taxable year in which a contribution is made and each of the four succeeding taxable years. The amount of the credit for each year shall be the lesser of ~~four~~ ten percent of the taxpayer's contribution or 50 percent of the taxpayer's tax liability for that taxable year prior to the allowance of this credit; provided, however, that in no event shall the aggregate credit allowable under this section for all taxable years exceed ~~20~~ 50 percent of the taxpayer's contribution to the initial ~~$5~~ $10 million capitalization of the ~~Vermont seed capital~~ fund. The credit shall be nontransferable except as provided in subsection (b) of this section.

(b) If the taxpayer disposes of an interest in the ~~Vermont seed capital~~ fund within four years after the date on which the taxpayer acquired that interest, any unused credit attributable to the disposed-of interest is disallowed. This disallowance does not apply in the event of an involuntary transfer of the interest, including a transfer at death to any heir, devisee, legatee, or trustee, or in the event of a transfer without consideration to or in trust for the benefit of the taxpayer or one or more persons related to the taxpayer as spouse, descendant, parent, grandparent, or child.

* * * Technology Loan Program * * *

Sec. 24. 10 V.S.A. chapter 12, subchapter 12 is added to read:

Subchapter 12. Technology Loan Program

§ 280aa. FINDINGS AND PURPOSE

(a) Technology-based companies are a vital source of innovation, employment, and economic growth in Vermont. The continued development and success of this increasingly important sector of Vermont's economy is dependent upon the availability of flexible, risk-based capital. Because the primary assets of technology-based companies sometimes consist almost entirely of intellectual property, such companies frequently do not have access to conventional means of raising capital, such as asset-based bank financing.

(b) To support the growth of technology-based companies and the resultant creation of high-wage employment in Vermont, a technology loan program is established under this subchapter.

§ 280bb. TECHNOLOGY LOAN PROGRAM

There is created a technology (TECH) loan program to be administered by the Vermont economic development authority. The program shall seek to meet the working capital and capital-asset financing needs of technology-based companies. The Vermont economic development authority shall establish such policies and procedures for the program as are necessary to carry out the purposes of this subchapter. The authority's lending criteria shall include consideration of in-state competition and whether a company has made reasonable efforts to secure capital in the private sector.

Sec. 25. TECHNOLOGY LOAN PROGRAM; APPROPRIATION; FEDERAL FUNDS

In fiscal year 2010 and again in fiscal year 2011, in two installments of $1,000,000.00, a total of $2,000,000.00 shall be appropriated from the state fiscal stabilization funds available under the American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5, to the Vermont economic development authority for use in the technology loan program established in this act.

* * * Wage Threshold for VEGI Program * * *

Sec. 26. STUDY ON THE VEGI PROGRAM

The VEGI technical working group shall make recommendations to the general assembly regarding the following:

(1) whether the VEGI program should target job creation, in general, and not just the creation of new, high-paying jobs; and

(2) options that are consistent with the integrity of the VEGI cost-benefit model but allow for variation in wage thresholds based on regional prevailing wage rates and unemployment rates.

* * * Small Business Loan Program: Loss Reserves * * *

Sec. 27. SMALL BUSINESS LOAN PROGRAM; LOSS RESERVES

In fiscal year 2010 and again in fiscal year 2011, in two installments of $1,000,000.00, a total of $2,000,000.00 shall be appropriated from the state fiscal stabilization funds available under the American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5, to the Vermont economic development authority under section 223 of Title 10 to be used by the authority for loss reserves in the Vermont small business loan program.

* * * Sustainable Jobs Fund: Loss Reserves * * *

Sec. 28. VERMONT SUSTAINABLE JOBS FUND PROGRAM; LOSS RESERVES; FEDERAL FUNDS

In fiscal year 2010, the amount of $250,000.00 shall be appropriated from the state fiscal stabilization funds available under the American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5, to the Vermont sustainable jobs fund program established in 10 V.S.A. § 328 to be used solely for loss reserves in the sustainable jobs fund's flexible capital fund program.

* * * Minimum Wage: Negative CPI * * *

Sec. 29. 21 V.S.A. § 384 is amended to read:

§ 384. PROHIBITION OF EMPLOYMENT

(a) An employer shall not employ an employee at a rate of less than $7.25, and, beginning January 1, 2007, and on each subsequent January 1, the minimum wage rate shall be increased by five percent or the percentage increase of the Consumer Price Index, CPI-U, U.S. city average, not seasonally adjusted, or successor index, as calculated by the U.S. Department of Labor or successor agency for the 12 months preceding the previous September 1, whichever is smaller, but in no event shall the minimum wage be decreased. The minimum wage shall be rounded off to the nearest $0.01. An employer in the hotel, motel, tourist place, and restaurant industry shall not employ a

service or tipped employee at a basic wage rate less than $3.65 an hour, and beginning January 1, 2008, and on each January 1 thereafter, this basic tip wage rate shall be increased at the same percentage rate as the minimum wage rate. For the purposes of this subsection, "a service or tipped employee" means an employee of a hotel, motel, tourist place, or restaurant who customarily and regularly receives more than $120.00 per month in tips for direct and personal customer service. If the minimum wage rate established by the United States government is greater than the rate established for Vermont for any year, the minimum wage rate for that year shall be the rate established by the United States government.

(b) Notwithstanding subsection (a) of this section, an employer shall not pay an employee less than one and one-half times the regular wage rate for any work done by the employee in excess of 40 hours during a workweek. However, this subsection shall not apply to:

(1) Employees of any retail or service establishment. A "retail or service establishment" means an establishment 75 percent of whose annual volume of sales of goods or services, or of both, is not for resale and is recognized as retail sales or services in the particular industry.

(2) Employees of an establishment which is an amusement or recreational establishment, if:

(A) it does not operate for more than seven months in any calendar year, or

(B) during the preceding calendar year its average receipts for any six months of that year were not more than one-third of its average receipts for the other six months of the year.

(3) Employees of an establishment which is a hotel, motel, or restaurant.

(4) Employees of hospitals, public health centers, nursing homes, maternity homes, therapeutic community residences, and residential care homes as those terms are defined in Title 18, provided:

(A) the employer pays the employee on a biweekly basis; and

(B) the employer files an election to be governed by this section with the commissioner; and

(C) the employee receives not less than one and one-half times the regular wage rate for any work done by the employee:

(i) in excess of eight hours for any workday; or

(ii) in excess of 80 hours for any biweekly period.

(5) Those employees of a business engaged in the transportation of persons or property to whom the overtime provisions of the Federal Fair Labor Standards Act do not apply, but shall apply to all other employees of such businesses.

(6) Those employees of a political subdivision of this state.

(7) State employees~~,~~ who ~~shall be~~ are covered by the U.S. Federal Fair Labor Standards Act.

(c) However, an employer may deduct from the rates required in subsections (a) and (b) of this section the amounts for board, lodging, apparel, rent, or utilities paid or furnished or other items or services or such other conditions or circumstances as may be usual in a particular employer-employee relationship, including gratuities as determined by the wage order made under this subchapter.

* * * Stimulus Money and Unemployment Insurance * * *

Sec. 30. ARRA AND UNEMPLOYMENT INSURANCE

(a) The American Recovery and Investment Act of 2009 (ARRA), Pub.L. No. 111-5, authorizes the federal government to transfer up to $13,918,000.00 into Vermont's unemployment insurance (UI) trust fund for UI modernization incentive payments.

(b) Vermont already qualifies for one-third of its allotted incentive payments because the state allows for the use of an alternative base period in determining UI eligibility. In order to qualify for the remaining two-thirds of its allotted incentive payments, Vermont's UI program must meet two of four expanded-coverage requirements.

(c) The state already meets one expanded-coverage requirement: namely, coverage of part-time workers. It is the intent of the general assembly to adopt one additional expanded-coverage requirement, namely the training program specified in Sec. 31 of this act, and to apply to the secretary of the United States Department of Labor for certification of UI modernization so that the state may receive its remaining allotment of incentive payments.

Sec. 31. 21 V.S.A. § 1423b is added to read:

§ 1423b. EXTENDED BENEFITS; APPROVED TRAINING PROGRAMS

(a) An individual who is otherwise eligible for benefits under this chapter, but who has exhausted his or her maximum benefit amount under section 1340 of this chapter shall be entitled to an additional 26 weeks of benefits in the same amount as the weekly benefit amount established in the individual's most recent benefit year if the individual is enrolled in and making satisfactory

process in a state-approved training program as defined in subsection (b) of this section.

(b) A state-approved training program is any training program or job training program that meets all of the following criteria:

(1) It is authorized by the Workforce Investment Act of 1998.

(2) It is designed to assist individuals who have been separated from a declining occupation or who have been involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the individual's place of employment.

(3) It is designed to train the individual for entry into a high-demand occupation.

* * * Farm to Plate * * *

Sec. 32. 10 V.S.A. chapter 15A § 330 is added to read:

§ 330. THE FARM-TO-PLATE INVESTMENT PROGRAM; CREATION; GOALS; TASKS; METHODS

(a) Creation.

(1) The sustainable jobs fund program shall establish the Vermont farm-to-plate investment program to fulfill the goals and carry out the tasks described in this section.

(2) If at least $100,000.00 in funding is not made available for the purpose of this section, the sustainable jobs fund program is encouraged but no longer required to fulfill the provisions of this section.

(b) Goals. The goals of the farm-to-plate investment program are to:

(1) Increase economic development in Vermont's food and farm sector.

(2) Create jobs in the food and farm economy.

(3) Improve access to healthy local foods.

(c) Tasks.

(1) By June 30, 2010, the Vermont farm-to-plate investment program shall create a strategic plan for agricultural economic development, which may be periodically reviewed and updated, based upon the following:

(A) Inventory Vermont's food system infrastructure by gathering existing data, studies, and analysis about the components of Vermont's food system, including:

(i) The types of foods produced in Vermont, the number of producers of each type of food, the amount of each type of food produced, and the financial viability of each food-producing sector.

(ii) The types of food processors in Vermont, how much food produced in Vermont is purchased by Vermont processors, and the financial viability of the food processing sector in Vermont.

(iii) The current and potential markets in which Vermont food producers and processors can sell their products.

(iv) The extent of existing agricultural lands that could be expanded and the resources available to expand Vermont's food production.

(v) The potential for new farmers and food processors to enter the local food economy, the methods for new farmers to acquire land and other farm infrastructure, and the availability and barriers to farm and processing labor.

(vi) The potential for entirely new local products and the barriers to farmers and processors entering new markets.

(B) Identify gaps in the infrastructure and distribution systems and identify ways to address these gaps.

(2) By June 30, 2010, the Vermont farm-to-plate investment program shall distribute grant funding to support farm-to-table direct marketing, including farmers' markets and community-supported agriculture operations and to support regional community food hubs. Funding shall be provided only to applicants contributing at least 200 percent of the grant amount in matching funds.

(3) As an ongoing task, the farm-to-plate investment program shall use the information gathered for the strategic plan to identify methods and the funding necessary to strengthen the links among producers, processors, and markets including:

(A) Support of the work of existing farm-to-school programs to increase the purchase of local foods by Vermont schools, with a particular emphasis on procurement of nutrient-dense animal foods.

(B) Collaborating with the agency of agriculture, food and markets and the department of buildings and general services to increase procurement of local foods in accordance with 6 V.S.A. § 4601.

(C) Collaborating with the agency of agriculture, food and markets and the sustainable agriculture council to increase procurement of local foods by businesses and institutions.

(D) Supporting initiatives that improve direct marketing of foods from the farm to the consumer.

(E) Informing agricultural lenders of the information collected under subsection (c)(1) of this section in order to facilitate availability of agricultural financing.

(d) Methods. To accomplish the goals and carry out the ongoing tasks stated in this section, the Vermont farm-to-plate investment program may:

(1) Create an advisory panel with representatives from the agricultural and business communities.

(2) Hire or assign staff.

(3) Seek and accept funds from private and public entities.

(4) Utilize technical assistance, loans, grants, or other means approved by the board.

33. 10 V.S.A. § 329 is amended to read:

§ 329. ANNUAL REPORT

Prior to January 31 of each year, the corporation formed under section 328 of this title shall submit a report concerning its activities to the governor and the legislative committees on commerce, general affairs, natural resources, ways and means, finance, institutions, and appropriations. The report shall include the following information:

* * *

(5) A summary of work completed in the farm-to-plate investment program, including progress toward meeting the program goals, information regarding any advisory panel meetings, an accounting of all revenues and expenses related to the program, and recommendations regarding future program activity. The report shall also include information regarding the status of state government procurement of local foods.

* * * Municipal Revenue Bonds * * *

Sec. 34. 24 V.S.A. § 1898(b) is amended to read:

(b) A municipality shall have power to issue from time to time general obligation ~~and~~ bonds, revenue bonds ~~from time to time~~, or revenue bonds also backed by the municipality's full faith and credit in its discretion to finance the undertaking of any improvements wholly or partly within such district. If revenue bonds are issued, such bonds shall be made payable, as to both principal and interest, solely from the income proceeds, revenues, tax increments and funds of the municipality derived from, or held in connection with its undertaking and carrying out of improvements under this chapter. So

long as any such bonds of a municipality are outstanding the local governing body may deduct, in any one or more years from any net increase in the aggregate taxable valuation of land and improvements in all areas covered by their district the amount necessary to produce tax revenues equal to the current debt service on such bonds, assuming the previous year's total tax rate and full collection. Only the balance, if any, of such net increase shall be taken into account in computing the sums which may be appropriated for other purposes under applicable tax rate limits. But all the taxable property in all areas covered by the district, including the whole of such net increase, shall be subject to the same total tax rate as other taxable property, except as may be otherwise provided by law. Such net increase shall be computed each year by subtracting, from the current aggregate valuation of the land and improvements in all areas covered by the district, the sum of the aggregate valuations of land and improvements in each such area on the date the district was approved under this section. An area shall be deemed to be covered as a district until the date all the indebtedness incurred by the municipality to finance the applicable improvements have been paid. Notwithstanding any provisions in this chapter to the contrary, any provision of a municipal charter of any municipality which specifies a different debt limit, or which requires a greater vote to authorize bonds, or which prescribes a different computation of appropriations under tax rate limits, or which is otherwise inconsistent with this subsection, shall apply.

Sec. 35. EFFECTIVE DATE

This act shall be effective upon passage.

(Committee vote: 7-0-0)

And that when so amended the bill ought to pass.

SENATOR ANN E. CUMMINGS
FOR THE COMMITTEE

Natural Resources and Energy Committee Report

TO THE HONORABLE SENATE

The Committee on Natural Resources and Energy to which was referred Senate Bill No. 137, entitled "AN ACT RELATING TO THE VERMONT RECOVERY AND REINVESTMENT ACT OF 2009"

respectfully reports that it has considered the same and recommends that the bill be amended as recommended by the Committee on Finance with the following amendments thereto:

First: By striking out Sec. 1 in its entirety and inserting in lieu thereof a new Sec. 1 to read as follows:

Sec. 1. SPRINGFIELD REDEVELOPMENT; PILOT PROGRAM

(a) For purposes of this section:

(1) "Redevelopment area" means an area within the town of Springfield that: is identified by the town to accommodate a significant amount of industrial activity, high technology, or other job-producing activity; includes one or more industrial facilities that have been vacant or substantially underutilized for more than ten years; has at least 15,000 square feet or a minimum of five acres if the site includes an older structure; and does not detract from the planned economic development of the downtown designated district.

(2) "Qualified business" means any business that intends to locate in or expand into the redevelopment area and:

(A) Is in compliance with applicable zoning and other local bylaws and requirements for locating in the redevelopment area.

(B) Is in compliance with applicable federal, state, and local regulations.

(C) Will employ at least ten new full-time employees in positions that are not retail sales within a year of approval.

(D) Will pay wages and benefits to all full-time employees that meet or exceed the prevailing compensation level for that particular employment.

(3) "Qualified redeveloper" means any taxpayer that purchases and redevelops an industrial building in the redevelopment area for sale or lease to a qualified business.

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

(5) "Substantially underutilized" means a property or facility of which less than ten percent has been occupied for uses other than storage or warehousing for at least ten years and for which active and sustained marketing has produced no significant employment.

(b) There is created a redevelopment pilot program which shall be administered as follows:

(1) The town of Springfield may apply to the secretary for approval of a redevelopment area authorized by this section.

(2) Qualified businesses and qualified redevelopers may apply to the secretary for the benefits provided by this section.

(3) Approval of a redevelopment area under this section shall be for a period of ten years and may be extended by the secretary, upon application by the municipality, for one additional ten-year period.

(4) Applications from the town of Springfield for approval of a redevelopment area and from qualified businesses and qualified redevelopers for approval of benefits shall be made in accordance with guidelines established by the secretary.

(5) The secretary shall issue a written decision granting or denying an application within 45 days of receipt of a completed application. If the secretary denies an application, the decision shall state the reasons for the denial. The town of Springfield, a qualified business, or a qualified redeveloper denied approval may submit a new application at any time.

(6) Decisions of the secretary under this section are not subject to chapter 25 of Title 3 and shall be final and not reviewable.

(7) Beginning no later than 12 months after approval by the secretary, qualified businesses and qualified redevelopers shall annually submit a written report to the secretary verifying that the business continues to meet all the requirements of this section.

(8) The secretary is authorized to approve one redevelopment area in accordance with this section.

(c) Qualified businesses and qualified redevelopers located in a redevelopment area are eligible for the following benefits:

(1) The sales tax exemption provided under 32 V.S.A. § 9741(48) for the building materials, machinery, equipment, or trade fixtures purchased for use in the Springfield pilot zone or redevelopment area.

(2) A ten-year exemption from the education tax imposed under 32 V.S.A. § 5402 on the nonresidential value of the redeveloped property.

(3) An annual income tax credit equal to three percent of the total wages and salaries paid during the taxable year to employees for services performed within the Springfield pilot zone or redevelopment area.

(4) Priority given to applications by such businesses or redevelopers for state permits and other state approvals over any other pending application.

(5) Priority consideration by any state agency for eligibility for state or federal funding or other aid to industrial development based on a cost-benefit analysis.

(6) Priority consideration for financing programs available through the Vermont economic development authority under chapter 12 of this title.

(7) Technical support from the department of public safety and the division for historic preservation for the rehabilitation of older and historic buildings.

(d) Property tax exemptions under this section shall commence in the first tax year in which the qualified business or qualified redeveloper has made expenditures in the approved redevelopment area.

(e) Any benefits received by a qualified redeveloper related to the redevelopment, sale, or lease of improved space to a qualified business within a redevelopment area shall not be separately available to a qualified business that purchases or leases all or part of the facility improved by the redeveloper.

(f) Benefits shall not be available for either of the following:

(1) Retail sales activities; or

(2) Relocating a business within Vermont to a redevelopment area.

(g) Benefits granted to a qualified business or a qualified redeveloper may be terminated and recaptured by the secretary upon determination that the qualified business or a qualified redeveloper is no longer in compliance with, or has failed to meet, the requirements of this section. A decision to terminate or recapture benefits shall not be subject to chapter 25 of Title 3 and shall be final and not reviewable.

(h) The secretary, on or before January 15, 2011, and biennially thereafter, shall report to the general assembly on the progress of the redevelopment pilot program under this section and its impact on new economic development and the creation of new jobs.

Second: By inserting twenty-five new sections to be numbered Secs. 34a, -34y to read as follows::

* * * Small-Scale Hydroelectric Projects * * *

Sec. 34a. FINDINGS

The general assembly finds and declares that:

(1) The generation of renewable power within Vermont is critical to the economic development, energy independence, and financial security of the state.

(2) Section 401 of the federal Clean Water Act, 33 U.S.C. § 1341, requires any applicant for a federal permit that may involve a discharge to navigable waters to obtain certification from the state that the permitted activity does not violate the state's water quality standards.

(3) As set forth in 10 V.S.A. § 1004, the secretary of natural resources is the agent that the U.S. Environmental Protection Agency delegated to conduct Clean Water Act § 401 certifications in the state of Vermont.

(4) The secretary of natural resources should be required to adopt procedures establishing an application process for certification of hydroelectric projects in a timely manner that allows for the predictable and affordable development of small-scale hydroelectric power projects.

Sec. 34b. 10 V.S.A. § 1006 is added to read:

§ 1006. CERTIFICATION OF HYDROELECTRIC PROJECTS; APPLICATION PROCESS

(a) As used in this section:

(1) "Bypass reach" means that area in a waterway between the initial point where water has been diverted through turbines or other mechanical means for the purpose of water-powered generation of electricity and the point at which water is released into the waterway below the turbines or other mechanical means of electricity generation.

(2) "Conduit" means any tunnel, canal, pipeline, aqueduct, flume, ditch, or similar constructed water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.

(3) "Hydroelectric project" means a facility, site, or conduit planned or operated for the generation of water-powered electricity that has a generation capacity of no more than 1 megawatt and does not create a new impoundment.

(4) "Impoundment" means any artificial structure used to collect water in a pond, reservoir, or similar collection area for the purpose of water-powered generation of electricity.

(b) On or before December 15, 2009, the agency of natural resources, after opportunity for public review and comment, shall adopt by procedure an application process for the certification of hydroelectric projects in Vermont under Section 401 of the federal Clean Water Act.

(c) The application process adopted by the agency of natural resources under subsection (b) of this section may include an application form for a federal Clean Water Act Section 401 certification for a hydroelectric project that meets the requirements of the Vermont water pollution control permit rules. The application form may require information addressing:

(1) a description of the proposed hydroelectric project and the impact of the project on the watershed;

(2) the preliminary terms and conditions that an applicant shall be subject to if a federal Clean Water Act Section 401 certification is issued for a proposed hydroelectric project; and

(3) time frames for the agency of natural resources review of and response to an application for a federal Clean Water Act Section 401 certification of a hydroelectric project.

(d) In adopting the Clean Water Act Section 401 certification application process required by subsection (b) of this section, the agency may, consistent with its authority to waive certifications under 33 U.S.C. § 1341(a)(1), adopt an expedited certification process for:

(1) hydroelectric projects when data provided by an applicant provide reasonable assurance that the project will comply with the state water quality standards;

(2) hydroelectric projects utilizing conduits; hydroelectric projects without a bypass reach; and hydroelectric projects with a de minimis bypass reach, as defined by the agency of natural resources; and

(3) Previously certified hydroelectric projects operating in compliance with the terms of a Clean Water Act Section 401 certification as demonstrated by existing administrative, monitoring, reporting, or enforcement data.

Sec. 34c. AGENCY OF NATURAL RESOURCES REPORT ON APPLICATION PROCESS FOR CERTIFICATIONS OF HYDROELECTRIC PROJECTS

On or before January 15, 2010, the agency of natural resources shall submit to the senate committee on economic development, housing and general affairs, the house committee on commerce and economic development, the house committee on fish, wildlife and water resources, and the house and senate committees on natural resources and energy a copy of the application process required under 10 V.S.A. § 1006 for the certification of hydroelectric projects.

* * * STORMWATER PERMITTING * * *

Sec. 34d. EXTENSION OF SUNSET

Sec. 10 of No. 140 of the Acts of the 2003 Adj. Sess. (2004), as amended by Sec. 8 of No. 154 of the Acts of the 2005 Adj. Sess. (2006), as amended by Sec. 3 of No. 43 of the Acts of 2007, is further amended to read:

Sec. 10. SUNSET

(a) Sec. 2 of this act (interim permitting authority for regulated stormwater runoff), except for subsection 1264a(e) of Title 10, shall continue to be in effect until January 15, 2011 for projects that receive all or part of their

funding through the American Recovery and Reinvestment Act (ARRA) of 2009, Pub.L. No. 111-5. For other projects, Sec. 2 of this act, except for subsection 1264a(e) of Title 10, shall be repealed on January 15, 2010.

(b) Sec. 4 of this act (local communities implementation fund) shall be repealed on September 30, 2012.

(c) Sec. 6 of this act (stormwater discharge permits during transition period) shall be repealed on January 15, ~~2010~~ 2011.

Sec. 34e. 24 V.S.A. § 4758 is amended to read:

§ 4758. LOAN PRIORITIES

(a) Periodically, and at least annually, the secretary shall prepare and certify to the bond bank a project priority list of those municipalities whose publicly owned projects, or privately owned wastewater systems, are eligible for financing or assistance under this chapter. In determining financing availability for wastewater projects under this chapter, the secretary of the agency having jurisdiction shall apply the following criteria:

(1) the probable public benefit to be gained or preserved by the project to be financed;

(2) the long-term costs and the resulting benefits to be derived from the project. In determining benefits, induced growth from a project that is not consistent with a town, city, or village plan, duly adopted under chapter 117 of this title, will not be considered;

(3) the cost of comparable credit or financing alternatives available to the municipality;

(4) the existence of immediate public health, safety and welfare factors, and compliance therewith;

(5) the existence of an emergency constituting a threat to public health, safety and welfare; and

(6) the current area and population to be served by the proposed project.

(b) In determining financing availability for stormwater projects under this chapter, the secretary of the agency having jurisdiction shall apply the following criteria:

(1) that the project is specifically or generally described in Vermont's nonpoint source management plan;

(2) that the project will remedy or prevent the impairment of waters, and the severity of that existing or prevented impairment; and

(3) that the project is consistent with the applicable basin plan for the waters affected by the project.

(c) In determining financing availability for projects funded by federal monies available to the state from the American Recovery and Reinvestment Act (ARRA) of 2009, Pub.L. No. 111-5, the secretary shall assure that municipal stormwater projects in the stormwater-impaired waters of the state shall be given priority over other projects.

Sec. 34f. SUNSET OF PRIORITY FOR STORMWATER PROJECTS UNDER STATE ENVIRONMENTAL REVOLVING FUND

24 V.S.A. § 4758(c) (state environmental revolving fund financing priority for stormwater projects in impaired waters) is repealed January 15, 2012.

Sec. 34g. ALTERNATIVE GUIDANCE FOR STORMWATER PERMITTING; WIND FACILITIES

To facilitate responsible development of renewable energy projects in high-elevation settings, the Vermont department of environmental conservation shall consult with project developers and interested stakeholders and, by January 15, 2010 or in the process currently under way to update the Vermont stormwater management manual, whichever occurs first, amend its rules or the stormwater management manual, pursuant to chapter 25 of Title 3, to include alternative guidance for operational-phase stormwater permitting of renewable energy projects located in high-elevation settings. Such alternative guidance shall include consideration of measures that minimize the extent and footprint of stormwater-treatment practices so as to preserve vegetation and trees and limit disturbances; that reflect the fragile ecosystems, shallow soils, and sensitive streams found in high-elevation settings; and that reflect the temporary nature and infrequent use of construction and access roads to such projects.

* * * Communications Facilities Permitting * * *

Sec. 34h. 30 V.S.A. § 248a is amended to read:

§ 248a. CERTIFICATE OF PUBLIC GOOD FOR ~~MULTIPLE~~ COMMUNICATIONS FACILITIES

(a) Notwithstanding any other provision of law, if the applicant ~~in a single application~~ seeks approval for the construction or installation ~~within three years~~ of ~~three or more~~ telecommunications facilities ~~as part of an interconnected network~~ that are to be interconnected with other telecommunications facilities proposed or already in existence, the applicant may obtain a certificate of public good issued by the public service board under this section, which the board may grant if it finds that the facilities will promote the general good of the state consistent with subsection 202c(b) of this

title. A single application may seek approval of one or more telecommunications facilities.

(b) For the purposes of this section:

(1) "Telecommunications facility" means ~~any~~ a communications facility that transmits and receives signals to and from a local, state, national, or international network used primarily for two-way communications for commercial, industrial, municipal, county, or state purposes and any associated support structure ~~extending more than 50 feet above the ground~~ that is proposed for construction or installation which is primarily for communications purposes ~~and which supports facilities that transmit and receive communications signals for commercial, industrial, municipal, county, or state purposes~~, and any ancillary improvements that are proposed for construction or installation and are primarily intended to serve the communications facilities or support structure.

(2) ~~Telecommunications facilities are "part of an interconnected network" if those facilities would allow one or more communications services to be provided throughout a contiguous area of coverage created by means of the proposed facilities or by means of the proposed facilities in combination with other facilities already in existence~~ An applicant may seek approval of construction or installation of a telecommunications facility whether or not the telecommunications facility is attached to an existing structure.

(c) Before the public service board issues a certificate of public good under this section, it shall find that~~, in the aggregate~~ each of the following is true:

(1) ~~the~~ The proposed ~~facilities~~ facility will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, and the public health and safety, with due consideration having been given to the relevant criteria specified in subsection 1424a(d) and subdivisions 6086(a)(1) through (8) and (9)(K) of Title 10~~; and~~.

(2) Substantial deference has been given to the legal standards and criteria of any ordinance adopted under 24 V.S.A. § 2291(19) or bylaw adopted under 24 V.S.A. § 4414(12) by the municipality in which the facility is located.

(3) ~~unless~~ Unless there is good cause to find otherwise, substantial deference has been given to the land conservation measures in the plans of the affected municipalities and the recommendations of the municipal and regional planning commissions regarding the municipal and regional plans, respectively.

(d) When issuing a certificate of public good under this section, the board shall give ~~due consideration~~ substantial deference to all conditions in an

existing state or local permit and shall harmonize the conditions in the certificate of public good with the existing permit conditions to the extent feasible.

(e) No less than 45 days prior to filing a petition for a certificate of public good under this section, the applicant shall serve written notice of an application to be filed with the board pursuant to this section to the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities; the secretary of the agency of natural resources; the commissioner of the department of public service and its director for public advocacy; and the landowners of record of property adjoining the project sites. In addition, at least one copy of each application shall be filed with each of these municipal and regional planning commissions. Upon motion or otherwise, the public service board shall direct that further public or personal notice be provided if the board finds that such further notice will not unduly delay consideration of the merits and that additional notice is necessary for fair consideration of the application.

(f) Unless the public service board identifies that an application raises a ~~substantial~~ significant issue, the board shall issue a final determination on an application filed pursuant to this section within 90 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 90 days of the date on which the clerk of the board notifies the applicant that the filing is complete. If the board rules that an application raises a ~~substantial~~ significant issue, it shall issue a final determination on an application filed pursuant to this section within 180 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 180 days of the date on which the clerk of the board notifies the applicant that the filing is complete.

(g) Nothing in this section shall be construed to prohibit an applicant from executing a letter of intent or entering into a contract before the issuance of a certificate of public good under this section, provided that the obligations under that letter of intent or contract are made subject to compliance with the requirements of this section.

(h) An applicant using the procedures provided in this section shall not be required to obtain a ~~local zoning~~ permit or a permit amendment or other approval under the provisions of subdivision 2291(19) or chapter 117 of Title 24 or chapter 151 of Title 10 for the facilities subject to the application or to a certificate of public good issued pursuant to this section. ~~Ordinances adopted pursuant to subdivision 2291(19) of Title 24 or a municipal charter that would otherwise apply to the construction or installation of facilities subject to this section are preempted.~~ Disputes over jurisdiction under this section shall be resolved by the public service board, subject to appeal as provided by section

12 of this title. An applicant that has obtained or been denied a permit or permit amendment under the provisions of Title 24 or chapter 151 of Title 10 for the construction of a telecommunications facility may not apply for approval from the board for the same or substantially the same facility, except that an applicant may seek approval for a modification to such a facility.

(i) Effective July 1, ~~2010~~ 2011, no new applications for certificates of public good under this section may be considered by the board.

(j)(1) The board may, subject to such conditions as it may otherwise lawfully impose, issue a certificate of public good in accordance with the provisions of this subsection and without the notice and hearings required by any provision other than subdivision (2) of this subsection if the board finds that such facilities will be of limited size and scope, and the petition does not raise a significant issue with respect to the substantive criteria of this section. If an applicant requests approval of multiple telecommunications facilities in a single application under this section, the board may issue a certificate of public good in accordance with the provisions of this subsection for all or some of the telecommunications facilities described in the petition.

(2)(A) Any party seeking to proceed under the procedures authorized by this subsection shall file a proposed certificate of public good and proposed findings of fact with its petition, and provide notice and a copy of the petition, proposed certificate of public good, and proposed findings of fact to the commissioner of the department of public service and its director for public advocacy, the secretary of the agency of natural resources, and each of the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities. The applicant shall give written notice of the proposed certificate to the landowners of record of property adjoining the project site or sites unless the board has previously determined on request of the applicant that good cause exists to waive or modify the notice requirement with respect to such landowners. Such notice shall request comment to the board within 21 days of the notice on the question of whether the petition raises a significant issue with respect to the substantive criteria of this section. If the board finds that a petition raises a significant issue with respect to the substantive criteria of this section, the board shall hear evidence on any such issue.

(B) Any waiver or modification of notice to adjoining landowners under this subsection shall be based on a determination that the landowners subject to the waiver or modification could not reasonably be affected by one or more of the proposed facilities, and that notice to such landowners would constitute a significant administrative burden without corresponding public benefit.

(C) If the board accepts a request to consider an application under the procedures of this subsection, then unless the public service board subsequently determines that an application raises a significant issue, the board shall issue a final determination on an application filed pursuant to this subsection within 45 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 45 days of the date on which the clerk of the board notifies the applicant that the filing is complete. If, subsequent to acceptance of an application under this subsection, the board rules that an application raises a significant issue, it shall issue a final determination on an application filed pursuant to this subsection within 90 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 90 days of the date on which the clerk of the board notifies the applicant that the filing is complete.

(D) If the board denies a request to consider an application under the procedures of this subsection, a filing made under this subsection that the board has found to be complete shall be deemed to satisfy notice requirements of subsection (e) of this section, and the periods stated under subsection (f) of this section shall run from the date of the board's denial of such request.

(k) The public service board may issue rules or orders implementing and interpreting this section. In developing such rules and orders, the board shall seek to simplify the application and review process as appropriate, consistently with the requirements of this section.

Sec. 34i. 24 V.S.A. § 4412(8)(C) is amended to read:

(C) The regulation ~~of antennae that are part~~ of a telecommunications facility, as defined in 30 V.S.A. § 248a, shall be exempt from municipal ~~bylaw review~~ approval under this chapter when and to the extent jurisdiction is assumed by the public service board according to the provisions of that section.

Sec. 34j. 10 V.S.A. § 6027 is amended to read:

§ 6027. POWERS

* * *

(l) A district commission may reject an application under this chapter that misrepresents any material fact and may after notice and opportunity for hearing award reasonable attorney's fees and costs to any party or person who may have become a party but for the false or misleading information or who has incurred attorney's fees or costs in connection with the application.

Sec. 34k. 24 V.S.A. § 4455 is added to read:

§ 4455. REVOCATION

On petition by the municipality and after notice and opportunity for hearing, the environmental court may revoke a municipal land use permit issued under this chapter, including a permit for a telecommunications facility, on a determination that the permittee violated the terms of the permit or obtained the permit based on misrepresentation of material fact.

Sec. 34l. 24 V.S.A. § 4470a is added to read:

§ 4470a. MISREPRESENTATION; MATERIAL FACT

An administrative officer or appropriate municipal panel may reject an application under this chapter, including an application for a telecommunications facility, that misrepresents any material fact. After notice and opportunity for hearing in compliance with section 809 of Title 3, an appropriate municipal panel may award reasonable attorney's fees and costs to any party or person who may have become a party but for the false or misleading information or who has incurred attorney's fees or costs in connection with the application.

Sec. 34m. 30 V.S.A. § 202c is amended to read:

§ 202c. STATE TELECOMMUNICATIONS; POLICY AND PLANNING

(a) The general assembly finds that advances in telecommunications technology and changes in federal regulatory policy are rapidly reshaping telecommunications services, thereby promising the people and businesses of the state improved communication and access to information, while creating new challenges for maintaining a robust, modern telecommunications network in Vermont.

(b) Therefore, to direct the benefits of improved telecommunications technology to all Vermonters, it is the purpose of this section and section 202d of this title to:

(1) Strengthen the state's role in telecommunications planning.

(2) Support the universal availability of appropriate infrastructure and affordable services for transmitting voice and high-speed data.

(3) Support the availability of modern mobile wireless telecommunications services along the state's travel corridors and in the state's communities.

(4) Provide for high-quality, reliable telecommunications services for Vermont businesses and residents.

(5) Provide the benefits of future advances in telecommunications technologies to Vermont residents and businesses.

(6) Support competitive choice for consumers among telecommunications service providers.

(7) Support the application of telecommunications technology to maintain and improve governmental and public services, public safety, and the economic development of the state.

(8) Support, to the extent practical and cost-effective, deployment of broadband infrastructure that:

(A) Uses the best commercially available technology.

(B) Does not negatively affect the ability of Vermont to take advantage of future improvements in broadband technology or result in widespread installation of technology that becomes outmoded within a short period after installation.

Sec. 34n. 30 V.S.A. § 8060 is amended to read:

§ 8060. LEGISLATIVE FINDINGS AND PURPOSE

(a) The general assembly finds that:

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

(2) Private entities have brought mobile telecommunications and broadband services to many households, businesses and locations in the state, but significant gaps remain.

(3) A new level of creative and innovative strategies (including partnerships and collaborations among and between state entities, nonprofit organizations, municipalities, the federal government, and the private sector) is necessary to extend and complete broadband coverage in the state, and to ensure that Vermont maintains a telecommunications infrastructure that allows residents and businesses to compete fairly in the national and global economy.

(4) When such partnerships and collaborations fail to achieve the goal of providing high-quality broadband access and service to all areas and households, or when some areas of the state fall behind significantly in the variety and quality of services readily available in the state, it is necessary for an authority of the state to support and facilitate the construction of infrastructure and access to broadband service through financial and other incentives.

(5) Small broadband enterprises now offering broadband service in Vermont have limited access to financial capital necessary for expansion of broadband service to unserved areas of the state. The general assembly recognizes these locally based broadband providers for their contributions to date in providing broadband service to unserved areas despite the limitations on their financial resources.

(6) The universal availability of adequate mobile telecommunications and broadband services promotes the general good of the state.

(7) Vermonters should be served by broadband infrastructure that, to the extent practical and cost-effective, uses the best commercially available technology and does not involve widespread installation of technology that becomes outmoded within a short period after installation.

(b) Therefore, it is the goal of the general assembly to ensure:

(1) that all residences and business in all regions of the state have access to affordable broadband services not later than the end of the year 2010~~:~~, and that this goal be achieved in a manner that, to the extent practical and cost-effective, does not negatively affect the future installation of the best commercially available broadband technology or result in widespread installation of technology that becomes outmoded within a short period after installation.

(2) the ubiquitous availability of mobile telecommunication services including voice and high-speed data throughout the state by the end of the year 2010.

(3) the investment in telecommunications infrastructure in the state which will support the best available and economically feasible service capabilities.

(4) that telecommunications and broadband infrastructure in all areas of the state is continuously upgraded to reflect the rapid evolution in the capabilities of available mobile telecommunications and broadband technologies, and in the capabilities of mobile telecommunications and broadband services needed by persons, businesses, and institutions in the state.

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

Sec. 34o. 30 V.S.A. § 8077 is amended to read:

§ 8077. ESTABLISHMENT OF MINIMUM TECHNICAL SERVICE CHARACTERISTIC OBJECTIVES

(a) The department of public service~~,~~ shall, as part of the state telecommunications plan prepared pursuant to section 202d of this title, identify minimum technical service characteristics which ought to be available as part of broadband services commonly sold to residential and small business users throughout the state. For the purposes of this chapter, "broadband" means high speed internet access. The department shall consider the performance characteristics of broadband services needed to support current and emerging applications of broadband services. The department shall review and update the minimum characteristics established under this section no less than every three years starting in 2009. In the event such review is conducted separately from an update of the state telecommunications plan pursuant to subsection 202d(f) of this title, the department shall issue revised minimum characteristics as an amendment to the plan.

(b) The authority shall give priority in its activities toward projects which expand the availability of broadband services that meet the minimum technical services characteristics established by the state telecommunications plan.

(c) Until the department of public service adopts ~~a revision to the state telecommunications plan~~ minimum service characteristics under subsection (a) of this section, the authority shall give priority to the expansion of broadband services which deploy equipment capable of a data transmission rate of not less than three megabits per second and offer a service plan with a data transmission rate of not less than 1.5 megabits per second in at least one direction to unserved areas.

Sec. 34p. 10 V.S.A. § 6001(3)(D) is amended to read:

(D) The word "development" does not include:

(i) The construction of improvements for farming, logging or forestry purposes below the elevation of 2,500 feet.

(ii) The construction of improvements for an electric generation or transmission facility that requires a certificate of public good under ~~section~~ 30 V.S.A. § 248 ~~or,~~ a natural gas facility as defined in ~~subdivision~~ 30 V.S.A. § 248(a)(3), or a telecommunications facility issued a certificate of public good under 30 V.S.A. § 248a.

(iii) [Repealed.]

(iv) The construction of improvements for agricultural fairs that are open to the public for 60 days per year, or fewer, provided that any improvements constructed do not include one or more buildings.

(v) The construction of improvements for the exhibition or showing of equines at events that are open to the public for 60 days per year, or fewer, provided that any improvements constructed do not include one or more buildings.

* * * Act 250 Exemptions; ARRA-Funded Roads and Bridges * * *

Sec. 34q. 10 V.S.A. § 6081 is amended to read:

§ 6081. PERMITS REQUIRED; EXEMPTIONS

* * *

(d) For purposes of this section, the following construction of improvements to preexisting municipal, county, or state projects shall not be considered to be substantial changes~~, regardless of the acreage involved,~~ and shall not require a permit as provided under subsection (a) of this section:

(1) essential municipal, county, or state wastewater treatment facility enhancements that do not expand the capacity of the facility by more than 10 percent, excluding the extension of a wastewater collection system or an expansion of the service-area boundaries of a wastewater treatment facility.

(2) essential municipal ~~waterworks~~, county, or state water supply enhancements that do not expand the capacity of the facility by more than 10 percent.

(3) essential public school reconstruction or expansion that does not expand the student capacity of the school by more than 10 percent.

(4) essential municipal, county, or state building renovations or reconstruction ~~or expansion~~ that does not expand the floor space of the building by more than 10 percent.

(5) construction of improvements to preexisting municipal, county, or state roads and bridges, provided such construction receives all or part of its funding through the federal American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5.

(e) For purposes of this section, the replacement of preexisting municipal, county, or state water and sewer lines~~, as part of a municipality's regular maintenance or replacement~~ of existing facilities~~,~~ shall not be considered to be substantial changes and shall not require a permit as provided under subsection (a) of this section, provided that the replacement does not expand the service capacity of the relevant facility by more than 10 percent.

* * *

Sec. 34r. SUNSET

10 V.S.A. § 6081(d)(5) (Act 250 exemption for ARRA-funded road and bridge improvements) shall be repealed July 1, 2011. However, the construction of improvements commenced prior to July 1, 2011 shall not require a permit by operation of this section if such construction was exempt under 10 V.S.A. § 6081(d)(5).

* * * Permit Expediting for ARRA-Funded Projects * * *

Sec. 34s. PERMIT EXPEDITING; FEDERAL STIMULUS

Notwithstanding any other provision of law, an application for a state or local permit or other approval pertaining to a project that will receive all or part of its funding through the federal American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5 may be given priority over any other pending application.

* * * Agency of Natural Resources Report on General Permits * * *

Sec. 34t. GENERAL PERMITS; ENVIRONMENTAL TICKETING; SPECIFIC PROPOSAL REQUIRED

(a) As soon as possible, and no later than November 15, 2009, the agency of natural resources (ANR) shall submit to the committees listed in subsection (c) of this section draft legislation on enabling authority for each of the following:

(1) ANR's issuance of general permits pertaining to the following chapters of Title 10 and permits within those chapters: 23 (air pollution control) for stationary source construction and operation permits; 37 (water resources management) for aquatic nuisance control permits; 41 (regulation of stream flow) for stream alteration permits; 56 (public water supply) for construction permits; and 159 (waste management) for solid waste transfer station and recycling certifications and categorical certifications.

(2) Environmental ticketing related to violations of statutes and regulations implemented by ANR statutes and of 10 V.S.A. chapter 151.

(b) The submission required by subsection (a) of this section shall identify and include at least each of the following:

(1) Among the chapters and permits listed in subdivision (a)(1) of this section, the specific project categories and other activities that involve a high volume of permits and typically pose low risk to the environment and human health. ANR also shall detail the basis used to identify project categories and other activities that involve a high volume of permits and low risk to the environment and human health.

(2) Among the chapters and permits listed in subdivision (a)(1) of this section, the specific activities, permits, or programs that ANR proposes as appropriate for general permitting authority.

(3) The specific environmental violations that the agency proposes for enforcement in the judicial bureau, including the appropriate enforcing officer or officers for each violation.

(c) The submission required by this section shall be made to the house and senate committees on natural resources and energy and the house committee on fish, wildlife and water resources.

* * * Clean Energy Development Fund; Efficient Technologies; Governance * * *

Sec. 34u. 10 V.S.A. § 6523 is hereby amended to read:

§ 6523. VERMONT CLEAN ENERGY DEVELOPMENT FUND

* * *

(b) Definitions. For purposes of this section, the following definitions shall apply:

* * *

(4) "Emerging energy-efficient technologies" means technologies that are both precommercial but near commercialization and that have already entered the market but have less than five percent of current market share; that use less energy than existing technologies and practices to produce the same product or otherwise conserve energy and resources, regardless of whether or not they are connected to the grid; and that have additional non-energy benefits such as reduced environmental impact, improved productivity and worker safety, or reduced capital costs.

(5) "Renewable energy" has the meaning established under 30 V.S.A. § 8002(2), and shall include the following: solar photovoltaic and solar thermal energy; wind energy; geothermal heat pumps; farm, landfill, and sewer methane recovery; low emission, advanced biomass power, and combined heat and power technologies using biomass fuels such as wood, agricultural or food wastes, energy crops, and organic refuse-derived waste, but not municipal solid waste; advanced biomass heating technologies and technologies using biomass-derived fluid fuels such as biodiesel, bio-oil, and bio-gas.

(c) Purposes of fund. The purposes of the fund shall be to promote the development and deployment of cost-effective and environmentally sustainable electric power resources, and emerging energy-efficient technologies using funds received through the American Recovery and Reinvestment Act (ARRA) of 2009, Pub.L. No. 111-5, for the long-term benefit of Vermont electric

customers, primarily with respect to renewable energy resources, and the use of combined heat and power technologies. The general assembly expects and intends that the public service board, public service department, and the state's power and efficiency utilities will actively implement the authority granted in Title 30 to acquire all reasonably available cost-effective energy efficiency resources and for the benefit of Vermont ratepayers and the power system.

(d) Expenditures authorized.

~~(1) This fund shall be administered by the department of public service to facilitate the development and implementation of clean energy resources.~~

~~(2) The department shall assure an open public process in the administration of the fund for the purposes established in this subchapter.~~

~~(3) By January 15 of each year, commencing in 2007, the department of public service shall provide to the house and senate committees on natural resources and energy, the senate committee on finance, and the house committee on commerce a report detailing the revenues collected and the expenditures made under this subchapter, together with recommended principles to be followed in the allocation of funds and a proposed five-year plan for future expenditures from the fund.~~

~~(4)~~(1) Projects for funding may include the following:

(A) projects that will sell power in commercial quantities;

(B) among those projects that will sell power in commercial quantities, funding priority will be given to those projects that commit to sell power to Vermont utilities on favorable terms;

(C) projects to benefit publicly owned or leased buildings;

(D) renewable energy projects on farms, which may include any or all costs incurred to upgrade to a three-phase line to serve a system on a farm;

(E) small scale renewable energy in Vermont residences and businesses;

(F) projects under the agricultural economic development special account established under 6 V.S.A. § 4710(g) to harvest biomass, convert biomass to energy, or produce biofuel;

(G) until December 31, 2008 only, super-efficient buildings; ~~and~~

(H) emerging energy-efficient technologies using funds received through ARRA; and

(I) effective projects that are not likely to be established in the absence of funding under the program.

~~(5)~~(2) If during a particular year, the ~~department~~ clean energy development board determines that there is a lack of high value projects eligible for funding, as identified in the five-year plan, or as otherwise identified, the ~~department~~ clean energy development board may consult with the public service board, and shall consider transferring funds to the energy efficiency fund established under the provisions of 30 V.S.A. § 209(d). Such a transfer may take place only in response to an opportunity for a particularly cost-effective investment in energy efficiency, and only as a temporary supplement to funds collected under that subsection, not as replacement funding.

~~(6)~~(3) The sum of $20,000.00 shall be transferred annually from the clean energy development fund to the general fund to support the cost of the solar energy income tax credits.

(e) Management of fund.

(1)~~(A)~~ There is created the clean energy development ~~fund advisory committee~~ board, which shall consist of ~~the commissioner of public service, or a designee, and the chairs of the house and senate committees on natural resources and energy, or their designees.~~ the following nine directors:

(A) Three at-large directors appointed by the speaker of the house;

(B) Three at-large directors appointed by the president pro tempore of the senate.

(C) Two at-large directors appointed by the governor.

(D) The state treasurer, ex officio.

~~(B) There is created the clean energy development fund investment committee, which shall consist of seven persons appointed by the clean energy development fund advisory committee.~~

(2) ~~The commissioner of public service shall:~~

~~(A) by no later than October 30, 2006:~~

~~(i) develop a five year strategic plan and an annual program plan, both of which shall be developed with input from a public stakeholder process;~~

~~(ii) develop an annual operating budget;~~

~~(iii) develop proposed program designs to facilitate clean energy market and project development (including use of financial assistance, investments, competitive solicitations, technical assistance, and other incentive programs and strategies); and~~

~~(iv) submit the plans, budget, and program designs to the clean energy development fund advisory committee for review and to the clean energy development fund investment committee for approval;~~

~~(B) adopt rules by no later than January 1, 2007 to carry out the program approved under this subdivision;~~

~~(C) explore pursuing joint investments in clean energy projects with other state funds and private investors to increase the effectiveness of the clean energy development fund;~~

~~(D) acting jointly with the members of the clean energy development fund investment committee, make decisions with respect to specific grants and investments, after the plans, budget, and program designs have been approved by the clean energy development fund investment committee. This subdivision (D) shall be repealed upon the effective date of rules adopted under subdivision (2)(B) of this subsection.~~

~~(3)~~ During fiscal years after FY 2006, up to five percent of amounts appropriated to the public service department from the fund may be used for administrative costs related to the clean energy development fund and after FY 2007~~, another five percent of amounts appropriated to the public service department from the fund not to exceed $300,000.00 in any fiscal year shall be transferred to the secretary of the agency of agriculture, food, and markets for agricultural and farm-based energy project development activities~~.

(3) A quorum of the clean energy development board shall consist of five directors. The directors of the board shall select a chair and vice chair.

(4) In making appointments of at-large directors to the clean energy development board, the appointing authorities shall give consideration to citizens of the state with knowledge of relevant technology, regulatory law, infrastructure, finance, and environmental permitting. The at-large directors of the board shall serve terms of four years beginning July 1 of the year of appointment. However, one at-large director appointed by the speaker and one at-large director appointed by the president pro tempore shall serve an initial term of two years. Any vacancy occurring among the at-large directors shall be filled by the respective appointing authority and shall be filled for the balance of the unexpired term. A director may be reappointed.

(5) Except for those directors of the clean energy development board otherwise regularly employed by the state, the compensation of the directors shall be the same as that provided by subsection 1010(a) of Title 32. All directors of the clean energy development board, including those directors otherwise regularly employed by the state, shall receive their actual and necessary expenses when away from home or office upon their official duties.

(6) At least every three years, the clean energy development board shall commission a detailed financial audit by an independent third party of the fund and the activities of the fund manager, which shall make available to the auditor its books, records, and any other information reasonably requested by the board or the auditor for the purpose of the audit.

(7) In performing its duties, the clean energy development board may utilize the legal and technical resources of the department of public service or, alternatively, may utilize reasonable amounts from the clean energy development fund to retain qualified private legal and technical service providers. The department of pubic service shall provide the clean energy development board and its fund manager with administrative services.

(8) By January 15 of each year, commencing in 2010, the clean energy development board shall provide to the house and senate committees on natural resources and energy, the senate committee on finance, and the house committee on commerce and economic development a report detailing the revenues collected and the expenditures made under this subchapter.

(9) By January 15, 2010, after public notice and opportunity for comment, the clean energy development board shall update the fund's five-year strategic plan adopted in May 2007 with any changes to the criteria, principles, and other matters addressed in that plan, and submit the updated strategic plan to the house and senate committees on natural resources and energy, the senate committee on finance, and the house committee on commerce and economic development.

(10) At least quarterly, the clean energy development board shall hold a public meeting to review and discuss the status of the fund, fund projects, the performance of the fund manager, any reports, information, or inquiries submitted by the fund manager or the public, and any additional matters the clean energy development board deems necessary to fulfill its obligations under this section.

(f) Clean energy development fund manager. The clean energy development fund shall have a fund manager who shall be a state employee retained and supervised by the board and housed within the department of public service for administrative purposes.

Sec. 34v. TRANSITION; POSITION TRANSFER

(a) It is the intent of the general assembly that the seven members of the clean energy development fund investment committee appointed prior to the effective date of this act shall be eligible for appointment as directors of the clean energy development fund board for a full term or until the terms of their original appointments expire.

(b) Upon the effective date of this act, the fund manager currently retained for the clean energy development fund shall be deemed the fund manager retained by the clean energy development board pursuant to 10 V.S.A. § 6523(f). Upon appointment of the clean energy development board, the position occupied by that fund manager shall be transferred to the board and become subject to the board's supervision.

* * * Stimulus Reimbursement for Utility Relocations * * *

Sec. 34w. 19 V.S.A. § 1607 is added to read:

§ 1607. FEDERAL REIMBURSEMENT FOR CERTAIN UTILITY RELOCATIONS

(a) As a result of appropriations for infrastructure enhancement and development contained in the American Recovery and Reinvestment Act (ARRA) of 2009, Pub.L. No. 111-5, and other federal transportation-aid programs, significant highway construction projects are expected to be constructed in the near future.

(b) To ensure that projects are not delayed or canceled because of the inability of utilities and municipalities to pay for utility relocation costs and to ensure that available federal funds are utilized on shovel-worthy projects, it is the intent of the general assembly to reimburse utilities with infrastructure, including municipally owned drinking water facilities and municipally owned wastewater infrastructure, up to 80 percent of the approved relocation costs, if the relocation is necessitated by a highway construction project funded by ARRA or other federal transportation-aid programs.

(c) Eligible relocation costs under subsection (b) of this section shall be reimbursed by the state agency or other entity primarily responsible for managing or directing the construction project on the condition that federal stimulus funds or other federal funds are available and eligible to pay for the relocation costs.

(d) The state and municipalities shall not be obligated to pay to utilities the state or local share of a federally funded project.

(e) The state shall not be obligated to pay the state or local share to a municipality for the relocation of municipal drinking water and municipal wastewater infrastructure.

* * * Energy Workforce Stimulus * * *

Sec. 34x. 16 V.S.A. chapter 37, subchapter 7 is added to read:

Subchapter 7. Energy Efficiency Training

§ 1594. ENERGY EFFICIENCY CURRICULUM

(a) The president of Vermont Technical College, director of the office of economic opportunity, commissioner of public service, commissioner of labor, assistant director for adult education, and Efficiency Vermont shall plan for and develop curriculum modules and deliver energy efficiency and renewable energy education and training at all levels, in order to develop a highly skilled workforce in Vermont that is prepared to participate in a growing energy-oriented industry sector.

(b) In all applicable content areas, the curriculum modules shall be designed to meet, at a minimum, the certification standards of the Building Performance Institute, other widely recognized certification standards, or a Vermont-specific certification developed in a process led by Vermont Technical College in collaboration with the aforementioned parties.

(c) The curriculum modules shall be offered through the Center for Sustainable Practices at Vermont Technical College and, on a regional basis, through the regional technical centers and the comprehensive high schools, including adult technical education programs, under agreed-upon terms where they can be appropriately incorporated into the curriculum, which will help prepare students of all ages for careers in the energy-efficiency industry.

(d) The department of labor shall not fund any single-service contract for the implementation of the modules developed in subsection (a) of this section or for the delivery of electrical and plumbing training programs offered under this section.

(e) Vermont Technical College and the regional technical centers shall request state fiscal stabilization funds available through the American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5, as well as other state or federal workforce training funds available through the Vermont departments of education and of labor, and through the Vermont Energy Investment Corporation. If sufficient funds are not received, then the Vermont Technical College and the regional technical centers are not required to offer the education and training programs outlined in this section.

* * * Indirect Air Source: Repeal of Permit Requirements * * *

Sec. 34y. 10 V.S.A. § 556(i) is added to read:

(i) Notwithstanding any provisions of this section, any rule of the secretary requiring permits for the construction or modification of indirect sources,

including any building, structure, facility, installation, or combination thereof that has or leads to associated mobile source activity as a result of which any air contaminant is or may be emitted, is hereby repealed.

(Committee vote: 5-0-0)

And that when so amended the bill ought to pass.

SENATOR VIRGINIA V. LYONS
FOR THE COMMITTEE

Appropriations Committee Report

TO THE HONORABLE SENATE

The Committee on Appropriations to which was referred House Bill No. 137, entitled "AN ACT RELATING TO THE VERMONT RECOVERY AND REINVESTMENT ACT AC OF 2009"

respectfully reports that it has considered the same and recommends that the Senate propose to the House to amend the bill as recommended by the Committees on Finance and on Natural Resources and Energy with the following amendment thereto:

By striking out Sec. 14 in its entirety.

(Committee vote: 4-1-2)

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

SENATOR HINDA MILLER
FOR THE COMMITTEE