

Journal of the House

Friday, April 24, 2009

At nine o'clock and thirty minutes in the forenoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Deacon Dennis Moore of Georgia, Vermont, Church of the Ascension.

House Bill Introduced

H. 455

By Reps. Zuckerman of Burlington, Hube of Londonderry, Sweaney of Windsor, Aswad of Burlington, Bohi of Hartford, Cheney of Norwich, Clarkson of Woodstock, Condon of Colchester, Copeland-Hanzas of Bradford, Davis of Washington, Deen of Westminster, Edwards of Brattleboro, Emmons of Springfield, Fisher of Lincoln, Frank of Underhill, French of Randolph, Geier of South Burlington, Grad of Moretown, Haas of Rochester, Heath of Westford, Hooper of Montpelier, Jewett of Ripton, Johnson of South Hero, Kitzmiller of Montpelier, Klein of East Montpelier, Larson of Burlington, Lenes of Shelburne, Lippert of Hinesburg, Lorber of Burlington, Maier of Middlebury, Manwaring of Wilmington, Marek of Newfane, Martin of Springfield, Masland of Thetford, McCullough of Williston, Mitchell of Barnard, Mrowicki of Putney, Nease of Johnson, Nuovo of Middlebury, Orr of Charlotte, Partridge of Windham, Pellett of Chester, Peltz of Woodbury, Ram of Burlington, Rodgers of Glover, Shand of Weathersfield, Sharpe of Bristol, Smith of Mendon, Spengler of Colchester, Stevens of Waterbury, Townsend of Randolph, Webb of Shelburne, Weston of Burlington, Wilson of Manchester, Wizowaty of Burlington and Zenie of Colchester,

An act relating to patient choice and control at end of life;

To the committee on Human Services.

Message from the Senate No. 45

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Mr. Speaker:

I am directed to inform the House that:

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

H. 441. An act making appropriations for the support of government.

H. 442. An act relating to miscellaneous tax provisions.

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

Bill Referred to Committee on Appropriations

S. 129

Senate bill, entitled

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

Appearing on the Calendar, carrying an appropriation, under rule 35a, was referred to the committee on Appropriations.

Joint Resolution Placed on Calendar

J.R.H. 25

Joint resolution relating to public decorum at proceedings related to the current and future operations of the Vermont Yankee nuclear power plant in Vernon

Offered by: Representatives O'Donnell of Vernon, Hube of Londonderry, Burke of Brattleboro, Edwards of Brattleboro, Milkey of Brattleboro and Obuchowski of Rockingham

Whereas, on Thursday, April 16, 2009, the U.S. Nuclear Regulatory Commission convened a public meeting in Brattleboro to discuss its annual assessment of the Vermont Yankee nuclear power plant in Vernon, and

Whereas, the current and future operations of Vermont Yankee are extremely contentious issues, over which members of the public have strongly divergent opinions, and

Whereas, although many members of the audience had views the opposite of those that the NRC expressed in its stated findings, these disagreements did not justify opponents of the commission's positions abandoning civil discourse and behavior during the course of the meeting, and

Whereas, throwing a handful of compost at officials of the Entergy Corporation and depositing other piles of the food waste in front of NRC officials did not advance the public discussion, and

Whereas, it is possible to express strong and vociferous dissenting views without engaging in unseemly and unnecessary theatrics, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly strongly requests all participants at proceedings related to the current and future operations of Vermont Yankee to refrain from crude and unseemly behavior and that they express their opinions in a civilized manner, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Nuclear Regulatory Commission and to Vermont Yankee.

Which was read and, in the Speaker's discretion, placed on the Calendar for action tomorrow under Rule 52.

Joint Resolution Adopted

J.R.H. 26

Joint resolution relating to classified state employees

Offered by: Representatives Nease of Johnson and Leriche of Hardwick

Whereas, the executive branch and the Vermont State Employees' Association have made proposals to address the budgetary shortfall in state revenues, and

Whereas, it is extremely important that every effort be undertaken to continue the delivery of essential state services to the citizens of Vermont, and

Whereas, it appears that the executive branch and the Vermont State Employees' Association are at an impasse, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly urgently requests that in an effort to resolve this impasse, the executive branch and the Vermont State Employees' Association enter into a mediation process with a completion date no later than May 5, 2009, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to Governor James Douglas, Secretary of Administration Neale Lunderville, and Vermont State Employees' Association Executive Director Jes Kraus.

Was taken up and adopted on the part of the House.

**Senate Proposal of Amendment Not Concurred in;
Committee of Conference Requested and Appointed;
Rules Suspended; and Bill Messaged to Senate Forthwith**

H. 441

The Senate proposed to the House to amend House bill, entitled

An act making appropriations for the support of government

Sec. A.100 SHORT TITLE

(a) This bill may be referred to as the BIG BILL - Fiscal Year 2010 Appropriations Act.

Sec. A.101 PURPOSE

(a) The purpose of this act is to provide appropriations for the operations of state government during fiscal year 2010. It is the express intent of the general assembly that activities of the various agencies, departments, divisions, boards, and commissions be limited to those which can be supported by funds appropriated in this act or other acts passed prior to June 30, 2009. Agency and department heads are directed to implement staffing and service levels at the beginning of fiscal year 2010 so as to meet this condition unless otherwise directed by specific language in this act or other acts of the general assembly.

Sec. A.102 APPROPRIATIONS

(a) It is the intent of the general assembly that this act serve as the primary source and reference for appropriations for fiscal year 2010.

(b) The sums herein stated are appropriated for the purposes specified in the following sections of this act. When no time is expressly stated during which any of the appropriations are to continue, the appropriations are single year appropriations only for the purpose indicated and shall be paid from funds shown as the source of funds. If in this act there is an error in either addition or subtraction, the totals shall be adjusted accordingly. Apparent errors in referring to section numbers of statutory titles within this act may be disregarded by the commissioner of finance and management.

(c) Unless codified or otherwise specified, all narrative portions of this act apply only to the fiscal year ending June 30, 2010.

Sec. A.103 DEFINITIONS

(a) For the purposes of this act:

(1) "Encumbrances" means a portion of an appropriation reserved for the subsequent payment of existing purchase orders or contracts. The

commissioner of finance and management shall make final decisions on the appropriateness of encumbrances.

(2) "Grants" means subsidies, aid, or payments to local governments, to community and quasi-public agencies for providing local services, and to persons who are not wards of the state for services or supplies, and means cash or other direct assistance, including pension contributions.

(3) "Operating expenses" means property management, repair and maintenance, rental expenses, insurance, postage, travel, energy and utilities, office and other supplies, equipment including motor vehicles, highway materials and construction, expenditures for the purchase of land, and construction of new buildings and permanent improvements, and similar items.

(4) "Personal services" means wages and salaries, fringe benefits, per diems, and contracted third party services, and similar items.

Sec. A.104 RELATIONSHIP TO EXISTING LAWS

(a) Except as specifically provided, this act shall not be construed in any way to negate or impair the full force and effect of existing laws.

Sec. A.105 OFFSETTING APPROPRIATIONS

(a) In the absence of specific provisions to the contrary in this act, when total appropriations are offset by estimated receipts, the state appropriations shall control, notwithstanding receipts being greater or less than anticipated.

Sec. A.106 FEDERAL FUNDS

(a) In fiscal year 2010 the governor, with the approval of the legislature or the joint fiscal committee if the legislature is not in session, may accept federal funds available to the state of Vermont including block grants in lieu of or in addition to funds herein designated as federal. The governor, with the approval of the legislature or the joint fiscal committee if the legislature is not in session, may allocate all or any portion of such federal funds for any purpose consistent with the purposes for which the basic appropriations in this act have been made.

(b) If, during fiscal year 2010, federal funds available to the state of Vermont and designated as federal in this and other acts of the 2009 session of the Vermont general assembly are converted into block grants or are abolished under their current title in federal law and reestablished under a new title in federal law, the governor may continue to accept such federal funds for any purpose consistent with the purposes for which the federal funds were appropriated. The governor may spend such funds for such purposes for no more than 45 days prior to legislative or joint fiscal committee approval. Notice shall be given to the joint fiscal committee without delay if the governor intends to use the authority granted by this section, and the joint

fiscal committee shall meet in an expedited manner to review the governor's request for approval.

Sec. A.107 DEPARTMENTAL RECEIPTS

(a) All receipts shall be credited to the general fund except as otherwise provided and except the following receipts, for which this subsection shall constitute authority to credit to special funds:

- (1) Connecticut River flood control
- (2) Public service department - sale of power
- (3) Tax department - unorganized towns and gores.

(b) Notwithstanding any other provision of law, departmental indirect cost recoveries (32 V.S.A. § 6) receipts are authorized, subject to the approval of the secretary of administration, to be retained by the department. All recoveries not so authorized shall be covered into the general fund, or, for agency of transportation recoveries, the transportation fund.

Sec. A.108 NEW POSITIONS

(a) Notwithstanding any other provision of law, the total number of authorized state positions, both classified and exempt, excluding temporary positions as defined in 3 V.S.A. § 311(11), shall not be increased during fiscal year 2010 except for new positions authorized by the 2009 session. Limited service positions approved pursuant to 32 V.S.A. § 5 shall not be subject to this restriction.

Sec. A.109 LEGEND

(a) The bill is organized by functions of government. The sections between B.100 and B.9999 contain appropriations of funds. The sections between E.100 and E.9999 contain language that relates to specific appropriations and/or government functions. The function areas by section numbers are as follows:

Sec. B.100 Secretary of administration - secretary's office

Personal services	795,758
Operating expenses	<u>69,411</u>
Total	865,169
Source of funds	
General fund	676,776
Global Commitment fund	<u>188,393</u>
Total	865,169

 Sec. B.101 Information and innovation - communications and information technology

Personal services	6,816,269
Operating expenses	2,749,899
Grants	<u>750,000</u>
Total	10,316,168
Source of funds	
General fund	97,094
Internal service funds	9,698,448
Interdepartmental transfers	<u>520,626</u>
Total	10,316,168

Sec. B.102 Information and innovation - health care information technology

Personal services	90,000
Grants	<u>2,865,674</u>
Total	2,955,674
Source of funds	
Special funds	2,616,174
Global Commitment fund	<u>339,500</u>
Total	2,955,674

Sec. B.103 Finance and management - budget and management

Personal services	1,011,091
Operating expenses	<u>145,343</u>
Total	1,156,434
Source of funds	
General fund	778,405
Global Commitment fund	63,375
Interdepartmental transfers	<u>314,654</u>
Total	1,156,434

Sec. B.104 Finance and management - financial operations

Personal services	2,666,280
Operating expenses	<u>205,538</u>
Total	2,871,818
Source of funds	
Internal service funds	<u>2,871,818</u>
Total	2,871,818

Sec. B.105 Human resources - operations

Personal services	2,460,443
Operating expenses	<u>625,941</u>

Total	3,086,384
Source of funds	
General fund	1,888,503
Special funds	280,835
Interdepartmental transfers	<u>917,046</u>
Total	3,086,384
Sec. B.107 Human resources - employee benefits & wellness	
Personal services	1,655,935
Operating expenses	<u>395,438</u>
Total	2,051,373
Source of funds	
Internal service funds	2,011,520
Interdepartmental transfers	<u>39,853</u>
Total	2,051,373
Sec. B.108 Libraries	
Personal services	2,078,222
Operating expenses	1,561,712
Grants	<u>62,500</u>
Total	3,702,434
Source of funds	
General fund	2,616,539
Special funds	132,500
Federal funds	855,215
Interdepartmental transfers	<u>98,180</u>
Total	3,702,434
Sec. B.109 Tax - administration/collection	
Personal services	12,047,125
Operating expenses	<u>2,992,665</u>
Total	15,039,790
Source of funds	
General fund	13,593,386
Special funds	1,191,404
Tobacco fund	58,000
Interdepartmental transfers	<u>197,000</u>
Total	15,039,790
Sec. B.110 Buildings and general services - administration	
Personal services	1,371,967

Operating expenses	<u>98,823</u>
Total	1,470,790
Source of funds	
Interdepartmental transfers	<u>1,470,790</u>
Total	1,470,790
Sec. B.111 Buildings and general services - engineering	
Personal services	1,989,475
Operating expenses	<u>418,865</u>
Total	2,408,340
Source of funds	
General fund	1,658,340
Interdepartmental transfers	<u>750,000</u>
Total	2,408,340
Sec. B.112 Buildings and general services - information centers	
Personal services	3,331,451
Operating expenses	1,333,949
Grants	<u>45,000</u>
Total	4,710,400
Source of funds	
General fund	4,660,400
Special funds	<u>50,000</u>
Total	4,710,400
Sec. B.113 Buildings and general services - purchasing	
Personal services	671,569
Operating expenses	<u>204,881</u>
Total	876,450
Source of funds	
General fund	<u>876,450</u>
Total	876,450
Sec. B.114 Buildings and general services - postal services	
Personal services	650,910
Operating expenses	<u>184,090</u>
Total	835,000
Source of funds	
General fund	36,116
Internal service funds	<u>798,884</u>
Total	835,000
Sec. B.115 Buildings and general services - copy center	

Personal services	725,873
Operating expenses	<u>194,127</u>
Total	920,000
Source of funds	
Internal service funds	<u>920,000</u>
Total	920,000
Sec. B.116 Buildings and general services - fleet management services	
Personal services	475,587
Operating expenses	<u>169,413</u>
Total	645,000
Source of funds	
Internal service funds	<u>645,000</u>
Total	645,000
Sec. B.117 Buildings and general services - federal surplus property	
Personal services	83,564
Operating expenses	<u>62,936</u>
Total	146,500
Source of funds	
Enterprise funds	<u>146,500</u>
Total	146,500
Sec. B.118 Buildings and general services - state surplus property	
Personal services	80,720
Operating expenses	<u>86,060</u>
Total	166,780
Source of funds	
Internal service funds	<u>166,780</u>
Total	166,780
Sec. B.119 Buildings and general services - property management	
Personal services	1,196,597
Operating expenses	<u>2,985,033</u>
Total	4,181,630
Source of funds	
Internal service funds	<u>4,181,630</u>
Total	4,181,630
Sec. B.120 Buildings and general services - workers' compensation insurance	
Personal services	1,329,914

Operating expenses	<u>309,324</u>
Total	1,639,238
Source of funds	
Internal service funds	<u>1,639,238</u>
Total	1,639,238
Sec. B.121 Buildings and general services - general liability insurance	
Personal services	295,114
Operating expenses	<u>125,386</u>
Total	420,500
Source of funds	
Internal service funds	<u>420,500</u>
Total	420,500
Sec. B.122 Buildings and general services - all other insurance	
Personal services	33,028
Operating expenses	<u>51,972</u>
Total	85,000
Source of funds	
Internal service funds	<u>85,000</u>
Total	85,000
Sec. B.123 Buildings and general services - fee for space	
Personal services	12,684,951
Operating expenses	<u>14,970,941</u>
Total	27,655,892
Source of funds	
Internal service funds	<u>27,655,892</u>
Total	27,655,892
Sec. B.124 Geographic information system	
Grants	<u>408,700</u>
Total	408,700
Source of funds	
Special funds	<u>408,700</u>
Total	408,700
Sec. B.125 Executive office - governor's office	
Personal services	1,217,326
Operating expenses	<u>386,489</u>
Total	1,603,815
Source of funds	
General fund	1,410,315

Interdepartmental transfers	<u>193,500</u>
Total	1,603,815
Sec. B.126 Legislative council	
Personal services	2,164,007
Operating expenses	<u>178,970</u>
Total	2,342,977
Source of funds	
General fund	<u>2,342,977</u>
Total	2,342,977
Sec. B.127 Legislature	
Personal services	3,872,884
Operating expenses	<u>3,428,507</u>
Total	7,301,391
Source of funds	
General fund	<u>7,301,391</u>
Total	7,301,391
Sec. B.128 Legislative information technology	
Personal services	393,601
Operating expenses	<u>492,357</u>
Total	885,958
Source of funds	
General fund	<u>885,958</u>
Total	885,958
Sec. B.129 Joint fiscal committee	
Personal services	1,214,565
Operating expenses	<u>94,632</u>
Total	1,309,197
Source of funds	
General fund	<u>1,309,197</u>
Total	1,309,197
Sec. B.130 Sergeant at arms	
Personal services	509,586
Operating expenses	<u>99,931</u>
Total	609,517
Source of funds	
General fund	<u>609,517</u>

Total	609,517
Sec. B.131 Lieutenant governor	
Personal services	146,651
Operating expenses	<u>16,983</u>
Total	163,634
Source of funds	
General fund	<u>163,634</u>
Total	163,634
Sec. B.132 Auditor of accounts	
Personal services	3,032,314
Operating expenses	<u>139,366</u>
Total	3,171,680
Source of funds	
General fund	437,938
Special funds	51,709
Internal service funds	<u>2,682,033</u>
Total	3,171,680
Sec. B.133 State treasurer	
Personal services	2,313,466
Operating expenses	357,079
Grants	<u>6,484</u>
Total	2,677,029
Source of funds	
General fund	1,086,815
Special funds	1,506,190
Private purpose trust funds	<u>84,024</u>
Total	2,677,029
Sec. B.134 State treasurer - unclaimed property	
Personal services	687,596
Operating expenses	<u>237,795</u>
Total	925,391
Source of funds	
Interdepartmental transfers	<u>925,391</u>
Total	925,391
Sec. B.135 Vermont state retirement system	
Personal services	27,115,165
Operating expenses	<u>773,415</u>
Total	27,888,580

Source of funds	
Pension trust funds	<u>27,888,580</u>
Total	27,888,580
Sec. B.136 Municipal employees' retirement system	
Personal services	1,841,374
Operating expenses	<u>346,814</u>
Total	2,188,188
Source of funds	
Pension trust funds	<u>2,188,188</u>
Total	2,188,188
Sec. B.137 State labor relations board	
Personal services	166,789
Operating expenses	<u>37,194</u>
Total	203,983
Source of funds	
General fund	198,260
Special funds	2,788
Interdepartmental transfers	<u>2,935</u>
Total	203,983
Sec. B.138 VOSHA review board	
Personal services	37,997
Operating expenses	<u>9,815</u>
Total	47,812
Source of funds	
General fund	23,905
Interdepartmental transfers	<u>23,907</u>
Total	47,812
Sec. B.139 Homeowner rebate	
Grants	<u>13,725,647</u>
Total	13,725,647
Source of funds	
General fund	<u>13,725,647</u>
Total	13,725,647
Sec. B.140 Renter rebate	
Grants	<u>8,476,695</u>
Total	8,476,695

Source of funds	
General fund	2,543,008
Education fund	<u>5,933,687</u>
Total	8,476,695
Sec. B.141 Tax department - reappraisal and listing payments	
Grants	<u>3,470,000</u>
Total	3,470,000
Source of funds	
Education fund	<u>3,470,000</u>
Total	3,470,000
Sec. B.142 Use tax reimbursement fund - municipal current use	
Grants	<u>10,807,403</u>
Total	10,807,403
Source of funds	
General fund	<u>10,807,403</u>
Total	10,807,403
Sec. B.143 Lottery commission	
Personal services	1,555,943
Operating expenses	<u>1,113,662</u>
Total	2,669,605
Source of funds	
Enterprise funds	<u>2,669,605</u>
Total	2,669,605
Sec. B.144 Payments in lieu of taxes	
Grants	<u>4,900,000</u>
Total	4,900,000
Source of funds	
Special funds	<u>4,900,000</u>
Total	4,900,000
Sec. B.145 Payments in lieu of taxes - Montpelier	
Grants	<u>184,000</u>
Total	184,000
Source of funds	
Special funds	<u>184,000</u>
Total	184,000
Sec. B.146 Payments in lieu of taxes - correctional facilities	
Grants	<u>40,000</u>

	Total	40,000
	Source of funds	
	Special funds	<u>40,000</u>
	Total	40,000
Sec. B 147	Total General government	184,207,966
	Source of funds	
	General fund	69,727,974
	Education fund	9,403,687
	Special funds	11,364,300
	Tobacco fund	58,000
	Global Commitment fund	591,268
	Federal funds	855,215
	Enterprise funds	2,816,105
	Internal service funds	53,776,743
	Pension trust funds	30,076,768
	Private purpose trust funds	84,024
	Interdepartmental transfers	<u>5,453,882</u>
	Total	184,207,966
Sec. B.200	Attorney general	
	Personal services	6,518,250
	Operating expenses	<u>1,055,051</u>
	Total	7,573,301
	Source of funds	
	General fund	4,044,689
	Special funds	788,302
	Tobacco fund	405,000
	Federal funds	677,526
	Interdepartmental transfers	1,657,784
	Total	7,573,301
Sec. B.201	Vermont court diversion	
	Grants	<u>1,724,784</u>
	Total	1,724,784
	Source of funds	
	General fund	1,204,784
	Special funds	<u>520,000</u>
	Total	1,724,784
Sec. B.202	Defender general - public defense	

Personal services	7,273,704
Operating expenses	<u>919,387</u>
Total	8,193,091
Source of funds	
General fund	7,691,786
Special funds	<u>501,305</u>
Total	8,193,091
Sec. B.203 Defender general - assigned counsel	
Personal services	3,319,857
Operating expenses	<u>77,909</u>
Total	3,397,766
Source of funds	
General fund	3,272,502
Special funds	<u>125,264</u>
Total	3,397,766
Sec. B.204 Judiciary	
Personal services	27,203,182
Operating expenses	10,084,796
Grants	<u>70,000</u>
Total	37,357,978
Source of funds	
General fund	30,960,922
Special funds	3,891,636
Tobacco fund	39,112
Federal funds	546,919
Interdepartmental transfers	<u>1,919,389</u>
Total	37,357,978
Sec. B.205 State's attorneys	
Personal services	9,685,589
Operating expenses	<u>1,298,616</u>
Total	10,984,205
Source of funds	
General fund	8,754,382
Special funds	56,675
Federal funds	31,000
Interdepartmental transfers	<u>2,142,148</u>
Total	10,984,205
Sec. B.206 Special investigative unit	
Grants	<u>1</u>

Total	1
Source of funds	
General fund	<u>1</u>
Total	1
Sec. B.207 Sheriffs	
Personal services	3,306,718
Operating expenses	<u>356,269</u>
Total	3,662,987
Source of funds	
General fund	<u>3,662,987</u>
Total	3,662,987
Sec. B.208 Public safety - administration	
Personal services	1,696,711
Operating expenses	<u>194,781</u>
Total	1,891,492
Source of funds	
General fund	1,861,340
Federal funds	<u>30,152</u>
Total	1,891,492
Sec. B.209 Public safety - state police	
Personal services	41,481,022
Operating expenses	12,457,718
Grants	<u>582,087</u>
Total	54,520,827
Source of funds	
ARRA funds	3,061,782
General fund	18,865,183
Transportation fund	26,231,384
Special funds	1,910,795
Federal funds	2,159,888
Interdepartmental transfers	<u>2,291,795</u>
Total	54,520,827
Sec. B.210 Public safety - criminal justice services	
Personal services	6,078,888
Operating expenses	2,965,224
Grants	<u>2,909,394</u>
Total	11,953,506

Source of funds	
General fund	745,092
Transportation fund	4,557,454
Special funds	1,860,980
Federal funds	4,689,372
Interdepartmental transfers	<u>100,608</u>
Total	11,953,506
Sec. B.211 Public safety - emergency management	
Personal services	1,778,662
Operating expenses	1,246,992
Grants	<u>819,400</u>
Total	3,845,054
Source of funds	
Transportation fund	63,969
Special funds	168,831
Federal funds	<u>3,612,254</u>
Total	3,845,054
Sec. B.212 Public safety - fire safety	
Personal services	4,396,900
Operating expenses	1,590,660
Grants	<u>55,000</u>
Total	6,042,560
Source of funds	
General fund	590,719
Special funds	4,866,202
Federal funds	411,992
Interdepartmental transfers	<u>173,647</u>
Total	6,042,560
Sec. B.213 Public safety - homeland security	
Personal services	1,252,863
Operating expenses	4,999,729
Grants	<u>1,050,000</u>
Total	7,302,592
Source of funds	
General fund	395,271
Federal funds	<u>6,907,321</u>
Total	7,302,592
Sec. B.214 Public safety - emergency management - radiological emergency response plan	

Personal services	695,571
Operating expenses	273,382
Grants	<u>743,518</u>
Total	1,712,471
Source of funds	
Special funds	<u>1,712,471</u>
Total	1,712,471
Sec. B.215 Military - administration	
Personal services	595,055
Operating expenses	185,755
Grants	<u>100,000</u>
Total	880,810
Source of funds	
General fund	<u>880,810</u>
Total	880,810
Sec. B.216 Military - air service contract	
Personal services	4,682,496
Operating expenses	<u>1,576,241</u>
Total	6,258,737
Source of funds	
General fund	433,236
Federal funds	<u>5,825,501</u>
Total	6,258,737
Sec. B.217 Military - army service contract	
Personal services	3,645,443
Operating expenses	<u>9,174,120</u>
Total	12,819,563
Source of funds	
General fund	107,071
Federal funds	<u>12,712,492</u>
Total	12,819,563
Sec. B.218 Military - building maintenance	
Personal services	1,024,137
Operating expenses	<u>386,580</u>
Total	1,410,717
Source of funds	
General fund	1,343,826

Federal funds	<u>66,891</u>
Total	1,410,717
Sec. B.219 Military - veterans' affairs	
Personal services	430,316
Operating expenses	133,624
Grants	<u>163,815</u>
Total	727,755
Source of funds	
General fund	575,519
Special funds	83,529
Federal funds	<u>68,707</u>
Total	727,755
Sec. B.220 Center for crime victims' services	
Personal services	1,275,841
Operating expenses	261,734
Grants	<u>9,433,056</u>
Total	10,970,631
Source of funds	
ARRA funds	797,067
General fund	1,119,233
Special funds	5,201,380
Federal funds	<u>3,852,951</u>
Total	10,970,631
Sec. B.221 Criminal justice training council	
Personal services	1,225,444
Operating expenses	<u>1,135,975</u>
Total	2,361,419
Source of funds	
General fund	1,453,753
Special funds	534,343
Interdepartmental transfers	<u>373,323</u>
Total	2,361,419
Sec. B.222 Agriculture, food and markets - administration	
Personal services	707,514
Operating expenses	390,128
Grants	<u>338,351</u>
Total	1,435,993
Source of funds	
General fund	886,626

Special funds	382,449
Federal funds	124,918
Interdepartmental transfers	<u>42,000</u>
Total	1,435,993

Sec. B.223 Agriculture, food and markets - food safety and consumer protection

Personal services	2,041,806
Operating expenses	<u>332,830</u>
Total	2,374,636
Source of funds	
General fund	1,278,611
Special funds	651,025
Federal funds	438,000
Interdepartmental transfers	<u>7,000</u>
Total	2,374,636

Sec. B.224 Agriculture, food and markets - agricultural development

Personal services	688,162
Operating expenses	504,063
Grants	<u>302,500</u>
Total	1,494,725
Source of funds	
General fund	673,775
Special funds	432,950
Federal funds	<u>388,000</u>
Total	1,494,725

Sec. B.225 Agriculture, food and markets - laboratories, agricultural resource management and environmental stewardship

Personal services	3,800,621
Operating expenses	639,708
Grants	<u>4,480,952</u>
Total	8,921,281
Source of funds	
General fund	2,420,363
Special funds	5,433,147
Federal funds	519,517
Interdepartmental transfers	<u>548,254</u>
Total	8,921,281

Sec. B.226 Agriculture, food and markets - state stipend

Grants	<u>175,000</u>
Total	175,000
Source of funds	
General fund	<u>175,000</u>
Total	175,000
Sec. B.227 Agriculture, food and markets - mosquito control	
Personal services	20,000
Operating expenses	<u>60,000</u>
Total	80,000
Source of funds	
Special funds	<u>80,000</u>
Total	80,000
Sec. B.228 Banking, insurance, securities, and health care administration - administration	
Personal services	1,982,977
Operating expenses	<u>88,470</u>
Total	2,071,447
Source of funds	
Special funds	<u>2,071,447</u>
Total	2,071,447
Sec. B.229 Banking, insurance, securities, and health care administration - banking	
Personal services	1,240,658
Operating expenses	<u>248,960</u>
Total	1,489,618
Source of funds	
Special funds	<u>1,489,618</u>
Total	1,489,618
Sec. B.230 Banking, insurance, securities, and health care administration - insurance	
Personal services	2,765,146
Operating expenses	<u>450,750</u>
Total	3,215,896
Source of funds	
Special funds	<u>3,215,896</u>
Total	3,215,896
Sec. B.231 Banking, insurance, securities, and health care administration - captive	

Personal services	2,998,995
Operating expenses	<u>452,000</u>
Total	3,450,995
Source of funds	
Special funds	<u>3,450,995</u>
Total	3,450,995
Sec. B.232 Banking, insurance, securities, and health care administration - securities	
Personal services	418,217
Operating expenses	<u>144,733</u>
Total	562,950
Source of funds	
Special funds	<u>562,950</u>
Total	562,950
Sec. B.233 Banking, insurance, securities, and health care administration - health care administration	
Personal services	4,338,993
Operating expenses	<u>326,905</u>
Total	4,665,898
Source of funds	
Special funds	2,767,074
Global Commitment fund	<u>1,898,824</u>
Total	4,665,898
Sec. B.234 Secretary of state	
Personal services	5,440,700
Operating expenses	2,086,742
Grants	<u>1,000,000</u>
Total	8,527,442
Source of funds	
General fund	1,710,918
Special funds	4,741,524
Federal funds	2,000,000
Interdepartmental transfers	<u>75,000</u>
Total	8,527,442
Sec. B.235 Public service - regulation and energy	
Personal services	7,588,185
Operating expenses	709,206

Grants	<u>6,506,007</u>
Total	14,803,398
Source of funds	
Special funds	13,645,598
Federal funds	<u>1,157,800</u>
Total	14,803,398
Sec. B.236 Public service - purchase and sale of power	
Personal services	18,484
Operating expenses	<u>1,516</u>
Total	20,000
Source of funds	
Special funds	<u>20,000</u>
Total	20,000
Sec. B.237 Public service board	
Personal services	2,555,286
Operating expenses	<u>320,000</u>
Total	2,875,286
Source of funds	
Special funds	<u>2,875,286</u>
Total	2,875,286
Sec. B.238 Enhanced 9-1-1 Board	
Personal services	2,098,342
Operating expenses	1,565,260
Grants	<u>1,823,443</u>
Total	5,487,045
Source of funds	
Special funds	<u>5,487,045</u>
Total	5,487,045
Sec. B.239 Human rights commission	
Personal services	375,041
Operating expenses	<u>68,917</u>
Total	443,958
Source of funds	
General fund	273,219
Federal funds	<u>170,739</u>
Total	443,958
Sec. B.240 Liquor control - administration	
Personal services	1,495,953

Operating expenses	<u>543,031</u>
Total	2,038,984
Source of funds	
Tobacco fund	6,661
Enterprise funds	1,789,323
Interdepartmental transfers	<u>243,000</u>
Total	2,038,984
Sec. B.241 Liquor control - enforcement and licensing	
Personal services	1,963,476
Operating expenses	<u>344,075</u>
Total	2,307,551
Source of funds	
Tobacco fund	289,645
Enterprise funds	<u>2,017,906</u>
Total	2,307,551
Sec. B.242 Liquor control - warehousing and distribution	
Personal services	750,352
Operating expenses	<u>367,561</u>
Total	1,117,913
Source of funds	
Enterprise funds	<u>1,117,913</u>
Total	1,117,913
Sec. B 243 Total Protection to persons and property	263,152,263
Source of funds	
ARRA funds	3,858,849
General fund	95,381,618
Transportation fund	30,852,807
Special funds	69,528,717
Tobacco fund	740,418
Global Commitment fund	1,898,824
Federal funds	46,391,940
Enterprise funds	4,925,142
Interdepartmental transfers	<u>9,573,948</u>
Total	263,152,263
Sec. B.300 Human services - agency of human services - secretary's office	
Personal services	10,016,218
Operating expenses	2,998,915

Grants	<u>5,099,439</u>
Total	18,114,572
Source of funds	
General fund	5,333,921
Special funds	7,517
Tobacco fund	609,730
Global Commitment fund	398,400
Federal funds	8,068,443
Interdepartmental transfers	3,696,561
Total	18,114,572
Sec. B.301 Secretary's office - global commitment	
Grants	<u>1,022,593,702</u>
Total	1,022,593,702
Source of funds	
ARRA funds	97,005,100
General fund	63,308,477
Special funds	11,854,521
Tobacco fund	34,911,760
State health care resources fund	159,183,519
Catamount fund	18,881,295
Federal funds	637,086,376
Interdepartmental transfers	<u>362,654</u>
Total	1,022,593,702
Sec. B.302 Rate setting	
Personal services	853,246
Operating expenses	<u>81,982</u>
Total	935,228
Source of funds	
Global Commitment fund	<u>935,228</u>
Total	935,228
Sec. B.303 Developmental disabilities council	
Personal services	240,797
Operating expenses	48,251
Grants	<u>220,000</u>
Total	509,048
Source of funds	
Federal funds	<u>509,048</u>
Total	509,048
Sec. B.304 Human services board	

Personal services	299,820
Operating expenses	<u>66,441</u>
Total	366,261
Source of funds	
General fund	51,912
Federal funds	157,174
Interdepartmental transfers	<u>157,175</u>
Total	366,261
Sec. B.305 AHS - administrative fund	
Personal services	500,000
Operating expenses	<u>4,500,000</u>
Total	5,000,000
Source of funds	
Interdepartmental transfers	<u>5,000,000</u>
Total	5,000,000
Sec. B.306 Office of Vermont health access - administration	
Personal services	31,911,860
Operating expenses	2,330,388
Grants	<u>1,018,000</u>
Total	35,260,248
Source of funds	
General fund	429,107
Global Commitment fund	31,631,056
Catamount fund	351,627
Federal funds	<u>2,848,458</u>
Total	35,260,248
Sec. B.307 Office of Vermont health access - Medicaid program - global commitment	
Grants	<u>538,752,966</u>
Total	538,752,966
Source of funds	
Global Commitment fund	<u>538,752,966</u>
Total	538,752,966
Sec. B.308 Office of Vermont health access - Medicaid program - long term care waiver	
Grants	<u>205,105,257</u>
Total	205,105,257

Source of funds	
ARRA funds	22,089,839
General fund	62,187,933
Federal funds	<u>120,827,485</u>
Total	205,105,257
Sec. B.309 Office of Vermont health access - Medicaid program - state only	
Grants	<u>32,524,951</u>
Total	32,524,951
Source of funds	
General fund	28,195,859
Global Commitment fund	1,510,264
Catamount fund	<u>2,818,828</u>
Total	32,524,951
Sec. B.310 Office of Vermont health access - Medicaid non-waiver matched	
Grants	<u>46,551,748</u>
Total	46,551,748
Source of funds	
ARRA funds	1,060,380
General fund	16,976,310
Federal funds	<u>28,515,058</u>
Total	46,551,748
Sec. B.311 Health - administration and support	
Personal services	6,222,550
Operating expenses	2,812,966
Grants	<u>2,877,000</u>
Total	11,912,516
Source of funds	
General fund	943,788
Special funds	24,678
Global Commitment fund	4,844,832
Federal funds	6,027,218
Interdepartmental transfers	<u>72,000</u>
Total	11,912,516
Sec. B.312 Health - public health	
Personal services	35,134,321
Operating expenses	7,080,700
Grants	<u>32,532,610</u>
Total	74,747,631
Source of funds	

General fund	6,924,156
Special funds	4,611,472
Tobacco fund	1,906,916
Global Commitment fund	24,847,472
Catamount fund	4,046,218
Federal funds	31,809,266
Permanent trust funds	10,000
Interdepartmental transfers	<u>592,131</u>
Total	74,747,631

Sec. B.313 Health - alcohol and drug abuse programs

Personal services	3,195,089
Operating expenses	799,901
Grants	<u>26,918,440</u>
Total	30,913,430

Source of funds

General fund	3,045,189
Special funds	236,210
Tobacco fund	2,382,834
Global Commitment fund	16,663,987
Federal funds	8,435,210
Interdepartmental transfers	<u>150,000</u>
Total	30,913,430

Sec. B.314 Mental health - mental health

Personal services	4,492,095
Operating expenses	562,604
Grants	<u>127,953,050</u>
Total	133,007,749

Source of funds

General fund	698,915
Special funds	6,836
Global Commitment fund	126,404,681
Federal funds	5,877,317
Interdepartmental transfers	<u>20,000</u>
Total	133,007,749

Sec. B.315 Mental health - Vermont state hospital

Personal services	20,040,654
Operating expenses	2,752,971
Grants	<u>82,335</u>

Total	22,875,960
Source of funds	
General fund	21,692,396
Special funds	170,000
Global Commitment fund	450,000
Federal funds	263,564
Interdepartmental transfers	<u>300,000</u>
Total	22,875,960

Sec. B.316 Department for children and families - administration & support services

Personal services	37,028,517
Operating expenses	7,305,795
Grants	<u>933,155</u>
Total	45,267,467
Source of funds	
ARRA funds	300,000
General fund	15,002,788
Global Commitment fund	15,455,187
Catamount fund	547,960
Federal funds	<u>13,961,532</u>
Total	45,267,467

Sec. B.317 Department for children and families - family services

Personal services	22,207,550
Operating expenses	3,312,909
Grants	<u>65,050,514</u>
Total	90,570,973
Source of funds	
ARRA funds	1,411,224
General fund	18,199,778
Special funds	1,691,637
Tobacco fund	275,000
Global Commitment fund	41,228,349
Federal funds	27,664,985
Interdepartmental transfers	<u>100,000</u>
Total	90,570,973

Sec. B.318 Department for children and families - child development

Personal services	3,473,066
Operating expenses	545,908
Grants	<u>56,106,468</u>
Total	60,125,442

Source of funds	
ARRA funds	2,452,636
General fund	23,481,012
Special funds	1,820,000
Global Commitment fund	5,221,053
Federal funds	27,011,234
Interdepartmental transfers	<u>139,507</u>
Total	60,125,442

Sec. B.319 Department for children and families - office of child support

Personal services	8,905,003
Operating expenses	<u>4,400,851</u>
Total	13,305,854

Source of funds	
ARRA funds	660,000
General fund	2,671,384
Special funds	455,718
Federal funds	9,131,152
Interdepartmental transfers	<u>387,600</u>
Total	13,305,854

Sec. B.320 Department for children and families - aid to aged, blind and disabled

Personal services	1,801,009
Grants	<u>10,305,780</u>
Total	12,106,789

Source of funds	
General fund	8,356,789
Global Commitment fund	<u>3,750,000</u>
Total	12,106,789

Sec. B.321 Department for children and families - general assistance

Grants	<u>6,000,928</u>
Total	6,000,928

Source of funds	
ARRA funds	1,699,412
General fund	2,850,196
Global Commitment fund	340,000
Federal funds	<u>1,111,320</u>
Total	6,000,928

Sec. B.322 Department for children and families - food stamp cash out

Grants	<u>19,031,133</u>
Total	19,031,133
Source of funds	
ARRA funds	2,300,000
Federal funds	<u>16,731,133</u>
Total	19,031,133
Sec. B.323 Department for children and families - reach up	
Grants	<u>49,803,800</u>
Total	49,803,800
Source of funds	
ARRA funds	6,735,423
General fund	16,086,170
Special funds	18,025,000
Global Commitment fund	374,400
Federal funds	<u>8,582,807</u>
Total	49,803,800
Sec. B.324 Department for children and families - home heating fuel assistance/LIHEAP	
Personal services	20,000
Operating expenses	90,000
Grants	<u>11,502,664</u>
Total	11,612,664
Source of funds	
Federal funds	<u>11,612,664</u>
Total	11,612,664
Sec. B.325 Department for children and families - office of economic opportunity	
Personal services	250,236
Operating expenses	78,644
Grants	<u>8,591,588</u>
Total	8,920,468
Source of funds	
ARRA funds	3,775,000
General fund	1,294,543
Special funds	57,810
Federal funds	<u>3,793,115</u>
Total	8,920,468
Sec. B.326 Department for children and families - OEO - weatherization assistance	

Personal services	174,293
Operating expenses	130,499
Grants	<u>14,959,936</u>
Total	15,264,728
Source of funds	
ARRA funds	8,421,288
Special funds	4,593,774
Federal funds	<u>2,249,666</u>
Total	15,264,728

Sec. B.327 Department for children and families - Woodside rehabilitation center

Personal services	3,482,661
Operating expenses	<u>630,581</u>
Total	4,113,242
Source of funds	
General fund	4,058,350
Interdepartmental transfers	<u>54,892</u>
Total	4,113,242

Sec. B.328 Department for children and families - disability determination services

Personal services	3,508,357
Operating expenses	<u>624,291</u>
Total	4,132,648
Source of funds	
Global Commitment fund	246,517
Federal funds	<u>3,886,131</u>
Total	4,132,648

Sec. B.329 Disabilities, aging and independent living - administration & support

Personal services	24,693,635
Operating expenses	<u>3,762,989</u>
Total	28,456,624
Source of funds	
General fund	6,952,640
Special funds	1,068,022
Global Commitment fund	6,329,926
Federal funds	11,666,254
Interdepartmental transfers	<u>2,439,782</u>

Total	28,456,624
Sec. B.330 Disabilities, aging and independent living - advocacy and independent living grants	
Grants	<u>22,243,510</u>
Total	22,243,510
Source of funds	
ARRA funds	404,000
General fund	10,101,374
Global Commitment fund	3,455,319
Federal funds	7,645,317
Interdepartmental transfers	<u>637,500</u>
Total	22,243,510
Sec. B.331 Disabilities, aging and independent living - blind and visually impaired	
Grants	<u>1,481,457</u>
Total	1,481,457
Source of funds	
General fund	364,064
Special funds	223,450
Global Commitment fund	245,000
Federal funds	<u>648,943</u>
Total	1,481,457
Sec. B.332 Disabilities, aging and independent living - vocational rehabilitation	
Grants	<u>7,302,971</u>
Total	7,302,971
Source of funds	
ARRA funds	1,334,000
General fund	1,535,695
Global Commitment fund	7,500
Federal funds	4,132,389
Interdepartmental transfers	<u>293,387</u>
Total	7,302,971
Sec. B.333 Disabilities, aging and independent living - developmental services	
Grants	<u>141,878,742</u>
Total	141,878,742
Source of funds	
General fund	172,625
Special funds	15,463

Global Commitment fund	141,330,797
Federal funds	<u>359,857</u>
Total	141,878,742
Sec. B.334 Disabilities, aging and independent living -TBI home and community based waiver	
Grants	<u>4,044,899</u>
Total	4,044,899
Source of funds	
Global Commitment fund	<u>4,044,899</u>
Total	4,044,899
Sec. B.335 Corrections - administration	
Personal services	2,348,301
Operating expenses	<u>302,104</u>
Total	2,650,405
Source of funds	
General fund	<u>2,650,405</u>
Total	2,650,405
Sec. B.336 Corrections - parole board	
Personal services	320,374
Operating expenses	<u>58,121</u>
Total	378,495
Source of funds	
General fund	<u>378,495</u>
Total	378,495
Sec. B.337 Corrections - correctional education	
Personal services	4,016,553
Operating expenses	<u>306,274</u>
Total	4,322,827
Source of funds	
General fund	413,648
Special funds	500,000
Interdepartmental transfers	<u>3,409,179</u>
Total	4,322,827
Sec. B.338 Corrections - correctional services	
Personal services	79,204,112
Operating expenses	34,200,620

Grants	<u>1,649,849</u>
Total	115,054,581
Source of funds	
General fund	110,673,067
Special funds	533,963
Tobacco fund	87,500
Global Commitment fund	3,094,144
Federal funds	584,861
Interdepartmental transfers	<u>81,046</u>
Total	115,054,581
Sec. B.339 Correctional services-out of state beds	
Personal services	<u>12,318,215</u>
Total	12,318,215
Source of funds	
General fund	<u>12,318,215</u>
Total	12,318,215
Sec. B.340 Corrections - correctional facilities - recreation	
Personal services	436,744
Operating expenses	<u>349,076</u>
Total	785,820
Source of funds	
General fund	125,000
Special funds	<u>660,820</u>
Total	785,820
Sec. B.341 Corrections - Vermont offender work program	
Personal services	1,154,973
Operating expenses	<u>554,103</u>
Total	1,709,076
Source of funds	
Internal service funds	<u>1,709,076</u>
Total	1,709,076
Sec. B.342 Vermont veterans' home - care and support services	
Personal services	14,896,756
Operating expenses	<u>3,362,067</u>
Total	18,258,823
Source of funds	
Special funds	10,931,473
Global Commitment fund	837,225
Federal funds	<u>6,490,125</u>

Total	18,258,823
Sec. B.343 Commission on women	
Personal services	224,632
Operating expenses	<u>67,273</u>
Total	291,905
Source of funds	
General fund	286,905
Special funds	<u>5,000</u>
Total	291,905
Sec. B.344 Retired senior volunteer program	
Grants	<u>131,096</u>
Total	131,096
Source of funds	
General fund	<u>131,096</u>
Total	131,096
Sec. B 345 Total Human services	2,880,736,849
Source of funds	
ARRA funds	149,648,302
General fund	447,892,202
Special funds	57,493,364
Tobacco fund	40,173,740
Global Commitment fund	972,399,202
State health care resources fund	159,183,519
Catamount fund	26,645,928
Federal funds	1,007,688,102
Permanent trust funds	10,000
Internal service funds	1,709,076
Interdepartmental transfers	<u>17,893,414</u>
Total	2,880,736,849
Sec. B.400 Labor - administration	
Personal services	4,592,207
Operating expenses	<u>577,547</u>
Total	5,169,754
Source of funds	
ARRA funds	1,875,000
General fund	223,725
Special funds	266,110

Catamount fund	25,424
Federal funds	2,412,145
Interdepartmental transfers	367,350
Total	5,169,754
Sec. B.401 Labor - programs	
Personal services	21,048,615
Operating expenses	4,726,026
Grants	<u>7,216,529</u>
Total	32,991,170
Source of funds	
General fund	8,852,385
Special funds	2,947,118
Catamount fund	368,648
Federal funds	18,786,531
Interdepartmental transfers	<u>2,036,488</u>
Total	32,991,170
Sec. B.402 Labor - domestic and sexual violence survivors' transitional employment program	
Grants	<u>30,000</u>
Total	30,000
Source of funds	
Special funds	<u>30,000</u>
Total	30,000
Sec. B 403 Total Labor	38,190,924
Source of funds	
ARRA funds	1,875,000
General fund	9,076,110
Special funds	3,243,228
Catamount fund	394,072
Federal funds	21,198,676
Interdepartmental transfers	<u>2,403,838</u>
Total	38,190,924
Sec. B.500 Education - finance and administration	
Personal services	5,173,188
Operating expenses	1,651,304
Grants	<u>12,084,730</u>
Total	18,909,222
Source of funds	
General fund	3,409,206

Special funds	12,626,342
Global Commitment fund	858,212
Federal funds	2,010,732
Interdepartmental transfers	4,730
Total	18,909,222
Sec. B.501 Education - education services	
Personal services	13,051,696
Operating expenses	1,873,037
Grants	<u>113,036,906</u>
Total	127,961,639
Source of funds	
General fund	5,325,358
Education fund	1,131,751
Special funds	2,189,254
Federal funds	119,289,540
Interdepartmental transfers	<u>25,736</u>
Total	127,961,639
Sec. B.502 Education - special education: formula grants	
Grants	<u>142,687,975</u>
Total	142,687,975
Source of funds	
Education fund	142,457,975
Global Commitment fund	<u>230,000</u>
Total	142,687,975
Sec. B.503 Education - state-placed students	
Grants	<u>18,900,000</u>
Total	18,900,000
Source of funds	
Education fund	<u>18,900,000</u>
Total	18,900,000
Sec. B.504 Education - adult education and literacy	
Grants	<u>6,463,656</u>
Total	6,463,656
Source of funds	
General fund	2,587,995
Education fund	3,000,000
Federal funds	<u>875,661</u>

Total	6,463,656
Sec. B.505 Education - adjusted education payment	
Grants	<u>1,136,100,000</u>
Total	1,136,100,000
Source of funds	
ARRA funds	38,575,036
Education fund	<u>1,097,524,964</u>
Total	1,136,100,000
Sec. B.506 Education - transportation	
Grants	<u>15,542,809</u>
Total	15,542,809
Source of funds	
Education fund	<u>15,542,809</u>
Total	15,542,809
Sec. B.507 Education - small school grants	
Grants	<u>6,977,336</u>
Total	6,977,336
Source of funds	
Education fund	<u>6,977,336</u>
Total	6,977,336
Sec. B.508 Education - capital debt service aid	
Grants	<u>188,000</u>
Total	188,000
Source of funds	
Education fund	<u>188,000</u>
Total	188,000
Sec. B.509 Education - tobacco litigation	
Personal services	131,153
Operating expenses	57,584
Grants	<u>800,180</u>
Total	988,917
Source of funds	
Tobacco fund	<u>988,917</u>
Total	988,917
Sec. B.510 Education - essential early education grant	
Grants	<u>5,700,000</u>
Total	5,700,000

Source of funds	
Education fund	<u>5,700,000</u>
Total	5,700,000
Sec. B.511 Education - technical education	
Grants	<u>12,800,000</u>
Total	12,800,000
Source of funds	
Education fund	<u>12,800,000</u>
Total	12,800,000
Sec. B.512 Education - Act 117 cost containment	
Personal services	1,070,398
Operating expenses	121,307
Grants	<u>91,000</u>
Total	1,282,705
Source of funds	
Special funds	<u>1,282,705</u>
Total	1,282,705
Sec. B.513 Appropriation and transfer to education fund	
Grants	<u>259,303,944</u>
Total	259,303,944
Source of funds	
General fund	<u>259,303,944</u>
Total	259,303,944
Sec. B.514 State teachers' retirement system	
Personal services	26,629,115
Operating expenses	942,527
Grants	<u>40,303,002</u>
Total	67,874,644
Source of funds	
General fund	40,303,002
Pension trust funds	<u>27,571,642</u>
Total	67,874,644
Sec. B 515 Total General education	1,821,680,847
Source of funds	
ARRA funds	38,575,036
General fund	310,929,505

Education fund	1,304,222,835
Special funds	16,098,301
Tobacco fund	988,917
Global Commitment fund	1,088,212
Federal funds	122,175,933
Pension trust funds	27,571,642
Interdepartmental transfers	<u>30,466</u>
Total	1,821,680,847
Sec. B.600 University of Vermont	
Grants	<u>40,746,629</u>
Total	40,746,629
Source of funds	
General fund	36,740,473
Global Commitment fund	4,006,156
Total	40,746,629
Sec. B.601 Vermont Public Television	
Grants	<u>564,620</u>
Total	564,620
Source of funds	
General fund	<u>564,620</u>
Total	564,620
Sec. B.602 Vermont state colleges	
Grants	<u>23,155,213</u>
Total	23,155,213
Source of funds	
General fund	<u>23,155,213</u>
Total	23,155,213
Sec. B.603 Vermont state colleges - allied health	
Grants	<u>1,068,537</u>
Total	1,068,537
Source of funds	
General fund	663,130
Global Commitment fund	<u>405,407</u>
Total	1,068,537
Sec. B.604 Vermont interactive television	
Grants	<u>785,679</u>
Total	785,679
Source of funds	

General fund	<u>785,679</u>
Total	785,679
Sec. B.605 Vermont student assistance corporation	
Grants	<u>18,363,607</u>
Total	18,363,607
Source of funds	
General fund	<u>18,363,607</u>
Total	18,363,607
Sec. B.606 New England higher education compact	
Grants	<u>84,000</u>
Total	84,000
Source of funds	
General fund	<u>84,000</u>
Total	84,000
Sec. B.607 University of Vermont - Morgan Horse Farm	
Grants	<u>1</u>
Total	1
Source of funds	
General fund	<u>1</u>
Total	1
Sec. B 608 Total Higher education	84,768,286
Source of funds	
General fund	80,356,723
Global Commitment fund	<u>4,411,563</u>
Total	84,768,286
Sec. B.700 Natural resources - agency of natural resources - administration	
Personal services	3,830,378
Operating expenses	1,506,066
Grants	<u>25,000</u>
Total	5,361,444
Source of funds	
General fund	<u>4,794,914</u>
Federal funds	278,120
Interdepartmental transfers	288,410
Total	5,361,444
Sec. B.701 Connecticut river watershed advisory commission	

Grants	<u>38,000</u>
Total	38,000
Source of funds	
General fund	<u>38,000</u>
Total	38,000
Sec. B.702 Citizens' advisory committee on Lake Champlain's future	
Personal services	3,600
Operating expenses	<u>3,900</u>
Total	7,500
Source of funds	
General fund	<u>7,500</u>
Total	7,500
Sec. B.703 Natural resources - state land local property tax assessment	
Operating expenses	<u>2,128,733</u>
Total	2,128,733
Source of funds	
General fund	1,707,233
Interdepartmental transfers	<u>421,500</u>
Total	2,128,733
Sec. B.704 Green up	
Operating expenses	7,594
Grants	<u>10,550</u>
Total	18,144
Source of funds	
Special funds	<u>18,144</u>
Total	18,144
Sec. B.705 Fish and wildlife - support and field services	
Personal services	12,437,985
Operating expenses	4,482,575
Grants	<u>774,333</u>
Total	17,694,893
Source of funds	
General fund	1,227,419
Fish and wildlife fund	16,230,474
Interdepartmental transfers	<u>237,000</u>
Total	17,694,893
Sec. B.706 Fish and wildlife - watershed improvement	
Grants	<u>125,000</u>

Total	125,000
Source of funds	
Fish and wildlife fund	<u>125,000</u>
Total	125,000
Sec. B.707 Forests, parks and recreation - administration	
Personal services	1,020,309
Operating expenses	555,710
Grants	<u>1,858,450</u>
Total	3,434,469
Source of funds	
General fund	1,223,859
Special funds	1,305,610
Federal funds	<u>905,000</u>
Total	3,434,469
Sec. B.708 Forests, parks and recreation - forestry	
Personal services	4,482,990
Operating expenses	579,205
Grants	<u>343,000</u>
Total	5,405,195
Source of funds	
General fund	3,633,694
Special funds	474,501
Federal funds	1,140,000
Interdepartmental transfers	<u>157,000</u>
Total	5,405,195
Sec. B.709 Forests, parks and recreation - state parks	
Personal services	5,381,818
Operating expenses	<u>1,989,011</u>
Total	7,370,829
Source of funds	
General fund	767,889
Special funds	<u>6,602,940</u>
Total	7,370,829
Sec. B.710 Forests, parks and recreation - lands administration	
Personal services	443,601
Operating expenses	<u>1,209,081</u>
Total	1,652,682

Source of funds	
General fund	368,477
Special funds	179,205
Federal funds	1,050,000
Interdepartmental transfers	<u>55,000</u>
Total	1,652,682
Sec. B.711 Forests, parks and recreation - youth conservation corps	
Grants	<u>751,666</u>
Total	751,666
Source of funds	
General fund	46,000
Special funds	361,666
Federal funds	94,000
Interdepartmental transfers	<u>250,000</u>
Total	751,666
Sec. B.712 Forests, parks and recreation - forest highway maintenance	
Personal services	20,000
Operating expenses	<u>159,266</u>
Total	179,266
Source of funds	
General fund	<u>179,266</u>
Total	179,266
Sec. B.713 Environmental conservation - management and support services	
Personal services	4,043,142
Operating expenses	806,015
Grants	<u>103,913</u>
Total	4,953,070
Source of funds	
General fund	1,065,644
Special funds	2,425,301
Federal funds	1,407,125
Interdepartmental transfers	<u>55,000</u>
Total	4,953,070
Sec. B.714 Environmental conservation - air and waste management	
Personal services	7,183,059
Operating expenses	6,483,565
Grants	<u>1,386,000</u>
Total	15,052,624
Source of funds	

General fund	619,928
Special funds	10,783,016
Federal funds	3,439,680
Interdepartmental transfers	<u>210,000</u>
Total	15,052,624
Sec. B.715 Environmental conservation - office of water programs	
Personal services	13,507,863
Operating expenses	1,964,999
Grants	<u>2,165,402</u>
Total	17,638,264
Source of funds	
General fund	6,336,970
Special funds	4,419,321
Federal funds	6,401,973
Interdepartmental transfers	<u>480,000</u>
Total	17,638,264
Sec. B.716 Environmental conservation - tax-loss-Connecticut river flood control	
Operating expenses	<u>40,000</u>
Total	40,000
Source of funds	
Special funds	<u>40,000</u>
Total	40,000
Sec. B.717 Natural resources board	
Personal services	2,259,294
Operating expenses	<u>347,320</u>
Total	2,606,614
Source of funds	
General fund	816,942
Special funds	<u>1,789,672</u>
Total	2,606,614
Sec. B 718 Total Natural resources	84,458,393
Source of funds	
General fund	22,833,735
Fish and wildlife fund	16,355,474
Special funds	28,399,376
Federal funds	14,715,898

Interdepartmental transfers	<u>2,153,910</u>
Total	84,458,393
Sec. B.800 Commerce and community development - agency of commerce and community development - administration	
Personal services	1,914,002
Operating expenses	642,659
Grants	<u>1,136,390</u>
Total	3,693,051
Source of funds	
General fund	2,793,051
Federal funds	800,000
Interdepartmental transfers	100,000
Total	3,693,051
Sec. B.801 Housing and community affairs	
Personal services	2,333,275
Operating expenses	420,760
Grants	<u>16,579,461</u>
Total	19,333,496
Source of funds	
General fund	1,203,070
Special funds	3,210,948
Federal funds	14,881,478
Interdepartmental transfers	<u>38,000</u>
Total	19,333,496
Sec. B.802 Historic sites - operations	
Personal services	593,585
Operating expenses	338,745
Grants	<u>2,850</u>
Total	935,180
Source of funds	
General fund	545,528
Special funds	<u>389,652</u>
Total	935,180
Sec. B.803 Historic sites - special improvements	
Personal services	108,200
Operating expenses	<u>76,247</u>
Total	184,447
Source of funds	
Special funds	50,000

Federal funds	113,449
Interdepartmental transfers	<u>20,998</u>
Total	184,447
Sec. B.804 Community development block grants	
Grants	<u>9,428,530</u>
Total	9,428,530
Source of funds	
ARRA funds	1,982,000
Federal funds	<u>7,446,530</u>
Total	9,428,530
Sec. B.805 Downtown transportation and capital improvement fund	
Personal services	72,978
Grants	<u>327,022</u>
Total	400,000
Source of funds	
Special funds	<u>400,000</u>
Total	400,000
Sec. B.806 Economic development	
Personal services	1,480,824
Operating expenses	619,677
Grants	<u>1,741,434</u>
Total	3,841,935
Source of funds	
General fund	2,876,585
Special funds	465,350
Federal funds	<u>500,000</u>
Total	3,841,935
Sec. B.807 Vermont training program	
Personal services	197,200
Operating expenses	22,334
Grants	<u>1,483,621</u>
Total	1,703,155
Source of funds	
General fund	1,668,155
Special funds	<u>35,000</u>
Total	1,703,155
Sec. B.808 Tourism and marketing	

Personal services	1,448,276
Operating expenses	2,008,976
Grants	<u>171,000</u>
Total	3,628,252
Source of funds	
General fund	3,622,252
Special funds	<u>6,000</u>
Total	3,628,252
Sec. B.809 Vermont life	
Personal services	740,669
Operating expenses	<u>110,309</u>
Total	850,978
Source of funds	
Enterprise funds	<u>850,978</u>
Total	850,978
Sec. B.810 Vermont council on the arts	
Grants	<u>507,607</u>
Total	507,607
Source of funds	
General fund	<u>507,607</u>
Total	507,607
Sec. B.811 Vermont symphony orchestra	
Grants	<u>113,821</u>
Total	113,821
Source of funds	
General fund	<u>113,821</u>
Total	113,821
Sec. B.812 Vermont historical society	
Grants	<u>795,669</u>
Total	795,669
Source of funds	
General fund	<u>795,669</u>
Total	795,669
Sec. B.813 Vermont housing and conservation board	
Grants	<u>22,933,436</u>
Total	22,933,436
Source of funds	
Special funds	11,326,662

Federal funds	<u>11,606,774</u>	
Total	22,933,436	
Sec. B.814 Vermont humanities council		
Grants	<u>172,670</u>	
Total	172,670	
Source of funds		
General fund	<u>172,670</u>	
Total	172,670	
Sec. B 815 Total Commerce and community development		68,522,227
Source of funds		
ARRA funds	1,982,000	
General fund	14,298,408	
Special funds	15,883,612	
Federal funds	35,348,231	
Enterprise funds	850,978	
Interdepartmental transfers	<u>158,998</u>	
Total	68,522,227	
Sec. B.900 Transportation - finance and administration		
Personal services	10,071,137	
Operating expenses	<u>2,438,262</u>	
Total	12,509,399	
Source of funds		
Transportation fund	12,009,399	
Federal funds	500,000	
Total	12,509,399	
Sec. B.901 Transportation - aviation		
Personal services	1,448,274	
Operating expenses	16,283,801	
Grants	<u>160,000</u>	
Total	17,892,075	
Source of funds		
Transportation fund	2,251,575	
Federal funds	<u>15,640,500</u>	
Total	17,892,075	
Sec. B.902 Transportation - buildings		
Operating expenses	<u>1,311,500</u>	

Total	1,311,500
Source of funds	
Transportation fund	<u>1,311,500</u>
Total	1,311,500
Sec. B.903 Transportation - program development	
Personal services	36,275,422
Operating expenses	202,948,726
Grants	<u>25,834,622</u>
Total	265,058,770
Source of funds	
ARRA funds	66,369,500
TIB fund	10,037,081
Transportation fund	27,571,077
Local match	1,600,430
Federal funds	152,704,432
Interdepartmental transfers	<u>6,776,250</u>
Total	265,058,770
Sec. B.904 Transportation - rest areas	
Personal services	100,000
Operating expenses	<u>2,850,000</u>
Total	2,950,000
Source of funds	
Transportation fund	379,740
Federal funds	<u>2,570,260</u>
Total	2,950,000
Sec. B.905 Transportation - maintenance state system	
Personal services	34,028,928
Operating expenses	32,991,361
Grants	<u>278,020</u>
Total	67,298,309
Source of funds	
Transportation fund	64,315,237
Federal funds	2,883,072
Interdepartmental transfers	<u>100,000</u>
Total	67,298,309
Sec. B.906 Transportation - policy and planning	
Personal services	4,099,519
Operating expenses	1,169,550
Grants	<u>5,024,772</u>

Total	10,293,841
Source of funds	
Transportation fund	2,295,512
Federal funds	7,623,486
Interdepartmental transfers	<u>374,843</u>
Total	10,293,841
Sec. B.907 Transportation - rail	
Personal services	3,625,048
Operating expenses	<u>16,858,115</u>
Total	20,483,163
Source of funds	
Transportation fund	10,129,388
Federal funds	<u>10,353,775</u>
Total	20,483,163
Sec. B.908 Transportation - bridge maintenance	
Operating expenses	<u>17,623,700</u>
Total	17,623,700
Source of funds	
ARRA funds	3,630,500
TIB fund	234,020
Transportation fund	2,979,620
Federal funds	<u>10,779,560</u>
Total	17,623,700
Sec. B.909 Transportation - public transit	
Personal services	717,809
Operating expenses	51,301
Grants	<u>21,563,806</u>
Total	22,332,916
Source of funds	
Transportation fund	6,828,234
Federal funds	<u>15,504,682</u>
Total	22,332,916
Sec. B.910 Transportation - central garage	
Personal services	3,454,724
Operating expenses	<u>14,373,351</u>
Total	17,828,075
Source of funds	

Internal service funds	<u>17,828,075</u>
Total	17,828,075
Sec. B.911 Department of motor vehicles	
Personal services	17,063,642
Operating expenses	8,026,673
Grants	<u>50,000</u>
Total	25,140,315
Source of funds	
Transportation fund	23,657,821
Federal funds	<u>1,482,494</u>
Total	25,140,315
Sec. B.912 Transportation - town highway structures	
Grants	<u>3,833,500</u>
Total	3,833,500
Source of funds	
Transportation fund	<u>3,833,500</u>
Total	3,833,500
Sec. B.913 Transportation - town highway Vermont local roads	
Grants	<u>375,000</u>
Total	375,000
Source of funds	
Transportation fund	235,000
Federal funds	<u>140,000</u>
Total	375,000
Sec. B.914 Transportation - town highway class 2 roadway	
Grants	<u>6,448,750</u>
Total	6,448,750
Source of funds	
Transportation fund	<u>6,448,750</u>
Total	6,448,750
Sec. B.915 Transportation - town highway bridges	
Personal services	3,570,000
Operating expenses	<u>17,101,100</u>
Total	20,671,100
Source of funds	
TIB fund	2,540,899
Transportation fund	500,000
Local match	1,356,473

Federal funds	<u>16,273,728</u>
Total	20,671,100
Sec. B.916 Transportation - town highway aid program	
Grants	<u>24,982,744</u>
Total	24,982,744
Source of funds	
Transportation fund	<u>24,982,744</u>
Total	24,982,744
Sec. B.917 Transportation - town highway class 1 supplemental grants	
Grants	<u>128,750</u>
Total	128,750
Source of funds	
Transportation fund	<u>128,750</u>
Total	128,750
Sec. B.918 Transportation - town highway emergency fund	
Grants	<u>750,000</u>
Total	750,000
Source of funds	
Transportation fund	<u>750,000</u>
Total	750,000
Sec. B.919 Transportation - municipal mitigation grant program	
Grants	<u>2,112,998</u>
Total	2,112,998
Source of funds	
Transportation fund	247,998
Federal funds	<u>1,865,000</u>
Total	2,112,998
Sec. B.920 Transportation - public assistance grant program	
Grants	<u>200,000</u>
Total	200,000
Source of funds	
Federal funds	<u>200,000</u>
Total	200,000
Sec. B.921 Transportation board	
Personal services	73,502
Operating expenses	<u>13,389</u>

	Total	86,891
	Source of funds	
	Transportation fund	<u>86,891</u>
	Total	86,891
Sec. B 922	Total Transportation	540,311,796
	Source of funds	
	ARRA funds	70,000,000
	TIB fund	12,812,000
	Transportation fund	190,942,736
	Local match	2,956,903
	Federal funds	238,520,989
	Internal service funds	17,828,075
	Interdepartmental transfers	<u>7,251,093</u>
	Total	540,311,796
Sec. B.1000	Debt service	
	Debt service	<u>69,569,880</u>
	Total	69,569,880
	Source of funds	
	General fund	63,509,650
	Transportation fund	3,560,515
	Special funds	2,499,715
	Total	69,569,880
Sec. B.1000.1	Short term borrowing	
	Debt service	<u>1,176,792</u>
	Total	1,176,792
	Source of funds	
	General fund	<u>1,176,792</u>
	Total	1,176,792
Sec. B 1001	Total Debt service	70,746,672
	Source of funds	
	General fund	64,686,442
	Transportation fund	3,560,515
	Special funds	<u>2,499,715</u>
	Total	70,746,672

Sec. B.1100 FISCAL YEAR 2010 NEXT GENERATION APPROPRIATION

(a) In fiscal year 2010, the following amount is appropriated from the next generation initiative fund, created in 16 V.S.A. § 2887 as prescribed by Sec. E.1100: \$7,293,000

Sec. B.1101 FISCAL YEAR 2010 ONE TIME APPROPRIATIONS

(a) In fiscal year 2010, the following amounts are appropriated from the general fund:

(1) To the university of Vermont. \$261,667 of these funds are intended for the restoration of the fiscal year 2009 reduction to the next generation scholarship allocated to UVM for both fiscal year 2009 and fiscal year 2010 and shall be used for scholarships in the same manner as specified in Sec. E.1100(a)(3)(B) of this act. \$5,436,966

(2) To Vermont state colleges \$291,667 of these funds are intended for the restoration of the fiscal year 2009 reduction to the next generation scholarship allocated to VSC for both fiscal year 2009 and fiscal year 2010. \$261,667 shall be used for scholarships in the same manner as specified in Sec. E.1100(a)(3)(B) and \$30,000 shall be used for dual enrollment programs in the same manner as specified in E.1100(a)(3)(C) of this act. \$3,537,342

(3) To the Vermont student assistance corporation. \$336,667 of these funds are intended for the restoration of the fiscal year 2009 reduction to the next generation scholarship allocated to VSAC for both fiscal year 2009 and fiscal year 2010. \$75,000 shall be used for non-degree grants in the same manner as specified in E.1100(a)(3)(A) and \$261,667 shall be used for scholarships in the same manner as specified in Sec. E.1100(a)(3)(B) of this act. \$2,476,658

(4) To the Vermont housing and conservation board for a grant to the Vermont center for independent living to fund the home access program in fiscal year 2010. \$1,000,000

(5) To the Vermont state colleges to grow the endowment and to be used in a manner consistent with that specified in Sec. 381a (a)(13) of Act 65 of 2007. \$100,000

(6) To the department of health for expenses associated with "Real ID" requirements. \$280,000

(7) To the department of tourism and marketing of which \$100,000 shall be for a grant to the Vermont convention bureau and \$20,000 shall be for the Shires of Vermont. \$600,000

(8) To the department of innovation and information for the expansion of the vision and human resource information systems. These funds will assist in the implementation of web-based time and expense reporting as well as to improve business practices related to the state financial systems. The department is authorized to re-negotiate the contract with the vendor consistent

with these funds or to re-bid the project if necessary. Additional funding will be required in fiscal year 2011 and fiscal year 2012 to complete the project.
\$4,500,000

(9) To the legislature, for planning and preparation for the 2009 council of state governments northeast regional meeting in Vermont.
\$50,000

(10) To the Sterling College for student residency and program center costs.
\$350,000

(b) In fiscal year 2010 the following amounts are appropriated from the American and Recovery and Reinvestment: State Fiscal Stabilization Fund Government Services Fund.

(1) To the Vermont economic development authority, for job creation in Vermont, a total of \$6,000,000 in fiscal year 2010. This is the first-year allocation of an intended two-year initiative. Of this total the funds are appropriated:

(A) to be reserved to provide venture capital to Vermont small businesses in the areas of technology, green energy, and agriculture to expand their workforce as specified in S.137 of 2009.
\$5,000,000

(B) to be reserved to fund activities specified in S.137 of 2009.
\$1,000,000

(2) To the transportation fund to be used for expenditures of the fund that are not used to match federal funds.
\$2,500,000

Sec. B.1102 REPEAL

(a) Sec. 3(a)(2)(B) of No. 206 of the Acts of 2008 (fiscal year 2010 transportation fund pay act) is repealed.

Sec. B.1103 APPROPRIATION REDUCTION; EXPENDITURE REDUCTION

(a) The secretary of administration shall reduce fiscal year 2010 general and transportation fund appropriations consistent with expenditure reductions, including reductions in positions, and is authorized to substitute appropriation adjustments in other funds and to effect fund transfers to the general and transportation funds to achieve these amounts. The general fund appropriation reduction shall be \$14,700,000 and the transportation fund reduction shall be \$1,400,000 and shall be made in accordance with the provision of Sec. E. 1103 of this act.

(b) The secretary of administration is directed to reduce instate travel budgets throughout the executive branch of state government, thereby reducing

operating expense appropriations by \$16,560. This shall be accomplished through a reduction in general funds.

* * * Fiscal Year 2009 Budget Adjustment * * *

Sec. C.101 Sec. 2.136 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.136. Public service - regulation and energy

Personal services	4,981,246	5,165,246
Operating expenses	690,524	690,524
Grants	<u>5,770,007</u>	<u>5,770,007</u>
Total	<u>11,441,777</u>	11,625,977
Source of funds		
Special funds	<u>10,248,977</u>	10,432,977
Federal funds	1,157,800	1,157,800
Interdepartmental transfer	<u>35,000</u>	<u>35,000</u>
Total	<u>11,441,777</u>	11,625,977

Sec. C.102 Sec. 2.145 of No. 192 of the Acts of 2008 as amended by Sec. 13 of H.232 of 2009 is further amended to read:

Sec. 2.145. Total protection to persons and property

	<u>259,245,579</u>	259,429,579
Source of funds		
General fund	93,104,352	93,104,352
Transportation fund	32,725,324	32,725,324
Special funds	<u>66,924,640</u>	67,108,640
Tobacco fund	696,306	696,306
Global Commitment fund	1,898,824	1,898,824
Federal funds	49,775,682	49,775,682
Enterprise funds	4,735,317	4,735,317
Interdepartmental transfer	<u>9,385,134</u>	<u>9,385,134</u>
Total	<u>259,245,579</u>	259,429,579

Sec. C. 103 Sec. 2.223 of No. 192 of the Acts of 2008 as amended by Sec. 29. of H. 232 of 2009 is further amended to read:

Sec. 2.223. Department for children and families - child development

Personal services	3,338,891	3,338,891
Operating expenses	<u>843,660</u>	520,557
Grants	<u>51,064,583</u>	<u>54,940,903</u>
Total	<u>55,247,134</u>	58,800,351
Source of funds		

General fund	23,228,747	25,195,964
Special funds	865,000	865,000
Global Commitment fund	4,289,469	5,365,469
<u>Federal ARRA funds</u>		426,000
Federal funds	26,724,411	26,808,411
Interdepartmental transfer	139,507	139,507
Total	55,247,134	58,800,351

Sec. C 104. Sec. 2.251 of No. 192 of the Acts of 2008 as amended by Sec. 46. of H. 232 is further amended to read:

Sec. 2.251. Total human services 2,649,379,658 2,693,573,326

Source of funds

General fund	521,931,597	474,056,196
Special funds	66,707,178	64,844,465
Tobacco fund	45,410,381	45,410,381
Global Commitment fund	906,593,258	914,305,775
State health care resources fund	147,623,246	148,261,016
Catamount fund	31,073,806	23,769,031
Federal funds	916,671,195	933,989,937
<u>Federal ARRA funds</u>		75,886,880
Permanent trust funds	10,000	10,000
Internal service funds	3,282,548	3,282,548
Interdepartmental transfer	10,076,449	9,757,097
Total	2,649,379,658	2,693,573,326

Sec. C.105 FISCAL YEAR 2009 – ARRA APPROPRIATIONS

(a) In addition to funds appropriated elsewhere, the following appropriation of American Recovery and Reinvestment Act funds are authorized in fiscal year 2009.

(1) \$60,049 to the agency of human services for the Vermont commission of national and community service.

(2) \$1,225,000 to the department for children and families - office of economic opportunity for Community Services Block Grant funding.

(3) \$131,911 to the department for children and families - child development as a result of IV-E enhanced match. This is anticipated to allow a like amount of funding to carry forward and be available to offset fiscal year 2010 funding need.

(4) \$1,048,199 to the department for children and families – family services as a result of IV-E enhanced match. This is anticipated to allow a like amount of funding to carry forward and be available to offset fiscal year 2010

funding need.

(5) \$540,660 to the department for children and families – food stamp cash out for supplemental nutrition assistance program funding.

(6) \$300,000 to the department for children and families – administration and support services for food stamp administration.

(7) \$635,573 to the department of disabilities, aging, and independent living - vocational rehabilitation for rehabilitation services.

(8) \$81,000 to the department of disabilities, aging, and independent living - advocacy and independent living grants for senior nutrition funds.

(9) \$3,000 to the department of disabilities, aging, and independent living - advocacy and independent living grants for senior community service employment.

(10) \$44,649 to the department of disabilities, aging, and independent living - blind and visually impaired.

(11) \$50,000 to the department of labor for state unemployment and employment service operations including job counseling and other assistance to workers.

(12) \$350,000 to the department of labor for employment and training assistance to economically disadvantaged youth with employment barriers.

Sec. D.100 APPROPRIATIONS; PROPERTY TRANSFER TAX

(a) This act contains the following amounts appropriated from special funds that receive revenue from the property transfer tax. Expenditures from these appropriations shall not exceed available revenues.

(1) The sum of \$314,503 is appropriated from the property valuation and review administration special fund to the department of taxes for administration of the use tax reimbursement program. Notwithstanding 32 V.S.A. § 9610(c), amounts above \$314,503 from the property transfer tax that are deposited into the property valuation and review administration special fund shall be transferred into the general fund.

(2) The sum of \$9,101,662 is appropriated from the Vermont housing and conservation trust fund to the Vermont housing and conservation trust board. Notwithstanding 10 V.S.A. § 312, amounts above \$9,101,662 from the property transfer tax that are deposited into the Vermont housing and conservation trust fund shall be transferred into the general fund.

(3) The sum of \$3,449,427 is appropriated from the municipal and regional planning fund. Notwithstanding 24 V.S.A. § 4306(a), amounts above \$3,449,427 from the property transfer tax that are deposited into the municipal and regional planning fund shall be transferred into the general fund. The sum of \$3,449,427 shall be allocated as follows:

(A) \$2,632,027 for disbursement to regional planning commissions in a manner consistent with 24 V.S.A. § 4306(b);

(B) \$408,700 for disbursement to municipalities in a manner consistent with 24 V.S.A. § 4306(b);

(C) \$408,700 to the Vermont center for geographic information.

(4) It is the intent of the general assembly that in fiscal year 2011, the appropriations in this subsection shall be in accordance with the formulas set forth in 32 V.S.A. § 9610(c), 10 V.S.A. § 312, and 24 V.S.A. § 4306(a) and (b).

Sec. D.101 FUND TRANSFERS

(a) The following amounts are transferred from the funds indicated:

(1) from the general fund to the:

(A) communications and information technology internal service fund established by 22 V.S.A. § 902a: \$750,000.

(B) next generation initiative fund established by 16 V.S.A. § 2887: \$7,293,000.

(2) from the transportation fund to the downtown transportation and related capital improvement fund established by 24 V.S.A. § 2796 to be used by the Vermont downtown development board for the purposes of the fund: \$400,000.

(3) from the public service department regulation special fund to the general fund: \$300,000.

(4) an assessment from special funds of no greater than two percent of any fund appropriation to the general fund, of no greater than \$3,321,444 in total. Notwithstanding any other provisions of law, the secretary of administration is authorized to reduce special fund appropriations and transfer special funds to the general fund in fiscal year 2010 to achieve this amount and shall report these actions to the joint fiscal committee at its November 2009 meeting.

Sec. D.102 FUND RESERVE AUTHORIZATION

(a) In fiscal year 2010, the secretary of administration may authorize the secretary of human services to include any available balance in the human services caseload reserve as an available state match when setting the per-member per-month actuarial rates for Medicaid eligibility groups in the global commitment program for federal fiscal year 2010 and submitting these rates for approval by the Centers for Medicare and Medicaid Services.

Sec. D.103 TOBACCO LITIGATION SETTLEMENT FUND BALANCE

(a) Notwithstanding 18 V.S.A. § 9502(b), the actual balances at the end of fiscal year 2009 in the tobacco litigation settlement fund shall remain for appropriation in fiscal year 2010.

Sec. D.104 TRANSFER OF TOBACCO TRUST FUNDS

(a) Notwithstanding 18 V.S.A. § 9502(a)(3) and (4), the actual amount of investment earnings of the tobacco trust fund at the end of fiscal year 2010 shall be transferred from the tobacco trust fund to the tobacco litigation settlement fund in fiscal year 2010.

Sec. D.105 EXEMPTIONS FROM BUDGET STABILIZATION RESERVES

(a) Transportation fund amounts totaling \$3,144,146, reverted under the secretary of administration's carry-forward authority in Sec. 82(a) of No. 90 of the Acts of 2008, are exempt from the fiscal year 2008 transportation fund appropriation total used to calculate the five percent budget stabilization requirement for fiscal year 2009 in 32 V.S.A. § 308a.

Sec. D.106 EDUCATION MEDICAID RECEIPTS IN FISCAL YEARS 2009 AND 2010

(a) Notwithstanding 16 V.S.A. § 2959a(g), during fiscal year 2009 and fiscal year 2010, after the application of subsections (a) through (f), any remaining Medicaid reimbursement funds shall be deposited in the general fund.

Sec. D.107 GROSS RECEIPTS TAX IN FISCAL YEAR 2010

(a) In fiscal year 2010, the first \$2,300,000 of gross receipts tax revenue collected under 33 V.S.A. § 2503 shall be deposited in the general fund.

Sec. D.108 AMERICAN RECOVERY AND REINVESTMENT ACT: STATE FISCAL STABILIZATION FUND PROGRAM FOR THE SUPPORT OF PUBLIC ELEMENTARY, SECONDARY, AND HIGHER EDUCATION

(a) The governor is authorized to submit an application as soon as practicable for Vermont's share of the American Recovery and Reinvestment

Act (ARRA) State Fiscal Stabilization Fund Program (SFSF) consistent with the intent of the Act and this section. \$38,575,036, which is one-half of Vermont's SFSF funds are appropriated to school districts as part of the funding of the state's adjusted education payment under Sec. B.505 of this act.

(b) The commissioner of education shall ensure that federal reporting is carried out as to:

- (1) the use of funds provided under the SFSF program;
- (2) the estimated number of jobs created or saved with program funds;
- (3) estimated tax increases that were averted as a result of program funds;
- (4) the state's progress in the areas covered by the application assurances; and
- (5) maintaining records to ensure the ability to effectively monitor, evaluate, and audit the state fiscal stabilization fund.

Sec. D. 109 AMERICAN RECOVERY AND REINVESTMENT ACT:
STATE FISCAL STABILIZATION FUND GOVERNMENT SERVICES
FUND

(a) The governor is authorized to submit an application as soon as practicable for Vermont's share of the American Recovery and Reinvestment Act (ARRA) State Fiscal Stabilization Fund Program (SFSF) consistent with the intent of the Act and as indicated below:

(1) For Vermont's SFSF government services fund designated for education, public safety, and other government services, estimated at \$17,165,683, \$8,500,000 is appropriated for fiscal year 2010 in Sec. B.1101 of the act which specifies:

(A) \$6,000,000 is shall be reserved for appropriation to the Vermont Economic Development Authority (VEDA) in fiscal year 2010 and fiscal year 2011 to further job creation in Vermont by providing \$5,000,000 for venture capital to Vermont small businesses in the areas of technology, green energy, and agriculture to expand their workforce and \$1,000,000 is reserved to meet other priorities contained in S.137, An Act Relating to the Vermont Recovery and Reinvestment Act of 2009.

(B) \$2,500,000 is applied to the transportation fund to be used for fund expenditures that are not a match for federal funds.

(b) The secretary of administration shall ensure that federal reporting is carried out as to:

- (1) the use of funds provided under the SFSF program;

- (2) the estimated number of jobs created or saved with program funds;
- (3) estimated tax increases that were averted as a result of program funds;
- (4) the state's progress in the areas covered by the application assurances; and
- (5) maintaining records to ensure the ability to effectively monitor, evaluate, and audit the SFSF monies.

Sec. D.110 FEDERAL ECONOMIC RECOVERY FUNDS

(a) Division A – Title XII of the American Recovery and Reinvestment Act (ARRA) of 2009 allocates federal funds to the state for transportation-related projects. The allocation is subject to a requirement that 50 percent of a portion of the allocation be obligated by the state within a 120-day time period and that the remaining funds be obligated by February 2010. To the extent the state needs to obligate ARRA funds to satisfy the February 2010 deadline, subject to the approval of the joint transportation oversight committee, the secretary is authorized to obligate ARRA funds:

- (1) to eligible projects in the fiscal year 2010 transportation program; and
- (2) to additional town highway projects that meet federal eligibility and readiness criteria.

(b) To the extent ARRA funds are proposed under subsection (a) of this section to be obligated to projects in place of previously authorized state funds or non-ARRA federal funds, the agency shall, subject to the approval of the joint transportation oversight committee, reallocate the authorized funds to advance other projects in the fiscal year 2010 transportation programs in the order of their priority ranking. If the secretary determines that such funds would be more efficiently spent advancing a lower-ranking project due to permitting, right-of-way, or other practical constraints that impede the advancement of a higher ranking project, the secretary may reallocate funds from the higher ranking to the lower ranking project.

(c) To the extent ARRA funds have been obligated and appropriated under other authority to projects in the fiscal year 2009 transportation program to projects in place of previously authorized and appropriated state funds or non-ARRA federal funds, the agency is authorized to reallocate the authorized funds to advance other projects in the fiscal year 2009 transportation program.

(d) The agency shall submit its proposal regarding the obligation of ARRA funds under subsection (a) of this section and its proposal regarding the reallocation of funds under subsection (b) of this section to the joint transportation oversight committee for approval. The agency shall in addition report to the committee on any reallocation of funds executed under authority of subsection (c) of this section.

(e) The secretary of the agency of transportation shall transfer portions of the \$66,369,500 of ARRA funds appropriated to program development in Sec. 2.903 of this act to other programs as required to effect the spending approved by the joint transportation oversight committee. The agency shall report on the expenditure of ARRA funds to the joint transportation oversight committee at the committee's regular and specially scheduled 2009 meetings.

(f) All reports from the agency to the joint transportation oversight committee (JTOC) required under this section when the legislature is not in session shall take place at meetings of the committee called by the chair.

* * * General Government * * *

Sec. E.100 Secretary of administration – secretary's office (Sec. B.100, #1100010000)

(a) The secretary of administration shall use the Global Commitment funds appropriated in this section for the Vermont Blueprint for Health chronic care initiative director.

(b) The secretary shall reduce in-state travel budgets in the executive branch to achieve the targeted savings in Sec. B.1103(b).

Sec. E.100.1 3 V.S.A. § 2283 is amended to read:

§ 2283. DEPARTMENT OF HUMAN RESOURCES

(a) The department of human resources is created in the agency of administration. In addition to other responsibilities assigned to it by law, the department is responsible for the provision of centralized human resources management services for state government, including the administration of a classification and compensation system for state employees under chapter 13 of this title and the performance of duties assigned to the commissioner of human resources under chapter 27 of this title. The department shall administer the human resources functions of the agency of administration, in consultation with the agency of administration commissioners and the state librarian. A department of the agency of administration which receives services of the consolidated agency human resources unit shall be charged for those services through an interdepartmental transfer on a basis established by the commissioner of finance and management in consultation with the

commissioner of human resources and with the approval of the secretary of administration.

Sec. E.100.2 22 V.S.A. § 901 is amended to read:

§ 901. CREATION OF DEPARTMENT

There is created the department of information and innovation within the agency of administration. The department shall have all the responsibilities assigned to it by law, including the following:

* * *

(12) to provide technical support and services to the departments of human resources and of finance and management for the statewide central accounting and encumbrance system, the statewide budget development system, the statewide human resources management system, and other agency of administration systems as may be assigned by the secretary.

Sec. E.100.3 32 V.S.A. § 183 is amended to read:

§ 183. FINANCIAL AND HUMAN RESOURCE INFORMATION
INTERNAL SERVICE FUND

(a) There is established in the department of finance and management a financial and human resource information internal service fund, to consist of revenues from charges to agencies, departments, and similar units of Vermont state government, and to be available to fund the costs of the division of financial operations in the department of finance and management, and the technical support ~~for the~~ and services provided by the department of information and innovation for the statewide central accounting and encumbrance, budget development, and human resource management system ~~in the department of human resources systems.~~ Expenditures shall be managed in accordance with subsection 462(b) of this title.

* * *

Sec. E.100.4 GOVERNOR'S PRODUCTIVITY TASKFORCE; JOINT
LEGISLATIVE GOVERNMENT ACCOUNTABILITY COMMITTEE

(a) The governor's productivity taskforce, as recommended in the September 8, 2005 report of the Vermont institute on government effectiveness, shall collaborate with the joint legislative government accountability committee on achieving the goals of the strategic enterprise initiative. Specifically, the taskforce and the committee shall develop initiatives to increase efficiencies in and promote innovation across state government.

Sec. E.101 Information and innovation - communications and information technology (Sec. B.101, #1105500000)

(a) Of this appropriation, \$750,000 is for a grant to the Vermont telecommunications authority established in 30 V.S.A. § 8061.

Sec. E.102 Information and innovation – health care information technology (Sec. B.102, #1105503000)

(a) The department of information and innovation (DII) will use the Global Commitment funds appropriated in this section for grants to coordinate with the Vermont Blueprint for Health chronic care initiative and other health care-related statewide information technology programs and projects. These programs and projects will provide public health approaches to improve the health outcomes and the quality of life for all Vermonters, including those who are Medicaid-eligible, and encourage the formation and maintenance of public-private partnerships in statewide health information exchange.

Sec. E.102.1 HEALTH INFORMATION TECHNOLOGY FOR PAYMENT REFORM WORK GROUP

(a) The commissioner of information and innovation shall convene a work group to explore ways to use and fund health information technology to achieve health care payment reform in this state. The work group shall consist of:

(1) Two members of the Vermont general assembly, one appointed by the speaker of the house of representatives and one appointed by the president pro tem of the senate.

(2) The secretary of administration or designee.

(3) The director of the office of economic stimulus and recovery.

(4) The director of the office of Vermont health access or designee.

(5) A representative from the Vermont Information Technology Leaders, Inc.

(6) A representative from First Data.

(7) A representative from IBM.

(8) A representative from each of the three largest health insurers licensed to do business in Vermont.

(9) Other interested stakeholders, which may include health care professionals, hospitals, and academic institutions.

(b) The work group shall:

(1) Explore opportunities for using health information technology to achieve health care payment reform in Vermont, including consideration of the use of smart card technology and mechanisms to enable real-time eligibility determinations and claims preparation, submission, and adjudication at a health care professional's office or a hospital.

(2) Identify potential sources of funding, including grants and other federal funds.

(3) Develop one or more proposals for appropriate grant funds, including those available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.

(4) Create a working plan for implementation of the health information technology payment reform initiatives identified for further action by the work group.

(c) No later than 90 days following the effective date of this act, the work group shall submit to the joint fiscal committee its recommendations for using health information technology to achieve payment reform, as well as the grant proposals and working plan required in subsection (b) of this section.

Sec. E.103 Finance and management – budget and management (Sec. B.103, #1110003000)

(a) The department of finance and management will use the Global Commitment funds appropriated in this section to support the staff effort needed to manage the Global Commitment fund.

Sec. E.103.1 32 V.S.A. §311 is amended to read:

§ 311. Retirement funds integrity report

(a) The governor shall include as a part of the annual budget report required by section 306 of this title, a statement of the extent by which the recommended appropriations to the teachers' retirement funds and to the Vermont employees' retirement funds differ from the amounts as recommended by the Vermont employees' retirement system retirement board as provided by subsection 471(n) of Title 3, and by the teachers' retirement system board of trustees as provided by subsection 1942(r) of Title 16 and for current obligations for retiree health care costs. If the governor's recommended appropriations are less than the amounts recommended by one or both of the boards of the two retirement systems for retirement obligations and retiree health care, the governor shall set forth the long-term financial implications to the state of such shortfall and present a plan to achieve and

preserve the fiscal integrity of the retirement funds of the retirement system or systems.

(b) At the request of the house or senate committees on government operations or appropriations, the state treasurer and the commissioner of finance and management shall present to the requesting committees the recommendations submitted under subsections 471(n) of Title 3 and 1942(r) of Title 16.

Sec. E.104 Finance and management – financial operations (Sec. B.104, #1115001000)

(a) Pursuant to 32 V.S.A. § 307(e), financial management fund charges not to exceed \$6,111,582 plus the costs of fiscal year 2010 salary increases bargained as part of the state/VSEA agreement are hereby approved. Of this amount, \$1,343,908 plus the costs of fiscal year 2010 salary increases bargained as part of the state/VSEA agreement shall be used to support the HCM system that is operated by the department of information and innovation.

Sec. E.107 HEALTH CARE AND WORKERS COMPENSATION INSURANCE FOR STATE FUNDED ENTITIES

(a) The commissioner of human resources shall review the fiscal implications of inclusion of quasi-public organizations such as the Vermont center for crime victims services and nonprofit organizations that receive 65 percent or more of their funding from Vermont state sources in the state health care program, the state workers compensation program and other state benefit programs. Such analysis shall assume that these organizations pay 100 percent of the costs of any program inclusion. This study shall be submitted to the house and senate committees on government operations and appropriations on or before December 1, 2009. If the commissioner of human resources and the secretary of administration determine there would be no negative fiscal implications for the state, they are authorized to implement the process of including these entities as soon as practicable.

Sec. E.111 Buildings and general services - engineering (Sec. B.111, #1150300000)

(a) The \$750,000 interdepartmental transfer in this appropriation shall be from the general bond fund appropriation in 2009 H.445 Sec. 1(8).

Sec. E.112 Buildings and general services – information centers (Sec. B.112, #1150400000)

(a) Of this appropriation, \$8,000 will be used to update the Sharon Vietnam honor roll.

Sec. E.120 Buildings and general services – workers' compensation insurance

(Sec. B.120, #1160450000)

(a) Pursuant to 32 V.S.A. § 307(e), workers' compensation fund charges not to exceed \$9,336,126 are hereby approved.

Sec. E.123 Buildings and general services – fee-for-space (Sec. B.123, #1160550000)

(a) Pursuant to 29 V.S.A. § 160a(b)(3), facilities operations fund charges not to exceed \$27,655,892 plus the costs of fiscal year 2010 salary increases bargained as part of the state/VSEA agreement are hereby approved.

Sec. E.127 Legislature (Sec. 127, #1210002000)

(a) It is the intent of the general assembly that funding for the legislature in fiscal year 2011 and beyond be included at a level sufficient to support an 18 week legislative session.

Sec. E.128 VIRTUALIZED INFORMATION TECHNOLOGY INFRASTRUCTURE; STUDY

(a) The legislative director of information technology and the commissioner of the department of information and innovation shall study the viability of cloud computing and other virtualized infrastructure options for the state's information technology infrastructure. In conducting the study they shall consider the following:

- (1) Current service level and scalability to future service needs;
- (2) Physical and virtual data security and recovery;
- (3) Potential for technology-related savings;
- (4) Opportunities for improved systems performance and capacity;
- (5) Specific vendors and relevant vendor policies; and
- (6) Potential for legal and regulatory obstacles.

(b) The legislative director of information technology and the commissioner of the department of information and innovation shall submit the results of this study to the general assembly on or before January 15, 2010. The director and the commissioner are respectively authorized to implement virtualized information technology.

Sec. E.129 ACCEPTANCE OF ARRA GRANTS

(a) During fiscal years 2009, 2010, and 2011, the joint fiscal committee shall consider grants under 32 V.S.A. § 5 that are received from the American

Recovery and Reinvestment Act (ARRA) with the following procedural changes:

(1) Where a grant is received from ARRA funding, the chairs of the house and senate legislative committees of most relevant jurisdiction, as determined by the chair of the joint fiscal committee, shall be informed of the grant receipt and request for acceptance.

(2) Said chairs may request that a joint fiscal committee member place a grant on the agenda of the joint fiscal committee in a manner consistent with committee policy under 32 V.S.A. § 5(a)(2)

(3) Where a grant is held for the joint fiscal committee agenda, the chairs of the legislative committees of jurisdiction shall be invited to the meeting and may participate in any related discussion.

(b) At joint fiscal committee regular meetings the administration shall report on ARRA grant applications submitted and on the current status of such grant submissions.

Sec. E.133 State treasurer (Sec. B.133, #1260010000)

(a) Of this general fund appropriation, \$6,484 shall be deposited into the armed services scholarship fund established in 16 V.S.A. § 2541.

Sec. E.135 Vermont state retirement system (Sec. B.135, #1265020000)

(a) Notwithstanding 3 V.S.A. § 473(d), in fiscal year 2010, investment fees shall be paid from the corpus of the fund.

Sec. E.135.1 COMMISSION ON THE DESIGN AND FUNDING OF RETIREMENT AND RETIREE HEALTH BENEFITS PLANS FOR STATE EMPLOYEES AND TEACHERS

(a) A commission is created to review and report on the design and funding of retirement and retiree health benefit plans for the state employees' and teachers' retirement systems. The commission is charged with making recommendations about plan design, benefit provisions, and appropriate funding sources, along with other recommendations they deem appropriate for consideration, consistent with actuarial and governmental accounting standards, as well as demographic and workforce trends and the long term sustainability of the benefit programs. The joint fiscal committee may provide benchmark targets reducing the rate of expenditure growth for retirement and retiree health benefits to the commission to guide the development of recommendations.

(b) The commission shall be comprised of the following seven members:

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

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

(3) the state treasurer, who shall chair the commission;

(4) the secretary of administration or designee;

(5) the commissioner of education or designee;

(6) one member of the public with pension and benefit experience appointed by the governor;

(7) one member of the public with pension and benefit experience appointed by jointly by the speaker of the house and the president of the senate;

(c) The report shall include, but not be limited to, the following:

(1) an evaluation of current benefits structure and contribution characteristics in comparison to other comparable public and private systems,

(2) an estimate of the cost of current and proposed benefits structures on a budgetary, pay-as-you-go basis and full actuarial accrual basis,

(3) a five year review of benefit expenditure levels, as well as employer and employee contribution levels and growth rates, and a three, five and ten year projection of these levels and rates,

(4) based on benefit and funding benchmarks, options for providing new benefit structures with the objective of adequate benefits within the established cost containment benchmarks,

(5) funding methods, including contributions from State, municipalities, and employees to achieve these objectives, and

(6) An evaluation of whether current governance, oversight, and lines of authority are appropriate and consistent with funding objectives.

(d) During the course of its deliberations and prior to any final recommendations being made, the commission should solicit input from the affected parties, such as employees, taxpayers, and organizations representing those parties, including the Vermont state employees association, Vermont – NEA, and the Vermont league of cities and towns.

(e) The commission may select and oversee outside expert benefit and legal expert advisory services as they deem appropriate. An amount of \$150,000 is appropriated for this purpose from the special funds.

(f) On or before December 18, 2009 the commission shall file a report and recommendations with the governor and the general assembly.

(g) The commission shall also provide the report to the board of trustees of the state employees' and teachers' retirement systems for their consideration, deliberation and comment to the general assembly.

(h) Administrative support shall be provided by the office of the state treasurer.

(i) Legislative and public members shall be entitled to per diem compensation and expenses as provided for in § 406 of Title 2 and § 1010 of Title 32 respectively.

Sec. E.135.2 [Deleted]

Sec. E.141 Tax department -reappraisal and listing payments (B.141, #1140060000)

(a) The amount of \$3,470,000 in education funds appropriated in Sec. B141 of this act in fiscal year 2010 shall be used to implement the provisions of 32 V.S.A. §§ 4041(a), relating to payments to municipalities for reappraisal costs, and 5405(f), relating to payments of \$1.00 per grand list parcel.

(b) Of this appropriation, \$200,000 shall be transferred to the department of taxes, division of property valuation and review and reserved for payment of expenses associated with a reappraisal as of April 1, 2010 of the hydroelectric plants and other property owned by TransCanada Hydro Northeast, Inc. in the state of Vermont. Expenditures for this purpose shall be considered qualified expenditures under 16 V.S.A. § 4025(c).

Sec. E.143 Lottery commission (Sec. B.143, #2310010000)

(a) Of this appropriation, the lottery commission shall transfer \$150,000 to the department of health, office of alcohol and drug abuse programs to support the gambling addiction program.

(b) The Vermont state lottery shall provide assistance and work with the Vermont council on problem gambling on systems and program development.

Sec. E.144 Payments in lieu of taxes (Sec. B.144, #1140020000)

(a) This appropriation is for state payments in lieu of property taxes under subchapter 4 of chapter 123 of Title 32, and the payments shall be calculated in addition to and without regard to the appropriations for PILOT for Montpelier and for correctional facilities elsewhere in this act.

Sec. E.145 Payments in lieu of taxes - Montpelier (Sec. B.145, #1150800000)

(a) Payments in lieu of taxes under this section shall be paid from the PILOT special fund under 32 V.S.A. § 3709.

Sec. E.146 Payments in lieu of taxes – correctional facilities (Sec. B.146, #1140030000)

(a) Payments in lieu of taxes under this section shall be paid from the PILOT special fund under 32 V.S.A. § 3709.

* * * Protection to Persons and Property * * *

Sec. E.200 Attorney general (Sec. B.200, #2100001000)

(a) Notwithstanding any other provisions of law, the office of the attorney general, Medicaid fraud control unit, is authorized to retain one-half of any civil monetary penalty proceeds from global Medicaid fraud settlements. All penalty funds retained shall be used to finance Medicaid fraud and residential abuse unit activities.

Sec. E.204 Judiciary (Sec. B.204, #2120000000)

(a) For compensation paid from July 1, 2009 to June 30, 2010, the supreme court is authorized to reduce by up to five percent salaries established by statute that are paid by the judicial department appropriation and to reduce by up to five percent the hourly rates of nonbargaining-unit employees earning in excess of \$28.85 per hour.

(b) The court administrator and the executive director of the department of state's attorneys and sheriffs shall enter into a memorandum of understanding to identify which court events require the personal or telephone presence of an individual in state custody. The agreement shall be implemented no later than August 1, 2009.

Sec. E.204.1 Judiciary (Sec. B.204, #2120000000)

4 V. S. A. § 25 is amended to read:

§ 25. JUDICIAL BRANCH; FURLOUGH DAYS; ADMINISTRATIVE LEAVE

(a) The supreme court is authorized to declare up to 12 unpaid judicial branch furlough days in a fiscal year and on those days may close ~~all~~ courts in the state. For purposes of implementing a furlough day, the supreme court is authorized to reduce on a daily or hourly basis all salaries established by 32 V.S.A. §§ 1003(c), 1141, 1142, and 1181, and all other salaries paid by the judicial branch. Furlough days declared under this section shall have the same

effect as holidays under 1 V.S.A. § 371 for the purpose of counting time under the rules of court procedure and the Vermont Statutes Annotated.

* * *

Sec. E.207 Sheriffs (Sec. B.207, #2130200000)

(a) Of this appropriation, \$15,000 shall be transferred to the state's attorneys' office as reimbursement for the cost of the executive director's salary.

(b) Notwithstanding any provision of law to the contrary, the executive director of the department of state's attorneys and sheriffs has the authority and shall reassign state paid deputies to achieve greater efficiency and reduced costs in transporting individuals in the custody of the state. The executive director shall take into consideration the location of correctional and detention facilities, use of regional arraignments by the judiciary, availability and use of technology, and other relevant considerations that will reduce costs.

(c) The executive director and the court administrator shall enter into a memorandum of understanding to identify which court events require the personal or telephone presence of an individual in state custody. The agreement shall be implemented no later than August 1, 2009.

Sec. E.209 Public safety - state police (Sec. B.209, #2140010000)

(a) Of this appropriation, \$32,000 shall be used to make a grant to the County of Essex for law enforcement purposes.

(b) Of this appropriation, \$35,000 in special funds shall be available for snowmobile law enforcement activities and \$35,000 in general funds shall be available to the southern Vermont wilderness search and rescue team, which comprises state police, the department of fish and wildlife, county sheriffs, and local law enforcement personnel in Bennington, Windham, and Windsor Counties for snowmobile enforcement.

(c) Of the \$255,000 allocated for local heroin interdiction grants funded in this section, \$190,000 shall be used by the Vermont drug task force to fund three town task force officers. These town task force officers will be dedicated to heroin and heroin-related drug (e.g., methadone, oxycontin, crack cocaine, and methamphetamine) enforcement efforts. Any additional available funds shall remain as a "pool" available to local and county law enforcement to fund overtime costs associated with heroin investigations. Any unexpended funds from prior fiscal years' allocations for local heroin interdiction shall be carried forward.

Sec. E.212 Public safety - fire safety (Sec. B.212, #2140040000)

(a) Of this general fund appropriation, \$55,000 shall be granted to the Vermont rural fire protection task force for the purpose of designing dry hydrants.

Sec. E.214 Public safety - emergency management - radiological emergency response plan (Sec. B.214, #2140080000)

(a) Of this special fund appropriation, up to \$30,000 shall be available to contract with any radio station serving the emergency planning zone for the emergency alert system.

Sec. E.215 Military - administration (Sec. B.215, #2150010000)

(a) Of this appropriation, \$100,000 shall be disbursed to the Vermont student assistance corporation for the national guard educational assistance program established in 16 V.S.A. § 2856.

Sec. E.219 Military - veterans' affairs (Sec. B.219, #2150050000)

(a) Of this appropriation, \$5,000 shall be used for continuation of the Vermont medal program, \$4,800 shall be used for the expenses of the governor's veterans' advisory council, \$7,500 shall be used for the Veterans' Day parade, and \$10,000 shall be used for the military, family, and community network.

Sec. E.220 Center for crime victim services (Sec. B.220, #2160010000)

(a) Of this appropriation, the amount of \$883,000.00 from the victims' compensation fund created by 13 V.S.A. § 5359 is appropriated for the Vermont network against domestic and sexual violence initiative. Expenditures for this initiative shall not exceed the revenues raised from the \$10.00 increase authorized by Sec. 20 of No. 174 of the Acts of 2008 applied to the assessment in 13 V.S.A. § 7282(a)(8)(B), and from the \$20.00 authorized by Sec. 21 of No. 174 of the Acts of 2008 applied to the fee in 32 V.S.A. Sec. 1712(1).

Sec. E.233 Banking, insurance, securities, and health care administration (Sec. B.233, #2210040000)

(a) The department of banking, insurance, securities, and health care administration (BISHCA) shall use the Global Commitment funds appropriated in this section for health care administration for the purpose of funding certain health care-related BISHCA programs, projects, and activities to increase the access of quality health care to uninsured persons, underinsured persons, and Medicaid beneficiaries.

(b) In fiscal year 2010, the commissioner of banking, insurance, securities, and health care administration shall collect the same amount under § 9416(c) of Title 18 as was collected in state fiscal year 2009 for the expenses incurred under that section.

Sec. E.234 Secretary of state (Sec. B.234, #2230010000)

(a) Of this special fund appropriation, \$492,991 represents the corporation division of the secretary of state's office and these funds shall be from the securities regulation and supervision fund in accordance with 9 V.S.A. § 5613.

Sec. E. 235 30 V.S.A. § 203a is amended to read:

§ 203a. FUEL EFFICIENCY FUND

(a) Fuel efficiency fund. There is established the fuel efficiency fund to be administered by a fund administrator appointed by the board. Balances in the fund shall be ratepayer funds, shall be used to support the activities authorized in this subdivision, and shall be carried forward and remain in the fund at the end of each fiscal year. These monies shall not be available to meet the general obligations of the state. Interest earned shall remain in the fund. The fund shall contain such sums as appropriated by the general assembly or as otherwise provided by law, in addition to revenues from the sale of credits under the RGGI cap and trade program ~~established as provided for~~ under section 255 of this title.

* * *

Sec. E. 235.1 30 V.S.A. § 209(d)(8) is added to read:

(8) Effective January 1, 2010, revenues from the sale of carbon credits as provided for under section 255 of this title shall be deposited into the electric efficiency fund established by this section and be used by the entity or entities appointed under subdivision (2) of this subsection to deliver fossil fuel energy efficiency services to Vermont heating and process-fuel consumers to help meet the state's building efficiency goals established by 10 V.S.A. § 581.

Sec. E. 235.2 30 V.S.A. § 255(d) is amended to read:

(d) Appointment of consumer trustees. The public service board, by rule, order, or competitive solicitation, may appoint one or more consumer trustees to receive, hold, bank, and sell tradable carbon credits created under this program. Trustees may include Vermont electric distribution utilities, the fiscal agent collecting and disbursing funds to support the statewide efficiency utility, or a financial institution or other entity with the expertise and financial resources to manage a portfolio of carbon credits for the long-term benefit of Vermont energy consumers. ~~Proceeds~~ Fifty percent of the net proceeds above costs from the sale of carbon credits shall be deposited into the fuel efficiency

fund established under section 203a and fifty percent of the net proceeds above costs shall be deposited in the electric efficiency fund established under subsection 209(d)(2) of this title.

Sec. E.238 Enhanced 9-1-1 board (Sec. B.238, #2260001000)

(a) Of this appropriation, \$1,823,443 shall be transferred to the department of public safety for 911 call-takers at public safety answering points operated by the department of public safety.

Sec. E.250 LAW ENFORCEMENT SERVICES; COORDINATION BETWEEN AGENCIES; UNFILLED POSITIONS

(a) The departments of fish and wildlife, motor vehicles, and liquor control shall establish memorandums of understanding with the department of public safety to continue the improvement in communication, cooperation, and coordination between the departments with respect to the provision of law enforcement services.

(b) The commissioners of the departments of public safety, fish and wildlife, motor vehicles, and liquor control shall report to the senate and house committees on appropriations on or before January 15, 2010 on progress the departments have made implementing the recommendations made in the Independent Evaluation of Law Enforcement Services report submitted to the general assembly by the Public Safety Strategies Group on February 20, 2009.

(c) The departments of fish and wildlife, motor vehicles, and liquor control shall report to the senate and house committees on appropriations by September 15, 2009 on the advisability of not filling positions that are not funded by the general fund or the transportation fund.

* * * Human Services * * *

Sec. E.300 Human services - agency of human services - secretary's office (Sec. B.300, #3400001000)

(a) Notwithstanding 32 V.S.A. § 706, the secretary may transfer funds allocated for the "high risk pool" and costs related to juvenile justice to the departments in the agency of human services designated to provide these services.

(b) Of this appropriation, \$54,000 in tobacco settlement funds shall be used to provide a grant to the project against violent encounters for a statewide program for substance abuse prevention and mentoring for youth.

(c) Of this appropriation, \$143,000 in tobacco funds shall be used for a grant to Lamoille County people in partnership for wrap-around services for at-risk youth.

(d) Of this appropriation, \$85,000 in tobacco funds with any corresponding federal matching funds shall be for comprehensive treatment services and \$15,000 shall be for housing provisions for at-risk youth.

(e) Of the funds appropriated to the secretary, \$100,000 shall be available for the pathways to housing program.

Sec. E.301 Secretary's office – Global Commitment (Sec. B.301, #3400004000)

(a) The agency of human services shall use the funds appropriated in this section for payment of the actuarially certified premium required under the intergovernmental agreement between the agency of human services and the managed care organization in the office of Vermont health access as provided for in the Global Commitment for Health Waiver ("Global Commitment") approved by the Centers for Medicare and Medicaid Services under Section 1115 of the Social Security Act.

(b) In addition to the state funds appropriated in this section, a total estimated sum of \$29,674,577 is anticipated to be certified as state matching funds under the Global Commitment as follows:

(1) \$12,279,600 certified state match available from local education agencies for eligible special education school-based Medicaid services under the Global Commitment. This amount combined with \$28,220,400 of federal funds appropriated in Sec. B.301 equals a total estimated expenditure of \$40,500,000. An amount equal to the amount of the federal matching funds for eligible special education school-based Medicaid services under Global Commitment shall be transferred from the Global Commitment fund to the Medicaid reimbursement special fund created in 16 V.S.A. § 2959a.

(2) \$8,956,247 certified state match available from local education agencies' school-based health services, including school nurse services, that increase the access of quality health care to uninsured persons, underinsured persons, and Medicaid beneficiaries.

(3) \$3,418,532 certified state match available from local education and social service agencies for eligible services provided to eligible persons through children's collaborative services programs.

(4) \$5,020,198 certified state match available from local designated mental health and developmental services agencies for eligible mental health services provided under the Global Commitment.

Sec. E.301.1 RETAINING ENHANCED FEDERAL MEDICAL ASSISTANCE PERCENTAGE (FMAP)

(a) Notwithstanding 16 V.S.A. § 2959a, to the extent possible, any additional federal funds received as a result of an enhanced FMAP (Federal Medical Assistance Percentage) that are associated with the certified expenditures specified in subdivisions (b)(1) through (4) of Sec. E.301 of this act shall be retained in the Global Commitment fund and shall not be transferred to the certifying entity.

(b) For the period of the enhanced FMAP, the funding allocated from the Catamount fund for Catamount Health care program expenses within the Global Commitment waiver shall be calculated on the base underlying FMAP rate. This allocation may be prorated as necessary to ensure that the fund is in balance at the close of the fiscal year.

Sec. E.306 MEDICAID; OUT-OF-STATE DISPENSING FEES (Sec. B.306, #341001000)

(a) The office of Vermont health access shall reduce the dispensing fees paid to pharmacies located out of state who participate in Medicaid, VHAP, Dr. Dynasaur, VPharm, or VermontRx to \$2.50 per script.

Sec. E.306.1 CHIROPRACTIC COVERAGE IN MEDICAID

(a) Effective on July 1, 2009, the agency of human services shall reinstate chiropractic coverage for adults in the Medicaid and VHAP programs consistent with section 4088a of Title 8 and at rates comparable to payments for care or services by other health care providers not to exceed Medicare rates.

Sec. E.307 Office of Vermont health access – Medicaid Program - Global Commitment (Sec. B.307, #3410015000)

(a) The office of Vermont health access shall limit payment for select drugs used as maintenance treatment to increments of 90-day supplies in Medicaid, the Vermont Health Access Plan, and VermontRx. This limit shall not apply to drugs generally used to treat acute conditions. The drug utilization review boards shall make recommendations to the director on the drugs to be selected. This limit shall not apply when the patient initially fills the prescription in order to provide an opportunity for the patient to try the medication and for the prescriber to determine that it is appropriate for the patient's medical needs.

Sec. E.307.1 EMERGENCY RULES

(a) In order to administer the provisions of this act relating to establishing co-payments in VPharm, VermontRx, and VHAP provided for in sections E.309.6, E.309.7, E.309.8, and E.309.12 modifying prescriptions for maintenance drugs to 90-day increments provided for in section E.307, and establishing a therapeutic equivalency generic drug program provided for in E.309.9 in a timely fashion, the agency of human services shall adopt rules pursuant to emergency rulemaking as provided for in 3 V.S.A. § 844.

Sec. E.307.2 33 V.S.A. § 1973 is amended to read:

§ 1973. VERMONT HEALTH ACCESS PLAN

* * *

(e) An individual who is or becomes eligible for Medicare shall not be eligible for the Vermont health access plan.

(f) For purposes of this section, “uninsured” means:

* * *

Sec. E.307.3 32 V.S.A. § 7823 is amended to read:

§ 7823. DEPOSIT OF REVENUE

The revenue generated by the taxes imposed under this chapter shall be credited to the state health care resources fund established by section 1901d of Title 33 and the Catamount fund established by section 1986 of Title 33.

Sec. E.308 FISCAL YEAR 2010 NURSING HOME INFLATION

(a) Notwithstanding any other provision of law, for state fiscal year 2010, the division of rate setting shall modify its methodology for calculating Medicaid rates for nursing homes by inflating the costs in the cost categories for the director of nursing, resident care, and indirect costs from base year 2005 through state fiscal year 2010 by adding two percentage points to the inflation percentages used to calculate the state fiscal year 2009 rates. The state fiscal year 2009 rates limited the incremental state fiscal year 2009 inflation to one-half of the percentage change in the inflation factors between 2008 and 2009.

(b) For the nursing care cost category, the division shall first calculate the inflation percentage from calendar year 2007 to state fiscal year 2008. The division shall next calculate the inflation percentage from calendar year 2007 to state fiscal year 2009. The difference in inflation between the state fiscal year 2008 and state fiscal year 2009 inflation calculations shall be halved and this one-half difference shall be added to the 2008 inflation percentage calculation. Two additional percentage points shall be added to this

calculation to arrive at the total inflation percentage to be used to inflate nursing care costs from base year 2007 through state fiscal year 2010.

(c) The division of rate setting shall provide an incentive or rate adjustment by rule to nursing homes to install electronic medical records in order to improve quality of care by avoiding medical errors and to achieve savings in health care costs through streamlined administration. The incentive or rate adjustment shall be in addition to any current adjustment for capital costs. The incentive or rate adjustment shall be available to nursing homes who have installed electronic medical records prior to the adoption of the rule.

Sec. E.309 33 V.S.A. § 2072(c) is added to read:

(c) If an individual becomes ineligible for assistance under this subchapter, the secretary shall terminate assistance to the individual.

Sec. E.309.1 33 V.S.A. § 2077(a) is amended to read:

(a) The programs established under this subchapter shall be designed to provide maximum access to program participants, to incorporate mechanisms that are easily understood and require minimum effort for applicants and health care providers, and to promote quality, efficiency, and effectiveness through cost controls and utilization review. Applications may be filed at any time and shall be reviewed annually. OVHA may contract with a fiscal agent for the purpose of processing claims and performing related functions required in the administration of the pharmaceutical programs established under this subchapter.

Sec. E.309.2 33 V.S.A. § 1998(f)(1) and (2) are amended to read:

(f)(1) The drug utilization review board shall make recommendations to the director for the adoption of the preferred drug list. The board's recommendations shall be based upon evidence-based considerations of clinical efficacy, adverse side effects, safety, appropriate clinical trials, and cost-effectiveness. "Evidence-based" shall have the same meaning as in section 4622 of Title 18. The director shall provide the board with evidence-based information about clinical efficacy, adverse side effects, safety, appropriate clinical trials, and shall provide information about cost-effectiveness of available drugs in the same therapeutic class.

(2) The board shall meet at least quarterly. The board shall comply with the requirements of subchapter 2 of chapter 5 of Title 1 (open meetings) and subchapter 3 of chapter 5 of Title 1 (open records), except that the board may go into executive session to discuss drug alternatives and receive information on the relative price, net of any rebates, of a drug under discussion and the

drug price in comparison to the prices, net of any rebates, of alternative drugs available in the same class to determine cost-effectiveness, and in order to comply with subsection 2002(c) of this title to consider information relating to a pharmaceutical rebate or to supplemental rebate agreements, which is protected from disclosure by federal law or the terms and conditions required by the Centers for Medicare and Medicaid Services as a condition of rebate authorization under the Medicaid program.

Sec. E.309.3 DUR BOARD EXECUTIVE SESSION

(a) If necessary in order to comply with 33 V.S.A. § 1998(f), the director of the office of Vermont health access shall renegotiate the contract with the pharmacy benefits manager to ensure that the drug utilization review (DUR) board receives information relating to costs of prescription drugs in executive session.

Sec. E.309.4 STUDY ON THE PROMOTION OF GENERICS IN MEDICAID

(a) The office of Vermont health access shall determine the impacts of modifying the co-payment structure in Medicaid and VPharm from a three-tiered structure which varies depending on the cost of the drug to a two-tiered structure with a higher co-payment for a brand-name drug than for a generic drug. The office shall analyze the impacts of changing the fee structure on spending in the Medicaid and VPharm programs, on patient utilization of generic drugs and brand-name drugs, and on any access issues.

(b) The office shall report its analysis to the commission on health care reform no later than October 15, 2009. The commission on health care reform shall review the report and make a recommendation to the general assembly on changing the fee structure as part of its annual report.

Sec. E.309.5 VPHARM; VERMONTRX; REBATES

(a) As required by sections 2002, 2073(f), and 2074(d) of Title 33, the director of the office of Vermont health access shall require any manufacturer of pharmaceuticals purchased by individuals receiving assistance from VPharm or VermontRx to pay a rebate in an amount at least as favorable as the rebate or price discount paid to the office in connection with the Medicaid program. The director shall negotiate with pharmaceutical companies for the payment of these rebates or price discounts. The department shall explore negotiation strategies taken by other states in order to maximize the rebates or discounts achieved. If the Centers for Medicare and Medicaid Services approve the amendment requested to include VPharm and VermontRx in the Global Commitment to Health Medicaid Section 1115 waiver, the director

shall establish rebates or price discounts for these programs as part of Medicaid.

Sec. E.309.6 33 V.S.A. § 2073(c) is amended to read:

(c) V-Pharm shall provide supplemental benefits by paying or subsidizing:

* * *

(2) any other cost-sharing required by Medicare part D, except for co-payments for individuals eligible for Medicaid and as provided for in subdivision (d)(1) of this section;

Sec. E.309.7 33 V.S.A. § 2073(d)(1) is amended to read:

~~(d)(1) The secretary of the agency of human services shall develop by rule the manner by which an individual shall contribute the individual's cost established in subdivision (2) of this subsection, except that individuals eligible for Medicaid shall only be subject to the cost sharing requirements established by Medicaid and Medicare. The rule shall seek to minimize the possibility of inadvertent loss of eligibility for Medicare part D and V-Pharm benefits. Prior to filing the rule, the secretary shall submit the proposed rule to the health access oversight committee. The health access oversight committee shall review and advise on the agency rules and policies developed under this subsection and shall submit for consideration any recommendations to the joint legislative committee on administrative rules.~~ An individual shall contribute a co-payment of \$1.00 for prescriptions costing \$29.99 or less and a co-payment of \$2.00 for prescriptions costing \$30.00 or more. A pharmacy may not refuse to dispense a prescription to an individual who does not provide the co-payment.

Sec. E.309.8 33 V.S.A. § 2074(c) is amended to read:

(c) Benefits under Vermont-Rx shall be subject to payment of a premium ~~amount~~ and co-payment amounts by the recipient in accordance with the provisions of this section.

* * *

(4) A recipient shall contribute a co-payment of \$1.00 for prescriptions costing \$29.99 or less and a co-payment of \$2.00 for prescriptions costing \$30.00 or more.

Sec. E.309.9 VPHARM; THERAPEUTIC EQUIVALENCY PILOT PROGRAM

(a) No later than July 1, 2009, the office of Vermont health access shall implement a pilot program to maximize the use of over-the-counter (OTC) and

generic drugs used to treat the conditions specified in subsection (b) of this section by individuals enrolled in a Medicare Part D prescription drug plan and VPharm.

(b)(1) The VPharm therapeutic equivalency pilot program shall require the use of an OTC or generic drug in order to receive coverage of the Medicare Part D cost-sharing or of the prescription when the drug would be paid for entirely by VPharm, except that a prescriber may override the substitution of a drug in the same manner and under the same criteria provided for under section 4606 of Title 18 (generic substitutions).

(2) The designated pilot classes are lipotropics, which are statins most commonly used for the treatment of high cholesterol, and gastrointestinal proton pump inhibitors, which are most commonly used to reduce gastric acid. The drug utilization review (DUR) board shall determine the list of OTC and generic drugs that shall be available for coverage in each class and shall ensure that the list of generic drugs includes drugs available on the formularies of 90 percent of the Medicare Part D prescription drug plans available in Vermont. In designing the list, the DUR board shall maximize access to a variety of OTC and generic drugs for consumers.

(c) The office of Vermont health access shall notify prescribers and pharmacists about the pilot program and the requirement for the use of OTC and generics in the pilot classes described in subsection (b) of this section in order to receive coverage for those classes under VPharm.

(d) The office of Vermont health access, in collaboration with the DUR board, shall evaluate the pilot program and provide a report no later than January 15, 2010. The evaluation and report shall include an estimate of the savings from the increased use of OTC and generic drugs, negative impacts on consumer choice, and other positive or negative outcomes of the pilot program.

Sec. E.309.10 VPHARM AND VHAP CO-PAYMENTS

(a) Prior to December 5, 2009, the joint fiscal committee may suspend the co-payments in VPharm, VermontRx, and VHAP established under sections E.309.6, E.309.7, E.309.8, and E.309.12 of this act pending further action of the general assembly:

(1) if the Centers for Medicare and Medicaid Services approve the office of Vermont health access' request for an amendment to the Global Commitment for Health Section 1115 Medicaid waiver to include the VPharm program as part of that waiver; or

(2) if the VPharm program is included as a managed care organization (MCO) investment under the Global Commitment for Health.

Sec. E.309.11 MEDICAID COST CONTAINMENT STUDY

(a) The office of Vermont health access shall determine the feasibility of creating a preferred list of or entering into agreements with other states for purchasing medical devices and biologics to maximize the ability of the Medicaid program to ensure high quality products while negotiating favorable prices and containing costs.

(b) No later than January 15, 2010, the office shall report its analysis on the feasibility, including the potential benefits and harms to the senate committees on appropriations and on health and welfare and the house committees on appropriations and on human services.

Sec. E.309.12 VHAP; PRESCRIPTION DRUG CO-PAYMENTS

(a) An individual enrolled in the Vermont health access plan (VHAP) with income at or above 100 percent of the federal poverty guideline shall contribute a co-payment of \$1.00 for prescriptions costing \$29.99 or less and a co-payment of \$2.00 for prescriptions costing \$30.00 or more. A pharmacy may not refuse to dispense a prescription to an individual who does not provide the co-payment.

Sec. E.311 Health – administration and support (Sec. B.311, #3420010000)

(a) Area health education center: Of this appropriation, \$500,000 shall be granted to the area health education center (AHEC) to support the work and infrastructure of the statewide AHEC network to ensure an adequate and appropriate health care workforce, to bring quality improvement programs to health care professionals, and to create partnerships across community-based health care services to improve health care access and integration. Any funds not expended shall be carried forward to be available for use in subsequent fiscal years. The AHEC will provide the department of health with a final progress report and financial report detailing the unexpended funds to be carried forward at the close of the fiscal year.

(b) Health care provider loan forgiveness and repayment programs:

(1) The department of health may carry forward any unspent portion of funds designated for health professional loan repayment. These funds may be used either alone or to match federal National Health Service Corps loan repayment funds, local funds, or private funds and shall be deposited into the loan repayment fund established under 18 V.S.A. § 10a or for the Vermont student assistance corporation for loan forgiveness programs for health care providers through the dental hygienist incentive loan program, the nursing incentive loan program, and the dental student incentive loan program.

(2) Of this Global Commitment fund appropriation, \$1,295,000 shall be used for the purposes of loan repayment for health care providers and health care educators pursuant to 18 V.S.A. § 10a.

(3) Of this appropriation, \$100,000 is allocated for the Vermont student assistance corporation for loan forgiveness programs for health care providers through the dental hygienist incentive loan program, the nurse incentive loan program, and the dental student incentive loan program.

(c) Vermont academic detailing program:

(1) Of this Global Commitment fund appropriation, \$100,000.00 shall be used for the purposes of supporting the Vermont academic detailing program, a university-based educational outreach program for health care professionals administered by the University of Vermont (UVM), College of Medicine office of primary care. The goal of the Vermont academic detailing program is to promote high-quality, evidence-based, patient-centered, cost-effective medication treatment decisions. This program shall present an objective overview of what evidence from studies shows about various drugs used to treat a medical condition.

(2) The UVM office of primary care may collaborate with other states, countries, or entities that are working on similar programs.

(3) The UVM office of primary care may request information and collaboration from the Vermont department of health, the office of Vermont health access, prescribers, pharmacists, private insurers, hospitals, pharmacy benefit managers, drug utilization review boards, state agencies, and other programs in order to best utilize resources, prevent redundancies of effort, and facilitate appropriate linkages to complementary programs, such as the Vermont Blueprint for Health.

(d) Blueprint: Of this appropriation, \$5,051,400 is allocated to the Vermont Blueprint for Health. \$1,300,000 of the funds shall be used to provide incentive grants and stipends to physician practices and hospitals participating in the pilot projects developed under the Vermont Blueprint for Health established in 18 V.S.A. § 702.

Sec. E.312 Health – public health (Sec. B.312, #3420021000)

(a) AIDS/HIV funding:

(1) The amount of \$335,000 of the general fund/Global Commitment fund appropriation shall be appropriated to the following Vermont AIDS service organizations and peer-support organizations for client-based support services. It is the intent of the general assembly that if Global Commitment fund monies in this subsection are unavailable, the total funding for Vermont

AIDS service organizations and peer-support organizations for client-based support services shall be maintained through the general fund or other state-funding sources. The department of health AIDS program shall meet at least quarterly with the HIV/AIDS Community Advisory Group (CAG) with current information and data relating to service initiatives. The funds shall be allocated as follows:

(A) AIDS Project of Southern Vermont, \$71,863;

(B) ACORN, \$28,745;

(C) IMANI, \$37,985;

(D) VT CARES, \$131,407;

(E) Twin States Network, \$30,000;

(F) People with AIDS Coalition, \$35,000.

(2) Of the federal funds, Ryan White Title II funds for AIDS services and the AIDS Medication Assistance Program shall be distributed in accordance with federal guidelines. These guidelines shall not apply to programming funded by state general funds.

(3) The amount of \$100,000 of this general fund appropriation shall be appropriated to Vermont AIDS service organizations and other Vermont HIV/AIDS prevention providers for community-based HIV prevention programming which is currently not supported by federal funds due to federal restrictions. These funds shall be used for HIV/AIDS prevention purposes, including improving the availability of confidential and anonymous HIV testing; prevention work with at-risk groups such as women, intravenous drug users, and people of color; anti-stigma campaigns; and promotion of needle exchange programs. No more than 15 percent of the funds may be used for the administration of such services by the recipients of these funds. The method by which these prevention funds shall be distributed shall be determined by mutual agreement of the department of health, AIDS service organizations, the community planning group (CPG), and CAG. The department of health AIDS program shall be guided and advised by CPG and CAG on an ongoing basis in prioritizing prevention service needs in the disbursement of these funds.

(4) The secretary of human services shall immediately notify the joint fiscal committee if, at any time, there are insufficient funds in AMAP to assist all eligible individuals. The secretary shall work in cooperation with persons living with HIV/AIDS to develop a plan to continue access to AMAP medications until such time as the general assembly can take action.

(5) The secretary of human services shall work in conjunction with the AMAP advisory committee, which shall be composed of no less than 50 percent of members who are living with HIV/AIDS. The committee shall make recommendations regarding the program's formulary of approved medication, related laboratory testing, nutritional supplements, and eligibility for the program.

(6) The amount of \$140,000 general fund carry-forward funds from fiscal year 2009 shall be used for assistance to individuals in the HIV/AIDS Medication Assistance Program (AMAP), including the costs of prescribed medications, related laboratory testing, and nutritional supplements. These funds may not be used for any administrative purposes by the department of health or by any other state agency or department. Any remaining AMAP general funds at the end of the fiscal year shall be distributed to Vermont AIDS service organizations in the same proportions as those outlined under this subsection.

(b) Of these Global Commitment funds, \$750,000 shall be used to support the Vermont coalition of clinics for the uninsured health care and dental services provided by clinics for uninsured individuals and families and for federally qualified health center (FQHC) development, service expansion, and uncompensated care.

(c) Funding for the tobacco programs in fiscal year 2010 shall consist of the \$1,917,516 in tobacco funds and \$1,059,409 in Global Commitment funds appropriated in Sec. B.312 of this act; and \$212,709 of the tobacco funds appropriated in Sec. B.300 of this act. This total \$3,189,634 shall be utilized according to the provisions of 18 V.S.A. chapter 225 as follows:

(1) community-based programs - \$850,300;

(2) media and public education - \$837,200;

(3) tobacco cessation programs - \$1,163,200; these funds may also be used to provide tobacco cessation counseling services to persons incarcerated in Vermont correctional facilities, and \$80,000 shall be used to make nicotine replacement therapies available to all persons enrolled in tobacco cessation counseling, \$91,400 shall be allocated to programs that serve pregnant women, and \$12,500 shall be granted to the Washington County Mental Health Agency, Inc. for a special cessation program;

(4) surveillance and evaluation activities - \$276,600;

(5) statewide provider education - \$62,334.

Sec. E.313 Health - alcohol and drug abuse programs (Sec. B.313, #3420060000)

(a) For the purpose of meeting the need for outpatient substance abuse services when the preferred provider system has a waiting list of five days or more or there is a lack of qualified clinicians to provide services in a region of the state, a state-qualified alcohol and drug abuse counselor may apply to the department of health, division of alcohol and drug abuse programs, for time-limited authorization to participate as a Medicaid provider to deliver clinical and case coordination services, as authorized.

(b)(1) In accordance with federal law, the division of alcohol and drug abuse programs may use the following criteria to determine whether to enroll a state-supported Medicaid and uninsured population substance abuse program in the division's network of designated providers, as described in the state plan:

(A) The program is able to provide the quality, quantity, and levels of care required under the division's standards, licensure standards, and accreditation standards established by the commission of accreditation of rehabilitation facilities, the joint commission on accreditation of health care organizations, or the commission on accreditation for family services.

(B) Any program that is currently being funded in the existing network shall continue to be a designated program until further standards are developed, provided the standards identified in this subdivision (b)(1) are satisfied.

(C) All programs shall continue to fulfill grant or contract agreements.

(2) The provisions of subdivision (1) of this subsection shall not preclude the division's "request for bids" process.

(c) Of the interdepartmental transfer in this section, \$150,000 shall be used to support the program dealing with gambling addiction.

(d) Of this appropriation, \$35,000 shall be used to support the drug court program in Chittenden County, \$25,000 shall be used to support the drug court program in Rutland County, and \$25,000 shall be used for court coordination in Bennington County.

(e) The department of health shall be advised by an executive council of Vermont's recovery center network on an ongoing basis to prioritize service and funding needs for recovery centers, to assist with the review of recovery center funding proposals, and to provide recommendations for disbursement of funds to the recovery centers and their support needs. The executive council will consist of a board member of each recovery center. The executive council

will work with a network coordinator who provides technical assistance and training to recovery centers. The executive council, working with the department of health, will have oversight of the recovery centers.

(f) Of this appropriation, \$45,000 shall be granted to the Vermont recovery center network. \$458,000 of the appropriation is the allocated share of the DETER program for recovery centers and shall be granted to the recovery centers in operation as of June 30, 2008.

(g) It is the intent of the general assembly that Maple Leaf Farm and Serenity House will undergo the rate setting process prior to establishing the fiscal year 2010 budget for the division of alcohol and drug abuse programs. The division of rate setting shall report to the joint fiscal committee at its July 2009 meeting on the status of this rate setting process.

(h) The total appropriation reflects a reduction of \$150,000 in treatment services. Prior to taking actions that distribute this savings to providers, the division of alcohol and drug abuse prevention must provide a plan to the joint fiscal committee at the July 2009 meeting for its review and approval.

(i) Of this appropriation, \$750,000 shall be available for a grant to establish a Chittenden County pilot program to unify existing treatment efforts in the county that will demonstrate savings in hospital expenditures related to detoxification and emergency treatment sufficient to offset the initial start-up investment by the end of the second year of operation and savings that exceed 50 percent of the program operation by the end of the third year of operation. Of this total \$250,000 is for start up expenses of the pilot program.

Sec. E.315 Mental health – Vermont state hospital (Sec. B.315, #3150080000)

(a) The community recovery residential program developed under this section shall be consistent with the goals identified in the existing “futures plan.”

Sec. E.316 Department for children and families – administration and support services (Sec. B.316, #3440010000)

(a) Of this appropriation, \$14,000 in general funds shall be provided as a grant to the Vermont Girl Scouts for a program enabling girl scouts and their siblings to visit their mothers in prison.

Sec. E.317. FISCAL YEAR 2010 PAYMENT RATES FOR PRIVATE NONMEDICAL INSTITUTIONS PROVIDING RESIDENTIAL CHILD CARE SERVICES

(a) Notwithstanding any other provisions of law, for state fiscal year 2010, the division of rate setting shall calculate payment rates for private nonmedical

institutions (PNMI) providing residential child care services as provided for under this section.

(b) General rule. The division of rate setting shall calculate PNMI per diem rates for state fiscal year 2010 as 98 percent of each program's final per diem rate in effect on June 30, 2009, with the following exception:

(1) For programs categorized by the placement authorizing departments as crisis-stabilization programs with typical lengths of stay from 0 to 10 days, rates for state fiscal year 2010 shall be set retroactively as follows:

(i) The allowable budget shall be 98 percent of the final approved budget for the rate year which includes June 30, 2009. The monthly allowable budget shall be the allowable budget divided by 12.

(ii) Within five days of the end of each month in state fiscal year 2010, the program shall submit the prior month's census to the division of rate setting. The per-diem rate will be set for the prior month by dividing the monthly allowable budget amount by the total number of resident days for the month just ended.

(b) Providers are not required to submit funding applications pursuant to section 3 of the PNMI rate setting rules for state fiscal year 2010.

(c) Rates set for state fiscal year 2010 shall be issued as final.

(d) For state fiscal year 2010, the three-month waiting provision of section 8.1(b) of the PNMI rate setting rules for the submission of a rate adjustment application is waived.

(e) The division shall ensure that setting rates of new PNMI residential programs does not disadvantage PNMI residential programs effected by subsection (a) of this section.

Sec. E.322 33 V.S.A. § 1701 is amended to read:

§ 1701. ~~FOOD STAMP~~ SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM

(a) The state of Vermont may participate in the federal ~~food stamp~~ supplemental nutrition assistance program which is provided for under Public Law 88-525, also known as the Food Stamp Act of 1964, as amended. The commissioner may adopt, and from time to time amend or repeal, regulations governing the operation of the program in the state.

(b) ~~[Repealed.]~~ An individual domiciled in Vermont shall be exempt from the disqualification provided for in 21 U.S.C. § 862a.

* * *

Sec. E.322.1 SCHOOL NUTRITION PROGRAM PILOT PROJECT

(a) No later than August 1, 2009, the department of education shall apply to the Food and Nutrition Service for permission to conduct a pilot project under 42 U.S.C. § 1769i to simplify the certification process for families receiving the earned income tax credit who are categorically eligible for the state nutrition assistance program (SNAP). The pilot project shall be designed to allow families receiving the earned income tax to enroll in the school nutrition programs by providing the school with a receipt of proof of earned income tax credit without having to apply for SNAP. The pilot shall be implemented no earlier than August 1, 2010.

(b) The commissioner of taxes shall provide taxpayers receiving the earned income tax credit a notice, including proof of eligibility of the earned income tax credit, explaining that the notice may be presented to the school district of the dependent's children for enrollment in school nutrition programs pursuant to the school nutrition program pilot project created by this act.

(c) The proof of eligibility issued by the commissioner shall in no way preclude the commissioner from assessing or collecting a tax nor shall such proof be admissible as evidence in any action by the commissioner to assess or collect a tax.

Sec. E.322.2 SUPPLEMENTAL NUTRITION ASSISTANCE; AGENCY ERRORS

(a) No later than July 1, 2009, the department for children and families shall submit a cost analysis to the Food and Nutrition Service (FNS) for permission to not establish an overpayment in the supplemental nutrition assistance program, called 3SquaresVt, when the overpayment to the household resulted from agency error and the overpayment amount is \$500 or less.

Sec. E.323 33 V.S.A. § 1103(c)(8) is added to read:

(8) An individual domiciled in Vermont shall be exempt from the disqualification provided for in 21 U.S.C. § 862a.

Sec. E.323.2 33 V.S.A. § 1203a is added to read:

§ 1203a. APPLICATION OF 21 U.S.C. § 862a

An individual domiciled in Vermont shall be exempt from the disqualification provided for in 21 U.S.C. § 862a.

Sec. E.324 Department for children and families – home heating fuel assistance/LIHEAP (Sec. B.324, #3440090000)

(a) Of the funds appropriated for home heating fuel assistance/LIHEAP in this act, no more than \$350,000 shall be expended for crisis fuel direct service/administration exclusive of statewide after-hours crisis coverage.

Sec. E.324.1 HOME HEATING FUEL ASSISTANCE/LIHEAP

(a) For the purpose of a crisis set-aside, for seasonal home heating fuel assistance through December 31, 2009, and for program administration, the commissioner of finance and management shall transfer \$2,550,000 from the home weatherization assistance fund to the home heating fuel assistance fund to the extent that federal LIHEAP or similar federal funds are not available. An equivalent amount shall be returned to the home weatherization fund from the home heating fuel assistance fund to the extent that federal LIHEAP or similar federal funds are received. Should a transfer of funds from the home weatherization assistance fund be necessary for the 2009–2010 crisis set-aside and for seasonal home heating fuel assistance through December 31, 2009, and if LIHEAP funds awarded as of December 31, 2009 for fiscal year 2010 do not exceed \$2,550,000, subsequent payments under the home heating fuel assistance program shall not be made prior to January 30, 2010. Notwithstanding any other provision of law, payments authorized by the office of home heating fuel assistance shall not exceed funds available, except that for fuel assistance payments made through December 31, 2009, the commissioner of finance and management may anticipate receipts into the home weatherization assistance fund.

Sec. E.324.2 33 V.S.A. § 2606 is amended to read:

§ 2606. APPLICATION PERIOD; ASSISTANCE

~~(a) In order to make a timely determination of benefit levels, there shall be an application period during which all beneficiaries shall apply for home heating fuel assistance for the ensuing heating season. The application period shall be from July 15 through August 31. The secretary shall establish by rule procedures for application, determination of eligibility, and issuance of benefits.~~

~~(b) The secretary shall accept applications after the application period has closed, but no later than the last day of February. No qualified applicant shall be penalized through a reduction of benefits for a late-filed application, except that such applicant shall not be entitled to benefits for any period prior to the month of application.~~

~~(c) The director of home energy assistance shall supply or contract for staff to carry out application-processing and related tasks including assisting~~

households in applying and providing required information, and locating and contacting fuel suppliers certified under section 2607 of this title.

Sec. E.325 Department for children and families - office of economic opportunity (Sec. B.325, #3440100000)

(a) Of the general fund appropriation in this section, \$792,000 shall be granted to community agencies for homeless assistance by preserving existing services, increasing services, or increasing resources available statewide. These funds may be granted alone or in conjunction with federal McKinney emergency shelter funds. Grant decisions shall be made with assistance from the coalition of homeless Vermonters.

Sec. E.326 Department for children and families - OEO - weatherization assistance (Sec. B.326, #3440110000)

(a) Of the special fund appropriation in this section, \$400,000 is for the replacement and repair of home heating equipment.

(b) As part of the administration's annual budget testimony before the house and senate committees on appropriations, the office of economic opportunity shall report on appropriations utilizing existing resources within state government available in the office of economic opportunity's weatherization data management system that compiles performance data available on households weatherized in the past year to include:

- (1) the number of households weatherized;
- (2) the average program expenditure per household for energy efficiency;
- (3) the average percent in energy savings;
- (4) the energy and non-energy benefits combined;
- (5) the benefits saved for every dollar spent;
- (6) the average savings per unit for heating fuels;
- (7) the gallons of oil saved related to the equivalent number of homes heated;
- (8) projected number of households to be weatherized in the current program year; and
- (9) the projected program expenditures for the current program year ending March 31.

(c) Appropriations from the weatherization trust fund may be limited based on the revenue forecast for the fund from the gross receipts tax as adopted pursuant to 32 V.S.A. § 305a.

Sec. E.326.1 FISCAL YEAR 2010 STATE WEATHERIZATION EFFORTS

(a) The general assembly recognizes the importance of weatherization activities as a key component of housing affordability in Vermont. To this end, for fiscal year 2010, the following state resources shall be targeted to furthering weatherization efforts:

(1) \$5,160,000 of proceeds from the gross receipts tax to the weatherization trust fund to support weatherization activities of the office of economic opportunity;

(2) \$3,496,000 of Regional Greenhouse Gas Initiative (RGGI) funds through the Vermont department of public service and through the electric efficiency fund to deliver fossil fuel energy efficiency services to Vermont heating and process-fuel consumers to help meet the state's building efficiency goals established by 10 V.S.A. § 581.

(b) The Vermont housing conservation board and the Vermont housing finance agency shall carry out its affordable housing activities, to the extent possible, to improve weatherization and building envelope efficiency.

(c) In carrying out its affordable housing activities, to the maximum extent feasible, the Vermont housing and conservation board shall utilize appropriate amounts from the funds authorized in this act together with other available weatherization resources and programs in Vermont to ensure that new construction and rehabilitation of affordable apartments and homes with funding support from the board will achieve increased short and long term energy efficiencies.

Sec. E.330 Disabilities, aging, and independent living - advocacy and independent living (Sec. B.330, #3460020000)

(a) Of this appropriation, \$100,000 shall be granted to support a supportive housing demonstration project managed by Cathedral Square Corporation. It is the intent of the general assembly that these funds be used as matching funds for a two-year period for grants to conduct research on cost-efficient and quality services in senior housing. Cathedral Square, in conjunction with the department of disabilities, aging, and independent living, shall identify the programmatic interventions intended to achieve measurable outcomes including savings from services not needed because of the demonstration project services or improvements in participants' physical and mental well-being. The general assembly recognizes the imperative to develop a long-term care system in Vermont designed to meet the needs of a senior population projected to double by the year 2030. The general assembly endorses this demonstration project as the potential foundation for a home-centered long-

term care policy in Vermont. The department and demonstration shall report to the health access oversight committee no less than every six months on the progress of the demonstration project.

(b) Certification of adult day providers shall require a demonstration that the new program is filling an unmet need for adult day services in a given geographic region and does not have an adverse impact on existing adult day services.

(c) Of this appropriation, \$23,655 in general funds shall be allocated for special assistance to adult day service providers. The department shall develop criteria on the use of these funds in consultation with the adult day programs. Funds remaining in this allocation after March 30, 2010 shall be distributed on an equitable basis to adult day programs by the close of the fiscal year.

(d) Of this appropriation, \$109,995 in general funds shall be allocated for base funds to adult day programs in the same proportion as they were allocated in fiscal year 2009.

Sec. E.337 Corrections – correctional education (Sec. B.337, # 3480003000)

(a) The appropriation in this section shall be notwithstanding 28 V.S.A. § 120(g).

Sec. E.338 Corrections – correctional services (Sec. B.338, # 3480004000)

(a) Of this general fund appropriation, \$106,820 shall be used as a grant to Dismas House of Vermont, Inc.

(b) The department of corrections is authorized to institute medical co-payments.

(c) Up to \$8,000 of the funds appropriated shall be for equipment purchased for the “wood warms” program in Bennington.

Sec. E.342 Vermont veterans’ home – care and support services (Sec. B.342, #3300010000)

(a) If Global Commitment fund monies are unavailable, the total funding for the Vermont veterans’ home shall be maintained through the general fund or other state funding sources.

(b) The Vermont veterans’ home will use the Global Commitment funds appropriated in this section for the purpose of increasing the access of quality health care to uninsured persons, underinsured persons, and Medicaid beneficiaries.

Sec. E 342.1 18 V.S.A. §§ 1421 is amended to read:

§ 1421. ~~DEFINITIONS~~ SMOKING IN THE WORKPLACE; PROHIBITION

As used in this subchapter:

(1) ~~“Smoking area” means an area that nonsmoking employees are not required to visit on a regular basis where smoking is permitted pursuant to a policy established under this subchapter. Up to 30 percent of employee cafeteria and lounge areas may be designated as a smoking area.~~

(2) ~~“Workplace”~~ The use of lighted tobacco products is prohibited in any “workplace,” which, for the purposes of this subchapter, means an enclosed structure where employees perform services for an employer or, in the case of an employer who assigns employees to departments, divisions, or similar organizational units, the enclosed portion of a structure where the unit to which the employee is assigned is located. Workplace does not include a residential facility for elders or disabled persons that is regulated by C.M.S., centers for Medicaid and Medicare services. Except for schools, workplace does not include areas commonly open to the public nor any portion of a structure ~~which that~~ also serves as the employee’s or employer’s personal residence. For schools, workplace ~~shall include~~ includes any enclosed location at which where instruction or other school-sponsored functions are occurring and students are present.

* * * Labor * * *

Sec. E.400 DEPARTMENT OF LABOR; AGENCY OF COMMERCE AND COMMUNITY DEVELOPMENT; LEGISLATIVE COMMITTEE

(a) A committee of the following members is created: the speaker of the house shall appoint one member from the house committee on government operations, one member from the house committee on general, housing, and military affairs, one member of the house committee on commerce, and one other member of the house; the president pro tempore of the senate shall appoint two members of the senate committee on government operations and two members from the senate committee on economic development, housing and general affairs. The speaker of the house and the president pro tempore of the senate shall appoint one of these members to serve as chair of the committee.

(b) The committee shall make recommendations for the possible restructuring of the agency of commerce and community development and the department of labor so that these agencies are better able to serve their respective constituencies by:

(1) Identifying areas for enhanced collaboration and increased efficiencies, including combining information technology resources and fiscal

and accounting services and sharing regional information and common customer resource and service management.

(2) Reviewing funding sources for the agency and the department, the requirements and limitations for those sources, and evaluating how they will be affected by the restructuring plan.

(3) Examining the likelihood of general fund savings resulting from restructuring.

(4) Identifying staffing and compliance issues resulting from the receipt of federal funding.

(5) Examining management structures, including the duties and responsibilities of commissioners, deputy commissioners, and exempt division directors.

(6) Recommending a new organizational structure, possibly with a focus on grouping divisions or departments around common functions and constituencies.

(7) Examining alternative co-locations for administrative and operational functions located in Montpelier and regionally.

(8) Considering other areas of state government that might appropriately be included in the recommended structure.

(9) Establishing a time line for restructuring that provides the least disruption of essential services, particularly at a time of high unemployment, and that may contemplate a phased implementation plan.

(10) Gathering information on other models in other states.

(c) Prior to making its recommendations, the committee shall meet with, seek input from, and discuss restructuring with potentially affected constituencies, including: the secretary of commerce and community development, the commissioners of the departments of the agency of commerce and community development, the commissioner of labor, employees of the agency of commerce and community development and the department of labor, all state entities connected with these agencies, the Vermont league of cities and towns, municipalities, private planners and community development consultants, regional planning commissions, regional development corporations, chambers of commerce, historic preservationists, workforce investment boards, the Vermont Bar Association's workers' compensation committee, labor unions, training and education providers, housing entities, the Vermont institute on government effectiveness, and the general business community. The committee shall also utilize and build upon existing studies and research.

(d) The committee shall meet with the joint legislative government accountability committee in order to coordinate recommendations.

(e) The committee may meet up to eight times while the legislature is not in session.

(f) The legislative council shall provide professional and administrative support to the committee. Committee members are entitled to compensation and reimbursement of expenses as provided under section 406 of Title 2.

(g) The committee shall submit its recommendations to the legislative committees of jurisdiction no later than January 15, 2010.

Sec. E. 400.1 UNEMPLOYMENT INSURANCE

(a) The general assembly recognizes that Vermont's unemployment insurance trust fund is not funded sufficiently to cover unemployment benefits for fiscal year 2010. In 2008, Vermont paid \$112,300,000 in unemployment benefits while collecting contributions of \$64,500,000. The general assembly intends that current benefits shall be maintained during fiscal year 2010, and the general assembly shall provide funding or adjust fund revenues to ensure sufficient resources are available to make these payments.

Sec. E.401 Labor - programs (Sec. B.401, 4100500000)

(a) The workforce development council shall allocate funding to the workforce investment boards based upon the performance of the local workforce investment boards, measured according to standards established by the council.

Sec. E.401.1 10 V.S.A. § 543(f) is amended to read:

(f) Awards. Based on guidelines set by the council, the commissioner of labor shall make awards to the following:

(1) Training Programs. Public, private, and nonprofit entities for existing or new innovative training programs. There shall be a preference for programs that include training for newly created or vacant positions. Awards may be made to programs that retrain incumbent workers. ~~The department shall ensure there are resources available in each quarter of the fiscal year.~~ Awards under this subdivision shall be made to programs or projects that do all the following:

* * *

* * * K-12 Education * * *

Sec. E.500 Education – finance and administration (Sec. B.500, #5100010000)

(a) The Global Commitment funds appropriated in this section for school health services, including school nurses, shall be used for the purpose of funding certain health-care-related projects. It is the goal of these projects to reduce the rate of uninsured or underinsured persons or both in Vermont and to increase the access of quality health care to uninsured persons, underinsured persons, and Medicaid beneficiaries.

Sec. E.500.1 THE AMERICAN RECOVERY AND INVESTMENT ACT OF 2009; EDUCATION

(a) The American Recovery and Reinvestment Act of 2009.

(1) The American Recovery and Reinvestment Act of 2009 (ARRA) provides billions of dollars in federal funds to stimulate the economy in the short term and to invest in education and other essential public services necessary to ensure the long-term economic health of the nation.

(2) Four principles guide distribution of ARRA funds:

(A) Spend funds quickly to save and create jobs.

(B) Improve student achievement through school reform.

(C) Ensure transparency, reporting, and accountability.

(D) Invest one-time ARRA funds thoughtfully to minimize unsustainable recurring costs in the future.

(b) Title VIII of the ARRA. In Title VIII, the ARRA appropriates additional funding to supervisory unions and school districts through existing federal programs, such as Title I of the Elementary and Secondary Education Act (Title I) and the Individuals with Disabilities Education Act (IDEA), to enhance and develop educational practices and outcomes for students who are disadvantaged or disabled, to provide supports for the lowest performing schools, and to promote innovation and improvement in education for all students.

(c) Department of education. The general assembly recognizes that, if it has the capacity, the department of education shall help supervisory unions and school districts to use IDEA, Title I, and other federal stimulus funds, both within and among these entities, in coordinated, fiscally prudent ways that advance the educational purposes of the ARRA. Therefore, it is the intent of the general assembly to ensure that the department has the positions and funding that it needs to help supervisory unions and school districts. Examples of departmental assistance include:

(1) Developing, coordinating, or providing professional development models to assist implementation of evidence-based strategies to:

(A) Increase student participation and achievement levels, such as through responsiveness to intervention (RTI), positive behavioral supports (PBS), differentiated instruction (DI), the Vermont integrated instructional model (VIIM), and the formative assessment project.

(B) Provide effective prevention and intervention strategies to support students at risk of not completing high school.

(C) Promote secondary school transformation.

(D) Support early intervention and early childhood education.

(2) Coordinating early intervention and early education services statewide.

(3) Aiding school districts to provide assistive technology equipment not otherwise available to them through existing funding sources.

(d) Supervisory unions and school districts. It is the intent of the general assembly that federal IDEA, Title I, and any other federal stimulus funds received by supervisory unions or school districts are used in fiscally prudent ways to advance the purposes of the ARRA as it relates to education without creating unsustainable recurring costs, such as:

(1) To provide intensive professional development opportunities in special education and general education that focus on implementing innovative, evidence-based, schoolwide strategies in reading, math, and science and in the use of positive behavioral interventions and supports.

(2) To establish a system to identify and train highly effective teachers to serve as instructional leaders and mentors.

(3) To implement innovative, flexible, evidence-based programs and practices to identify and support students who are at risk of not completing high school.

(4) To implement student progress monitoring systems to assist teachers and administrators to collect and use data to improve instruction and learning for all students.

(5) To provide intensive training and coaching to teachers, administrators, and para-educators to improve services provided to students with disabilities, including autism and emotional behavioral disorders.

(6) To provide additional intervention services for children with disabilities who are eligible for early childhood education as that term is defined in 16 V.S.A. § 11(a)(31).

(7) To support the training and certification of early childhood educators working in a program offered by or through a school district.

(8) To increase the federal share of special education costs.

Sec. E.500.2 FIVE LIMITED SERVICE POSITIONS WITHIN THE DEPARTMENT OF EDUCATION

(a) Five limited service positions are authorized within the department of education to support implementation of Sec. E.500.1 of this act, including one exempt attorney position to specialize in special education law, one program coordinator I position, and three education consultant II positions.

(b) The sum of \$325,000 is appropriated to the department of education from the special fund created in subsection 2959a(b) of Title 16 through an allocation made pursuant to subsection 2959a(f) of that title.

Sec. E.501 Education – education services (Sec. B.501 #510003000)

(a) In fiscal year 2010 and fiscal year 2011, \$1,131,751 is added to the education fund for early education initiative grants for at-risk preschoolers. In fiscal year 2012, these expenses shall revert to the general fund, and the general fund transfer shall be adjusted accordingly.

Sec. E.501.1 [Deleted]

Sec. E.502 Education-special education formula grants (Sec. B.502, #5100040000)

(a) The education fund appropriated in this section shall be notwithstanding 16 V.S.A. §§ 2963(c)(3) and 2967(b).

Sec. E.503 Education – state-placed students (Sec. B.503, #5100050000)

(a) The independence place program of the Lund Family Center shall be considered a 24-hour residential program for the purposes of reimbursement of education costs.

Sec. E.504 Education-adult education and literacy (Sec. B.504, #5100060000)

(a) Of this appropriation, the amount from the education fund shall be distributed to school districts for reimbursement of high school completion services pursuant to 16 V.S.A. 1049a(c).

Sec. E.505 COMMUNITY HIGH SCHOOL OF VERMONT GRANT

(a) From the education funds appropriated in Sec. B.505 in fiscal year 2010 and fiscal year 2011, a base education payment shall be paid to the community high school of Vermont for full-time equivalent students studying high school equivalency coursework. For fiscal year 2010, this total grant shall be set at the base education payment for 355 full-time equivalent pupils. This amount

shall be transferred from the funds appropriated in Sec. B.505 to the department of corrections - correctional education program. These payments shall be made notwithstanding 16 V.S.A. § 4025(b)(1). In fiscal year 2012, these expenses shall revert to the general fund, and the general fund transfer shall be adjusted accordingly

Sec. E.506 TRANSPORTATION GUIDELINES

(a) The commissioner of education, in consultation with the board of education, shall establish guidelines and recommendations for school transportation services and policies. Establishment of these guidelines shall take into account the safety of passengers and other persons, relevant costs, and environmental impacts.

Sec. E.511 Education-technical education (Sec. B.511, #5100200000)

(a) The appropriation in this section shall be authorized, notwithstanding 16 V.S.A. Sec. 1564.

Sec. E.511.1 REPEAL

(a) 16 V.S.A. § 1564 (equipment replacement fund) is repealed.

Sec. E.512 Education – No. 117 of the Acts of 2000 – cost containment (Sec. B.512, #5100310000)

(a) Notwithstanding any other provisions of law, expenditures made from this section shall be counted under 16 V.S.A. § 2967(b) as part of the state's 60 percent of the statewide total special education expenditures of funds which are not derived from federal sources.

Sec. E.513 EDUCATION FUND TRANSFER ADJUSTMENT FOR ARRA FUND OFFSET

(a) Notwithstanding 16 V.S.A. § 4025(2), for fiscal year 2010 the general fund transfer to the education fund shall be \$259,203,945.

(b) It is the intent of the general assembly that the fiscal year 2011 general fund transfer shall be as required in 16 V.S.A. § 4025(2) less any offset for federal state fiscal stabilization funds.

(c) Any calculations required to identify funding levels for the education fund budget stabilization reserve under 16 V.S.A. § 4026(b) shall be calculated as if in fiscal year 2010 those revenues and expenditures included \$38,575,036 in additional revenues and \$38,575,036 in additional expenditures.

Sec. E.513.1 16 V.S.A. § 4025(b) is amended to read:

(b) Moneys in the education fund shall be used for the following:

(1) To make payments to school districts and supervisory unions for the support of education in accordance with the provisions of section 4028 of this title, other provisions of this chapter, and the provisions of chapter 135 of Title 32.

(2) To cover the cost of fund auditing, accounting and of short term borrowing to meet fund cash flow requirements.

(3) To make payments required under subdivisions 6066(a)(1) and (2) of Title 32 and only that portion attributable to education taxes, as determined by the commissioner of taxes, of payments required under subdivisions 6066(a)(3) and 6066(b) of Title 32.

* * *

Sec. E.514 State teachers' retirement system (Sec. B.514, #1265010000)

(a) In accordance with 16 V.S.A. § 1944(g)(2), the amount of annual contribution to the Vermont state teachers' retirement system shall be \$41,503,002 in fiscal year 2010.

(b) In accordance with 16 V.S.A. § 1944(c)(2), of the annual contribution, \$19,821,109 is the "normal contribution," and \$21,681,893 is the "accrued liability contribution."

(c) The general assembly is proposing that a combination of \$40,303,002 in general funds and an estimated \$1,200,000 of Medicare Part D reimbursement funds be utilized to achieve funding at the actuarially recommended level.

* * * Higher Education * * *

Sec. E.600 University of Vermont (Sec. B.600, #1110006000)

(a) The commissioner of finance and management shall issue warrants to pay one-twelfth of this appropriation to the University of Vermont on or about the 15th day of each calendar month of the year.

(b) Of this appropriation, \$396,115 shall be transferred to EPSCoR (Experimental Program To Stimulate Competitive Research) for the purpose of complying with state matching fund requirements necessary for the receipt of available federal or private funds or both.

(c) If Global Commitment fund monies are unavailable, the total grant funding for the university of Vermont shall be maintained through the general fund or other state funding sources.

(d) The university of Vermont will use the Global Commitment funds appropriated in this section to support Vermont physician training. The university of Vermont prepares students, both Vermonters and out-of-state, and awards approximately 100 medical degrees annually. Graduates of this

program, currently representing a significant number of physicians practicing in Vermont, deliver high quality health care services to Medicaid beneficiaries and to the uninsured or underinsured persons or both in Vermont and across the nation.

Sec. E.602 Vermont state colleges (Sec. B.602, #1110009000)

(a) The commissioner of finance and management shall issue warrants to pay one-twelfth of this appropriation to the Vermont state colleges on or about the 15th day of each calendar month of the year.

(b) Of this appropriation, \$446,652 shall be transferred to the Vermont manufacturing extension center for the purpose of complying with state matching fund requirements necessary for the receipt of available federal or private funds or both.

Sec. E.603 Vermont state colleges – allied health (Sec. B.603, #1110010000)

(a) If Global Commitment fund monies are unavailable, the total grant funding for the Vermont state colleges shall be maintained through the general fund or other state funding sources.

(b) The Vermont state colleges shall use the Global Commitment funds appropriated in this section to support the dental hygiene, respiratory therapy, and nursing programs which graduate approximately 250 health care providers annually. These graduates deliver direct, high quality health care services to Medicaid beneficiaries and uninsured or underinsured persons or both.

Sec. E.605 Vermont student assistance corporation (Sec. B.605, #1110012000)

(a) Of this appropriation, \$25,000 is appropriated from the general fund to the Vermont student assistance corporation to be deposited into the trust fund established in 16 V.S.A. § 2845.

(b) Except as provided in subsection (a) of this section, not less than 100 percent of grants shall be used for direct student aid.

(c) Of state funds available to the Vermont student assistance corporation pursuant to Sec. E.215(a) and E.1100(a)(3)(B) of this act, \$242,500 shall be used for the purposes of 16 V.S.A. § 2856. Any unexpended funds from these allocations shall carry forward for this purpose.

* * * Natural Resources * * *

Sec. E.700 Natural Resource – Agency of Natural Resources - Administration

(a) Of the funds appropriated on Sec. B 700, \$25,000 is for water management typing for the White River basin and the West, Williams, and Saxons river basin.

(1) \$12,500 shall be granted to the Two Rivers Ottaquechee Regional Commission for the purpose developing recommended water management type designations for the White River Basin. In adopting its recommendations, the Two Rivers Ottaquechee Regional Commission shall consult with the agency of natural resources watershed coordinator for the White River basin and shall consider the most recent information for the watershed available from the agency of natural resources and other sources.

(2) \$12,500 shall be granted to the Windham Regional Commission for the purpose of developing recommended water management type designations for the West, Williams and Saxons River Basin. In adopting its recommendations, the Windham Regional Commission shall consult with the agency of natural resources watershed coordinator for the White River basin and shall consider the most recent information for the watershed available from the agency of natural resources and other sources.

Sec. E.700.1 REPORT AND RULEMAKING ON WATER
MANAGEMENT TYPING FOR THE WHITE RIVER BASIN AND THE
WEST, WILLIAMS, AND SAXONS RIVER BASIN

(a) On or before January 31, 2011, the Two Rivers Ottaquechee Regional Commission and the Windham Regional Commission shall submit to the agency of natural resources and the natural resources board the recommended water management type designations required under Sec. E. 700(a)(1) and (2) of this act. Upon receipt of the recommended water management type designations required under subsections (a) and (b), the agency of natural resources shall post the recommended water management type designations to its website and shall make the recommendations available to any person upon request.

(b) Within three months of receipt of the recommended water management type designations under this section, the natural resources board shall initiate rulemaking to amend the Vermont water quality standards in order to consider the recommended water management type designations for the White River basin and the West, Williams and Saxons River Basin.

Sec. E.705 FUNDING GOALS FOR FISH & WILDLIFE

(a) It is the intent of the general assembly that the department of fish and wildlife be able to sustain services and seek the federal funds eligible to the state in the future through the generation of revenue and state funding.

(b) The department shall seek to access to the maximum amount the state may be eligible for of Pittman-Robertson, Dingell-Johnson and other federal revenues. The department shall establish and administer a grant program for Vermont organizations and citizens to utilize the Pittman-Robertson funds for the construction of new public sport shooting ranges and the improvement or modification of existing sport shooting ranges. Sport shooting ranges are defined as per 10 V.S.A. § 5227.

Sec. E.707 FUNDING GOALS FOR FORESTS, PARKS AND RECREATION

(a) It is the intent of the general assembly that the department of forests, parks and recreation be able to sustain services and seek the federal funds eligible to the state in the future through the generation of revenue and state funding.

Sec. E.717 Natural resources board (Sec. B.717, #6215000000)

(a) It is the intent of the general assembly that should the level of funding provided in Sec. B.717 of this act require reductions in personal service expenses in fiscal year 2010, any such reductions shall apply only to exempt positions supported by this appropriation.

* * * Commerce and Community Development * * *

Sec. E.800 COMMUNITY DEVELOPMENT PROGRAM; FUND CONSOLIDATION PLAN; IMPLEMENTATION

(a) Consistent with the requirements of subchapter 1 of chapter 29 of Title 10, a committee chaired by Vermont league of cities and towns and consisting of the executive directors of the Vermont housing finance agency, Vermont economic development authority, and the secretary of the agency of commerce and community development the secretary of the agency of commerce and community development or designee, Vermont housing conservation board, Vermont bankers association, municipalities, regional development corporations, and other appropriate entities shall develop a proposal for the best use of and administration of community development grants which have previously been awarded to municipalities and that are currently inactive from the community development block grant (CDBG) program authorized by Title I of the federal Housing and Community Development Act of 1974, as amended, 42 U.S.C. § 5301 et. seq.. The purpose of the proposal is to maximize the availability of CDBG funding for Vermont's municipalities. The proposal shall include criteria and processes for standardizing the administration and oversight of CDBG funds, while preserving a municipality's ability to access funds.

(b) The committee will be staffed by the agency of commerce and community development. The committee shall report its findings to the general assembly on or before January 15, 2010.

Sec. E.800.1 CFED; INTERIM STUDY COMMITTEE; SUSPENSION

(a) The chair of the commission on the future of economic development (CFED), as established in 10 V.S.A. § 1, shall convene and chair an interim study committee composed of seven members. In addition to the current CFED chair, members of the study committee shall include the commissioner of commerce and economic development, three other current members of CFED appointed by the chair, and the existing legislative members.

(b) The committee may meet no more than seven times during the 2009 legislative interim. The committee shall cease to exist December 15, 2009.

(c) The committee shall receive reasonable administrative, fiscal, and legal support from the joint fiscal office, the Vermont state economists, and the legislative council.

(d) Legislative members of the committee shall be entitled to per diem compensation and reimbursement of necessary expenses as provided in 2 V.S.A. § 406; other members shall be entitled to per diem compensation and reimbursement of necessary expenses as provided in 32 V.S.A. § 1010.

(e) The committee shall:

(1) Determine the best model for an entity responsible for developing and overseeing economic planning in Vermont. The entity's responsibilities would include: establishing a statewide, comprehensive economic development plan; making policy recommendations to the general assembly and governor; analyzing existing programs and policies in terms of the benchmarks and the four principal goals established by CFED; amending and updating the plan, benchmarks, and goals as necessary; and reporting annually to the general assembly and governor on the status of economic development in Vermont.

(2) Study models of economic development used in other states, such as the private-public-nonprofit coordinating board used in Arizona (Arizona Economic Resource Organization) and the North Carolina economic development board.

(3) Propose ways of improving the value and usefulness of the unified economic development budget required under 10 V.S.A. § 2.

(4) Work with the state economists to refine the benchmarks set by CFED for the purpose of measuring the state's position and specific program outcomes relative to Vermont's economic development goals.

(f) The committee shall report its findings and recommendations to the senate committee on economic development, housing and general affairs, the house committee on commerce and economic development, and the governor no later than December 1, 2009.

(g) CFED, notwithstanding its responsibilities as provided in 10 V.S.A. § 1, shall suspend its activities until January 1, 2010.

Sec. E.801 Housing and community affairs (Sec. B.801, #7110010000)

(a) Of this appropriation, \$60,000 shall be granted to the First Stop Program.

Sec. E.804 Community development block grants (Sec. B.804, #7110030000)

(a) Community development block grants shall carry forward until expended.

(b) Community development block grant (CDBG) funds shall be expended in accordance with and in the order of the following priorities:

(1) The greatest priority for the use of CDBG funds will be the creation and retention of affordable housing and jobs.

(2) The overarching priority and fundamental objective in the use of funds for all affordable housing is to achieve perpetual affordability through the use of mechanisms that produce housing resources that will continue to remain affordable over time. It is the goal of the state to maintain at least 45 to 55 percent of CDBG funds for affordable housing applications.

(3) Among affordable housing applications, the highest priorities are to preserve and increase the supply of affordable family housing, to reduce and strive to eliminate childhood homelessness, and to serve families and individuals at or below 30 percent of HUD Area Median Income and people with special needs as described in the Consolidated Plan. Housing for seniors should be considered a priority when it meets clear unmet needs in the region for the lowest income seniors.

(4) Projects which address the ongoing deterioration of the existing housing stock through acquisition, preservation, and rehabilitation of units shall comply with housing quality standards with priority given to lead hazard reduction and energy efficiency.

(5) Preference shall be given to projects that maintain the historic settlement pattern of compact village and downtown centers separated by a rural working landscape. Funds generally should not be awarded to projects

that promote or constitute sprawl, defined as dispersed development outside compact urban and village centers, along highways, and in rural countryside.

(c) No less than 50 percent of CDBG-generated loan repayments shall remain available to municipalities awarded community development block grant funds.

(d) The department of housing and community affairs may not restrict CDBG applications for housing to projects which have been previously awarded federal low income housing tax credits.

Sec. E.813 10 V.S.A. § 311 is amended to read:

§ 311. CREATION OF THE VERMONT HOUSING AND CONSERVATION BOARD

(a) There is created and established a body politic and corporate to be known as the "Vermont housing and conservation board" to carry out the provisions of this chapter. The board is constituted a public instrumentality exercising public and essential governmental functions, and the exercise by the board of the powers conferred by this chapter shall be deemed and held to be the performance of an essential governmental function of the state. The board is exempt from licensure under chapter 73 of Title 8.

~~(b) The board shall consist of nine members, including ex officio the secretary of agriculture, food and markets, the secretary of commerce and community development, the secretary of natural resources and the executive director of the Vermont housing finance agency, or their designees, and five public members who shall be residents of the state and who shall in the opinion of the governor be experienced in creating affordable housing or conserving and protecting Vermont's agricultural land, historic properties, important natural areas or recreational lands. At least one member shall be a representative of lower income Vermonters and one member shall be a farmer as defined in 32 V.S.A. § 3752(7). The public members shall be appointed by the governor with the advice and consent of the senate for three-year terms beginning on February 1 of the year in which the appointment is made, except that the first members appointed by the governor to the board shall be appointed, one for a term of one year, two for a term of two years and two for a term of three years. Vacancies shall be filled in the same manner as the original appointment for the unexpired portion of the term vacated.~~

The board shall consist of the following 11 members:

- (1) The secretary of agriculture, food and markets or his or her designee.
- (2) The secretary of human services or his or her designee.
- (3) The secretary of natural resources or his or her designee.

(4) The executive director of the Vermont housing finance agency or his or her designee.

(5) Three public members appointed by the governor who shall be residents of the state and who shall be experienced in creating affordable housing or conserving and protecting Vermont's agricultural land, historic properties, important natural areas or recreational lands, one of whom shall be a representative of lower income Vermonters and one of whom shall be a farmer as defined in subdivision 3752(7) of Title 32.

(6) One public member appointed by the speaker of the house, who may not be a member of the general assembly at the time of appointment.

(7) One public member appointed by the senate committee on committees, who shall not be member of the general assembly at the time of appointment.

(8) Two public members appointed jointly by the speaker of the house and the president pro tempore of the senate as follows:

(A) One member from the nonprofit affordable housing organizations that qualify as eligible applicants under subdivision 303(4) of this title who shall not be an employee or board member of any of those organizations at the time of appointment.

(B) One member from the nonprofit conservation organizations that qualify as eligible applicants under subdivision 303(4) of this title who shall not be an employee or member of the board of any of those organizations at the time of appointment.

(c) The public members shall serve terms of three years beginning July 1 of the year of appointment. However, two of the public members first appointed by the governor shall serve initial terms of one year; and the public members first appointed by the speaker and committee on committees shall serve initial terms of two years. A vacancy occurring among the public members shall be filled by the respective appointing authority for the balance of the unexpired term. A member may be reappointed.

(d) Annually, the board shall elect from among its public members a chair and vice chair. The board may elect such officers as it may determine. Meetings shall be held at the call of the chair or at the request of three members. A majority of the sitting members shall constitute a quorum and action taken by the board under the provisions of this chapter may be authorized by a majority of the members present and voting at any regular or special meeting.

~~(d)~~(e) Members other than ex officio members shall be entitled to per diem authorized under 32 V.S.A. § 1010 for each day spent in the performance of their duties and each ~~such~~ member shall be reimbursed from the fund for his or her reasonable expenses incurred in carrying out his or her duties under this chapter.

~~(e)~~(f) The board shall employ an executive director to administer, manage and direct the affairs and business of the board, subject to the policies, control and direction of the members. The board may employ technical experts and ~~such~~ other officers, agents and employees as are necessary to effect the purposes of this chapter, and may fix their qualifications, duties and compensation. The board shall use the office of the attorney general for legal services.

Sec. E.813.1 10 V.S.A. § 321 is amended to read:

§ 321. GENERAL POWERS AND DUTIES

(a) The board shall have all the powers necessary and convenient to carry out and effectuate the purposes and provisions of this chapter, including without limitation those general powers provided to a business corporation by section 1852 of Title 11 and including, without limiting the generality of the foregoing, the power to:

(1) upon application from an eligible applicant in a form prescribed by the board, provide funding in the form of grants or loans for eligible activities;

(2) enter into cooperative agreements with private organizations or individuals or with any agency or instrumentality of the United States or of this state to carry out the purposes of this chapter;

(3) issue rules in accordance with 3 V.S.A. chapter 25 for the purpose of administering the provisions of this chapter;

(4) transfer funds to the department of housing and community affairs to carry out the purposes of this chapter.

(b) The board shall seek out and fund not-for-profit organizations and municipalities that can assist any region of the state which has high housing prices, high unemployment and low per capita incomes in obtaining grants and loans under this chapter for perpetually affordable housing. The board shall administer the "HOME" affordable housing program which was enacted under Title II of the Cranston-Gonzalez National Affordable Housing Act (Title II, P.L. 101-625, 42 U.S.C. 12701-12839). The state of Vermont, as a participating jurisdiction designated by Department of Housing and Urban Development, shall enter into a written memorandum of understanding with the board, as subrecipient, authorizing the use of HOME funds for eligible

activities in accordance with applicable federal law and regulations. HOME funds shall be used to implement and effectuate the policies and purposes of this chapter related to affordable housing. The memorandum of understanding shall include performance measures and outcomes that the board will annually report on to the Vermont department of housing and community affairs.

(c) On behalf of the state of Vermont, the board shall be the exclusive designated entity to seek and administer federal affordable housing funds available from the Department of Housing and Urban Development under the national Housing Trust Fund which was enacted under HR 3221, Title 1, Subtitle B, Section 1228 of the Federal Housing Finance Regulatory Reform Act of 2008 to increase perpetually affordable rental housing and home ownership for low and very low income families.

~~(e)~~(d) On behalf of the state of Vermont, the board shall seek and administer federal farmland protection funds to facilitate the acquisition of interests in land to protect and preserve in perpetuity important farmland for future agricultural use. Such funds shall be used to implement and effectuate the policies and purposes of this chapter.

~~(d)~~(e) The board shall inform all grant applicants and recipients of funds derived from the annual capital appropriations and state bonding act of the following: "The Vermont Housing and Conservation Trust Fund is funded by the taxpayers of the State of Vermont, at the direction of the General Assembly, through the annual Capital Appropriation and State Bonding Act." An appropriate placard shall, if feasible, be displayed at the location of the proposed grant activity.

Sec. E.813.2 GRANT STATUS; JFO #2370

(a) In accordance with the legislature's authority under 32 V.S.A. § 5, the U.S. Department of Housing and Urban Development Neighborhood Stabilization Program (NSP) grant (JFO #2370) is not accepted. The grant, as submitted, failed to incorporate priorities outlined in the November 24, 2008 letter from the joint fiscal committee to the secretary of administration. The agency of commerce and community development is hereby instructed to request modification of the grant terms as follows and then resubmit the grant for acceptance under the above statute. The specific requested modifications are as follows:

(1) \$2,000,000 of the \$19,600,000 shall be transferred to the Vermont housing and conservation board (VHCB) for direct administration in a manner consistent with the provisions and intent of the U.S. Department of Housing and Urban Development Neighborhood Stabilization Program (NSP).

(2) The VHCB shall have full authority to commit NSP funds in accordance with the provisions of chapter 15 of Title 10 of the Vermont Statutes Annotated and the state consolidated plan. VHCB may replace or add to existing project commitments. VHCB may also award funds in communities that receive municipal NSP awards.

* * * Transportation * * *

Sec. E.900 19 V.S.A. § 11a is amended to read:

§ 11a. ~~TRANSPORTATION FUNDS APPROPRIATED FOR SUPPORT OF GOVERNMENT~~ THE DEPARTMENT OF PUBLIC SAFETY

(a) ~~The maximum amount of~~ No transportation funds that may shall be appropriated for the support of government; other than for the agency of transportation, the transportation board, transportation pay act funds, construction of transportation capital facilities used by the agency of transportation, and transportation debt service shall not exceed \$32,852,807.00, and the department of public safety. The amount of transportation funds appropriated to the department of public safety shall:

(1) in fiscal year 2010 not exceed \$30,850,000.00;

(2) in fiscal year 2011 not exceed \$28,350,000.00; and

(3) in fiscal year 2012 not exceed \$25,250,000.00.

Sec. E.910 Transportation – central garage (Sec. B.910, #8110000200)

(a) Of this appropriation, \$6,216,757 is appropriated from the transportation equipment replacement account within the central garage fund for the purchase of equipment as authorized in 19 V.S.A. § 13(b).

Sec. E.916 Transportation – town highway aid program (Sec. B.916, #810003000)

(a) This appropriation is authorized notwithstanding 19 V.S.A. § 306(a).

* * * Debt Service * * *

Sec. E.1000 DEBT SERVICE – BOND PREMIUM APPLICATION

(a) In addition to funds appropriated in Sec. B.1000 of this act, \$1,176,792 of the funds available in the general fund bond premium reserve will be appropriated and applied to the state's long-term bonded debt service expenses in fiscal year 2010.

* * * Miscellaneous * * *

Sec. E.1100 FISCAL YEAR 2010 NEXT GENERATION FUND ALLOCATIONS (Sec. B.1100(a))

(a) The \$7,293,000 appropriated in Sec. B.1100(a) of this act from the next generation initiative fund created in 16 V.S.A. § 2887 shall be as follows:

(1) Workforce development, \$3,220,500, as follows:

(A) Workforce education training fund (WETF). The sum of \$1,472,500 is appropriated to the Vermont workforce education and training fund, which is administered by the department of labor, for workforce development. Up to seven percent of the funds may be used for administration of the program.

(B) Vermont training program. The sum of \$712,500 is appropriated to the agency of commerce and community development. This appropriation is for the Vermont training program for the issuance of grants pursuant to 10 V.S.A. § 531.

(C) Career and alternative workforce education. The amount of \$387,500 is appropriated to the department of labor. This appropriation shall be to support out-of-school youth, youth at risk, and youth at risk of remaining unemployed with outcomes that lead to employment or continued education to provide:

(i) Grants to regional technical centers, comprehensive high schools, and other programs for career exploration programs for students entering grades 7 through 12.

(ii) Grants to regional technical centers, comprehensive high schools, the community high school of Vermont, and nonprofit organizations, designated by the workforce development council, for alternative and intensive vocational/academic programs for secondary students in order to earn necessary credits toward graduation.

(D) Adult technical education programs. The amount of \$410,500 is appropriated to the department of labor, working with the workforce development council. This appropriation is for the purpose of awarding grants to regional technical centers and comprehensive high schools to provide adult technical education, as that term is defined in 16 V.S.A. § 1522, to unemployed and underemployed Vermont adults.

(E) UVM technology transfer program. The amount of \$237,500 is appropriated to the University of Vermont. Of this appropriation, \$180,000 shall be transferred to the Vermont center for emerging technologies to enhance development of high technology businesses and next generation employment opportunities throughout Vermont. The remainder is for patent

development and commercialization of technology created at the university for the purpose of creating employment opportunities for Vermont residents.

(2) Loan repayment \$475,000 as follows:

(A) The sum of \$475,000 is appropriated to the agency of human services-Global Commitment for the department of health to use for health care loan repayment. The department shall use these funds for a grant to the area health education centers (AHEC) for repayment of commercial or governmental loans for postsecondary health care-related education or training owed by persons living and working in Vermont in the health care field.

(3) Scholarships and grants \$3,597,500 as follows:

(A) Nondegree VSAC grants. The amount of \$712,500 is appropriated to the Vermont student assistance corporation. This appropriation shall be for the purpose of providing nondegree grants to Vermonters to improve job skills and increase overall employability, enabling them to enroll in a postsecondary education or training program, including adult technical education that is not part of a degree or accredited certificate program. A portion of this appropriation shall be used for grants for indirect educational expenses to students enrolled in training programs. The grants shall not exceed \$3,000 per student. None of this appropriation shall be used for administrative overhead.

(B) The sum of \$2,600,000 is appropriated for awarding need-based scholarships to Vermont residents. The first \$142,500 shall be distributed to the Vermont student assistance corporation to fund the national guard educational assistance program established in 16 V.S.A. § 2856. The amount of \$819,166 shall be distributed to the university of Vermont, \$819,166 to the Vermont state colleges, and \$819,168 to the Vermont student assistance corporation. The Vermont student assistance corporation shall reserve these funds for students attending institutions other than the university of Vermont or the Vermont state colleges. The university of Vermont and the Vermont state colleges shall each reserve \$12,000 of the funds allocated in this subdivision for the state "2+2" agricultural scholarship program in fiscal year 2010. None of the \$2,600,000 appropriation shall be used for administrative overhead.

(C) Dual enrollment programs. The sum of \$285,000 is appropriated to the Vermont state colleges for dual enrollment programs. The state colleges shall develop a voucher program that will allow Vermont students to attend programs at a postsecondary institution other than the state college system when programs at the other institution are better suited academically or geographically to student need.

Sec. E.1103. COST REDUCTION AUTHORIZATION

(a) Due to the current and continuing fiscal stress that will be impacting the Vermont state budget and a desire to avert unnecessary layoffs, the general assembly strongly urges the Vermont state employees' association and the secretary of administration to negotiate contract changes and other personnel adjustments to achieve \$14,700,000 in general fund savings and \$1,400,000 in transportation fund savings as well as other reductions in special funds and federal funds consistent with any contract modification agreed to between the Vermont state employees' association and the state of Vermont in fiscal year 2010.

(b) The general assembly recommends the parties consider the following in achieving a contract modification to produce the savings sought in subsection (a) of this section:

(1) Acceptance of the union proposals to:

(i) Forego the fiscal year 2010 cost of living increase.

(ii) Postpone any steps eligibility 12 months from when it would otherwise occur.

(iii) Eliminate the employee wellness program

(iv) Extend the contract one year with no cost of living increase in fiscal year 2011.

(2) Inclusion of the following additional proposals:

(i) Reduce general fund contracted expenditures for fiscal year 2010 by \$1,260,000.

(ii) The application of 8 furlough days per year.

(iii) The elimination of five executive branch exempt positions at salary levels in excess \$60,000 per year and further cuts in positions or pay to produce \$1,500,000 in general fund savings from exempt positions, temporary employees and classified confidential employees.

(3) The recommendations in subdivisions (b)(1) and (2) of this section shall apply to all state employees in all branches of government. Agency or department heads may adjust the salaries or furloughs of exempt employees who have already taken furloughs or salary reductions in excess of these amounts to make them consistent with the reductions outlined above.

(4) As part of this proposal, the cost of living adjustment for members of the general assembly shall be treated in accordance with the contract revision.

(5) For fiscal year 2010, notwithstanding existing pay plans, no bonuses, salary increases, or pay plan adjustments shall be made for nonbargaining unit employees, nor shall employees who change positions or take on added responsibilities receive increases in salaries accompanying this change.

(c) In the event that no agreement is reached, the secretary of administration shall not have the authority to reduce appropriations and positions to achieve the savings in subsection (a) of this section unless the secretary has submitted the reduction plan to the house and senate committees on appropriations by May 1, 2009 and that plan is enacted by the general assembly.

(d) The secretary of administration shall not plan to close or significantly reduce operations at any correctional facility unless approval to proceed with such closing or reduction plans is granted by both the joint committee on corrections oversight and the joint fiscal committee.

Sec. E.1104 APRIL 24, 2009 REVENUE REVISION

(a) The senate recognizes this fiscal year 2010 budget proposal is being developed and approved just prior to the April 24, 2009 official revenue forecast revision. It is extremely likely that this revision will result in a general fund and transportation fund revenue downgrade for fiscal years 2009 and 2010.

(b) To the extent that a general fund downgrade does result, the budget conference committee is directed to look to the following among options to address the general fund shortfall:

(1) Potential reduction in the general fund transfer to the education fund not to exceed the administration's \$23,000,000 cost shift.

(2) Potential K-12 expense reallocations to the education fund and a limited version of the administration's proposed cost shift of the teachers' retirement obligation to the education fund, including a potential transfer of current liabilities and current retiree or new employee health care obligations, and limitations to the base education payment.

(3) Further reductions to health care provider payments, including Medicaid reimbursement for cross-over claims.

(4) Possible Medicaid or Medicaid waiver program benefit changes or elimination of any eligibility expansions to Catamount health assistance.

(5) To the extent that no agreement is reached on state employee reductions in accordance with the legislative intent under section E.1103 of this act, further position reductions.

(6) Addition of agency of natural resources' costs to the pilot special fund.

(7) Elimination of tax expenditures.

(8) Reductions of other state programmatic support.

(c) To the extent that a transportation fund downgrade does result, the transportation conference committee is directed to consider the following principles in addressing the transportation fund shortfall. Expenditure reductions:

(1) Shall not disproportionately impact town highway aid.

(2) Shall preserve Vermont's ability to maximize the draw down of federal funds.

(3) Shall be consistent with the legislature priority setting and transportation planning process.

Sec. G.100 EFFECTIVE DATES

(a) This section and Secs. C.101, C.102, C.104, C.105, D.103, D.105, D.106, D.108, D.109, E.102.1, E.209(c), E.307.1, E.322.2, and E.330(c) shall take effect on passage.

* * * Proposed Miscellaneous Tax Amendments * * *

Sec. H.1. INCREASING THE NUMBER OF COMPLIANCE PERSONNEL IN THE DEPARTMENT OF TAXES

(a) In addition to any other funds appropriated to the department of taxes in fiscal year 2010, there is appropriated from the general fund to the department \$535,000.00 in fiscal year 2010 for the purpose of hiring nine full-time limited service employees to augment the department's compliance division. The department shall use the funds so appropriated to hire four tax field examiners, two desk audit examiners, two collectors, and one desk audit supervisor.

(b) In addition to any other funds appropriated to the department of taxes in fiscal year 2011, there is appropriated from the general fund to the department \$935,000.00 in fiscal year 2011 for the purpose of retaining the nine full-time limited service employees hired pursuant to subsection (a) of this section and hiring six additional full-time limited service employees to further augment the department's compliance division. The department shall use the additional funds so appropriated to hire four tax field examiners and two desk audit examiners.

(c) It is the intent of the legislature to further augment the department's compliance efforts in fiscal year 2012 by appropriating additional funds for fiscal year 2012 for the purpose of retaining the 15 full-time limited service employees hired pursuant to subsections (a) and (b) of this section and hiring five additional limited service employees.

(d) The positions created pursuant to subsections (a) and (b) of this section shall not be new state employee positions but instead shall be transferred and converted from the vacant position pool as and only when such positions in the vacant position pool become available.

(e) Notwithstanding any other provision of law, the positions created by this section shall be created as limited service positions and shall not be funded for a period in excess of three years.

Sec. H.2. ADDING COMPLIANCE PERSONNEL TO THE DEPARTMENT OF LABOR

(a) In addition to any other funds appropriated to the department of labor in fiscal year 2010, there is appropriated from the general fund to the department \$308,212.00 in fiscal year 2010 for the purpose of hiring four full-time limited service employees as workers' compensation fraud staff who will investigate the classification of workers as either contractors or employees and enforce compliance of the proper classification by businesses.

(b) The positions created pursuant to subsection (a) of this section shall not be new state employee positions but instead shall be transferred and converted from the vacant position pool as and only when such positions in the vacant position pool become available.

(c) Notwithstanding any other provision of law, the positions created by this section shall be created as limited service positions and shall not be funded for a period in excess of three years.

* * * Tax Amnesty * * *

Sec. H.3. TAX AMNESTY

(a) Notwithstanding any law to the contrary, the commissioner of taxes shall establish a tax amnesty program during which all penalties that could be assessed by the commissioner may be waived without the need for any showing by the taxpayer of reasonable cause or the absence of willful neglect if the taxpayer, prior to the expiration of the amnesty period, files proper returns for any tax types and any period for which the taxpayer has or had a filing obligation and pays the full amount of tax shown on such return together with all interest due thereon. The amnesty program shall be established for a

period of six consecutive weeks to be determined by the commissioner, to expire not later than October 2, 2009.

(b) The amnesty program shall apply to a tax liability of any tax type for any periods for which the due date of the return was before January 26, 2009 but shall not apply to those penalties which the commissioner would not have the sole authority to waive, including fuel taxes administered under the International Fuel Tax Agreement or under the local option portions of taxes.

(c)(1) The commissioner shall maintain records of the amnesty provided under this section, including:

(A) the number of taxpayers provided with amnesty;

(B) the types of tax liability for which amnesty was provided and, for each type of liability:

(i) the amount of tax liability collected by the commissioner; and

(ii) the amount of penalties forgone by virtue of the amnesty; and

(iii) the total outstanding tax liability due to the state, for the period through June 30, 2009, after the collection of all funds under this section.

(2) The commissioner shall file a report detailing the information required by subdivision (1) of this subsection with the clerk of the house of representatives and the secretary of the senate, the joint fiscal committee, the house committee on ways and means, and the senate committee on finance not later than December 15, 2009; provided, however, that the report shall not contain information sufficient to identify an individual taxpayer or the amnesty an individual taxpayer was provided under this section.

Sec. H.4. APPROPRIATION

In addition to any other funds appropriated to the department of taxes in fiscal year 2010, there is appropriated from the general fund to the department \$132,000.00 in fiscal year 2010 for the purpose of marketing the tax amnesty program provided for in Sec. 3 of this act. In order to help stimulate the local economy, the legislature asks in determining what resources or marketing firms to use, the department give priority to Vermont-based firms.

* * * Sale of State-Owned Personal Property * * *

Sec. H.5. SALE OF STATE-OWNED SURPLUS PERSONAL PROPERTY

In order to raise capital and to free space in buildings owned or leased by the state, the commissioner of buildings and general services is authorized and

directed to conduct a “spring cleaning” to identify and sell surplus personal property of the state. Each department and agency of the state shall, in accordance with section 1556 of Title 29, transfer all surplus personal property to the commissioner, who is authorized to sell such surplus personal property pursuant to subdivision 1556(6). Notwithstanding section 1557 of Title 29, the proceeds of such sale, net of the commissioner’s administrative costs, shall be deposited into the general fund.

* * * Department of Revenue * * *

Sec. H.6. DEPARTMENT OF TAXES; DEPARTMENT OF REVENUE; TRANSITION

(a) In accordance with the report of the commissioner of taxes dated January 22, 2007, the department of taxes shall be converted into a department of revenue no later than June 30, 2012.

(b) To accomplish the requirement set out in subsection (a) of this section, there is hereby established a revenue transition committee to review and approve the commissioner’s plan to transition the department of taxes to a department of revenue, which shall be responsible for collecting taxes, fees, levies, and other assessments as determined pursuant to subsection (c) of this section. The revenue transition committee shall be composed of the following seven members:

(1) The commissioner of finance and management or designee;

(2) The state treasurer or designee;

(3) A member of the house committee on ways and means, appointed by the speaker of the house;

(4) A member of the house committee on government operations, appointed by the speaker of the house;

(5) A member of the senate committee on finance, appointed by the committee on committees;

(6) A member of the senate committee on government operations, appointed by the committee on committees;

(7) The court administrator or designee.

(c) The commissioner shall review each state revenue source and determine whether the management of such revenue source should:

(1) remain substantially as is;

(2) be transferred to the treasurer’s lockbox services contract;

(3) be transferred to the department of taxes, which shall ultimately be redesignated the department of revenue; or

(4) be transferred to another entity.

(d) The revenue transition committee shall meet as needed to review and approve the commissioner's implementation plan for the transition to a revenue department. The commissioner shall report to the revenue transition committee the findings and recommendations required pursuant to subsection (c) of this section, and the commissioner will implement any changes upon the approval of the revenue transition committee.

(e) No later than February 15 of each of the three years following the effective date of this act, the committee shall issue a report to the general assembly on its findings and containing specific recommendations concerning the implementation of the transition, efficiencies, technology, staffing issues, and recommendations with respect to subsection (c) of this section.

(f) The legislative members shall be entitled to per diem compensation and reimbursement of necessary expenses as provided to members of standing committees under 2 V.S.A. § 406 for attendance at a meeting when the general assembly is not in session.

Sec. H.7. STATUTORY REVISION

After June 30, 2012, the legislative council is directed to revise the Vermont Statutes Annotated to reflect the redesignation of the department of taxes as the department of revenue. When applicable, the term "commissioner of taxes" shall be substituted with the term "commissioner of revenue"; and when applicable, the term "department of taxes" shall be substituted with the term "department of revenue."

* * * Blue Ribbon Tax Structure Study Committee * * *

Sec. H.8. TAX STRUCTURE STUDY

(a) Composition of committee. There is hereby established a tax structure study committee composed of three to five members to be selected as follows:

(1) The speaker of the house, the president pro tempore of the senate, and the governor shall each appoint one member; and

(2) The three members appointed pursuant to subdivision (1) of this subsection may select one or two additional members.

(b) The tax structure study committee shall be appointed as soon as possible after the effective date of this act. The panel shall elect a chair and vice chair from among its members.

(c) Purpose and goals. The tax structure study committee shall study the state's revenue system with the goal of determining whether the current system:

(1) Raises enough revenue to sustain spending needs now and in the future;

(2) Provides equity among the state's diverse taxpayers;

(3) Provides incentives that further the state's goals; and

(4) Enhances the state's competitiveness by attracting labor, capital, and entrepreneurs.

(d) Tax incidence study. As a first step in fulfilling its goals, the tax structure study committee shall hire one or more consultants to conduct a thorough and independent review and analysis of tax incidence in Vermont. The consultants shall report to the tax structure study committee by October 15, 2009. The consultants shall have the assistance of the department of taxes. Specifically, the report to the tax structure study committee shall provide information regarding the distribution of state and local taxes, including income taxes, sales and use taxes, and property taxes, in relation to taxpayer income and provide the tax structure study committee information on the equity of the overall distribution. Additionally, the report shall include information on how the total state and local tax burden on Vermont households varies by income range and how the burden of each component of the overall state and local tax system is distributed across Vermont households. The report shall also include information on taxes with an initial impact on businesses, such as the corporate franchise tax and the sales tax on business purchases.

(e) Report to committee; follow-up. The tax structure study committee shall have the assistance of the department of taxes and shall meet as needed to evaluate the tax incidence study and oversee the hiring of additional consultants, as needed, to evaluate the tax incidence study required by subsection (d) of this section and provide recommendations regarding the sustainability and stability of the state's revenue system to the general assembly no later than January 15, 2010. The tax structure study committee and any independent consultants it hires shall develop proposals for changes to the state's revenue system, if any, and provide the legislature with plans for implementation of any proposed changes.

(f) In preparation for the study required by subsection (d) of this section, the department of taxes shall provide data to the consultants, which shall prepare reports on the following:

(1) Changes in personal income, arranged by decile, over the last five

years;

(2) House site and homestead value arranged by adjusted gross income (AGI) and, where available, household income;

(3) Gross and net school taxes paid, arranged by adjusted gross income and, where available, by household income.

(g) For attendance at a meeting of the tax structure study committee members shall be entitled to per diem compensation and reimbursement of expenses as allowed by state law.

Sec. H.9. APPROPRIATION

In addition to any other funds appropriated to the department of taxes, there is appropriated from the general fund \$200,000.00 in fiscal year 2010 for the purposes outlined in Sec. 8 of this act.

* * * Tax Expenditure Reporting Requirement * * *

Sec. H.10. 32 V.S.A. § 306 is amended to read:

§ 306. BUDGET REPORT

(a) The governor shall submit to the general assembly, not later than the third Tuesday of every annual session, a budget which shall embody his or her estimates, requests and recommendations for appropriations or other authorizations for expenditures from the state treasury. In the first year of the biennium, the budget shall relate to the two succeeding fiscal years. In the second year of the biennium, it shall relate to the succeeding fiscal year.

(b) The governor shall also submit to the general assembly, not later than the third Tuesday of each session of every biennium, a tax expenditure budget which shall embody his or her estimates, requests, and recommendations for appropriations or other authorizations for expenditures from the state treasury appropriating tax expenditures as contained in the report provided for in section 312 of this chapter. The tax expenditure budget shall be provided to the members of the house committee on ways and means and the senate committee on finance, which committees will review the tax expenditures and recommend appropriations for the tax expenditures to their respective committees on appropriations.

Sec. H.11. 32 V.S.A. § 307 is amended to read:

§ 307. FORM OF BUDGET

(a) The budget shall be arranged and classified so as to show separately the following estimates and recommendations:

- (1) Expenses of state administration.
- (2) Deficiencies, overdrafts, and unexpended balances in appropriations of former years.
- (3) Bonded debt, loans and interest charges.
- (4) All requests and proposals for expenditures for new projects, new construction, additions, improvements, and other capital outlay.
- (5) With respect to the tax expenditure budget required under section 306(b) of this chapter, all requests and proposals for new, amended, or continued tax expenditures as reported under section 312 of this chapter.

* * *

* * * Repeal of Certain Tax Credits * * *

Sec. H.12. REPEAL

(a) 32 V.S.A. § 5930v (providing an income tax credit for eligible venture capital investment) is repealed effective for tax years beginning on or after January 1, 2010.

(b) 32 V.S.A. § 3802(13) (exempting fallout shelters from property tax) is repealed for grand lists prepared for April 1, 2010 and after.

* * * Vermont State-Sponsored Credit Card Program * * *

Sec. H.13. 32 V.S.A. § 584 is added to read:

§ 584. VERMONT STATE-SPONSORED CREDIT CARD PROGRAM

(a) The state treasurer is hereby authorized to sponsor and participate in a financial institution credit card program for the benefit of the residents of this state upon his or her determination that such a program is feasible and may be procured at rates and terms in the best interest of the residents of this state. In selecting a credit card issuer, the treasurer shall consider the issuer's record of investments in the state and shall take into consideration credit card features which will enhance the promotion of the state-sponsored credit card, including consumer-friendly terms, favorable interest rates, annual fees, and other fees for using the card.

(b) The treasurer shall consult with other state agencies about potential public purpose projects to be designated for the program and shall allow cardholders to designate that funds be used either to support sustainable agricultural programs, renewable energy programs, state parks and forestland programs, or any combination of these. The net proceeds of the state fees generated by this program shall be transmitted to the state and shall be deposited in a state-sponsored credit card fund and subsequently transferred to

the designated state programs and purposes as selected by the cardholders. The funds received shall be held by the treasurer until transferred for the purposes directed by participating Vermont credit card holders in accordance with the trust fund provisions of section 462 of this title.

(c) All program balances at the end of the fiscal year shall be carried forward and shall not revert to the general fund. Interest earned shall remain in the program. The treasurer's annual financial report to the governor and the general assembly shall contain an accounting of receipts, disbursements, and earnings of the program.

(d) The state shall not assume any liability for lost or stolen credit cards nor any other legal debt owed to the financial institutions.

(e) The state treasurer is authorized to adopt such rules as may be necessary to implement the Vermont state-sponsored credit card program.

* * * Government Licenses and Employment * * *

Sec. H.14. 32 V.S.A. § 3113 is amended to read:

§ 3113. REQUIREMENT FOR OBTAINING LICENSE ~~OR~~
GOVERNMENTAL CONTRACT, OR EMPLOYMENT

* * *

(c) Every agency shall, upon request of the commissioner, furnish a list of licenses and contracts issued or renewed by such agency during the reporting period; provided, however, that the secretary of state shall, with respect to certificates of authority to transact business issued to foreign corporations, furnish to the commissioner only those certificates originally issued by the secretary of state during the reporting period and not renewals of such certificates. The lists ~~should~~ shall include the name, address, ~~social security~~ Social Security or federal identification number of such licensee or provider, and such other information as the commissioner may require.

* * *

(i) No agency of the state shall hire any person as a full-time, part-time, temporary, or contractual employee unless the person shall first sign a written declaration under the pains and penalties of perjury that the person is in good standing with respect to or in full compliance with a plan to pay any and all taxes due as of the date such declaration is made. This requirement applies only to the initial hire of an individual into a position that is paid using the state of Vermont federal taxpayer identification number, other than as a county employee, and not to an employee serving in such position or who returns to

any position in state government as a result of a placement right or reduction in force recall right.

* * * Unclaimed Property * * *

Sec. H.15. 32 V.S.A. § 3113a is added to read:

§ 3113a. ABANDONED PROPERTY; SATISFACTION OF TAX LIABILITIES

The commissioner may request from the office of the treasurer the names and Social Security or federal identification numbers of owners of unclaimed property prior to notice being given to such persons pursuant to section 1249 of Title 27. If any such owner owes taxes to the state, the commissioner, after notice to the owner, may request and the treasurer shall transfer the abandoned property of such owner to the department for setoff of the taxes owed. The notice shall advise the owner of the action being taken and the right to appeal the setoff if the tax debt is not the owner's debt; or if the debt has been paid; or if the tax debt was appealed within 60 days from the date of the assessment and the appeal has not been finally determined; or if the debt was discharged in bankruptcy.

* * * Mapping Program * * *

Sec. H.16. 32 V.S.A. § 3409 is amended to read:

§ 3409. PREPARATION OF PROPERTY MAPS

Consistent with available resources and pursuant to a memorandum of understanding entered into between the commissioner and the Vermont center for geographic information, the ~~director shall prepare~~ center shall provide regional planning commissions, state agencies, and the general public with orthophotographic maps of the state at a scale appropriate for the production and revision of town property maps. Periodically, such maps shall be revised and updated to reflect land use changes, new settlement patterns and such additional information as may have become available to the director ~~or the center.~~

(1) The ~~director~~ center shall supply to the clerk and to the listers or assessors of each town such maps as have been prepared by the ~~director~~ it of the total area of that town. Any map shall be available, without charge, for public inspection both in the office of the ~~Vermont mapping program and in the office of the~~ town clerk to whom the map was supplied.

(2) The ~~director may~~ state of Vermont shall retain the copyright of any map prepared ~~under this section~~ by the Vermont mapping program and the center and the Vermont mapping program shall jointly own the copyright to any map prepared on or after the effective date of this act.

(3) A person, who, without the written authorization of the director and the center, copies, reprints, duplicates, sells, or attempts to sell any map prepared under this chapter shall be fined an amount not to exceed \$1,000.00.

(4) At a reasonable charge to be established by the center and the director, the ~~director~~ center shall supply to any person or agency other than a town clerk or lister a copy of any map prepared under this section.

* * * Unorganized Towns and Gores and Unified Towns and Gores * * *

Sec. H.17. 32 V.S.A. § 4408 is amended to read:

§ 4408. HEARING BY BOARD

(a) On the date so fixed by the town clerk and from day to day thereafter, the board of civil authority shall hear such appellants as appear in person or by agents or attorneys, until all such objections have been heard and considered. All objections filed in writing with the board of civil authority at or prior to the time fixed for hearing appeals shall be determined by the board notwithstanding that the person filing the objections fails to appear in person, or by agent or attorney.

(b) Ad hoc board for unorganized towns and gores and unified towns and gores. For purposes of hearing appeals under this subchapter only, the supervisor shall create an ad hoc board composed of:

(1) the supervisor; and

(2) one member from each adjoining municipality's board of civil authority, to be appointed by each respective board of civil authority, representing no fewer than three and no more than five of the adjoining municipalities, at the discretion of the supervisor.

(c) The ad hoc board provided for in subsection (b) of this section shall, for purposes of hearing appeals under this subchapter only, act as a board of civil authority, and an aggrieved party shall have further appeal rights as though the party had appealed to a board of civil authority.

* * * Education Property Tax Information Insert * * *

Sec. H.18. 32 V.S.A. § 5402(b)(1) is amended to read:

(1) The commissioner of taxes shall determine for each municipality the education tax rates under subsection (a) of this section, divided by the municipality's most recent common level of appraisal. The legislative body in each municipality shall then bill each property taxpayer at the homestead or nonresidential rate determined by the commissioner under this subdivision, multiplied by the education property tax grand list value of the property,

properly classified as homestead or nonresidential property and without regard to any other tax classification of the property. Tax bills shall show the tax due and the calculation of the rate determined under subsection (a) of this section, divided by the municipality's most recent common level of appraisal, multiplied by the current grand list value of the property to be taxed. ~~Each homestead property tax bill shall include a copy of the document entitled "About Your 20XX Taxes "The more you spend the more you pay", updated annually for each town by the commissioner of taxes.~~

* * * Declaration of Homestead * * *

Sec. H.19. 32 V.S.A. § 5410 is amended to read:

§ 5410. DECLARATION OF HOMESTEAD

(a) A homestead owner shall declare ownership of a homestead for purposes of education property tax.

(b) Annually on or before the due date for filing the Vermont income tax return, without extension, each homestead owner shall, on a form prescribed by the commissioner, which shall be verified under the pains and penalties of perjury, declare his or her homestead, if any, as of, or expected to be as of, April 1 of the year in which the declaration is made for property that was acquired by the declarant or was made the declarant's homestead during the previous year. The declaration of homestead shall remain in effect until the earlier of:

- (1) the transfer of title of all or any portion of the homestead; or
- (2) that time that the property ceases to qualify as a homestead.

(c) In the event that an unsigned but otherwise completed homestead declaration is filed at the same time as the declarant's signed state income tax return, the commissioner may treat such declaration as signed by the declarant.

* * * Unrelated Business Income of Nonprofit Corporations * * *

Sec. H.20. 32 V.S.A. § 5811(3) is amended to read:

(3) "Corporation" means any business entity subject to income taxation as a corporation, and any entity qualified as a small business corporation, under the laws of the United States, with the exception of the following entities which are exempt from taxation under this chapter:

(A) ~~Railroad and insurance, surety and guaranty companies, mutual or otherwise~~ that are taxed under chapter 211 of this title;

(B) ~~Life, fire and marine insurance companies and mutual life, fire and marine insurance companies;~~

~~(C) Farmers' or other mutual hail, cyclone, fire or life insurance companies, mutual water, mutual or cooperative telephone companies or similar organizations of a purely local character, the income of which companies consists solely of assessments, dues and fees collected from the members for the sole purpose of meeting the expenses of the company;~~

~~(D) Farmers', fruit growers', or like associations organized and operated on a cooperative basis:~~

~~(i) for the purpose of processing, preparing for market, handling or marketing the farm products of members or other producers and turning back to them the proceeds of sales, less the necessary marketing, handling and processing expenses, on the basis of either quantity or the value of the products furnished by them;~~

~~(ii) for the purpose of purchasing supplies and equipment for the use of the members and other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses; or~~

~~(iii) for the purpose of processing, preparing for market, or marketing handcraft products as defined in section 991 of Title 11 of members or other producers and turning back to them the proceeds of sales, less the necessary marketing, handling and processing expenses;~~

~~(E) Credit unions organized under chapter 71 of Title 8 and federal credit unions;~~

~~(F)(C) Nonprofit hospital service corporations organized under chapter 123 of Title 8;~~

~~(G)(D) Nonprofit medical service corporations organized under chapter 125 of Title 8;~~

~~(H) Free public library corporations organized under chapter 3 of Title 22;~~

~~(I) Cemetery corporations and associations, labor, agricultural or horticultural organizations, fraternal beneficiary societies, no part of the net earnings of which inures to any member or stockholder;~~

~~(J) Sanitary corporations and corporations organized for religious, charitable, scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual member;~~

~~(K) Business organizations, chambers of commerce or boards of trade and area development organizations not organized for profit, no part of~~

~~the net earnings of which inures to the benefit of any private stockholder or individual member;~~

~~(L) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare;~~

~~(M) Clubs organized and operated exclusively for pleasure and recreation and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual member; or~~

~~(N) Any political organization which is exempt from or does not owe any federal income taxes as provided in the federal internal revenue code.~~

Sec. H.21. 32 V.S.A. § 5811(18) is amended to read:

(18) “Vermont net income” means, for any taxable year and for any corporate taxpayer:

* * *

(D) For a corporation with federal exempt status, “Vermont net income” means all income that is subject to federal income tax, including unrelated business income under Section 511 of the Internal Revenue Code and any income arising from debt-financed property subject to taxation under Section 514 of the Internal Revenue Code.

* * * Annual Update of Links to Federal Law * * *

Sec. H.22. 32 V.S.A. § 5824 is amended to read:

§ 5824. ADOPTION OF FEDERAL INCOME TAX LAWS

The statutes of the United States relating to the federal income tax, as in effect for taxable year ~~2007~~ 2008, but without regard to federal income tax rates under Section 1 of the Internal Revenue Code, are hereby adopted for the purpose of computing the tax liability under this chapter.

* * * Digital Business Entities * * *

Sec. H.23. LEGISLATIVE INTENT

The purpose of the following sections of this act concerning digital business entities is to build on the momentum created by Secs. 74 through 100 of No. 190 of the Acts of the 2007 Adj. Sess. (2008), which provided for Vermont companies to conduct much of their statutorily required corporate affairs using electronic media, including e-mail, facsimile, and web-based filings.

Sec. H.24. 32 V.S.A. § 5811(26) is added to read:

(26) “Digital business entity” means a business entity which, during the entire taxable year:

(A) was not a member of an affiliated group or engaged in a unitary business with one or more members of an affiliated group that is subject to Vermont income taxation; did not have any Vermont property, payroll, or sales and did not perform any activities in this state which would constitute doing business for purposes of income taxation except activities described in subdivisions (15)(C)(i) (fulfillment operations) and (C)(ii) (web page or Internet site maintenance) of this section; and

(B) used mainly computer, electronic, and telecommunications technologies in its formation and in the conduct of its business meetings, in its interaction with shareholders, members, and partners, in executing any other formal requirements.

Sec. H.25. 32 V.S.A. § 5832(2) is amended to read:

(2)(A) \$75.00 for small farm corporations. “Small farm corporation” means any corporation organized for the purpose of farming, which during the taxable year is owned solely by active participants in that farm business and receives less than \$100,000.00 gross receipts from that farm operation, exclusive of any income from forest crops; or

(B) An amount determined in accordance with section 5832a of this title for a corporation which qualifies as and has elected to be taxed as a digital business entity for the taxable year; or

(C) \$250.00 for all other corporations.

Sec. H.26. 32 V.S.A. § 5911 is amended to read:

§ 5911. TAXATION OF AN S CORPORATION AND ITS SHAREHOLDERS

(a) An S corporation shall not be subject to the tax imposed by section 5832 of this title, except to the extent of income taxable to the corporation under the provisions of the Internal Revenue Code.

(b) For the purposes of section 5823 of this title, each shareholder’s pro rata share of the S corporation’s income attributable to Vermont and each resident shareholder’s pro rata share of the S corporation’s income not attributable to Vermont shall be taken into account by the shareholder in the manner provided in Section 1366 of the Code.

(c) An S corporation and its shareholders shall not be subject to the tax imposed by section 5832 of this title or to the provisions of this subchapter if the S corporation qualifies as and elects to be taxed as a digital business for the taxable year; but such corporation shall be subject to the reporting

requirements of this chapter, and its shareholders shall file a report of income received from such S corporation during the taxable year with the commissioner at the same time as returns are due under section 5861 of this chapter.

Sec. H.27. 32 V.S.A. § 5921a is added to read:

§ 5921a. DIGITAL BUSINESS ENTITY ELECTION

A partnership or limited liability company and its partners or members shall not be subject to the tax imposed by section 5832 of this title or to provisions of this subchapter if the partnership or company qualifies as and elects to be taxed as a digital business entity for the taxable year; but such partnership shall be subject to the reporting requirements of this chapter, and its partners shall file a report of income received from such partnership during the taxable year with the commissioner at the same time as returns are due under section 5861 of this chapter.

Sec. H.28. 32 V.S.A. § 5832a is added to read:

§ 5832a. DIGITAL BUSINESS ENTITY FRANCHISE TAX

(a) There is imposed upon every business entity which qualifies as and has elected to be taxed as a digital business entity an annual franchise tax equal to:

(1) the greater of 0.02 percent of the current value of the tangible and intangible assets of the company or \$250.00, but in no case more than \$500,000.00; or

(2) where the authorized capital stock does not exceed 5,000 shares, \$250.00; where the authorized capital stock exceeds 5,000 shares but is not more than 10,000 shares, \$500.00; and the further sum of \$250.00 on each 10,000 shares or part thereof.

(b) In no case shall the tax on any corporation for a full taxable year, whether computed under subdivision (a)(1) or (2) of this section, be more than \$500,000.00 or less than \$250.00.

(c) In the case of a corporation that has not been in existence during the whole year, the amount of tax due, at the foregoing rates and as provided, shall be prorated for the portion of the year during which the corporation was in existence.

(d) In the case of a corporation changing during the taxable year the amount of its authorized capital stock, the total annual franchise tax payable at the foregoing rates shall be arrived at by adding together the franchise taxes calculated pursuant to subdivision (a)(2) of this section as prorated for the

several periods of the year during which each distinct authorized amount of capital stock was in effect.

(e) For the purpose of computing the taxes imposed by this section, the authorized capital stock of a corporation shall be considered to be the total number of shares that the corporation is authorized to issue without regard to whether the number of shares that may be outstanding at any one time is limited to a lesser number.

(f) The franchise tax under this section shall be reported and paid in the same manner as the tax under subdivision 5832(2)(B) of this title; provided, however, that an electing corporation shall report its income to the commissioner as provided in section 5862 of this chapter.

* * * Trustee Process * * *

Sec. H.29. 32 V.S.A. § 5892 is amended to read:

§ 5892. ACTION TO COLLECT TAXES; LIMITATIONS

(a) Action may be brought by the attorney general of the state at the instance of the commissioner in the name of the state to recover the amount of the tax liability of any taxpayer, if the action is brought within six years after the date the tax liability was collectible under section 5886 of this title. The action shall be returnable in the county where the taxpayer resides or has a place of business, and if the taxpayer neither resides nor has a place of business in this state, the action shall be returnable in Washington ~~county~~ County.

(b) Notwithstanding sections 3167 and 3168 of Title 12, a motion may be brought by the attorney general of the state at the instance of the commissioner in the name of the state for issuance of trustee process at the same time as an action is brought under subsection (a) of this section, and, if judgment is granted in that action, the court may proceed immediately to hear and render a decision on the trustee process.

* * * Property Tax Adjustments * * *

Sec. H.30. 32 V.S.A. § 6067 is amended to read:

§ 6067. CREDIT LIMITATIONS

Only one individual per household per taxable year shall be entitled to a benefit under this chapter. An individual who received a homestead exemption or adjustment with respect to property taxes assessed by another state for the taxable year shall not be entitled to receive an adjustment under this chapter. No taxpayer shall receive total adjustments under this chapter in excess of ~~\$8,000.00~~ \$10,000.00 related to any one property tax year.

Sec. H.31. 32 V.S.A. § 6066a is amended to read:

§ 6066a. DETERMINATION OF PROPERTY TAX ADJUSTMENTS

* * *

(c) The commissioner shall notify the municipality of any claim and refund amounts unresolved by September 15 at the time of final resolution, including adjudication if any; provided, however, that towns will not be notified of any additional adjustment amounts after ~~December 31~~ September 15 of the claim year, and such amounts shall be paid to the claimant by the commissioner.

* * *

(f) Property tax bills.

* * *

(4) If the property tax adjustment amount as described in subsection ~~(b)~~(e) of this section exceeds the property tax, penalties and interest, due for the current and all prior years, the municipality shall refund the excess to the taxpayer, without interest, within 20 days of the first date upon which taxes become due and payable or 20 days after notification by the commissioner of education, whichever is later.

* * *

* * * Estate Tax * * *

Sec. H.32. 32 V.S.A. § 7442a is amended to read:

§ 7442a. IMPOSITION OF A VERMONT ESTATE TAX AND RATE OF TAX

(a) A tax is hereby imposed on the transfer of the Vermont estate of every decedent dying on or after January 1, 2002, who, at the time of death, was a resident of this state. The base amount of this tax shall be a sum equal to the amount ~~by which~~ of the credit for state death taxes allowable to a decedent's estate under Section 2011, ~~as in effect on January 1, 2001, of the Internal Revenue Code, hereinafter sometimes referred to as the "credit," exceeds the lesser of as in effect on January 1, 2001. This base amount shall be reduced by the lesser of the following:~~

(1) The total amount of all constitutionally valid state death taxes actually paid to other states; or

(2) A sum equal to the proportion of the credit which the value of the property taxed by other states bears to the value of the decedent's total gross estate for federal estate tax purposes.

(b) A tax is hereby imposed on the transfer of the Vermont estate of every decedent dying on or after January 1, 2002, who, at the time of death, was not a resident of this state. The amount of this tax shall be a sum equal to the proportion of the ~~credit~~ base amount of tax under subsection (a) of this section which the value of Vermont real and tangible personal property taxed in this state bears to the value of the decedent's total gross estate for federal estate tax purposes.

(c) The Vermont estate tax shall not exceed the amount of the tax imposed by Section 2001 of the Internal Revenue Service Code calculated using the applicable credit amount under Section 2010 as in effect on January 1, 2008, with no deduction under Section 2058.

(d) All values shall be as finally determined for federal estate tax purposes.

Sec. H.33. 32 V.S.A. § 7444 is amended to read:

§ 7444. RETURN BY EXECUTOR

In all cases where ~~the federal gross estate at the time of the death of the decedent exceeds the applicable federal exclusion amount or where the estate is subject to federal estate tax~~ a tax is imposed upon the estate under section 7442a of this chapter, the executor shall make a return with respect to the estate tax imposed by this chapter. If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he or she shall include in his or her return (to the extent of his or her knowledge or information) a description of such part and the name of every person holding a legal or beneficial interest therein. Upon notice from the commissioner such person shall in like manner make a return as to such part of the gross estate. A return made by one of two or more joint fiduciaries shall be sufficient compliance with the requirements of this section. A return made pursuant to this section shall contain a statement that the return is, to the best of the knowledge and belief of the fiduciary, true and correct.

Sec. H.34. 32 V.S.A. § 7445 is amended to read:

§ 7445. COPIES OF FEDERAL ESTATE TAX RETURNS TO BE FILED

It shall be the duty of the executor of every person who may die a resident of Vermont or a nonresident with real estate or tangible personal property having an actual situs in Vermont to file with the commissioner a duplicate of all federal estate tax returns which he or she is required to make to the federal authorities, or, if no federal estate tax return is required, a pro forma federal estate tax return for the estate of a decedent with a Vermont estate tax liability shall be filed with the commissioner.

Sec. H.35. 32 V.S.A. § 7446 is amended to read:

§ 7446. WHEN RETURNS TO BE FILED

The estate tax return required under section 7444 of this title shall be filed ~~at the time the federal estate tax return is required to be filed under the laws of the United States, including any extensions of time for filing granted by the federal authorities within nine months of the death of the decedent. Prior to expiration of the filing period, executors may apply for a six-month extension.~~

Sec. H.36. 32 V.S.A. § 7475 is amended to read:

§ 7475. ADOPTION OF FEDERAL ESTATE AND GIFT TAX LAWS

The laws of the United States, relating to federal estate and gift taxes as in effect on January 1, ~~2008~~ 2009, are hereby adopted for the purpose of computing the tax liability under this chapter, except:

(1) ~~with~~ the credit for state death taxes shall remain as provided for under ~~Section~~ Sections 2011 and 2604 of the Internal Revenue Code as in effect on January 1, 2001;

(2) the applicable credit amount shall remain as provided for under section 2010 of the Internal Revenue Code, as in effect on January 1, 2008; and

(3) ~~without any~~ the deduction for state death taxes under Section 2058 of the Internal Revenue Code shall not apply.

* * * Tobacco Tax * * *

Sec. H.37a. 32 V.S.A. § 7702 is amended to read:

§ 7702. DEFINITIONS

The following words and phrases, as used in this chapter, shall have the following meanings, unless the context otherwise requires:

* * *

(13) “Moist snuff” means any finely cut, ground, or powdered tobacco that is not intended to be smoked, has a moisture content of no less than 45 percent, and is not offered in individual single-dose tablets or other discrete single-use units.

* * *

(15) “Tobacco products” means ~~eigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff, snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweeping of~~

~~tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking~~ any product manufactured from, derived from, or containing tobacco that is intended for human consumption by smoking, chewing, or in any other manner; but shall not include cigarettes, little cigars, roll-your-own tobacco, moist snuff, or new smokeless tobacco as defined in this section.

* * *

(20) “New smokeless tobacco” means any tobacco product manufactured from, derived from, or containing tobacco that is not intended to be smoked, has a moisture content of less than 45 percent, or is offered in individual single-dose tablets or other discrete single-use units.

Sec. H.37b. 32 V.S.A. § 7771(c) is amended to read:

(c) The tax imposed under this section shall be at the rate of ~~89.5~~ 112 mills per cigarette or little cigar and for each 0.09 ounces of roll-your-own tobacco. The interest and penalty provisions of section 3202 of this title shall apply to liabilities under this section.

Sec. H.37c. 32 V.S.A. § 7811 is amended to read:

§ 7811. IMPOSITION OF TOBACCO PRODUCTS TAX

There is hereby imposed and shall be paid a tax on all tobacco products except roll-your-own tobacco and little cigars taxed under section 7771 of this title possessed in the state of Vermont by any person for sale on and after July 1, 1959 which were imported into the state or manufactured in the state after said date, except that no tax shall be imposed on tobacco products sold under such circumstances that this state is without power to impose such tax, or sold to the United States, or sold to or by a voluntary unincorporated organization of the armed forces of the United States operating a place for the sale of goods pursuant to regulations promulgated by the appropriate executive agency of the United States. ~~Such tax on is intended to be imposed only once upon the wholesale sale of any tobacco products product and~~ shall be at the rate of 44 ~~92~~ percent of the wholesale price for all tobacco products except moist snuff, which shall be taxed at \$1.66 per ounce, or fractional part thereof, and is intended to be imposed only once upon any tobacco product and new smokeless tobacco, which shall be taxed at the greater of \$1.66 per ounce or, if packaged for sale to a consumer in a package that contains less than 1.2 ounces of the new smokeless tobacco, at the rate of \$1.99 per package. Provided, however, that upon payment of the tax within 10 days, the distributor or dealer may deduct from the tax two percent of the tax due. It shall be presumed that all tobacco products within the state are subject to tax until the contrary is

established and the burden of proof that any tobacco products are not taxable hereunder shall be upon the person in possession thereof. Wholesalers of tobacco products shall state on the invoice whether the price includes the Vermont tobacco products tax.

Sec. H.38. 32 V.S.A. § 7814 is amended to read:

§ 7814. FLOOR STOCK TAX

* * *

(b) Cigarettes, little cigars, or roll-your-own tobacco. Notwithstanding the prohibition against further tax on stamped cigarettes, little cigars, or roll-your-own tobacco under section 7771 of this title, a floor stock tax is hereby imposed upon every dealer of cigarettes, little cigars, or roll-your-own tobacco in this state who is either a wholesaler, or a retailer who at 12:01 a.m. ~~on July 1, 2006~~ following enactment of this act, has more than 10,000 cigarettes or little cigars or who has \$500.00 or more of wholesale value of roll-your-own tobacco, for retail sale in his or her possession or control. The amount of the tax shall be the amount by which the new tax exceeds the amount of the tax already paid for each cigarette, little cigar, or roll-your-own tobacco in the possession or control of the wholesaler or retailer at 12:01 a.m. ~~on July 1, 2006~~ following enactment of this act, and on which cigarette stamps have been affixed before July 1, ~~2006~~ following enactment of this act. A floor stock tax is also imposed on each Vermont cigarette stamp in the possession or control of the wholesaler at 12:01 a.m. ~~on July 1, 2006~~ following enactment of this act, and not yet affixed to a cigarette package, and the tax shall be at the rate of ~~\$0.60~~ \$0.24 per stamp. Each wholesaler and retailer subject to the tax shall, on or before July 25, ~~2006~~ following enactment of this act, file a report to the commissioner in such form as the commissioner may prescribe showing the cigarettes, little cigars, or roll-your-own tobacco and stamps on hand at 12:01 a.m. ~~on July 1, 2006~~ following enactment of this act, and the amount of tax due thereon. The tax imposed by this section shall be due and payable on or before August 25, ~~2006~~ following enactment of this act, and thereafter shall bear interest at the rate established under section 3108 of this title. In case of timely payment of the tax, the wholesaler or retailer may deduct from the tax due two and three-tenths of one percent of the tax. Any cigarettes, little cigars, or roll-your-own tobacco with respect to which a floor stock tax has been imposed under this section shall not again be subject to tax under section 7771 of this title.

* * * Electronic Filing of Property Transfer Tax * * *

Sec. H.39. DEVELOPMENT OF ELECTRONIC SYSTEM FOR FILING AND PAYING PROPERTY TRANSFER TAXES

No later than August 1, 2009, the department of taxes shall file with the joint fiscal committee an implementation plan for the electronic filing of property transfer tax returns and the electronic payment of property transfer taxes.

* * *

* * * Sales and Use Tax on Digital Downloads * * *

Sec. H.40. 32 V.S.A. § 9701(45), (46), and (47) are added to read:

(45) Transferred electronically: means obtained by the purchaser by means other than tangible storage media.

(46) Specified digital products: means digital audio-visual works, digital audio works, digital books, or ringtones that are transferred electronically.

(A) Digital audio-visual works: means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any;

(B) Digital audio works: means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones;

(C) Digital books: means works that are generally recognized in the ordinary and usual sense as “books.”

(D) Ringtones: means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication.

(47) End user: means any person other than a person who received by contract a product transferred electronically for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution, or exhibition of the product, in whole or in part, to another person or persons.

* * *

Sec. H.41. 32 V.S.A. § 9771 is amended to read:

§ 9771. IMPOSITION OF SALES TAX

Except as otherwise provided in this chapter, there is imposed a tax on retail sales in this state. The tax shall be paid at the rate of six percent of the sales price charged for, but in no case shall any one transaction be taxed under more than one of, the following:

* * *

(8) Specified digital products transferred electronically to an end user.

Sec. H.41a. 32 V.S.A. § 9772 is amended to read:

§ 9772. AMOUNT OF TAX TO BE COLLECTED

(a) For the purpose of adding and collecting the tax imposed by this chapter, or an amount equal as nearly as possible or practicable to the average equivalent thereof, to be reimbursed to the vendor by the purchaser, the vendor shall ~~use either the calculation in subdivision (1) of this subsection or the formula in subdivision (2). The tax required to be remitted shall be the rate specified in section 9771 of this title multiplied by the total sales price of all the taxable transactions; provided, however, the tax required to be remitted shall be no more than the amount required to be collected. The vendor shall be entitled to retain any amount lawfully collected by the person in excess of the tax imposed by this chapter.~~

~~(1) The multiply the~~ total sales price of all the ~~transaction multiplied transactions taxable~~ by the rate specified in section 9771 of this title carried to the third decimal place and rounded up to the nearest whole cent if the third decimal point is greater than four and rounded down to the nearest whole cent if the third decimal point is four or less. The tax may be computed on either the total invoice amount or on each taxable item.

Amount of Sale	Amount of Tax
\$0.01-0.10	No Tax
0.11-0.16	\$.01
0.17-0.33	.02
0.34-0.50	.03
0.51-0.66	.04
0.67-0.83	.05
0.84-1.00	.06

~~In addition to a tax of \$0.06 on each full dollar, a tax shall be collected on each part of a dollar in excess of a full dollar in accordance with the following formula:~~

\$ 0.01-0.16	\$.01
0.17-0.33	.02
0.34-0.50	.03
0.51-0.66	.04
0.67-0.83	.05
0.84-0.99	.06

* * *

Sec. H.42. 32 V.S.A. § 9773 is amended to read:

§ 9773. IMPOSITION OF COMPENSATING USE TAX

Unless property has already been or will be subject to the sales tax under this chapter, there is imposed on every person a use tax at the rate of six percent for the use within this state, except as otherwise exempted under this chapter:

* * *

(2) Of any tangible personal property manufactured, processed or assembled by the user, if items of the same kind of tangible personal property are offered for sale by him or her in the regular course of business, but the mere storage, keeping, retention or withdrawal from storage of tangible personal property or the use for demonstrational or instructional purposes of tangible personal property by the person who manufactured, processed or assembled such property shall not be deemed a taxable use by him or her; and for purposes of this section only, the sale of electrical power generated by the taxpayer shall not be considered a sale by him or her in the regular course of business if at least 60 percent of the electrical power generated annually by the taxpayer is used by the taxpayer in his or her trade or business; ~~and~~

(3) Of any tangible personal property, however acquired, where not acquired for purposes of resale, upon which any taxable services described in subdivision 9771(3) of this title have been performed; and

(4) Specified digital products transferred electronically to an end user.

* * * Sales Tax on Clothing Costing \$110.00 or More * * *

Sec. H.42a. 32 V.S.A. § 9741(45) is amended to read:

(45) ~~Clothing~~ Each article of clothing with a purchase price of \$110.00 or less; but clothing shall not include clothing accessories or equipment, protective equipment, or sport or recreational equipment.

* * * Returns Upon Business Closing * * *

Sec. H.43. 32 V.S.A. § 9775 is amended to read:

§ 9775. RETURNS

(a) Except as otherwise provided in this section, every person required to collect or pay tax under this chapter shall, where the sales and use tax liability under this chapter for the immediately preceding calendar year has been (or would have been in cases when the business was not operating for the entire year) \$500.00 or less, pay the tax imposed by this chapter in one annual

payment on or before the 25th day of January of each year. Every person required to collect or pay tax under this chapter shall, where the sales and use tax liability under this chapter for the immediately preceding calendar year has been (or would have been in cases when the business was not operating for the entire year) more than \$500.00 but less than \$2,500.00, pay the tax imposed by this chapter in quarterly installments on or before the 25th day of the calendar month succeeding the quarter ending on the last day of March, June, September, and December of each year. In all other cases, except as provided in ~~subsection~~ subsections (e) and (g) of this section, the tax imposed by this chapter shall be due and payable monthly on or before the 25th (23rd of February) day of the month following the month for which the tax is due. Payment by electronic funds transfer does not affect the requirement to file returns. The return of a vendor of tangible personal property shall show such information as the commissioner may require.

* * *

(g) A person required to report sales and use tax annually who cancels his, her, or its sales and use tax account shall file a final return not later than 60 days after such cancellation.

* * * Land Gains Tax * * *

Sec. H.44. 32 V.S.A. § 10009(b) is amended to read:

(b) All the administrative provisions of chapter 151 of this title, including those relating to the collection and enforcement by the commissioner of the withholding tax and the income tax, and of chapter 103, including those relating to interest and penalty charges, shall apply to the tax imposed by this chapter.

* * * Education Property Tax Rates * * *

Sec. H.45. FISCAL YEAR 2010 EDUCATION PROPERTY TAX RATE REDUCTION

(a) For fiscal year 2010 only, the education property tax imposed under subsection 5402(a) of Title 32 shall be reduced from the rate of \$1.59 and \$1.10 and shall instead be at the following rates:

(1) the tax rate for nonresidential property shall be \$1.34 per \$100.00; and

(2) the tax rate for homestead property shall be \$0.85 multiplied by the district spending adjustment for the municipality, per \$100.00 of equalized property value as most recently determined under section 5405 of Title 32.

(b) For claims filed in 2010 only, “applicable percentage” in subdivision 6066(a)(2) of Title 32 shall be reduced from 2.0 percent and instead shall be 1.80 percent multiplied by the fiscal year 2010 district spending adjustment for the municipality in which the homestead residence is located; but in no event shall the applicable percentage be less than 1.80 percent.

* * * VHFA: Moral Obligation for Pledged Equity Funds * * *

Sec. H.46. 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. H.47. 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. H.48. REPEAL

10 V.S.A. § 632 (authorizing the Vermont housing and finance agency to establish reserve funds) is repealed.

Sec. H.49. 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 their issuance; 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 provided in this section 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 of 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 provided in this section 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 pledged such 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 provided in this section 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 that 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 fund a 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 required by this section, 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 fund a 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 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 fund to the amount required by this section or to otherwise satisfy the state's commitment with respect to each 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. H.50. SAVINGS CLAUSE

Nothing in Sec. 49 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.

* * * Tax on Spirituous Liquor * * *

Sec. H.51. 7. V.S.A. § 422 is amended to read:

§ 422. TAX ON SPIRITUOUS LIQUOR

A tax of ~~25~~ 35 percent of the gross revenues is hereby assessed on the sale of spirituous liquor as defined in section 2 of this title other than fortified wine, sold by or through the liquor control board in accordance with the provisions of this title. A tax of ~~25~~ 35 percent of the gross revenues is hereby assessed on the sale of fortified wine so sold.

Sec. H.52. [Deleted]

Sec. H.53. [Deleted]

* * * Capital Gains Tax Exemption * * *

Sec. H.54. 32 V.S.A. § 5811(21) is amended to read:

(21) "Taxable income" means federal taxable income determined without regard to Section 168(k) of the Internal Revenue Code and:

* * *

(B) Decreased by the following items of income (to the extent such income is included in federal adjusted gross income):

(i) income from United States government obligations; and

(ii) the first \$5,000.00 of adjusted net capital gain income as defined in Section 1(h) of the Internal Revenue Code ~~40 percent of adjusted net capital gain income as defined in Section 1(h) of the Internal Revenue Code, but the total amount of decrease under this subdivision (ii) shall not exceed 40 percent of federal taxable income.~~

Sec. H.54a. SUNSET

The following sections of this bill shall expire on June 30, 2012:

(1) Sec. H.37b (increase in tax on cigarettes);

(2) Sec. H.37c (increase in tax on other tobacco products from 41 percent to 92 percent); but the other provisions of this section, relating to the tax on moist snuff and new smokeless tobacco, shall not expire;

(3) Sec. H.42a (sales and use tax on clothing costing more than \$110.00);

(4) Sec. H.51 (increase in tax on spirituous liquor); and

(5) Sec. H.54 (gross receipts tax on satellite television programming providers).

* * * Reduction of Income Tax Rates * * *

Sec. H.55. REDUCTION OF PERSONAL INCOME TAX RATES

For taxable year 2009 and subsequent taxable years, income tax rates under 32 V.S.A. § 5822, after taking into account any inflation adjustments to taxable income as required under subdivision 5822(b)(2), shall be as follows:

For taxable income which, without this amendment, would be subject to tax at the following rate:

That taxable income shall instead be taxed at the following rate:

<u>3.60%</u>	<u>3.50%</u>
<u>7.20%</u>	<u>7.10%</u>
<u>8.50%</u>	<u>8.25%</u>
<u>9.00%</u>	<u>8.75%</u>
<u>9.50%</u>	<u>8.95%</u>

* * * Satellite Television Tax * * *

Sec. H.56. 32 V.S.A. chapter 242 is added to read:

CHAPTER 242. TAX ON SATELLITE TELEVISION PROGRAMMING

Subchapter 1. General Provisions

§ 10401. DEFINITIONS

Unless otherwise provided, the following terms when used in this chapter have the following definitions:

(1) “Distributor” means any person engaged in the business of making satellite programming available for purchase by subscribers.

(2) “Satellite programming” means radio and television audio and video programming services distributed or broadcast by satellite directly to the subscriber’s receiving equipment.

§ 10402. GENERAL POWERS OF THE COMMISSIONER

In addition to other powers granted in this chapter, the commissioner may:

(1) Prescribe methods for determining the amount of gross receipts subject to tax.

(2) Require any person required to pay the tax imposed under this chapter to keep detailed records of all receipts received, charged, or accrued, including those claimed to be nontaxable, and of other facts relevant in determining the amount of tax due and to furnish that information upon request to the commissioner.

§ 10403. LIABILITY FOR TAX

Every distributor required by this chapter to pay the tax imposed by this chapter shall be personally and individually liable for the amount of such tax together with such interest and penalty as has accrued under the provisions of section 3202 of this title; and if the distributor is a corporation or other entity, the personal liability shall extend and be applicable to any officer or agent of the corporation or entity who as an officer or agent of the same is under a duty to collect the tax and transmit it to the commissioner as required in this chapter.

§ 10404. RECORDS TO BE KEPT

Every person required to collect any tax imposed by this chapter shall keep records of its gross receipts and of the tax payable thereon in such form as the commissioner may by regulation require. The records shall be available for inspection and examination at any time upon demand by the commissioner or his or her duly authorized agent or employee and shall be preserved for a period of three years, except that the commissioner may consent to their destruction within that period or may require that they be kept longer.

Subchapter 2. Exemptions§ 10441. TRANSACTIONS NOT COVERED

This chapter shall not cover the following transactions:

(1) Transactions that are not within the taxing power of this state under the Constitution of the United States.

(2) The provision of satellite programming to a person for resale in the ordinary course of business.

Subchapter 3. Imposition, Rate, and Payment of Tax§ 10471. IMPOSITION OF TAX

Except as otherwise provided in this chapter, there is imposed a tax on the provision of satellite programming to a subscriber located in this state. The tax shall be paid by the distributor at the rate of five percent of all gross receipts derived by the distributor from the provision of satellite programming to the subscribers within this state.

§ 10472. RETURNS

(a) Except as otherwise provided in this section, every distributor subject to taxation under section 10471 of this title shall file a return with the commissioner stating the gross receipts derived by the distributor during each calendar quarter on or before the 25th day of the calendar month following such calendar quarter.

(b) The commissioner may permit or require returns to be made covering other periods and upon such dates as he or she may specify. In addition, the commissioner may require payments of tax liability at the intervals and based upon the classifications as he or she may designate. In prescribing the other periods to be covered by the return or intervals or classifications for payment of tax liability, the commissioner may take into account the dollar volume of tax involved as well as the need for ensuring the prompt and orderly collection of the taxes imposed.

(c) The form of returns shall be prescribed by the commissioner and shall contain such information as he or she may deem necessary for the proper administration of this chapter. The commissioner may require returns and amended returns to be filed within 20 days after notice and to contain the information specified in the notice.

(d) Upon the failure of a taxpayer to file any return required under this chapter within 20 days of the date of a notice to the taxpayer under subsection (c) of this section, the commissioner may petition a judge of the superior court in the county wherein the taxpayer has a place of business or, if the taxpayer has no place of business in this state, the commissioner may petition the Washington superior court, and upon the petition of the commissioner and a hearing, the judge shall issue a citation requiring the taxpayer and, if the taxpayer is a corporation, any principal officer of such corporation to file a proper return in accordance with this chapter upon pain of contempt. The order of notice upon the petition shall be returnable not later than 20 days after the filing of the petition. The petition shall be heard and determined on the return day or on a day thereafter as the court shall fix, having regard to the speediest possible determination of the case consistent with the rights of the parties. The judgment shall include costs in favor of the prevailing party. The commissioner's authority to petition under this subsection is in addition to the commissioner's authority under subsection 10475(a) of this chapter to compute the tax liability of a taxpayer who fails to file a required return or files an incorrect or insufficient return.

§ 10473. PAYMENT OF TAX

Every person required to file a return under this chapter shall, at the time of filing the return, pay to the commissioner the tax imposed by this chapter. The commissioner may require payment by electronic funds transfer from any taxpayer who is required by federal tax law to pay any federal tax in that manner or from any taxpayer who has submitted to the tax department two or more protested or otherwise uncollectible checks with regard to any state tax payment in the prior two years. All the taxes for the period for which a return is required to be filed or for such lesser interval as shall have been designated by the commissioner shall be due and payable to the commissioner on the date limited for the filing of the return for that period or on the date limited for such lesser interval as the commissioner has designated, without regard to whether a return is filed or whether the return which is filed correctly shows the amount of gross receipts or the taxes due thereon.

§ 10474. DETERMINATION OF TAX OR PENALTY

(a) If a return required by this chapter is not filed or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the commissioner from any information available. Notice of the determination shall be given to the person liable for the payment of the tax. The determination shall finally and irrevocably fix the tax within 60 days after giving notice of the determination unless the person against whom it is assessed shall apply in writing to the commissioner for a hearing or unless the commissioner of his or her own motion shall redetermine the tax. After the hearing the commissioner shall give notice of his or her determination to the person against whom the tax is assessed.

(b) Notwithstanding the provisions of subsection (a) of this section, the commissioner, if he or she believes the collection from a taxpayer of any deficiency, penalty, or interest to be in jeopardy, may demand in writing that the taxpayer pay the deficiency, penalty, or interest forthwith. The demand may be made concurrently with or after the notice of deficiency or the assessment of penalty or interest given to the taxpayer under subsection (a) of this section. The amount of deficiency, penalty, or interest shall be collectible by the commissioner on the date of the demand unless the taxpayer files with the commissioner a bond in an amount equal to the deficiency, penalty, or interest sought to be collected as security for such amount as finally may be determined.

§ 10476. REFUNDS

(a) As provided in this section, the commissioner shall refund or credit any tax, penalty, or interest erroneously, illegally, or unconstitutionally paid if application to the commissioner for the refund shall be made within three years from the date the return was required to be filed; provided that the application is made within three years of the payment. The commissioner may, in lieu of any refund, allow credit on payments due from the applicant.

(b) A person shall not be entitled to a revision, refund, or credit under this section of a tax, interest, or penalty which had been determined to be due pursuant to the provisions of section 10474 of this title where he or she has had a hearing or an opportunity for a hearing as provided in that section or has failed to avail himself or herself of the remedies therein provided. No refund or credit shall be made of a tax, interest, or penalty paid after a determination by the commissioner made under section 10474 unless it is found that the determination was erroneous, illegal, or unconstitutional or otherwise improper pursuant to law, in which event refund or credit shall be made of the tax, interest, or penalty found to have been overpaid.

(c) If the commissioner determines on a petition for refund or otherwise that a taxpayer has paid an amount of tax under this chapter which, as of the

date of the determination, exceeds the amount of tax liability owing from the taxpayer to the state with respect to the current and all preceding taxable periods under any provision of this title, the commissioner shall forthwith refund the excess amount to the taxpayer together with interest at the rate per annum established from time to time by the commissioner pursuant to section 3108 of this title. That interest shall be computed from 45 days after the date the return was filed or from 45 days after the date the return was due, including any extensions of time thereto, with respect to which the excess payment was made, whichever is the later date.

Subchapter 4. Enforcement and Penalties

§ 10511. PROCEEDINGS TO RECOVER TAX

(a) Whenever any person required to pay a tax under this chapter shall fail to pay any tax, penalty, or interest imposed by this chapter, the attorney general shall, upon the request of the commissioner, enforce the payment thereof on behalf of the state in any court of the state or of any other state of the United States.

(b) As an additional or alternate remedy, the commissioner may issue a warrant, directed to the sheriff of any county commanding him or her to levy upon and sell the real and personal property of any person liable for the tax, which may be found within his or her county, for the payment of the amount thereof with any penalties and interest and the cost of executing the warrant and to return the warrant to the commissioner and to pay to him or her the money collected by virtue thereof within 60 days after the receipt of the warrant. The sheriff shall within five days after the receipt of the warrant file with the county clerk a copy thereof, and thereupon the clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax, penalties, and interest for which the warrant is issued and the date on which the copy is filed. Thereupon the amount of the warrant so docketed shall become a lien upon the title to and interest in real and personal property of the person against whom the warrant is issued. The sheriff shall then proceed upon the warrant in the same manner and with like effect as that provided by law in respect to executions issued against property upon judgments of a court of record, and, for services in executing the warrant, he or she shall be entitled to the same fees which he or she may collect in the same manner. If a warrant is returned not satisfied in full, the commissioner may from time to time issue new warrants and shall also have the same remedies to enforce the amount due as if the state had recovered judgment therefor and execution had been returned unsatisfied.

§ 10512. ACTIONS FOR COLLECTION OF TAX

Action may be brought by the attorney general at the instance of the commissioner in the name of the state to recover the amount of taxes, penalties, and interest due from a distributor, provided such action is brought within six years after the same are due. Such action shall be returnable in the county where the distributor has a place of business or, if the distributor has no place of business in this state, the action shall be returnable to Washington County. The limitation of six years in this section shall not apply to a suit to collect taxes, penalties, interest, and costs when the distributor filed a fraudulent return or failed to file a return when due.

§ 10513. PRESUMPTIONS AND BURDEN OF PROOF

(a) For the purpose of the proper administration of this chapter and to prevent evasion of the tax hereby imposed, it shall be presumed that all gross receipts from the provision of satellite programming are subject to tax until the contrary is established, and the burden of proving that any receipt or amusement charge is not taxable hereunder shall be upon the person required to collect tax.

(b) The certificate of the commissioner to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied under this chapter shall be presumptive evidence thereof.

§ 10514. CRIMINAL PENALTIES

(a) Failure to file; failure to remit. Any person who knowingly fails to file a return or fails to remit a tax required under this subchapter shall be imprisoned not more than three years or fined not more than \$10,000.00 or both.

(b) Any person who knowingly makes, signs, verifies, or files with the commissioner a false or fraudulent tax return shall be imprisoned not more than one year or fined not more than \$1,000.00 or both. Any person who with intent to evade a tax liability makes, signs, verifies, or files with the commissioner a false or fraudulent tax return shall, if the amount of tax evaded is in excess of \$500.00, be imprisoned not more than three years or fined not more than \$10,000.00 or both.

§ 10515. NOTICE AND LIMITATIONS OF TIME

(a) Any notice under this chapter may be given by mailing it to the person for whom it is intended in a postpaid envelope addressed to that person at the address given in the last return filed by him or her under this chapter or in any application made by him or her or, if no return has been filed or application made, then to any address obtainable. The mailing of the notice shall be presumptive evidence of its receipt by the person to whom it is addressed. Any

period of time which is determined under this chapter by the giving of notice shall commence to run from the date of mailing of the notice.

(b) The provisions of law relating to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the state or the commissioner to levy, appraise, assess, determine, or enforce the collection of any tax or penalty under this chapter. However, except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the later of the date of the filing of a return or the date a return is due; provided, however, that when no return has been filed as provided by law, the tax may be assessed at any time and further provided that where tax collected under this chapter has been underreported by 20 percent or more, such tax may be assessed at any time before the expiration of six years from the date of the filing of the return.

(c) When, before the expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer has consented in writing that the period be extended, the amount of the additional tax due may be determined at any time within the extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period. If a taxpayer has consented in writing to the extension of the period for assessment, the period for filing an application for credit or refund pursuant to section 10476 of this title shall not expire prior to six months after the expiration of the period within which an assessment may be made pursuant to the consent to extend the time for assessment of additional tax.

§ 10516. REVIEW OF COMMISSIONER'S DECISION

(a) Any aggrieved taxpayer may, within 30 days after any decision, order, finding, assessment, or action of the commissioner made under this chapter, appeal to the superior court. The appellant shall give security, approved by the commissioner, conditioned to pay the tax levied, if it remains unpaid, with interest and costs, as set forth in subsection (c) of this section.

(b) The appeal provided by this section shall be the exclusive remedy available to any taxpayer for review of a decision of the commissioner determining the liability of the taxpayer for the taxes imposed.

(c) Notwithstanding any restrictions on the assessment and collection of deficiencies, the commissioner may assess a deficiency after the expiration of the period specified in subsection (a) of this section, notwithstanding that a notice of appeal regarding the deficiency has been filed by the taxpayer unless the taxpayer, prior to the time the notice of appeal is filed, has paid the

deficiency, has deposited with the commissioner the amount of the deficiency, or has filed with the commissioner a bond, which may be a jeopardy bond, in the amount of the portion of the deficiency including interest and other amounts in respect of which review is sought and all costs and charges which may accrue against the taxpayer in the prosecution of the proceeding, including costs of all appeals, and with surety approved by the county court conditioned upon the payment of the deficiency including interest and other amounts as finally determined and all costs and charges. If, as a result of a waiver of the restrictions on the assessment and collection of a deficiency, any part of the amount determined by the commissioner is paid after the filing of the appeal bond, the bond shall, at the request of the taxpayer, be proportionately reduced.

§ 10517. LIENS

If any person required to pay a tax under this chapter neglects or refuses to pay the same after demand, the amount, together with all penalties and interest provided for in this chapter and together with any costs that may accrue in addition thereto, shall be a lien in favor of the state of Vermont upon all property and rights to property, whether real or personal, belonging to such person. Such lien shall arise at the time demand is made by the commissioner of taxes and shall continue until the liability for such sum with interest and costs is satisfied or becomes unenforceable. Such lien shall have the same force and effect as the lien for taxes under chapter 151 of this title as provided in section 5895 of this title, and notice of such lien shall be recorded as is provided in that section. Certificates of release of such lien shall also be given by the commissioner as in the case of the aforesaid tax liens.

* * * Limitation on Use Value Property Tax Reduction * * *

Sec. H.57. 32 V.S.A. § 3764 is added to read:

§ 3764. LIMITATION ON USE VALUE PROPERTY TAX REDUCTION

Notwithstanding any other provision of law, if the per-acre fair market value of the total enrolled acres in any one parcel exceeds \$4,000.00, then the owner shall, in addition to the tax otherwise paid on the use value of the parcel, pay municipal and education property taxes on the amount per acre in excess of \$4,000.00, subject to any property tax adjustment available to the owner under chapter 154 of this title; and the payment to any municipality under section 3760 of this chapter shall be adjusted accordingly.

Sec. H.57a. HEALTH CARE REFORM PROPERTY TAX EXEMPTION

In fiscal years 2010 and 2011, the following two properties shall be exempt from education property tax under chapter 135 of Title 32: Buildings and land owned and occupied by a health, recreation, and fitness organization which is exempt under Section 501(c)(3) of the Internal Revenue Code, the income of

which is entirely used for its exempt purpose, one of which is designated by the Springfield Hospital and the other designated by the North Country Hospital, to promote exercise and healthy lifestyles for the community and to serve citizens of all income levels in this mission. This exemption shall apply notwithstanding the provisions of subdivision 3832(7) of Title 32.

Sec. H.58. EFFECTIVE DATES

The provisions contained in Section H of this act shall take effect upon passage, except:

(1) Sec. H.17 (establishing an ad hoc board of civil authority for unorganized towns and gores and unified towns and gores) shall apply to appeals filed on or after July 1, 2009.

(2) Sec. H.18 (repealing tax information insert) shall apply to homestead property tax bills mailed in 2009 and after.

(3) Sec. H.19 (homestead declaration) shall apply to homestead declarations filed for tax year 2008 and after.

(4) Secs. H.20 and H.21 (taxation of unrelated business income of nonprofit corporations) shall take effect for taxable years beginning on and after January 1, 2010.

(5) Sec. H.22 (update of link to federal income tax laws) shall apply to taxable years beginning on and after January 1, 2008.

(6) Secs. H.24–28a (digital business entities) shall take effect on January 1, 2010.

(7) Sec. H.30 (income sensitivity adjustment limit) shall apply to income sensitivity adjustments made in 2009 and after.

(8) Sec. H.31 (deadline for notice from department to towns regarding adjustment amounts) shall apply to homestead declarations filed in 2009 and after.

(9) Secs. H.32–36 (estate taxes) shall apply to estates of individuals dying on or after January 1, 2009.

(10) Secs. H.37–38 (tobacco tax) shall take effect July 1, 2009.

(11) Secs. H.40–42 (sales and use tax on digital downloads) shall take effect on July 1, 2009.

(12) Sec. H.43 (cancellation of sales and use tax account) shall take effect with respect to cancellations on or after July 1, 2009.

(13) Sec. H.51 (tax on spirituous liquor) shall take effect on July 1, 2009.

(14) [Deleted]

(15) Sec. H.54 (capital gains exemption) shall take effect for taxable years beginning on or after January 1, 2009.

(16) Sec. H.56 (satellite television tax) shall take effect on July 1, 2009.

(17) Sec. H.57 (limitation on use value property tax reduction) shall apply to property tax bills issued in calendar 2010 and thereafter.

Pending the question, Will the House concur in the Senate proposal of amendment? **Rep. Heath of Westford** moved that the House refuse to concur and ask for a Committee of Conference, which was agreed to, and the Speaker appointed as members of the Committee of Conference on the part of the House:

REP. Heath of Westford

REP. Larson of Burlington

REP. Morley of Barton

On motion of **Rep. Leriche of Hardwick**, the rules were suspended and the bill was ordered messaged to the Senate forthwith.

**Rules Suspended; Senate Proposal of Amendment Not Concurred in:
Committee of Conference Appointed; Rules Suspended and Bill Ordered
Messaged to the Senate Forthwith**

H. 442

On motion of **Rep. Leriche of Hardwick**, the rules were suspended and House bill, entitled

An act relating to An act relating to miscellaneous tax provisions;

Appearing on the Calendar for notice, was taken up for immediate consideration.

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

* * * Proposed Miscellaneous Tax Amendments * * *

**Sec. 1. INCREASING THE NUMBER OF COMPLIANCE PERSONNEL IN
THE DEPARTMENT OF TAXES**

(a) In addition to any other funds appropriated to the department of taxes in fiscal year 2010, there is appropriated from the general fund to the department \$535,000.00 in fiscal year 2010 for the purpose of hiring nine full-time limited

service employees to augment the department's compliance division. The department shall use the funds so appropriated to hire four tax field examiners, two desk audit examiners, two collectors, and one desk audit supervisor.

(b) In addition to any other funds appropriated to the department of taxes in fiscal year 2011, there is appropriated from the general fund to the department \$935,000.00 in fiscal year 2011 for the purpose of retaining the nine full-time limited service employees hired pursuant to subsection (a) of this section and hiring six additional full-time limited service employees to further augment the department's compliance division. The department shall use the additional funds so appropriated to hire four tax field examiners and two desk audit examiners.

(c) It is the intent of the legislature to further augment the department's compliance efforts in fiscal year 2012 by appropriating additional funds for fiscal year 2012 for the purpose of retaining the 15 full-time limited service employees hired pursuant to subsections (a) and (b) of this section and hiring five additional limited service employees.

(d) The positions created pursuant to subsections (a) and (b) of this section shall not be new state employee positions but instead shall be transferred and converted from the vacant position pool as and only when such positions in the vacant position pool become available.

(e) Notwithstanding any other provision of law, the positions created by this section shall be created as limited service positions and shall not be funded for a period in excess of three years.

Sec. 2. ADDING COMPLIANCE PERSONNEL TO THE DEPARTMENT OF LABOR

(a) In addition to any other funds appropriated to the department of labor in fiscal year 2010, there is appropriated from the general fund to the department \$308,212.00 in fiscal year 2010 for the purpose of hiring four full-time limited service employees as workers' compensation fraud staff who will investigate the classification of workers as either contractors or employees and enforce compliance of the proper classification by businesses.

(b) The positions created pursuant to subsection (a) of this section shall not be new state employee positions but instead shall be transferred and converted from the vacant position pool as and only when such positions in the vacant position pool become available.

(c) Notwithstanding any other provision of law, the positions created by this section shall be created as limited service positions and shall not be funded for a period in excess of three years.

* * * Tax Amnesty * * *

Sec. 3. TAX AMNESTY

(a) Notwithstanding any law to the contrary, the commissioner of taxes shall establish a tax amnesty program during which all penalties that could be assessed by the commissioner may be waived without the need for any showing by the taxpayer of reasonable cause or the absence of willful neglect if the taxpayer, prior to the expiration of the amnesty period, files proper returns for any tax types and any period for which the taxpayer has or had a filing obligation and pays the full amount of tax shown on such return together with all interest due thereon. The amnesty program shall be established for a period of six consecutive weeks to be determined by the commissioner, to expire not later than October 2, 2009.

(b) The amnesty program shall apply to a tax liability of any tax type for any periods for which the due date of the return was before January 26, 2009 but shall not apply to those penalties which the commissioner would not have the sole authority to waive, including fuel taxes administered under the International Fuel Tax Agreement or under the local option portions of taxes.

(c)(1) The commissioner shall maintain records of the amnesty provided under this section, including:

(A) the number of taxpayers provided with amnesty;

(B) the types of tax liability for which amnesty was provided and, for each type of liability:

(i) the amount of tax liability collected by the commissioner; and

(ii) the amount of penalties forgone by virtue of the amnesty; and

(iii) the total outstanding tax liability due to the state, for the period through June 30, 2009, after the collection of all funds under this section.

(2) The commissioner shall file a report detailing the information required by subdivision (1) of this subsection with the clerk of the house of representatives and the secretary of the senate, the joint fiscal committee, the house committee on ways and means, and the senate committee on finance not later than December 15, 2009; provided, however, that the report shall not contain information sufficient to identify an individual taxpayer or the amnesty an individual taxpayer was provided under this section.

Sec. 4. APPROPRIATION

In addition to any other funds appropriated to the department of taxes in fiscal year 2010, there is appropriated from the general fund to the department \$132,000.00 in fiscal year 2010 for the purpose of marketing the tax amnesty program provided for in Sec. 3 of this act. In order to help stimulate the local economy, the legislature asks in determining what resources or marketing firms to use, the department give priority to Vermont-based firms.

* * * Sale of State-Owned Personal Property * * *

Sec. 5. SALE OF STATE-OWNED SURPLUS PERSONAL PROPERTY

In order to raise capital and to free space in buildings owned or leased by the state, the commissioner of buildings and general services is authorized and directed to conduct a "spring cleaning" to identify and sell surplus personal property of the state. Each department and agency of the state shall, in accordance with section 1556 of Title 29, transfer all surplus personal property to the commissioner, who is authorized to sell such surplus personal property pursuant to subdivision 1556(6). Notwithstanding section 1557 of Title 29, the proceeds of such sale, net of the commissioner's administrative costs, shall be deposited into the general fund.

* * * Department of Revenue * * *

Sec. 6. DEPARTMENT OF TAXES; DEPARTMENT OF REVENUE; TRANSITION

(a) In accordance with the report of the commissioner of taxes dated January 22, 2007, the department of taxes shall be converted into a department of revenue no later than June 30, 2012.

(b) To accomplish the requirement set out in subsection (a) of this section, there is hereby established a revenue transition committee to review and approve the commissioner's plan to transition the department of taxes to a department of revenue, which shall be responsible for collecting taxes, fees, levies, and other assessments as determined pursuant to subsection (c) of this section. The revenue transition committee shall be composed of the following seven members:

(1) The commissioner of finance and management or designee;

(2) The state treasurer or designee;

(3) A member of the house committee on ways and means, appointed by the speaker of the house;

(4) A member of the house committee on government operations, appointed by the speaker of the house;

(5) A member of the senate committee on finance, appointed by the committee on committees;

(6) A member of the senate committee on government operations, appointed by the committee on committees;

(7) The court administrator or designee.

(c) The commissioner shall review each state revenue source and determine whether the management of such revenue source should:

(1) remain substantially as is;

(2) be transferred to the treasurer's lockbox services contract;

(3) be transferred to the department of taxes, which shall ultimately be redesignated the department of revenue; or

(4) be transferred to another entity.

(d) The revenue transition committee shall meet as needed to review and approve the commissioner's implementation plan for the transition to a revenue department. The commissioner shall report to the revenue transition committee the findings and recommendations required pursuant to subsection (c) of this section, and the commissioner will implement any changes upon the approval of the revenue transition committee.

(e) No later than February 15 of each of the three years following the effective date of this act, the committee shall issue a report to the general assembly on its findings and containing specific recommendations concerning the implementation of the transition, efficiencies, technology, staffing issues, and recommendations with respect to subsection (c) of this section.

(f) The legislative members shall be entitled to per diem compensation and reimbursement of necessary expenses as provided to members of standing committees under 2 V.S.A. § 406 for attendance at a meeting when the general assembly is not in session.

Sec. 7. STATUTORY REVISION

After June 30, 2012, the legislative council is directed to revise the Vermont Statutes Annotated to reflect the redesignation of the department of taxes as the department of revenue. When applicable, the term "commissioner of taxes" shall be substituted with the term "commissioner of revenue"; and when applicable, the term "department of taxes" shall be substituted with the term "department of revenue."

* * * Blue Ribbon Tax Structure Study Committee * * *

Sec. 8. TAX STRUCTURE STUDY

(a) Composition of committee. There is hereby established a tax structure study committee composed of three to five members to be selected as follows:

(1) The speaker of the house, the president pro tempore of the senate, and the governor shall each appoint one member; and

(2) The three members appointed pursuant to subdivision (1) of this subsection may select one or two additional members.

(b) The tax structure study committee shall be appointed as soon as possible after the effective date of this act. The panel shall elect a chair and vice chair from among its members.

(c) Purpose and goals. The tax structure study committee shall study the state's revenue system with the goal of determining whether the current system:

(1) Raises enough revenue to sustain spending needs now and in the future;

(2) Provides equity among the state's diverse taxpayers;

(3) Provides incentives that further the state's goals; and

(4) Enhances the state's competitiveness by attracting labor, capital, and entrepreneurs.

(d) Tax incidence study. As a first step in fulfilling its goals, the tax structure study committee shall hire one or more consultants to conduct a thorough and independent review and analysis of tax incidence in Vermont. The consultants shall report to the tax structure study committee by October 15, 2009. The consultants shall have the assistance of the department of taxes. Specifically, the report to the tax structure study committee shall provide information regarding the distribution of state and local taxes, including income taxes, sales and use taxes, and property taxes, in relation to taxpayer income and provide the tax structure study committee information on the equity of the overall distribution. Additionally, the report shall include information on how the total state and local tax burden on Vermont households varies by income range and how the burden of each component of the overall state and local tax system is distributed across Vermont households. The report shall also include information on taxes with an initial impact on businesses, such as the corporate franchise tax and the sales tax on business purchases.

(e) Report to committee; follow-up. The tax structure study committee shall have the assistance of the department of taxes and shall meet as needed to evaluate the tax incidence study and oversee the hiring of additional consultants, as needed, to evaluate the tax incidence study required by subsection (d) of this section and provide recommendations regarding the sustainability and stability of the state's revenue system to the general assembly no later than January 15, 2010. The tax structure study committee and any independent consultants it hires shall develop proposals for changes to the state's revenue system, if any, and provide the legislature with plans for implementation of any proposed changes.

(f) In preparation for the study required by subsection (d) of this section, the department of taxes shall provide data to the consultants, which shall prepare reports on the following:

(1) Changes in personal income, arranged by decile, over the last five years;

(2) House site and homestead value arranged by adjusted gross income (AGI) and, where available, household income;

(3) Gross and net school taxes paid, arranged by adjusted gross income and, where available, by household income.

(f) For attendance at a meeting of the tax structure study committee members shall be entitled to per diem compensation and reimbursement of expenses as allowed by state law.

Sec. 9. APPROPRIATION

In addition to any other funds appropriated to the department of taxes, there is appropriated from the general fund \$200,000.00 in fiscal year 2010 for the purposes outlined in Sec. 8 of this act.

* * * Tax Expenditure Reporting Requirement * * *

Sec. 10. 32 V.S.A. § 306 is amended to read:

§ 306. BUDGET REPORT

(a) The governor shall submit to the general assembly, not later than the third Tuesday of every annual session, a budget which shall embody his or her estimates, requests and recommendations for appropriations or other authorizations for expenditures from the state treasury. In the first year of the biennium, the budget shall relate to the two succeeding fiscal years. In the second year of the biennium, it shall relate to the succeeding fiscal year.

(b) The governor shall also submit to the general assembly, not later than the third Tuesday of each session of every biennium, a tax expenditure budget

which shall embody his or her estimates, requests, and recommendations for appropriations or other authorizations for expenditures from the state treasury appropriating tax expenditures as contained in the report provided for in section 312 of this chapter. The tax expenditure budget shall be provided to the members of the house committee on ways and means and the senate committee on finance, which committees will review the tax expenditures and recommend appropriations for the tax expenditures to their respective committees on appropriations.

Sec. 11. 32 V.S.A. § 307 is amended to read:

§ 307. FORM OF BUDGET

(a) The budget shall be arranged and classified so as to show separately the following estimates and recommendations:

(1) Expenses of state administration.

(2) Deficiencies, overdrafts, and unexpended balances in appropriations of former years.

(3) Bonded debt, loans and interest charges.

(4) All requests and proposals for expenditures for new projects, new construction, additions, improvements, and other capital outlay.

(5) With respect to the tax expenditure budget required under section 306(b) of this chapter, all requests and proposals for new, amended, or continued tax expenditures as reported under section 312 of this chapter.

* * *

* * * Repeal of Certain Tax Credits * * *

Sec. 12. REPEAL

(a) 32 V.S.A. § 5930v (providing an income tax credit for eligible venture capital investment) is repealed effective for tax years beginning on or after January 1, 2010.

(b) 32 V.S.A. § 3802(13) (exempting fallout shelters from property tax) is repealed for grand lists prepared for April 1, 2010 and after.

* * * Vermont State-Sponsored Credit Card Program * * *

Sec. 13. 32 V.S.A. § 584 is added to read:

§ 584. VERMONT STATE-SPONSORED CREDIT CARD PROGRAM

(a) The state treasurer is hereby authorized to sponsor and participate in a financial institution credit card program for the benefit of the residents of this state upon his or her determination that such a program is feasible and may be procured at rates and terms in the best interest of the residents of this state. In selecting a credit card issuer, the treasurer shall consider the issuer's record of investments in the state and shall take into consideration credit card features which will enhance the promotion of the state-sponsored credit card, including consumer-friendly terms, favorable interest rates, annual fees, and other fees for using the card.

(b) The treasurer shall consult with other state agencies about potential public purpose projects to be designated for the program and shall allow cardholders to designate that funds be used either to support sustainable agricultural programs, renewable energy programs, state parks and forestland programs, or any combination of these. The net proceeds of the state fees generated by this program shall be transmitted to the state and shall be deposited in a state-sponsored credit card fund and subsequently transferred to the designated state programs and purposes as selected by the cardholders. The funds received shall be held by the treasurer until transferred for the purposes directed by participating Vermont credit card holders in accordance with the trust fund provisions of section 462 of this title.

(c) All program balances at the end of the fiscal year shall be carried forward and shall not revert to the general fund. Interest earned shall remain in the program. The treasurer's annual financial report to the governor and the general assembly shall contain an accounting of receipts, disbursements, and earnings of the program.

(d) The state shall not assume any liability for lost or stolen credit cards nor any other legal debt owed to the financial institutions.

(e) The state treasurer is authorized to adopt such rules as may be necessary to implement the Vermont state-sponsored credit card program.

* * * Government Licenses and Employment * * *

Sec. 14. 32 V.S.A. § 3113 is amended to read:

§ 3113. REQUIREMENT FOR OBTAINING LICENSE OR,
GOVERNMENTAL CONTRACT, OR EMPLOYMENT

* * *

(c) Every agency shall, upon request of the commissioner, furnish a list of licenses and contracts issued or renewed by such agency during the reporting period; provided, however, that the secretary of state shall, with respect to certificates of authority to transact business issued to foreign corporations,

furnish to the commissioner only those certificates originally issued by the secretary of state during the reporting period and not renewals of such certificates. The lists ~~should~~ shall include the name, address, ~~social security~~ Social Security or federal identification number of such licensee or provider, and such other information as the commissioner may require.

* * *

(i) No agency of the state shall hire any person as a full-time, part-time, temporary, or contractual employee unless the person shall first sign a written declaration under the pains and penalties of perjury that the person is in good standing with respect to or in full compliance with a plan to pay any and all taxes due as of the date such declaration is made. This requirement applies only to the initial hire of an individual into a position that is paid using the state of Vermont federal taxpayer identification number, other than as a county employee, and not to an employee serving in such position or who returns to any position in state government as a result of a placement right or reduction in force recall right.

* * * Unclaimed Property * * *

Sec. 15. 32 V.S.A. § 3113a is added to read:

§ 3113a. ABANDONED PROPERTY; SATISFACTION OF TAX LIABILITIES

The commissioner may request from the office of the treasurer the names and Social Security or federal identification numbers of owners of unclaimed property prior to notice being given to such persons pursuant to section 1249 of Title 27. If any such owner owes taxes to the state, the commissioner, after notice to the owner, may request and the treasurer shall transfer the abandoned property of such owner to the department for setoff of the taxes owed. The notice shall advise the owner of the action being taken and the right to appeal the setoff if the tax debt is not the owner's debt; or if the debt has been paid; or if the tax debt was appealed within 60 days from the date of the assessment and the appeal has not been finally determined; or if the debt was discharged in bankruptcy.

* * * Mapping Program * * *

Sec. 16. 32 V.S.A. § 3409 is amended to read:

§ 3409. PREPARATION OF PROPERTY MAPS

Consistent with available resources and pursuant to a memorandum of understanding entered into between the commissioner and the Vermont center

for geographic information, the ~~director shall prepare~~ center shall provide regional planning commissions, state agencies, and the general public with orthophotographic maps of the state at a scale appropriate for the production and revision of town property maps. Periodically, such maps shall be revised and updated to reflect land use changes, new settlement patterns and such additional information as may have become available to the director or the center.

(1) The ~~director~~ center shall supply to the clerk and to the listers or assessors of each town such maps as have been prepared by ~~the director~~ it of the total area of that town. Any map shall be available, without charge, for public inspection ~~both in the office of the Vermont mapping program and in the office of the town clerk to whom the map was supplied.~~

(2) The ~~director may~~ state of Vermont shall retain the copyright of any map prepared under this section by the Vermont mapping program and the center and the Vermont mapping program shall jointly own the copyright to any map prepared on or after the effective date of this act.

(3) A person, who, without the written authorization of the director and the center, copies, reprints, duplicates, sells, or attempts to sell any map prepared under this chapter shall be fined an amount not to exceed \$1,000.00.

(4) At a reasonable charge to be established by the center and the director, the ~~director~~ center shall supply to any person or agency other than a town clerk or lister a copy of any map prepared under this section.

* * * Unorganized Towns and Gores and Unified Towns and Gores * * *

Sec. 17. 32 V.S.A. § 4408 is amended to read:

§ 4408. HEARING BY BOARD

(a) On the date so fixed by the town clerk and from day to day thereafter, the board of civil authority shall hear such appellants as appear in person or by agents or attorneys, until all such objections have been heard and considered. All objections filed in writing with the board of civil authority at or prior to the time fixed for hearing appeals shall be determined by the board notwithstanding that the person filing the objections fails to appear in person, or by agent or attorney.

(b) Ad hoc board for unorganized towns and gores and unified towns and gores. For purposes of hearing appeals under this subchapter only, the supervisor shall create an ad hoc board composed of:

(1) the supervisor; and

(2) one member from each adjoining municipality's board of civil authority, to be appointed by each respective board of civil authority, representing no fewer than three and no more than five of the adjoining municipalities, at the discretion of the supervisor.

(c) The ad hoc board provided for in subsection (b) of this section shall, for purposes of hearing appeals under this subchapter only, act as a board of civil authority, and an aggrieved party shall have further appeal rights as though the party had appealed to a board of civil authority.

* * * Education Property Tax Information Insert * * *

Sec. 18. 32 V.S.A. § 5402(b)(1) is amended to read:

(1) The commissioner of taxes shall determine for each municipality the education tax rates under subsection (a) of this section, divided by the municipality's most recent common level of appraisal. The legislative body in each municipality shall then bill each property taxpayer at the homestead or nonresidential rate determined by the commissioner under this subdivision, multiplied by the education property tax grand list value of the property, properly classified as homestead or nonresidential property and without regard to any other tax classification of the property. Tax bills shall show the tax due and the calculation of the rate determined under subsection (a) of this section, divided by the municipality's most recent common level of appraisal, multiplied by the current grand list value of the property to be taxed. ~~Each homestead property tax bill shall include a copy of the document entitled "About Your 20XX Taxes "The more you spend the more you pay", updated annually for each town by the commissioner of taxes.~~

* * * Declaration of Homestead * * *

Sec. 19. 32 V.S.A. § 5410 is amended to read:

§ 5410. DECLARATION OF HOMESTEAD

(a) A homestead owner shall declare ownership of a homestead for purposes of education property tax.

(b) Annually on or before the due date for filing the Vermont income tax return, without extension, each homestead owner shall, on a form prescribed by the commissioner, which shall be verified under the pains and penalties of perjury, declare his or her homestead, if any, as of, or expected to be as of, April 1 of the year in which the declaration is made for property that was acquired by the declarant or was made the declarant's homestead during the previous year. The declaration of homestead shall remain in effect until the earlier of:

(1) the transfer of title of all or any portion of the homestead; or

(2) that time that the property ceases to qualify as a homestead.

(c) In the event that an unsigned but otherwise completed homestead declaration is filed at the same time as the declarant's signed state income tax return, the commissioner may treat such declaration as signed by the declarant.

* * * Unrelated Business Income of Nonprofit Corporations * * *

Sec. 20. 32 V.S.A. § 5811(3) is amended to read:

(3) "Corporation" means any business entity subject to income taxation as a corporation, and any entity qualified as a small business corporation, under the laws of the United States, with the exception of the following entities which are exempt from taxation under this chapter:

(A) Railroad and insurance, ~~surety and guaranty~~ companies, ~~mutual or otherwise~~ that are taxed under chapter 211 of this title;

(B) ~~Life, fire and marine insurance companies and mutual life, fire and marine insurance companies;~~

(C) ~~Farmers' or other mutual hail, cyclone, fire or life insurance companies, mutual water, mutual or cooperative telephone companies or similar organizations of a purely local character, the income of which companies consists solely of assessments, dues and fees collected from the members for the sole purpose of meeting the expenses of the company;~~

(D) ~~Farmers', fruit growers', or like associations organized and operated on a cooperative basis:~~

~~(i) for the purpose of processing, preparing for market, handling or marketing the farm products of members or other producers and turning back to them the proceeds of sales, less the necessary marketing, handling and processing expenses, on the basis of either quantity or the value of the products furnished by them;~~

~~(ii) for the purpose of purchasing supplies and equipment for the use of the members and other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses; or~~

~~(iii) for the purpose of processing, preparing for market, or marketing handcraft products as defined in section 991 of Title 11 of members or other producers and turning back to them the proceeds of sales, less the necessary marketing, handling and processing expenses;~~

(E) Credit unions organized under chapter 71 of Title 8 and federal credit unions;

~~(F)(C)~~ Nonprofit hospital service corporations organized under chapter 123 of Title 8;

~~(G)(D)~~ Nonprofit medical service corporations organized under chapter 125 of Title 8;

~~(H)~~ Free public library corporations organized under chapter 3 of Title 22;

~~(I)~~ Cemetery corporations and associations, labor, agricultural or horticultural organizations, fraternal beneficiary societies, no part of the net earnings of which inures to any member or stockholder;

~~(J)~~ Sanitary corporations and corporations organized for religious, charitable, scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual member;

~~(K)~~ Business organizations, chambers of commerce or boards of trade and area development organizations not organized for profit, no part of the net earnings of which inures to the benefit of any private stockholder or individual member;

~~(L)~~ Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare;

~~(M)~~ Clubs organized and operated exclusively for pleasure and recreation and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual member; or

~~(N)~~ Any political organization which is exempt from or does not owe any federal income taxes as provided in the federal internal revenue code.

Sec. 21. 32 V.S.A. § 5811(18) is amended to read:

(18) “Vermont net income” means, for any taxable year and for any corporate taxpayer:

* * *

(D) For a corporation with federal exempt status, “Vermont net income” means all income that is subject to federal income tax, including unrelated business income under Section 511 of the Internal Revenue Code and any income arising from debt-financed property subject to taxation under Section 514 of the Internal Revenue Code.

* * * Annual Update of Links to Federal Law * * *

Sec. 22. 32 V.S.A. § 5824 is amended to read:

§ 5824. ADOPTION OF FEDERAL INCOME TAX LAWS

The statutes of the United States relating to the federal income tax, as in effect for taxable year ~~2007~~ 2008, but without regard to federal income tax rates under Section 1 of the Internal Revenue Code, are hereby adopted for the purpose of computing the tax liability under this chapter.

* * * Digital Business Entities* * *

Sec. 23. LEGISLATIVE INTENT

The purpose of the following sections of this act concerning digital business entities is to build on the momentum created by Secs. 74 through 100 of No. 190 of the Acts of the 2007 Adj. Sess. (2008), which provided for Vermont companies to conduct much of their statutorily required corporate affairs using electronic media, including e-mail, facsimile, and web-based filings.

Sec. 24. 32 V.S.A. § 5811(26) is added to read:

(26) “Digital business entity” means a business entity which, during the entire taxable year:

(A) was not a member of an affiliated group or engaged in a unitary business with one or more members of an affiliated group that is subject to Vermont income taxation; did not have any Vermont property, payroll, or sales and did not perform any activities in this state which would constitute doing business for purposes of income taxation except activities described in subdivisions (15)(C)(i) (fulfillment operations) and (C)(ii) (web page or Internet site maintenance) of this section; and

(B) used mainly computer, electronic, and telecommunications technologies in its formation and in the conduct of its business meetings, in its interaction with shareholders, members, and partners, in executing any other formal requirements.

Sec. 25. 32 V.S.A. § 5832(2) is amended to read:

(2)(A) \$75.00 for small farm corporations. “Small farm corporation” means any corporation organized for the purpose of farming, which during the taxable year is owned solely by active participants in that farm business and receives less than \$100,000.00 gross receipts from that farm operation, exclusive of any income from forest crops; or

(B) An amount determined in accordance with section 5832a of this title for a corporation which qualifies as and has elected to be taxed as a digital business entity for the taxable year; or

(C) \$250.00 for all other corporations.

Sec. 26. 32 V.S.A. § 5911 is amended to read:

§ 5911. TAXATION OF AN S CORPORATION AND ITS SHAREHOLDERS

(a) An S corporation shall not be subject to the tax imposed by section 5832 of this title, except to the extent of income taxable to the corporation under the provisions of the Internal Revenue Code.

(b) For the purposes of section 5823 of this title, each shareholder's pro rata share of the S corporation's income attributable to Vermont and each resident shareholder's pro rata share of the S corporation's income not attributable to Vermont shall be taken into account by the shareholder in the manner provided in Section 1366 of the Code.

(c) An S corporation and its shareholders shall not be subject to the tax imposed by section 5832 of this title or to the provisions of this subchapter if the S corporation qualifies as and elects to be taxed as a digital business for the taxable year; but such corporation shall be subject to the reporting requirements of this chapter, and its shareholders shall file a report of income received from such S corporation during the taxable year with the commissioner at the same time as returns are due under section 5861 of this chapter.

Sec. 27. 32 V.S.A. § 5921a is added to read:

§ 5921a. DIGITAL BUSINESS ENTITY ELECTION

A partnership or limited liability company and its partners or members shall not be subject to the tax imposed by section 5832 of this title or to provisions of this subchapter if the partnership or company qualifies as and elects to be taxed as a digital business entity for the taxable year; but such partnership shall be subject to the reporting requirements of this chapter, and its partners shall file a report of income received from such partnership during the taxable year with the commissioner at the same time as returns are due under section 5861 of this chapter.

Sec. 28. 32 V.S.A. § 5832a is added to read:

§ 5832a. DIGITAL BUSINESS ENTITY FRANCHISE TAX

(a) There is imposed upon every business entity which qualifies as and has elected to be taxed as a digital business entity an annual franchise tax equal to:

(1) the greater of 0.02 percent of the current value of the tangible and intangible assets of the company or \$250.00, but in no case more than \$500,000.00; or

(2) where the authorized capital stock does not exceed 5,000 shares, \$250.00; where the authorized capital stock exceeds 5,000 shares but is not more than 10,000 shares, \$500.00; and the further sum of \$250.00 on each 10,000 shares or part thereof.

(b) In no case shall the tax on any corporation for a full taxable year, whether computed under subdivision (a)(1) or (2) of this section, be more than \$500,000.00 or less than \$250.00.

(c) In the case of a corporation that has not been in existence during the whole year, the amount of tax due, at the foregoing rates and as provided, shall be prorated for the portion of the year during which the corporation was in existence.

(d) In the case of a corporation changing during the taxable year the amount of its authorized capital stock, the total annual franchise tax payable at the foregoing rates shall be arrived at by adding together the franchise taxes calculated pursuant to subdivision (a)(2) of this section as prorated for the several periods of the year during which each distinct authorized amount of capital stock was in effect.

(e) For the purpose of computing the taxes imposed by this section, the authorized capital stock of a corporation shall be considered to be the total number of shares that the corporation is authorized to issue without regard to whether the number of shares that may be outstanding at any one time is limited to a lesser number.

(f) The franchise tax under this section shall be reported and paid in the same manner as the tax under subdivision 5832(2)(B) of this title; provided, however, that an electing corporation shall report its income to the commissioner as provided in section 5862 of this chapter.

* * * Trustee Process * * *

Sec. 29. 32 V.S.A. § 5892 is amended to read:

§ 5892. ACTION TO COLLECT TAXES; LIMITATIONS

(a) Action may be brought by the attorney general of the state at the instance of the commissioner in the name of the state to recover the amount of the tax liability of any taxpayer, if the action is brought within six years after the date the tax liability was collectible under section 5886 of this title. The action shall be returnable in the county where the taxpayer resides or has a place of business, and if the taxpayer neither resides nor has a place of business in this state, the action shall be returnable in Washington ~~county~~ County.

(b) Notwithstanding sections 3167 and 3168 of Title 12, a motion may be brought by the attorney general of the state at the instance of the commissioner

in the name of the state for issuance of trustee process at the same time as an action is brought under subsection (a) of this section, and, if judgment is granted in that action, the court may proceed immediately to hear and render a decision on the trustee process.

* * * Property Tax Adjustments * * *

Sec. 30. 32 V.S.A. § 6067 is amended to read:

§ 6067. CREDIT LIMITATIONS

Only one individual per household per taxable year shall be entitled to a benefit under this chapter. An individual who received a homestead exemption or adjustment with respect to property taxes assessed by another state for the taxable year shall not be entitled to receive an adjustment under this chapter. No taxpayer shall receive total adjustments under this chapter in excess of ~~\$8,000.00~~ \$10,000.00 related to any one property tax year.

Sec. 31. 32 V.S.A. § 6066a is amended to read:

§ 6066a. DETERMINATION OF PROPERTY TAX ADJUSTMENTS

* * *

(c) The commissioner shall notify the municipality of any claim and refund amounts unresolved by September 15 at the time of final resolution, including adjudication if any; provided, however, that towns will not be notified of any additional adjustment amounts after ~~December 31~~ September 15 of the claim year, and such amounts shall be paid to the claimant by the commissioner.

* * *

(f) Property tax bills.

* * *

(4) If the property tax adjustment amount as described in subsection ~~(b)~~(e) of this section exceeds the property tax, penalties and interest, due for the current and all prior years, the municipality shall refund the excess to the taxpayer, without interest, within 20 days of the first date upon which taxes become due and payable or 20 days after notification by the commissioner of education, whichever is later.

* * *

* * * Estate Tax * * *

Sec. 32. 32 V.S.A. § 7442a is amended to read:

§ 7442a. IMPOSITION OF A VERMONT ESTATE TAX AND RATE OF TAX

(a) A tax is hereby imposed on the transfer of the Vermont estate of every decedent dying on or after January 1, 2002, who, at the time of death, was a resident of this state. The base amount of this tax shall be a sum equal to the amount ~~by which~~ of the credit for state death taxes allowable to a decedent's estate under Section 2011, ~~as in effect on January 1, 2001,~~ of the Internal Revenue Code, ~~hereinafter sometimes referred to as the "credit," exceeds the lesser of~~ as in effect on January 1, 2001. This base amount shall be reduced by the lesser of the following:

(1) The total amount of all constitutionally valid state death taxes actually paid to other states; or

(2) A sum equal to the proportion of the credit which the value of the property taxed by other states bears to the value of the decedent's total gross estate for federal estate tax purposes.

(b) A tax is hereby imposed on the transfer of the Vermont estate of every decedent dying on or after January 1, 2002, who, at the time of death, was not a resident of this state. The amount of this tax shall be a sum equal to the proportion of the ~~credit~~ base amount of tax under subsection (a) of this section which the value of Vermont real and tangible personal property taxed in this state bears to the value of the decedent's total gross estate for federal estate tax purposes.

(c) The Vermont estate tax shall not exceed the amount of the tax imposed by Section 2001 of the Internal Revenue Service Code calculated using the applicable credit amount under Section 2010 as in effect on January 1, 2008, with no deduction under Section 2058.

(d) All values shall be as finally determined for federal estate tax purposes.

Sec. 33. 32 V.S.A. § 7444 is amended to read:

§ 7444. RETURN BY EXECUTOR

In all cases where ~~the federal gross estate at the time of the death of the decedent exceeds the applicable federal exclusion amount or where the estate is subject to federal estate tax~~ a tax is imposed upon the estate under section 7442a of this chapter, the executor shall make a return with respect to the estate tax imposed by this chapter. If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he or she shall include in his or her return (to the extent of his or her knowledge or information) a description of such part and the name of every person holding a legal or beneficial interest therein. Upon notice from the commissioner such

person shall in like manner make a return as to such part of the gross estate. A return made by one of two or more joint fiduciaries shall be sufficient compliance with the requirements of this section. A return made pursuant to this section shall contain a statement that the return is, to the best of the knowledge and belief of the fiduciary, true and correct.

Sec. 34. 32 V.S.A. § 7445 is amended to read:

§ 7445. COPIES OF FEDERAL ESTATE TAX RETURNS TO BE FILED

It shall be the duty of the executor of every person who may die a resident of Vermont or a nonresident with real estate or tangible personal property having an actual situs in Vermont to file with the commissioner a duplicate of all federal estate tax returns which he or she is required to make to the federal authorities, or, if no federal estate tax return is required, a pro forma federal estate tax return for the estate of a decedent with a Vermont estate tax liability shall be filed with the commissioner.

Sec. 35. 32 V.S.A. § 7446 is amended to read:

§ 7446. WHEN RETURNS TO BE FILED

The estate tax return required under section 7444 of this title shall be filed at the time the federal estate tax return is required to be filed under the laws of the United States, including any extensions of time for filing granted by the federal authorities within nine months of the death of the decedent. Prior to expiration of the filing period, executors may apply for a six-month extension.

Sec. 36. 32 V.S.A. § 7475 is amended to read:

§ 7475. ADOPTION OF FEDERAL ESTATE AND GIFT TAX LAWS

The laws of the United States, relating to federal estate and gift taxes as in effect on January 1, ~~2008~~ 2009, are hereby adopted for the purpose of computing the tax liability under this chapter, except:

(1) ~~with~~ the credit for state death taxes shall remain as provided for under Section Sections 2011 and 2604 of the Internal Revenue Code as in effect on January 1, 2001;

(2) the applicable credit amount shall remain as provided for under section 2010 of the Internal Revenue Code, as in effect on January 1, 2008; and

(3) ~~without any~~ the deduction for state death taxes under Section 2058 of the Internal Revenue Code shall not apply.

* * * Tobacco Tax * * *

Sec. 37a. 32 V.S.A. § 7702 is amended to read:

§ 7702. DEFINITIONS

The following words and phrases, as used in this chapter, shall have the following meanings, unless the context otherwise requires:

* * *

(13) “Moist snuff” means any finely cut, ground, or powdered tobacco that is not intended to be smoked, has a moisture content of no less than 45 percent, and is not offered in individual single-dose tablets or other discrete single-use units.

* * *

(15) “Tobacco products” means ~~eigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff, snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweeping of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking~~ any product manufactured from, derived from, or containing tobacco that is intended for human consumption by smoking, chewing, or in any other manner; but shall not include cigarettes, little cigars, roll-your-own tobacco, moist snuff, or new smokeless tobacco as defined in this section.

* * *

(20) “New smokeless tobacco” means any tobacco product manufactured from, derived from, or containing tobacco that is not intended to be smoked, has a moisture content of less than 45 percent, or is offered in individual single-dose tablets or other discrete single-use units.

Sec. 37b. 32 V.S.A. § 7771(c) is amended to read:

(c) The tax imposed under this section shall be at the rate of ~~89.5~~ 112 mills per cigarette or little cigar and for each 0.09 ounces of roll-your-own tobacco. The interest and penalty provisions of section 3202 of this title shall apply to liabilities under this section.

Sec. 37c. 32 V.S.A. § 7811 is amended to read:

§ 7811. IMPOSITION OF TOBACCO PRODUCTS TAX

There is hereby imposed and shall be paid a tax on all tobacco products except roll-your-own tobacco and little cigars taxed under section 7771 of this title possessed in the state of Vermont by any person for sale on and after July 1, 1959 which were imported into the state or manufactured in the state after said date, except that no tax shall be imposed on tobacco products sold

under such circumstances that this state is without power to impose such tax, or sold to the United States, or sold to or by a voluntary unincorporated organization of the armed forces of the United States operating a place for the sale of goods pursuant to regulations promulgated by the appropriate executive agency of the United States. Such tax ~~on~~ is intended to be imposed only once upon the wholesale sale of any tobacco products product and shall be at the rate of ~~41~~ 92 percent of the wholesale price for all tobacco products except moist snuff, which shall be taxed at \$1.66 per ounce, or fractional part thereof, ~~and is intended to be imposed only once upon any tobacco product and new smokeless tobacco, which shall be taxed at the greater of \$1.66 per ounce or, if packaged for sale to a consumer in a package that contains less than 1.2 ounces of the new smokeless tobacco, at the rate of \$1.99 per package.~~ Provided, however, that upon payment of the tax within 10 days, the distributor or dealer may deduct from the tax two percent of the tax due. It shall be presumed that all tobacco products within the state are subject to tax until the contrary is established and the burden of proof that any tobacco products are not taxable hereunder shall be upon the person in possession thereof. Wholesalers of tobacco products shall state on the invoice whether the price includes the Vermont tobacco products tax.

Sec. 38. 32 V.S.A. § 7814 is amended to read:

§ 7814. FLOOR STOCK TAX

* * *

(b) Cigarettes, little cigars, or roll-your-own tobacco. Notwithstanding the prohibition against further tax on stamped cigarettes, little cigars, or roll-your-own tobacco under section 7771 of this title, a floor stock tax is hereby imposed upon every dealer of cigarettes, little cigars, or roll-your-own tobacco in this state who is either a wholesaler, or a retailer who at 12:01 a.m. ~~on July 1, 2006~~ following enactment of this act, has more than 10,000 cigarettes or little cigars or who has \$500.00 or more of wholesale value of roll-your-own tobacco, for retail sale in his or her possession or control. The amount of the tax shall be the amount by which the new tax exceeds the amount of the tax already paid for each cigarette, little cigar, or roll-your-own tobacco in the possession or control of the wholesaler or retailer at 12:01 a.m. ~~on July 1, 2006~~ following enactment of this act, and on which cigarette stamps have been affixed before July 1, ~~2006~~ following enactment of this act. A floor stock tax is also imposed on each Vermont cigarette stamp in the possession or control of the wholesaler at 12:01 a.m. ~~on July 1, 2006~~ following enactment of this act, and not yet affixed to a cigarette package, and the tax shall be at the rate of ~~\$0.60~~ \$0.24 per stamp. Each wholesaler and

retailer subject to the tax shall, on or before July 25, ~~2006~~ following enactment of this act, file a report to the commissioner in such form as the commissioner may prescribe showing the cigarettes, little cigars, or roll-your-own tobacco and stamps on hand at 12:01 a.m. ~~o'clock~~ on July 1, ~~2006~~ following enactment of this act, and the amount of tax due thereon. The tax imposed by this section shall be due and payable on or before August 25, ~~2006~~ following enactment of this act, and thereafter shall bear interest at the rate established under section 3108 of this title. In case of timely payment of the tax, the wholesaler or retailer may deduct from the tax due two and three-tenths of one percent of the tax. Any cigarettes, little cigars, or roll-your-own tobacco with respect to which a floor stock tax has been imposed under this section shall not again be subject to tax under section 7771 of this title.

* * * Electronic Filing of Property Transfer Tax * * *

Sec. 39. DEVELOPMENT OF ELECTRONIC SYSTEM FOR FILING AND PAYING PROPERTY TRANSFER TAXES

No later than August 1, 2009, the department of taxes shall file with the joint fiscal committee an implementation plan for the electronic filing of property transfer tax returns and the electronic payment of property transfer taxes.

* * *

* * * Sales and Use Tax on Digital Downloads * * *

Sec. 40. 32 V.S.A. § 9701(45), (46), and (47) are added to read:

(45) Transferred electronically: means obtained by the purchaser by means other than tangible storage media.

(46) Specified digital products: means digital audio-visual works, digital audio works, digital books, or ringtones that are transferred electronically.

(A) Digital audio-visual works: means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any;

(B) Digital audio works: means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones;

(C) Digital books: means works that are generally recognized in the ordinary and usual sense as "books."

(D) Ringtones: means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication.

(47) End user: means any person other than a person who received by contract a product transferred electronically for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution, or exhibition of the product, in whole or in part, to another person or persons.

* * *

Sec. 41. 32 V.S.A. § 9771 is amended to read:

§ 9771. IMPOSITION OF SALES TAX

Except as otherwise provided in this chapter, there is imposed a tax on retail sales in this state. The tax shall be paid at the rate of six percent of the sales price charged for, but in no case shall any one transaction be taxed under more than one of, the following:

* * *

(8) Specified digital products transferred electronically to an end user.

Sec. 41a. 32 V.S.A. § 9772 is amended to read:

§ 9772. AMOUNT OF TAX TO BE COLLECTED

(a) For the purpose of adding and collecting the tax imposed by this chapter, or an amount equal as nearly as possible or practicable to the average equivalent thereof, to be reimbursed to the vendor by the purchaser, the vendor shall ~~use either the calculation in subdivision (1) of this subsection or the formula in subdivision (2). The tax required to be remitted shall be the rate specified in section 9771 of this title multiplied by the total sales price of all the taxable transactions; provided, however, the tax required to be remitted shall be no more than the amount required to be collected. The vendor shall be entitled to retain any amount lawfully collected by the person in excess of the tax imposed by this chapter.~~

(1) The multiply the total sales price of all the transaction multiplied transactions taxable by the rate specified in section 9771 of this title carried to the third decimal place and rounded up to the nearest whole cent if the third decimal point is greater than four and rounded down to the nearest whole cent if the third decimal point is four or less. The tax may be computed on either the total invoice amount or on each taxable item.

Amount of Sale	Amount of Tax
\$0.01-0.10	No Tax
0.11-0.16	\$.01
0.17-0.33	.02

0.34-0.50	.03
0.51-0.66	.04
0.67-0.83	.05
0.84-1.00	.06

~~In addition to a tax of \$0.06 on each full dollar, a tax shall be collected on each part of a dollar in excess of a full dollar in accordance with the following formula:~~

\$ 0.01-0.16	\$.01
0.17-0.33	.02
0.34-0.50	.03
0.51-0.66	.04
0.67-0.83	.05
0.84-0.99	.06

* * *

Sec. 42. 32 V.S.A. § 9773 is amended to read:

§ 9773. IMPOSITION OF COMPENSATING USE TAX

Unless property has already been or will be subject to the sales tax under this chapter, there is imposed on every person a use tax at the rate of six percent for the use within this state, except as otherwise exempted under this chapter:

* * *

(2) Of any tangible personal property manufactured, processed or assembled by the user, if items of the same kind of tangible personal property are offered for sale by him or her in the regular course of business, but the mere storage, keeping, retention or withdrawal from storage of tangible personal property or the use for demonstrational or instructional purposes of tangible personal property by the person who manufactured, processed or assembled such property shall not be deemed a taxable use by him or her; and for purposes of this section only, the sale of electrical power generated by the taxpayer shall not be considered a sale by him or her in the regular course of business if at least 60 percent of the electrical power generated annually by the taxpayer is used by the taxpayer in his or her trade or business; ~~and~~

(3) Of any tangible personal property, however acquired, where not acquired for purposes of resale, upon which any taxable services described in subdivision 9771(3) of this title have been performed; and

(4) Specified digital products transferred electronically to an end user.

* * * Sales Tax on Clothing Costing \$110.00 or More * * *

Sec. 42a. 32 V.S.A. § 9741(45) is amended to read:

(45) ~~Clothing~~ Each article of clothing with a purchase price of \$110.00 or less; but clothing shall not include clothing accessories or equipment, protective equipment, or sport or recreational equipment.

* * * Returns Upon Business Closing * * *

Sec. 43. 32 V.S.A. § 9775 is amended to read:

§ 9775. RETURNS

(a) Except as otherwise provided in this section, every person required to collect or pay tax under this chapter shall, where the sales and use tax liability under this chapter for the immediately preceding calendar year has been (or would have been in cases when the business was not operating for the entire year) \$500.00 or less, pay the tax imposed by this chapter in one annual payment on or before the 25th day of January of each year. Every person required to collect or pay tax under this chapter shall, where the sales and use tax liability under this chapter for the immediately preceding calendar year has been (or would have been in cases when the business was not operating for the entire year) more than \$500.00 but less than \$2,500.00, pay the tax imposed by this chapter in quarterly installments on or before the 25th day of the calendar month succeeding the quarter ending on the last day of March, June, September, and December of each year. In all other cases, except as provided in ~~subsection~~ subsections (e) and (g) of this section, the tax imposed by this chapter shall be due and payable monthly on or before the 25th (23rd of February) day of the month following the month for which the tax is due. Payment by electronic funds transfer does not affect the requirement to file returns. The return of a vendor of tangible personal property shall show such information as the commissioner may require.

* * *

(g) A person required to report sales and use tax annually who cancels his, her, or its sales and use tax account shall file a final return not later than 60 days after such cancellation.

* * * Land Gains Tax * * *

Sec. 44. 32 V.S.A. § 10009(b) is amended to read:

(b) All the administrative provisions of chapter 151 of this title, including those relating to the collection and enforcement by the commissioner of the withholding tax and the income tax, and of chapter 103, including those

relating to interest and penalty charges, shall apply to the tax imposed by this chapter.

* * * Education Property Tax Rates * * *

Sec. 45. FISCAL YEAR 2010 EDUCATION PROPERTY TAX RATE REDUCTION

(a) For fiscal year 2010 only, the education property tax imposed under subsection 5402(a) of Title 32 shall be reduced from the rate of \$1.59 and \$1.10 and shall instead be at the following rates:

(1) the tax rate for nonresidential property shall be \$1.34 per \$100.00;
and

(2) the tax rate for homestead property shall be \$0.85 multiplied by the district spending adjustment for the municipality, per \$100.00 of equalized property value as most recently determined under section 5405 of Title 32.

(b) For claims filed in 2010 only, "applicable percentage" in subdivision 6066(a)(2) of Title 32 shall be reduced from 2.0 percent and instead shall be 1.80 percent multiplied by the fiscal year 2010 district spending adjustment for the municipality in which the homestead residence is located; but in no event shall the applicable percentage be less than 1.80 percent.

* * * VHFA: Moral Obligation for Pledged Equity Funds * * *

Sec. 46. 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. 47. 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. 48. REPEAL

10 V.S.A. § 632 (authorizing the Vermont housing and finance agency to establish reserve funds) is repealed.

Sec. 49. 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 their issuance; 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 provided in this section 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 of 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 provided in this section 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 pledged such 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 provided in this section 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 that 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 fund a 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 required by this section, 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 fund a 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 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 fund to the amount required by this section or to otherwise satisfy the state's commitment with respect to each 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. 50. SAVINGS CLAUSE

Nothing in Sec. 49 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.

* * * Tax on Spirituous Liquor * * *

Sec. 51. 7. V.S.A. § 422 is amended to read:

§ 422. TAX ON SPIRITUOUS LIQUOR

A tax of ~~25~~ 35 percent of the gross revenues is hereby assessed on the sale of spirituous liquor as defined in section 2 of this title other than fortified wine, sold by or through the liquor control board in accordance with the provisions of this title. A tax of ~~25~~ 35 percent of the gross revenues is hereby assessed on the sale of fortified wine so sold.

Sec. 52. [Deleted]

Sec. 53. [Deleted]

* * * Capital Gains Tax Exemption * * *

Sec. 54. 32 V.S.A. § 5811(21) is amended to read:

(21) "Taxable income" means federal taxable income determined without regard to Section 168(k) of the Internal Revenue Code and:

* * *

(B) Decreased by the following items of income (to the extent such income is included in federal adjusted gross income):

(i) income from United States government obligations; and

(ii) the first \$5,000.00 of adjusted net capital gain income as defined in Section 1(h) of the Internal Revenue Code ~~40 percent of adjusted net capital gain income as defined in Section 1(h) of the Internal Revenue Code, but the total amount of decrease under this subdivision (ii) shall not exceed 40 percent of federal taxable income.~~

Sec. 54a. SUNSET

The following sections of this bill shall expire on June 30, 2012:

(1) Sec. 37b (increase in tax on cigarettes);

(2) Sec. 37c (increase in tax on other tobacco products from 41 percent to 92 percent); but the other provisions of this section, relating to the tax on moist snuff and new smokeless tobacco, shall not expire;

(3) Sec. 42a (sales and use tax on clothing costing more than \$110.00);

(4) Sec. 51 (increase in tax on spirituous liquor); and

(5) Sec. 54 (gross receipts tax on satellite television programming providers).

* * * Reduction of Income Tax Rates * * *

Sec. 55. REDUCTION OF PERSONAL INCOME TAX RATES

For taxable year 2009 and subsequent taxable years, income tax rates under 32 V.S.A. § 5822, after taking into account any inflation adjustments to taxable income as required under subdivision 5822(b)(2), shall be as follows:

<u>For taxable income which, without this amendment, would be subject to tax at the following rate:</u>	<u>That taxable income shall instead be taxed at the following rate:</u>
<u>3.60%</u>	<u>3.50%</u>
<u>7.20%</u>	<u>7.10%</u>
<u>8.50%</u>	<u>8.25%</u>
<u>9.00%</u>	<u>8.75%</u>
<u>9.50%</u>	<u>8.95%</u>

* * * Satellite Television Tax * * *

Sec. 56. 32 V.S.A. chapter 242 is added to read:

CHAPTER 242. TAX ON SATELLITE TELEVISION PROGRAMMING

Subchapter 1. General Provisions

§ 10401. DEFINITIONS

Unless otherwise provided, the following terms when used in this chapter have the following definitions:

(1) "Distributor" means any person engaged in the business of making satellite programming available for purchase by subscribers.

(2) "Satellite programming" means radio and television audio and video programming services distributed or broadcast by satellite directly to the subscriber's receiving equipment.

§ 10402. GENERAL POWERS OF THE COMMISSIONER

In addition to other powers granted in this chapter, the commissioner may:

(1) Prescribe methods for determining the amount of gross receipts subject to tax.

(2) Require any person required to pay the tax imposed under this chapter to keep detailed records of all receipts received, charged, or accrued, including those claimed to be nontaxable, and of other facts relevant in

determining the amount of tax due and to furnish that information upon request to the commissioner.

§ 10403. LIABILITY FOR TAX

Every distributor required by this chapter to pay the tax imposed by this chapter shall be personally and individually liable for the amount of such tax together with such interest and penalty as has accrued under the provisions of section 3202 of this title; and if the distributor is a corporation or other entity, the personal liability shall extend and be applicable to any officer or agent of the corporation or entity who as an officer or agent of the same is under a duty to collect the tax and transmit it to the commissioner as required in this chapter.

§ 10404. RECORDS TO BE KEPT

Every person required to collect any tax imposed by this chapter shall keep records of its gross receipts and of the tax payable thereon in such form as the commissioner may by regulation require. The records shall be available for inspection and examination at any time upon demand by the commissioner or his or her duly authorized agent or employee and shall be preserved for a period of three years, except that the commissioner may consent to their destruction within that period or may require that they be kept longer.

Subchapter 2. Exemptions

§ 10441. TRANSACTIONS NOT COVERED

This chapter shall not cover the following transactions:

(1) Transactions that are not within the taxing power of this state under the Constitution of the United States.

(2) The provision of satellite programming to a person for resale in the ordinary course of business.

Subchapter 3. Imposition, Rate, and Payment of Tax

§ 10471. IMPOSITION OF TAX

Except as otherwise provided in this chapter, there is imposed a tax on the provision of satellite programming to a subscriber located in this state. The tax shall be paid by the distributor at the rate of five percent of all gross receipts derived by the distributor from the provision of satellite programming to the subscribers within this state.

§ 10472. RETURNS

(a) Except as otherwise provided in this section, every distributor subject to taxation under section 10471 of this title shall file a return with the commissioner stating the gross receipts derived by the distributor during each calendar quarter on or before the 25th day of the calendar month following such calendar quarter.

(b) The commissioner may permit or require returns to be made covering other periods and upon such dates as he or she may specify. In addition, the commissioner may require payments of tax liability at the intervals and based upon the classifications as he or she may designate. In prescribing the other periods to be covered by the return or intervals or classifications for payment of tax liability, the commissioner may take into account the dollar volume of tax involved as well as the need for ensuring the prompt and orderly collection of the taxes imposed.

(c) The form of returns shall be prescribed by the commissioner and shall contain such information as he or she may deem necessary for the proper administration of this chapter. The commissioner may require returns and amended returns to be filed within 20 days after notice and to contain the information specified in the notice.

(d) Upon the failure of a taxpayer to file any return required under this chapter within 20 days of the date of a notice to the taxpayer under subsection (c) of this section, the commissioner may petition a judge of the superior court in the county wherein the taxpayer has a place of business or, if the taxpayer has no place of business in this state, the commissioner may petition the Washington superior court, and upon the petition of the commissioner and a hearing, the judge shall issue a citation requiring the taxpayer and, if the taxpayer is a corporation, any principal officer of such corporation to file a proper return in accordance with this chapter upon pain of contempt. The order of notice upon the petition shall be returnable not later than 20 days after the filing of the petition. The petition shall be heard and determined on the return day or on a day thereafter as the court shall fix, having regard to the speediest possible determination of the case consistent with the rights of the parties. The judgment shall include costs in favor of the prevailing party. The commissioner's authority to petition under this subsection is in addition to the commissioner's authority under subsection 10475(a) of this chapter to compute the tax liability of a taxpayer who fails to file a required return or files an incorrect or insufficient return.

§ 10473. PAYMENT OF TAX

Every person required to file a return under this chapter shall, at the time of filing the return, pay to the commissioner the tax imposed by this chapter. The commissioner may require payment by electronic funds transfer from any

taxpayer who is required by federal tax law to pay any federal tax in that manner or from any taxpayer who has submitted to the tax department two or more protested or otherwise uncollectible checks with regard to any state tax payment in the prior two years. All the taxes for the period for which a return is required to be filed or for such lesser interval as shall have been designated by the commissioner shall be due and payable to the commissioner on the date limited for the filing of the return for that period or on the date limited for such lesser interval as the commissioner has designated, without regard to whether a return is filed or whether the return which is filed correctly shows the amount of gross receipts or the taxes due thereon.

§ 10474. DETERMINATION OF TAX OR PENALTY

(a) If a return required by this chapter is not filed or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the commissioner from any information available. Notice of the determination shall be given to the person liable for the payment of the tax. The determination shall finally and irrevocably fix the tax within 60 days after giving notice of the determination unless the person against whom it is assessed shall apply in writing to the commissioner for a hearing or unless the commissioner of his or her own motion shall redetermine the tax. After the hearing the commissioner shall give notice of his or her determination to the person against whom the tax is assessed.

(b) Notwithstanding the provisions of subsection (a) of this section, the commissioner, if he or she believes the collection from a taxpayer of any deficiency, penalty, or interest to be in jeopardy, may demand in writing that the taxpayer pay the deficiency, penalty, or interest forthwith. The demand may be made concurrently with or after the notice of deficiency or the assessment of penalty or interest given to the taxpayer under subsection (a) of this section. The amount of deficiency, penalty, or interest shall be collectible by the commissioner on the date of the demand unless the taxpayer files with the commissioner a bond in an amount equal to the deficiency, penalty, or interest sought to be collected as security for such amount as finally may be determined.

§ 10476. REFUNDS

(a) As provided in this section, the commissioner shall refund or credit any tax, penalty, or interest erroneously, illegally, or unconstitutionally paid if application to the commissioner for the refund shall be made within three years from the date the return was required to be filed; provided that the application is made within three years of the payment. The commissioner may, in lieu of any refund, allow credit on payments due from the applicant.

(b) A person shall not be entitled to a revision, refund, or credit under this section of a tax, interest, or penalty which had been determined to be due pursuant to the provisions of section 10474 of this title where he or she has had a hearing or an opportunity for a hearing as provided in that section or has failed to avail himself or herself of the remedies therein provided. No refund or credit shall be made of a tax, interest, or penalty paid after a determination by the commissioner made under section 10474 unless it is found that the determination was erroneous, illegal, or unconstitutional or otherwise improper pursuant to law, in which event refund or credit shall be made of the tax, interest, or penalty found to have been overpaid.

(c) If the commissioner determines on a petition for refund or otherwise that a taxpayer has paid an amount of tax under this chapter which, as of the date of the determination, exceeds the amount of tax liability owing from the taxpayer to the state with respect to the current and all preceding taxable periods under any provision of this title, the commissioner shall forthwith refund the excess amount to the taxpayer together with interest at the rate per annum established from time to time by the commissioner pursuant to section 3108 of this title. That interest shall be computed from 45 days after the date the return was filed or from 45 days after the date the return was due, including any extensions of time thereto, with respect to which the excess payment was made, whichever is the later date.

Subchapter 4. Enforcement and Penalties

§ 10511. PROCEEDINGS TO RECOVER TAX

(a) Whenever any person required to pay a tax under this chapter shall fail to pay any tax, penalty, or interest imposed by this chapter, the attorney general shall, upon the request of the commissioner, enforce the payment thereof on behalf of the state in any court of the state or of any other state of the United States.

(b) As an additional or alternate remedy, the commissioner may issue a warrant, directed to the sheriff of any county commanding him or her to levy upon and sell the real and personal property of any person liable for the tax, which may be found within his or her county, for the payment of the amount thereof with any penalties and interest and the cost of executing the warrant and to return the warrant to the commissioner and to pay to him or her the money collected by virtue thereof within 60 days after the receipt of the warrant. The sheriff shall within five days after the receipt of the warrant file with the county clerk a copy thereof, and thereupon the clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax, penalties, and interest for which the warrant is issued and the date on which the copy is filed. Thereupon the amount of the warrant so

docketed shall become a lien upon the title to and interest in real and personal property of the person against whom the warrant is issued. The sheriff shall then proceed upon the warrant in the same manner and with like effect as that provided by law in respect to executions issued against property upon judgments of a court of record, and, for services in executing the warrant, he or she shall be entitled to the same fees which he or she may collect in the same manner. If a warrant is returned not satisfied in full, the commissioner may from time to time issue new warrants and shall also have the same remedies to enforce the amount due as if the state had recovered judgment therefor and execution had been returned unsatisfied.

§ 10512. ACTIONS FOR COLLECTION OF TAX

Action may be brought by the attorney general at the instance of the commissioner in the name of the state to recover the amount of taxes, penalties, and interest due from a distributor, provided such action is brought within six years after the same are due. Such action shall be returnable in the county where the distributor has a place of business or, if the distributor has no place of business in this state, the action shall be returnable to Washington County. The limitation of six years in this section shall not apply to a suit to collect taxes, penalties, interest, and costs when the distributor filed a fraudulent return or failed to file a return when due.

§ 10513. PRESUMPTIONS AND BURDEN OF PROOF

(a) For the purpose of the proper administration of this chapter and to prevent evasion of the tax hereby imposed, it shall be presumed that all gross receipts from the provision of satellite programming are subject to tax until the contrary is established, and the burden of proving that any receipt or amusement charge is not taxable hereunder shall be upon the person required to collect tax.

(b) The certificate of the commissioner to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied under this chapter shall be presumptive evidence thereof.

§ 10514. CRIMINAL PENALTIES

(a) Failure to file; failure to remit. Any person who knowingly fails to file a return or fails to remit a tax required under this subchapter shall be imprisoned not more than three years or fined not more than \$10,000.00 or both.

(b) Any person who knowingly makes, signs, verifies, or files with the commissioner a false or fraudulent tax return shall be imprisoned not more

than one year or fined not more than \$1,000.00 or both. Any person who with intent to evade a tax liability makes, signs, verifies, or files with the commissioner a false or fraudulent tax return shall, if the amount of tax evaded is in excess of \$500.00, be imprisoned not more than three years or fined not more than \$10,000.00 or both.

§ 10515. NOTICE AND LIMITATIONS OF TIME

(a) Any notice under this chapter may be given by mailing it to the person for whom it is intended in a postpaid envelope addressed to that person at the address given in the last return filed by him or her under this chapter or in any application made by him or her or, if no return has been filed or application made, then to any address obtainable. The mailing of the notice shall be presumptive evidence of its receipt by the person to whom it is addressed. Any period of time which is determined under this chapter by the giving of notice shall commence to run from the date of mailing of the notice.

(b) The provisions of law relating to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the state or the commissioner to levy, appraise, assess, determine, or enforce the collection of any tax or penalty under this chapter. However, except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the later of the date of the filing of a return or the date a return is due; provided, however, that when no return has been filed as provided by law, the tax may be assessed at any time and further provided that where tax collected under this chapter has been underreported by 20 percent or more, such tax may be assessed at any time before the expiration of six years from the date of the filing of the return.

(c) When, before the expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer has consented in writing that the period be extended, the amount of the additional tax due may be determined at any time within the extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period. If a taxpayer has consented in writing to the extension of the period for assessment, the period for filing an application for credit or refund pursuant to section 10476 of this title shall not expire prior to six months after the expiration of the period within which an assessment may be made pursuant to the consent to extend the time for assessment of additional tax.

§ 10516. REVIEW OF COMMISSIONER'S DECISION

(a) Any aggrieved taxpayer may, within 30 days after any decision, order, finding, assessment, or action of the commissioner made under this chapter, appeal to the superior court. The appellant shall give security, approved by the

commissioner, conditioned to pay the tax levied, if it remains unpaid, with interest and costs, as set forth in subsection (c) of this section.

(b) The appeal provided by this section shall be the exclusive remedy available to any taxpayer for review of a decision of the commissioner determining the liability of the taxpayer for the taxes imposed.

(c) Notwithstanding any restrictions on the assessment and collection of deficiencies, the commissioner may assess a deficiency after the expiration of the period specified in subsection (a) of this section, notwithstanding that a notice of appeal regarding the deficiency has been filed by the taxpayer unless the taxpayer, prior to the time the notice of appeal is filed, has paid the deficiency, has deposited with the commissioner the amount of the deficiency, or has filed with the commissioner a bond, which may be a jeopardy bond, in the amount of the portion of the deficiency including interest and other amounts in respect of which review is sought and all costs and charges which may accrue against the taxpayer in the prosecution of the proceeding, including costs of all appeals, and with surety approved by the county court conditioned upon the payment of the deficiency including interest and other amounts as finally determined and all costs and charges. If, as a result of a waiver of the restrictions on the assessment and collection of a deficiency, any part of the amount determined by the commissioner is paid after the filing of the appeal bond, the bond shall, at the request of the taxpayer, be proportionately reduced.

§ 10517. LIENS

If any person required to pay a tax under this chapter neglects or refuses to pay the same after demand, the amount, together with all penalties and interest provided for in this chapter and together with any costs that may accrue in addition thereto, shall be a lien in favor of the state of Vermont upon all property and rights to property, whether real or personal, belonging to such person. Such lien shall arise at the time demand is made by the commissioner of taxes and shall continue until the liability for such sum with interest and costs is satisfied or becomes unenforceable. Such lien shall have the same force and effect as the lien for taxes under chapter 151 of this title as provided in section 5895 of this title, and notice of such lien shall be recorded as is provided in that section. Certificates of release of such lien shall also be given by the commissioner as in the case of the aforesaid tax liens.

* * * Limitation on Use Value Property Tax Reduction * * *

Sec. 57. 32 V.S.A. § 3764 is added to read:

§ 3764. LIMITATION ON USE VALUE PROPERTY TAX REDUCTION

Notwithstanding any other provision of law, if the per-acre fair market value of the total enrolled acres in any one parcel exceeds \$4,000.00, then the owner shall, in addition to the tax otherwise paid on the use value of the parcel, pay municipal and education property taxes on the amount per acre in excess of \$4,000.00, subject to any property tax adjustment available to the owner under chapter 154 of this title; and the payment to any municipality under section 3760 of this chapter shall be adjusted accordingly.

Sec. 57a. HEALTH CARE REFORM PROPERTY TAX EXEMPTION

In fiscal years 2010 and 2011, the following two properties shall be exempt from education property tax under chapter 135 of Title 32: Buildings and land owned and occupied by a health, recreation, and fitness organization which is exempt under Section 501(c)(3) of the Internal Revenue Code, the income of which is entirely used for its exempt purpose, one of which is designated by the Springfield Hospital and the other designated by the North Country Hospital, to promote exercise and healthy lifestyles for the community and to serve citizens of all income levels in this mission. This exemption shall apply notwithstanding the provisions of subdivision 3832(7) of Title 32.

Sec. 58. EFFECTIVE DATES

This act shall take effect upon passage, except:

(1) Sec. 17 (establishing an ad hoc board of civil authority for unorganized towns and gores and unified towns and gores) shall apply to appeals filed on or after July 1, 2009.

(2) Sec. 18 (repealing tax information insert) shall apply to homestead property tax bills mailed in 2009 and after.

(3) Sec. 19 (homestead declaration) shall apply to homestead declarations filed for tax year 2008 and after.

(4) Secs. 20 and 21 (taxation of unrelated business income of nonprofit corporations) shall take effect for taxable years beginning on and after January 1, 2010.

(5) Sec. 22 (update of link to federal income tax laws) shall apply to taxable years beginning on and after January 1, 2008.

(6) Secs. 24–28a (digital business entities) shall take effect on January 1, 2010.

(7) Sec. 30 (income sensitivity adjustment limit) shall apply to income sensitivity adjustments made in 2009 and after.

(8) Sec. 31 (deadline for notice from department to towns regarding adjustment amounts) shall apply to homestead declarations filed in 2009 and after.

(9) Secs. 32–36 (estate taxes) shall apply to estates of individuals dying on or after January 1, 2009.

(10) Secs. 37–38 (tobacco tax) shall take effect July 1, 2009.

(11) Secs. 40–42 (sales and use tax on digital downloads) shall take effect on July 1, 2009.

(12) Sec. 43 (cancellation of sales and use tax account) shall take effect with respect to cancellations on or after July 1, 2009.

(13) Sec. 51 (tax on spirituous liquor) shall take effect on July 1, 2009.

(14) [Deleted]

(15) Sec. 54 (capital gains exemption) shall take effect for taxable years beginning on or after January 1, 2009.

(16) Sec. 56 (satellite television tax) shall take effect on July 1, 2009.

(17) Sec. 57 (limitation on use value property tax reduction) shall apply to property tax bills issued in calendar 2010 and thereafter.

Pending the question, Shall the House concur in the Senate proposal of amendment? **Rep. Zuckerman of Burlington** moved to concur with the Senate proposal of amendment with a further amendment thereto, as follows:

By striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FISCAL YEAR 2010 EDUCATION PROPERTY TAX RATE

REDUCTION

(a) For fiscal year 2010 only, the education property tax imposed under subsection 5402(a) of Title 32 shall be reduced from the rates of \$1.59 and \$1.10 and shall instead be at the following rates:

(1) the tax rate for nonresidential property shall be \$1.34 per \$100.00; and

(2) the tax rate for homestead property shall be \$0.85 multiplied by the district spending adjustment for the municipality per \$100.00 of equalized property value as most recently determined under section 5405 of Title 32.

(b) For claims filed in 2010 only, “applicable percentage” in subdivision 6066(a)(2) of Title 32 shall be reduced from 2.0 percent and instead shall be 1.80 percent multiplied by the fiscal year 2010 district spending adjustment for the municipality in which the homestead residence is located; but in no event shall the applicable percentage be less than 1.80 percent.

* * * Imposition of Additional Education Property Tax
on Homestead Property* * *

Sec. 2. 32 V.S.A. § 5402(f) is added to read:

(f) For fiscal year 2010 and after, there is imposed an additional education property tax on homestead property at the rate of \$0.15 per \$100.00 of equalized property value as most recently determined under section 5405 of this title. The additional tax shall not be subject to adjustment under chapter 154 of this title.

Sec. 3. APPROPRIATION

Of the estimated \$63,000,000.00 in additional money to the education fund raised pursuant to Sec. 2 of this act, \$40,000,000.00 is appropriated in fiscal year 2010 to the Vermont teachers’ retirement fund established pursuant to 16 V.S.A. § 1944.

Sec. 4. LEGISLATIVE INTENT

It is the intent of the legislature that the remaining estimated \$23,000,000.00 in additional money to the education fund in fiscal year 2010 after the appropriation provided for in Sec. 3 of this act be used by the education fund in lieu of a transfer of that sum from the general fund in fiscal year 2010, thereby making an additional estimated \$23,000,000.00 available for fiscal year 2010 appropriations from the general fund.

Pending the question, Shall the House concur in the Senate proposals of amendment with further amendments thereto as moved by Rep. Zuckerman of Burlington? **Rep. Leriche of Hardwick** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the House concur in the Senate proposals of amendment with further amendments thereto as moved by Rep. Zuckerman of Burlington? was decided in the negative. Yeas, 0. Nays, 130.

Those who voted in the affirmative:

none

Those who voted in the negative are:

Acinapura of Brandon
Adams of Hartland

Ainsworth of Royalton
Ancel of Calais

Andrews of Rutland City
Aswad of Burlington

Atkins of Winooski	Helm of Castleton	Mitchell of Barnard
Audette of South Burlington	Higley of Lowell	Moran of Wardsboro
Baker of West Rutland	Hooper of Montpelier	Morley of Barton
Bissonnette of Winooski	Howard of Rutland City *	Morrissey of Bennington
Bohi of Hartford	Howrigan of Fairfield	Mrowicki of Putney
Botzow of Pownal	Hube of Londonderry	Myers of Essex
Branagan of Georgia	Hubert of Milton	Nuovo of Middlebury
Bray of New Haven	Jerman of Essex	O'Brien of Richmond
Browning of Arlington	Jewett of Ripton	O'Donnell of Vernon
Burke of Brattleboro	Johnson of South Hero	Partridge of Windham
Canfield of Fair Haven	Johnson of Canaan	Pearce of Richford
Cheney of Norwich	Keenan of St. Albans City	Peaslee of Guildhall
Clark of Vergennes	Kitzmiller of Montpelier	Pellett of Chester
Clarkson of Woodstock	Klein of East Montpelier	Peltz of Woodbury
Clerkin of Hartford	Koch of Barre Town	Perley of Enosburg
Condon of Colchester	Komline of Dorset	Potter of Clarendon
Conquest of Newbury	Krawczyk of Bennington	Pugh of South Burlington
Consejo of Sheldon	Lanpher of Vergennes	Ram of Burlington
Copeland-Hanzas of	Larocque of Barnet	Reis of St. Johnsbury
Bradford	Larson of Burlington	Rodgers of Glover
Corcoran of Bennington	Lawrence of Lyndon	Savage of Swanton
Courcelle of Rutland City	Lenes of Shelburne	Shand of Weathersfield
Deen of Westminster	Leriche of Hardwick	Sharpe of Bristol
Devereux of Mount Holly	Lewis of Derby	Smith of Mendon
Dickinson of St. Albans	Lippert of Hinesburg	South of St. Johnsbury
Town	Lorber of Burlington	Spengler of Colchester
Donaghy of Poultney	Macaig of Williston	Stevens of Waterbury
Donahue of Northfield *	Maier of Middlebury	Sweaney of Windsor
Donovan of Burlington	Malcolm of Pawlet	Till of Jericho
Edwards of Brattleboro	Manwaring of Wilmington	Toll of Danville
Emmons of Springfield	Marcotte of Coventry	Townsend of Randolph
Evans of Essex	Marek of Newfane	Waite-Simpson of Essex
Fagan of Rutland City	Martin of Springfield	Webb of Shelburne
Fisher of Lincoln	Martin of Wolcott	Westman of Cambridge
Frank of Underhill	Masland of Thetford	Wheeler of Derby
French of Shrewsbury	McAllister of Highgate	Wilson of Manchester
French of Randolph	McCullough of Williston	Winters of Williamstown
Geier of South Burlington	McDonald of Berlin	Wizowaty of Burlington
Gilbert of Fairfax	McNeil of Rutland Town	Wright of Burlington
Greshin of Warren	Milkey of Brattleboro	Young of St. Albans City
Haas of Rochester	Miller of Shaftsbury	Zenie of Colchester
Head of South Burlington	Minter of Waterbury	Zuckerman of Burlington

Those members absent with leave of the House and not voting are:

Brennan of Colchester	Grad of Moretown	Mook of Bennington
Crawford of Burke	Heath of Westford	Nease of Johnson
Davis of Washington	Kilmartin of Newport City	Obuchowski of Rockingham
Flory of Pittsford	McFaun of Barre Town	Orr of Charlotte

Poirier of Barre City
Scheuermann of Stowe
Stevens of Shoreham

Taylor of Barre City
Trombley of Grand Isle
Turner of Milton

Weston of Burlington

Rep. Donahue of Northfield explained her vote as follows:

“Mr. Speaker:

The concept that school boards could collectively reduce their budgets by \$60 million in a few weeks time was completely unrealistic. It did at least raise a valid issue of attempting to include school budget cuts on the table along with all other spending to spread the impact of cuts. However, it is completely inaccurate to describe it as having been a proposal to raise property taxes.”

Rep. Howard of Rutland City explained his vote as follows:

“Mr. Speaker:

I vote to oppose this \$63 million dollar property tax increase, a proposal which was made earlier by the Governor and according to the non-partisan joint fiscal office’s real actual and existing analysis of the Governor’s budget would resulting a \$.13 per \$100 of assessed value increase in the property taxes paid by Vermonters.”

Pending the question, Will the House concur in the Senate proposal of amendment? **Rep. Ancel of Calais** moved that the House refuse to concur and ask for a Committee of Conference, which was agreed to, and the Speaker appointed as members of the Committee of Conference on the part of the House:

Rep. Ancel of Calais

Rep. Obuchowski of Rockingham

Rep. Condon of Colchester

Thereupon, on motion of **Rep. Leriche of Hardwick**, the rules were suspended and the bill was ordered messaged to the Senate forthwith.

Rules Suspended; Bill Committed

S. 2

On motion of **Rep. Myers of Essex**, the rules were suspended and Senate bill, entitled

An act relating to offenders with a mental illness or other functional impairment;

Appearing on the Calendar for notice, was taken up for immediate consideration.

Pending the reading of the report of the committee on Corrections and Institutions, on motion of **Rep. Myers of Essex**, the bill was committed to the committee on Human Services.

Read Third Time and Passed

S. 7

Senate bill, entitled

An act to prohibit the use of lighted tobacco products in the workplace

Was taken up and pending third reading of the bill, **Rep. Ainsworth of Royalton** moved to propose to the Senate to amend the bill as follows:

By striking Sec. 3 and inserting in lieu thereof the following:

Sec. 3. 18 V.S.A. § 1743 is amended to read:

§ 1743. EXCEPTIONS

The restrictions in this chapter on possession of lighted tobacco products ~~shall~~ do not apply to:

First: (1) ~~Workplace smoking areas designated under subchapter 2 of chapter 28 of this title~~ A retail tobacco shop, which, for the purposes of this subchapter, means any enclosed indoor workplace dedicated to or predominantly used for the retail sale of tobacco, tobacco products, and related accessories and at which the sale of other products or services is incidental, provided that the tobacco shop provides a separate enclosed, ventilated smoking area that that is located so that the public is not required to, but may, enter.

Second: (2) Areas not commonly open to the public of owner-operated businesses with no employees.

(3) Any enclosed indoor workplace of a business that manufactures, imports, or distributes tobacco products when, as a necessary and integral part of the business, tobacco is tested by heating, burning, or smoking the tobacco, provided the employer provides a separate, enclosed, ventilated testing area.

Thereupon, **Rep. Ainsworth of Royalton** asked that the question be divided and the first proposal of amendment was disagreed to.

Thereupon, **Rep. Ainsworth of Royalton** asked and was granted leave of the House to withdraw the second recommendation of proposal of amendment.

Pending third reading of the bill, **Reps. Hubert of Milton and Fagan of Rutland City** moved to propose to the Senate to amend the bill as follows:

First: In Sec. 2, 18 V.S.A. § 1426, by striking subsection (b) and inserting in lieu thereof the following:

(a) An employee aggrieved by an employer's failure to comply with the provisions of this subchapter may file a complaint with the department of health.

~~(b) If the complaint is based on an employer's alleged failure to establish a smoking policy or post the policy and summary as required under section 1424 of this title, the~~ The department shall not initiate an action under this section until it has given the employer written notice of the alleged violation and ten days to come into voluntary compliance with the provisions of this subchapter.

~~(c) The commissioner of health or a hearing officer designated by the commissioner may, after notice and an opportunity for hearing, impose an administrative penalty of \$100.00 against an employer who violates a provision of this chapter. If it is determined at the hearing that the employer made every effort to enforce the provisions of this subchapter and the employee smoked in willful disregard of the workplace prohibition against smoking, the administrative penalty shall be assessed against the employee after notice and hearing.~~ The hearing before the commissioner shall be a contested case subject to the provisions of chapter 25 of Title 3 (Administrative Procedure Act).

Second: By adding a new Sec. 2a to read as follows:

Sec. 2a. VIOLATION OF WORKPLACE SMOKING PROHIBITION BY
EMPLOYEE; UNEMPLOYMENT COMPENSATION; GROSS
MISCONDUCT

Notwithstanding any other provision of law, termination of an employee for the employee's willful violation of the prohibition against smoking in the workplace shall be considered gross misconduct.

Thereupon, **Rep. Hubert of Milton** asked that the question be divided.

Thereupon, **Rep. Hubert of Milton** asked and was granted leave of the House to withdraw his second proposal of amendment and then his first proposal of amendment.

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment.

**Third Reading; Bill Passed in Concurrence
With Proposal of Amendment**

S. 27

Senate bill, entitled

An act relating to tastings and sale of wines, fortified wines and spirits

Was taken up, read the third time and passed in concurrence with proposal of amendment.

Proposal of Amendment Agreed to; Third Reading Ordered

S. 86

Rep. Shand of Weathersfield, for the committee on Commerce and Economic Development, to which had been referred Senate bill, entitled

An act relating to the administration of trusts

Reported in favor of its passage in concurrence with proposal of amendment as follows:

Sec. 1. Title 14A is added to read:

TITLE 14A. TRUSTS

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

§ 101. SHORT TITLE

This title may be cited as the Vermont Trust Code.

§ 102. SCOPE

This title applies to express trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust. This title shall not apply to trusts described in the following provisions of Vermont Statutes Annotated: chapter 16 of Title 3, chapter 151 of Title 6, chapters 103, 204, and 222 of Title 8, chapters 11A, 12, and 59 of Title 10, chapter 7 of Title 11A, chapter 11 of Title 15, chapters 55, 90, and 131 of Title 16, chapters 121, 177, and 225 of Title 18, chapter 9 of Title 21, chapters 65, 119, 125, and 133 of Title 24, chapters 5 and 7 of Title 27, chapter 11 of Title 28, chapter 16 of Title 29, and chapters 84 and 91 of Title 30.

§ 103. DEFINITIONS

In this title:

(1) "Action," with respect to an act of a trustee, includes a failure to act.

(2) "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on the effective date of this title.

(3) "Beneficiary" means a person that:

(A) has a present or future beneficial interest in a trust, vested or contingent; or

(B) in a capacity other than that of trustee, holds a power of appointment over trust property.

(4) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in subsection 405(a) of this title.

(5) "Conservator" shall have the same meaning as "Guardian of the property" under subdivision 7(A)(ii) of this section.

(6) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

(7)(A) "Guardian."

(i) "Guardian of the person" means a person appointed by the probate court to make decisions regarding the support, care, education, health, and welfare of a minor or adult individual.

(ii) "Guardian of the property" means a person appointed by the probate court to administer the estate of a minor or adult individual.

(B) Neither term includes a guardian ad litem.

(8) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

(9) "Jurisdiction," with respect to a geographic area, includes a state or country.

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

(11) "Power of withdrawal" means a presently exercisable general power of appointment other than a power:

(A) exercisable by a trustee and limited by an ascertainable standard; or

(B) exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

(12) "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

(13)(A) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined, is:

(i) a “first tier” beneficiary as a distributee or permissible distributee of trust income or principal;

(ii) a “second tier” beneficiary who would be a first tier beneficiary of trust income or principal if the interests of the distributees described in subdivision (A) of this subdivision (13) terminated on that date without causing the trust to terminate; or

(iii) a “final beneficiary” who would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(B) Notwithstanding subdivisions (i) and (ii) of subdivision (A) of this subdivision (13), a second tier beneficiary or a final beneficiary shall not be a “qualified beneficiary” if the beneficiary’s interest in the trust:

(i) is created by the exercise of a power of appointment and the exercise of the power of appointment is not irrevocable; or

(ii) may be eliminated by an amendment to the trust.

(14) “Revocable,” as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

(15) “Settlor” means a person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person’s contribution except to the extent another person has the power to revoke or withdraw that portion.

(16) “Spendthrift provision” means a term of a trust which restrains both voluntary and involuntary transfer of a beneficiary’s interest.

(17) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes a Native American tribe or band recognized by federal law or formally acknowledged by a state.

(18) “Terms of a trust” means the manifestation of the settlor’s intent regarding a trust’s provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

(19) “Trust instrument” means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.

(20) "Trustee" includes an original, additional, and successor trustee, and a cotrustee.

§ 104. KNOWLEDGE

(a) Subject to subsection (b) of this section, a person has knowledge of a fact if the person:

(1) has actual knowledge of it;

(2) has received a notice or notification of it; or

(3) from all the facts and circumstances known to the person at the time in question, has reason to know it.

(b) An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust, or would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information.

§ 105. DEFAULT AND MANDATORY RULES

(a) Except as otherwise provided in the terms of the trust, this title governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

(b) The terms of a trust prevail over any provision of this title except:

(1) the requirements for creating a trust;

(2) the duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries;

(3) the requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;

(4) the power of the probate court to modify or terminate a trust under sections 410 through 416 of this title;

(5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in chapter 5 of this title;

(6) the power of the probate court under section 702 of this title to require, dispense with, or modify or terminate a bond;

(7) the power of the probate court under subsection 708(b) of this title to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;

(8) the effect of an exculpatory term under section 1008 of this title;

(9) the rights under sections 1010 through 1013 of this title of a person other than a trustee or beneficiary;

(10) periods of limitation for commencing a judicial proceeding;

(11) the power of the probate court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; and

(12) the subject matter jurisdiction of the probate court and venue for commencing a proceeding as provided in sections 203 and 204 of this title.

§ 106. COMMON LAW OF TRUSTS; PRINCIPLES OF EQUITY

The common law of trusts and principles of equity supplement this title, except to the extent modified by this title or another statute of this state.

§ 107. GOVERNING LAW

The meaning and effect of the terms of a trust are determined by:

(1) the law of the jurisdiction designated in the terms unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue; or

(2) in the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue.

§ 108. PRINCIPAL PLACE OF ADMINISTRATION

(a) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if:

(1) a trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction; or

(2) all or part of the administration occurs in the designated jurisdiction.

(b) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries.

(c) Without precluding the right of the probate court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection (b) of this section, may transfer the trust's principal place of administration to another state or to a jurisdiction outside the United States.

(d) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration not less than 60 days before initiating the transfer. The notice of proposed transfer must include:

(1) the name of the jurisdiction to which the principal place of administration is to be transferred;

(2) the address and telephone number at the new location at which the trustee can be contacted;

(3) an explanation of the reasons for the proposed transfer;

(4) the date on which the proposed transfer is anticipated to occur; and

(5) the date, not less than 60 days after the giving of the notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.

(e) The authority of a trustee under this section to transfer a trust's principal place of administration terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

(f) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to section 704 of this title.

§ 109. METHODS AND WAIVER OF NOTICE

(a) Notice to a person under this title or the sending of a document to a person under this title must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, commercial delivery service, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed electronic message.

(b) Notice otherwise required under this title or a document otherwise required to be sent under this title need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

(c) Notice under this title or the sending of a document under this title may be waived by the person to be notified or sent the document.

(d) Notice of a judicial proceeding must be given as provided in the applicable rules of court procedure.

§ 110. OTHERS TREATED AS QUALIFIED BENEFICIARIES

(a) Whenever notice to qualified beneficiaries of a trust is required under this title, the trustee shall also give notice to any other beneficiary who has sent the trustee a request for notice.

(b)(1) A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a qualified beneficiary under this title if the charitable organization, on the date the charitable organization's qualification is being determined, is:

(A) a "first tier" beneficiary as a distributee or permissible distributee of trust income or principal;

(B) a "second tier" beneficiary who would be a first tier beneficiary of trust income or principal if the interests of the distributees described in subdivision (1)(A) of this subsection (b) terminated on that date without causing the trust to terminate; or

(C) a "final beneficiary" who would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(2) Notwithstanding subdivision (1) of this subsection (b), a second tier beneficiary or a final beneficiary whose interest in the trust is created by the exercise of a power of appointment, and the exercise of the power of appointment is not irrevocable, shall not have the rights of a "qualified beneficiary."

(c) A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in section 408 or 409 of this title has the rights of a qualified beneficiary under this title.

(d) The attorney general of this state has the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in this state.

§ 111. NONJUDICIAL SETTLEMENT AGREEMENTS

(a) For purposes of this section, "interested persons" means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the probate court.

(b) Except as otherwise provided in subsection (c) of this section, interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

(c) A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the probate court under this title or other applicable law.

(d) Matters that may be resolved by a nonjudicial settlement agreement include:

(1) the interpretation or construction of the terms of the trust;

(2) the approval of a trustee's report or accounting;

(3) direction to a trustee to perform or to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;

(4) the resignation or appointment of a trustee and the determination of a trustee's compensation;

(5) transfer of a trust's principal place of administration; and

(6) liability of a trustee for an action relating to the trust.

(e) Any interested person may request the probate court to approve a nonjudicial settlement agreement to determine whether the representation as provided in chapter 3 of this title was adequate, and to determine whether the agreement contains terms and conditions the probate court could have properly approved.

§ 112. RULES OF CONSTRUCTION

The rules of construction that apply in this state to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property.

CHAPTER 2. JUDICIAL PROCEEDINGS

§ 201. ROLE OF COURT IN ADMINISTRATION OF TRUST

(a) The probate court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.

(b) A trust is not subject to continuing judicial supervision unless ordered by the probate court.

(c) A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights.

(d) Upon motion of any party in a probate action concerning the administration of a trust under the provisions of this title, the presiding probate judge shall permit an appeal to be taken to the superior court from any interlocutory order or ruling if the judge finds that the order or ruling involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal may materially advance the termination of the litigation.

§ 202. JURISDICTION OVER TRUSTEE AND BENEFICIARY

(a) By accepting the trusteeship of a trust having its principal place of administration in this state or by moving the principal place of administration to this state, the trustee submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(b) With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the courts of this state regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(c) This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary, or other person receiving property from the trust.

§ 203. SUBJECT MATTER JURISDICTION

(a) The probate court has exclusive jurisdiction of proceedings in this state brought by a trustee or beneficiary concerning the administration of a trust.

(b) The probate court has concurrent jurisdiction with other courts of this state of other proceedings involving a trust.

§ 204. VENUE

(a) Except as otherwise provided in subsection (b) of this section, venue for a judicial proceeding involving a trust is in the probate district of this state in which the trust's principal place of administration is or will be located and, if the trust is created by will and the estate is not yet closed, in the probate district in which the decedent's estate is being administered.

(b) If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in a probate district of this state in which a beneficiary resides, in a probate district in which any trust property is located, and if the trust is created by will, in the probate district in which the decedent's estate was or is being administered.

§ 205. MATTERS IN EQUITY

The probate court may hear and determine in equity all matters relating to trusts in this title.

CHAPTER 3. REPRESENTATION§ 301. REPRESENTATION; BASIC EFFECT

(a) Notice to a person who may represent and bind another person under this chapter has the same effect as if notice were given directly to the other person.

(b) The consent of a person who may represent and bind another person under this chapter is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

(c) Except as otherwise provided in sections 411 and 602 of this title, a person who under this chapter may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

§ 302. REPRESENTATION BY HOLDER OF GENERAL TESTAMENTARY POWER OF APPOINTMENT

To the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.

§ 303. REPRESENTATION BY FIDUCIARIES AND PARENTS

To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

(1) a guardian of the property may represent and bind the estate that the guardian controls;

(2) a guardian of the person may represent and bind the ward if a guardian of the ward's estate has not been appointed;

(3) an agent having authority to act with respect to the particular question or dispute may represent and bind the principal;

(4) a trustee may represent and bind the beneficiaries of the trust;

(5) a personal representative of a decedent's estate may represent and bind persons interested in the estate; and

(6) a parent may represent and bind the parent's minor or unborn child if a guardian for the child has not been appointed.

§ 304. REPRESENTATION BY PERSON HAVING SUBSTANTIALLY IDENTICAL INTEREST

Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest with respect to the particular question between the representative and the person represented.

§ 305. APPOINTMENT OF REPRESENTATIVE

(a) If the probate court determines that an interest is not represented under this chapter, or that the otherwise available representation might be inadequate, the probate court may appoint a representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown. A representative may be appointed to represent several persons or interests.

(b) A representative may act on behalf of the individual represented with respect to any matter arising under this title, whether or not a judicial proceeding concerning the trust is pending.

(c) In making decisions, a representative may consider general benefit accruing to the living members of the individual's family.

CHAPTER 4. CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST

§ 401. METHODS OF CREATING TRUST

A trust may be created:

(1) by transfer of property to another person as trustee or to the trust in the trust's name during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;

(2) by declaration by the owner of property that the owner holds identifiable property as trustee;

(3) by exercise of a power of appointment in favor of a trustee;

(4) pursuant to a statute or judgment or decree that requires property to be administered in the manner of an express trust;

(5) by an agent or attorney-in-fact under a power of attorney that expressly grants authority to create the trust.

§ 402. REQUIREMENTS FOR CREATION

(a) A trust is created only if:

(1) the settlor has capacity to create a trust;

(2) the settlor indicates an intention to create the trust;

(3) the trust has a definite beneficiary or is:

(A) a charitable trust;

(B) a trust for the care of an animal, as provided in section 408 of this title; or

(C) a trust for a noncharitable purpose, as provided in section 409 of this title;

(4) the trustee has duties to perform; and

(5) the same person is not the sole trustee and current and sole beneficiary.

(b) A settlor is deemed to have the capacity to create a trust if:

(1) the trust is created by an agent of the settlor under a power of attorney that expressly grants authority to create the trust; and

(2) the settlor had capacity to create a trust at the time the power of attorney was executed.

(c) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(d) A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

§ 403. TRUSTS CREATED IN OTHER JURISDICTIONS

A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation:

(1) the settlor was domiciled, had a place of abode, or was a citizen;

(2) a trustee was domiciled or had a place of business; or

(3) any trust property was located.

§ 404. TRUST PURPOSES

A trust may be created only to the extent its purposes are lawful, not contrary to public policy, and possible to achieve. A trust and its terms must be for the benefit of its beneficiaries.

§ 405. CHARITABLE PURPOSES; ENFORCEMENT

(a) A charitable trust may be created for the relief of poverty; the advancement of education or religion; the promotion of health, scientific, literary, benevolent, governmental, or municipal purposes; or other purposes the achievement of which is beneficial to the community.

(b) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary or if the designated charitable purpose cannot be completed or no longer exists, the trustee, if authorized by the terms of the trust, or if not, the probate court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor's intention to the extent it can be ascertained.

(c) The settlor of a charitable trust, the attorney general, a cotrustee, or a person with a special interest in the charitable trust may maintain a proceeding to enforce the trust.

§ 406. CREATION OF TRUST INDUCED BY FRAUD, DURESS, OR UNDUE INFLUENCE

A trust is void to the extent its creation was induced by fraud, duress, or undue influence.

§ 407. EVIDENCE OF ORAL TRUST

Except as required by a statute other than this title, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear and convincing evidence.

§ 408. TRUST FOR CARE OF ANIMAL

(a) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the probate court. A person having an interest in the welfare of the animal may request the probate court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the probate court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

§ 409. NONCHARITABLE TRUST WITHOUT ASCERTAINABLE BENEFICIARY

Except as otherwise provided in section 408 of this title or by another statute, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than 21 years.

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the probate court.

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the probate court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

§ 410. MODIFICATION OR TERMINATION OF TRUST; PROCEEDINGS FOR APPROVAL OR DISAPPROVAL

(a) In addition to the methods of termination prescribed by sections 411 through 414 of this title, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve.

(b) A proceeding to approve or disapprove a proposed modification or termination under sections 411 through 416 of this title, or trust combination or division under section 417 of this title, may be commenced by a trustee or beneficiary, and a proceeding to approve or disapprove a proposed modification or termination under section 411 of this title may be commenced by the settlor. The settlor of a charitable trust may maintain a proceeding to modify the trust under section 413 of this title.

§ 411. MODIFICATION OR TERMINATION OF NONCHARITABLE
IRREVOCABLE TRUST BY CONSENT

(a) A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. If, upon petition, the probate court finds that the settlor and all beneficiaries consent to the modification or termination of a noncharitable irrevocable trust, the probate court shall approve the modification or termination even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's modification or termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; by the settlor's guardian of the property with the approval of the probate court supervising the guardianship if an agent is not so authorized; or by the settlor's guardian of the person with the approval of the probate court supervising the guardianship if an agent is not so authorized and a guardian of the property has not been appointed.

(b) A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the probate court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the probate court concludes that modification is not inconsistent with a material purpose of the trust.

(c) A spendthrift provision in the terms of the trust is not presumed to constitute a material purpose of the trust.

(d) Upon termination of a trust under subsection (a) or (b) of this section, the trustee shall distribute the trust property as agreed by the beneficiaries.

(e) If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection (a) or (b) of this section, the modification or termination may be approved by the probate court if the probate court is satisfied that:

(1) if all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and

(2) the interests of a beneficiary who does not consent will be adequately protected.

§ 412. MODIFICATION OR TERMINATION BECAUSE OF
UNANTICIPATED CIRCUMSTANCES OR INABILITY TO
ADMINISTER TRUST EFFECTIVELY

(a) The probate court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.

(b) The probate court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration.

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property as directed by the probate court or otherwise in a manner consistent with the purposes of the trust.

§ 413. CY PRES

(a) Except as otherwise provided in subsection (b) of this section, if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful:

(1) the trust does not fail, in whole or in part;

(2) the trust property does not revert to the settlor or the settlor's successors in interest; and

(3) the probate court, on motion of any trustee, or any interested person, or the attorney general, may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes.

(b) A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the probate court under subsection (a) of this section to apply cy pres to modify or terminate the trust only if, when the provision takes effect:

(1) the trust property is to revert to the settlor and the settlor is still living; or

(2) fewer than 21 years have elapsed since the date of the trust's creation.

§ 414. MODIFICATION OR TERMINATION OF UNECONOMIC TRUST

(a) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than \$100,000.00 may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

(b) The probate court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property as directed by the probate court or otherwise in a manner consistent with the purposes of the trust.

(d) This section does not apply to an easement for conservation or preservation.

§ 415. REFORMATION TO CORRECT MISTAKES

The probate court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

§ 416. MODIFICATION TO ACHIEVE SETTLOR'S TAX OBJECTIVES

The probate court may modify the terms of a trust to achieve the settlor's tax objectives if the modification is not contrary to the settlor's probable intention. The probate court may provide that the modification has retroactive effect.

§ 417. COMBINATION AND DIVISION OF TRUSTS

After notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust.

CHAPTER 5. CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

§ 501. RIGHTS OF BENEFICIARY'S CREDITOR OR ASSIGNEE

To the extent a beneficiary's interest is not protected by a spendthrift provision, the probate court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The probate court may limit the award to such relief as is appropriate under the circumstances.

§ 502. SPENDTHRIFT PROVISION

(a) A spendthrift provision is valid only if it restrains both voluntary and involuntary transfer of a beneficiary's interest.

(b) A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust," or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.

(c) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this chapter, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.

§ 503. EXCEPTIONS TO SPENDTHRIFT PROVISION

(a) In this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another state.

(b) A spendthrift provision is unenforceable against:

(1) a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance;

(2) a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust; and

(3) a claim of this state or the United States to the extent a statute of this state or federal law so provides.

(c) A claimant against which a spendthrift provision cannot be enforced may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary. The court may limit the award to such relief as is appropriate under the circumstances.

§ 504. DISCRETIONARY TRUSTS; EFFECT OF STANDARD

(a) In this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another state.

(b) Except as otherwise provided in subsection (c) of this section, whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if:

(1) the discretion is expressed in the form of a standard of distribution;
or

(2) the trustee has abused the discretion.

(c) To the extent a trustee has not complied with a standard of distribution or has abused a discretion:

(1) a distribution may be ordered by the court to satisfy a judgment or court order against the beneficiary for support or maintenance of the beneficiary's child, spouse, or former spouse; and

(2) the court shall direct the trustee to pay to the child, spouse, or former spouse such amount as is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.

(d) This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.

§ 505. CREDITOR'S CLAIM AGAINST SETTLOR

(a) Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

(1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

(2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach shall not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution. This subdivision shall not apply to an irrevocable "special needs trust" established for a disabled person as described in 42 U.S.C. Section 1396p(d)(4) or similar federal law governing the transfer to such a trust.

(3) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

(b) For purposes of this section:

(1) during the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power; and

(2) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in Section 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986, or Section 2503(b) of the Internal Revenue Code of 1986, in each case as in effect on the effective date of this title.

§ 506. OVERDUE DISTRIBUTION

(a) In this section, “mandatory distribution” means a distribution of income or principal which the trustee is required to make to a beneficiary under the terms of the trust, including a distribution upon termination of the trust. The term does not include a distribution subject to the exercise of the trustee’s discretion even if:

(1) the discretion is expressed in the form of a standard of distribution;
or

(2) the terms of the trust authorizing a distribution couple language of discretion with language of direction.

(b) Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date.

§ 507. PERSONAL OBLIGATION OF TRUSTEE

Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

CHAPTER 6. REVOCABLE TRUSTS§ 601. CAPACITY OF SETTLOR OF REVOCABLE TRUST

The capacity of a settlor required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

§ 602. REVOCATION OR AMENDMENT OF REVOCABLE TRUST

(a) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before the effective date of this title.

(b) If a revocable trust is created or funded by more than one settlor:

(1) to the extent the trust consists of community property or property held by tenants by the entirety when added to the trust, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses;

(2) to the extent the trust consists of property other than community property or property held by tenants by the entirety when added to the trust, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor’s contribution; and

(3) upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall notify the other settlors of the revocation or amendment.

(c) The settlor may revoke or amend a revocable trust:

(1) by substantial compliance with a method provided in the terms of the trust; or

(2) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

(A) executing a later will or codicil that expressly refers to and revokes or amends the trust or specifically devises or bequeaths specific property that would otherwise have passed according to the terms of the trust, or

(B) any other method manifesting clear and convincing evidence of the settlor's intent.

(d) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs, but with respect to community property or property held by tenants by the entirety when added to the trust under subdivision (b)(1) of this section, the trustee shall deliver one-half of the property to each spouse unless the governing instrument specifically states otherwise.

(e) A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power.

(f) A guardian of the property of the settlor or, if no guardian of the property has been appointed, a guardian of the person of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the probate court supervising the guardianship.

(g) A trustee who does not have actual knowledge that a trust has been revoked or amended is not liable for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

§ 603. SETTLOR'S POWERS; POWERS OF WITHDRAWAL

(a) While a trust is revocable, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

(b) During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

§ 604. LIMITATION ON ACTION CONTESTING VALIDITY OF REVOCABLE TRUST; DISTRIBUTION OF TRUST PROPERTY

(a) A person may commence a judicial proceeding to contest the validity of a trust that was revocable immediately before the settlor's death within the earlier of:

(1) three years after the settlor's death; or

(2) four months after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding.

(b) Upon the death of the settlor of a trust that was revocable immediately before the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless:

(1) the trustee has actual knowledge of a pending judicial proceeding contesting the validity of the trust; or

(2) a potential contestant has notified the trustee in writing of a possible judicial proceeding to contest the trust, and a judicial proceeding is commenced within 60 days after the contestant sent the notification.

(c) A beneficiary of a trust that is determined to have been invalid in whole or in part is liable to return any distribution received to the extent that the invalidity applies to the distribution.

CHAPTER 7. OFFICE OF TRUSTEE

§ 701. ACCEPTING OR DECLINING TRUSTEESHIP

(a) Except as otherwise provided in subsection (c) of this section, a person designated as trustee accepts the trusteeship:

(1) by substantially complying with a method of acceptance provided in the terms of the trust; or

(2) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

(b) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.

(c) A person designated as trustee, without accepting the trusteeship, may:

(1) act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to the designated cotrustee, or, if none, to the successor trustee, or, if none, to a qualified beneficiary; and

(2) inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

§ 702. TRUSTEE'S BOND

(a) A trustee shall give bond to secure performance of the trustee's duties only if the probate court finds that a bond is needed to protect the interests of the beneficiaries or is required by the terms of the trust and the probate court has not dispensed with the requirement.

(b) The probate court may specify the amount of a bond, its liabilities, and whether sureties are necessary. The probate court may modify or terminate a bond at any time.

§ 703. COTRUSTEES

(a) Cotrustees who are unable to reach a unanimous decision may act by majority decision.

(b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

(c) A cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity, or the cotrustee has properly delegated the performance of the function to another trustee.

(d) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(e) A trustee may not delegate to a cotrustee the performance of a function the settlor reasonably expected the trustees to perform jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

(f) Except as otherwise provided in subsection (g) of this section, a trustee who does not join in an action of another trustee is not liable for the action.

(g) Each trustee shall exercise reasonable care to:

- (1) prevent a cotrustee from committing a serious breach of trust; and
- (2) compel a cotrustee to redress a serious breach of trust.

(h) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified in writing any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

§ 704. VACANCY IN TRUSTEESHIP; APPOINTMENT OF SUCCESSOR

(a) A vacancy in a trusteeship occurs if:

- (1) a person designated as trustee rejects the trusteeship;
- (2) a person designated as trustee cannot be identified or does not exist;
- (3) a trustee resigns;
- (4) a trustee is disqualified or removed;
- (5) a trustee dies; or
- (6) a guardian is appointed for an individual serving as trustee.

(b) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

(c) A vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:

- (1) by a person designated in the terms of the trust to act as successor trustee;
- (2) by a person appointed by unanimous agreement of the qualified beneficiaries; or
- (3) by a person appointed by the probate court.

(d) A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority:

- (1) by a person designated in the terms of the trust to act as successor trustee; or

(2) by a person appointed by the probate court.

(e) Whether or not a vacancy in a trusteeship exists or is required to be filled, the probate court may appoint an additional trustee or special fiduciary whenever the probate court considers the appointment necessary for the administration of the trust.

§ 705. RESIGNATION OF TRUSTEE

(a) A trustee may resign:

(1) upon at least 30 days' notice in writing to all cotrustees and to the qualified beneficiaries except those qualified beneficiaries under a revocable trust which the settlor has the capacity to revoke; or

(2) with the approval of the probate court.

(b) In approving a resignation, the probate court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

(c) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

§ 706. REMOVAL AND REPLACEMENT OF TRUSTEE

(a) The settlor, a cotrustee, or a beneficiary may request the probate court to remove a trustee under subsection (b) of this section or to replace a trustee under subsection (c) of this section. A trustee may be removed by the probate court on its own initiative.

(b) The probate court may remove a trustee if:

(1) the trustee is obviously unsuitable;

(2) the trustee has committed a serious breach of trust;

(3) lack of cooperation among cotrustees substantially impairs the administration of the trust;

(4) because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries;

(5) there has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the probate court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

(6) for any cause, if the interests of the trust estate require it.

(c) The probate court may remove an existing trustee, and appoint a replacement trustee subject to the provisions of section 704 of this title, if the probate court finds that a change in trustee would be in keeping with the intent of the settlor. In deciding whether to replace a trustee under this subsection, the probate court may consider the following factors:

(1) Whether removal would substantially improve or benefit the administration of the trust;

(2) The relationship between the grantor and the trustee as it existed at the time the trust was created;

(3) Changes in the nature of the trustee since the creation of the trust;

(4) The relationship between the trustee and the beneficiaries;

(5) The responsiveness of the trustee to the beneficiaries;

(6) The experience and skill level of the trustee;

(7) The investment performance of the trustee;

(8) The charges for services performed by the trustee; and

(9) Any other relevant factors pertaining to the administration of the trust.

(d) A probate court may order trustees who are replaced pursuant to an action brought under subsection (c) of this section to reimburse the trust for attorney's fees and court costs paid by the trust relating to the action.

(e) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the probate court may order such appropriate relief under subsection 1001(b) of this title as may be necessary to protect the trust property or the interests of the beneficiaries.

§ 707. DELIVERY OF PROPERTY BY FORMER TRUSTEE

(a) Unless a cotrustee remains in office or the probate court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.

(b) A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to it.

§ 708. COMPENSATION OF TRUSTEE

(a) If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

(b) If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the probate court may allow more or less compensation if:

(1) the duties of the trustee are substantially different from those contemplated when the trust was created; or

(2) the compensation specified by the terms of the trust would be unreasonably low or high.

(c)(1) Factors for the probate court to consider in deciding upon a trustee's compensation shall include:

(A) the size of the trust;

(B) the nature and number of the assets;

(C) the results obtained;

(D) the time and responsibility required;

(E) the expertise required;

(F) any management or sale of real property or closely held business interests;

(G) any involvement in litigation to protect the trust property;

(H) the fee customarily charged in the locality for similar services;

(I) the experience, reputation, and ability of the person performing the services;

(J) the effect that the particular employment may have on the ability of the person employed to engage in other employment;

(K) the time limitations imposed by the trustee or by the circumstances; and

(L) other relevant factors.

(2) The order of the factors in this subsection does not imply their relative importance.

§ 709. REIMBURSEMENT OF EXPENSES

(a) A trustee is entitled to be reimbursed out of the trust property, with reasonable interest as appropriate, for:

(1) expenses that were properly incurred in the administration of the trust; and

(2) to the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

(b) An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

CHAPTER 8. DUTIES AND POWERS OF TRUSTEE

§ 801. DUTY TO ADMINISTER TRUST

Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this title.

§ 802. DUTY OF LOYALTY

(a) A trustee shall administer the trust solely in the interests of the beneficiaries.

(b) Subject to the rights of persons dealing with or assisting the trustee as provided in section 1012 of this title, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

(1) the transaction was authorized by the terms of the trust;

(2) the transaction was approved by the probate court;

(3) the beneficiary did not commence a judicial proceeding within the time allowed by section 1005 of this title;

(4) the beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with section 1009 of this title;

(5) the transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee;

(6) the transaction was consented to in writing by a settlor of the trust while the trust was revocable.

(c) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

(1) the trustee's spouse;

(2) the trustee's descendants, siblings, parents, or their spouses;

(3) an agent or attorney of the trustee; or

(4) a corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(d) A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee obtains an advantage is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.

(e) A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

(f) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment is fairly priced and otherwise complies with the prudent investor rule of chapter 9 of this title. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee must include in the trustee's annual report the rate and method by which that compensation was determined.

(g) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

(h) This section does not preclude the following transactions, if fair to the beneficiaries:

(1) an agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

(2) payment of reasonable compensation to the trustee;

(3) a transaction between a trust and another trust, decedent's estate, or guardianship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(4) a deposit of trust money in a regulated financial-service institution operated by the trustee; or

(5) an advance by the trustee of money for the protection of the trust.

(i) The probate court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

§ 803. IMPARTIALITY

If a trust has two or more beneficiaries, the trustee shall act impartially in administering the trust, giving due regard to the beneficiaries' respective interests.

§ 804. PRUDENT ADMINISTRATION

A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

§ 805. COSTS OF ADMINISTRATION

In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust, and the skills of the trustee.

§ 806. TRUSTEE'S SKILLS

A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, shall use those special skills or expertise.

§ 807. DELEGATION BY TRUSTEE

(a) A trustee may delegate duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

(1) selecting an agent;

(2) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

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

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

(c) A trustee who complies with subsection (a) of this section is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

(d) By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

§ 808. POWERS TO DIRECT

(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

§ 809. CONTROL AND PROTECTION OF TRUST PROPERTY

A trustee shall take reasonable steps to take control of and protect the trust property.

§ 810. RECORDKEEPING AND IDENTIFICATION OF TRUST PROPERTY

(a) A trustee shall keep adequate records of the administration of the trust.

(b) A trustee shall keep trust property separate from the trustee's own property.

(c) Except as otherwise provided in subsection (d) of this section, a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

(d) If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.

§ 811. ENFORCEMENT AND DEFENSE OF CLAIMS

A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.

§ 812. COLLECTING TRUST PROPERTY

A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee, and to redress a breach of trust known to the trustee to have been committed by a former trustee.

§ 813. DUTY TO INFORM AND REPORT

(a) A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust. Notice does not need to be provided to the attorney general by the trustee of a charitable trust under this section except upon request by the attorney general or as provided in subsection (f) of this section.

(b) A trustee:

(1) upon request of a beneficiary, shall promptly furnish to the beneficiary a copy of the trust instrument;

(2) within 60 days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone number;

(3) within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument, and of the right to a trustee's report as provided in subsection (c) of this section; and

(4) shall notify the qualified beneficiaries in advance of any change in the method or rate of the trustee's compensation.

(c) A trustee shall send to the distributees or permissible distributees of trust income or principal, and to other beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property,

liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets, and, if feasible, their respective market values. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be sent to the qualified beneficiaries by the former trustee. A personal representative may send the qualified beneficiaries a report on behalf of a deceased trustee, and a guardian or a duly authorized agent under a power of attorney may send the qualified beneficiaries a report on behalf of an incapacitated trustee.

(d) A beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

(e) Subdivisions (b)(2) and (3) of this section do not apply to a trustee who accepts a trusteeship before the effective date of this title, to an irrevocable trust created before the effective date of this title, or to a revocable trust that becomes irrevocable before the effective date of this title.

(f)(1) A person seeking relief regarding a charitable trust under this subsection shall notify the attorney general upon filing a petition to:

(A) select a charitable purpose or charitable beneficiary as provided in subsection 405(b) of this title;

(B) enforce a charitable trust as provided in subsection 405(c) of this title;

(C) remove or replace a trustee of a charitable trust as provided in section 706 of this title; or

(D) remedy a breach of trust as provided in section 1001 of this title.

(2) Notice does not have to be given under this subsection if the trustee reasonably believes that the assets of the trust are less than \$10,000.00.

§ 814. DISCRETIONARY POWERS; TAX SAVINGS

(a) Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute," "sole," or "uncontrolled," the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(b) Subject to subsection (d) of this section, and unless the terms of the trust expressly indicate that a rule in this subsection does not apply:

(1) a person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard; and

(2) a trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

(c) A power whose exercise is limited or prohibited by subsection (b) of this section may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the probate court may appoint a special fiduciary with authority to exercise the power.

(d) Subsection (b) of this section does not apply to:

(1) a power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in Section 2056(b)(5) or 2523(e) of the Internal Revenue Code of 1986, as in effect on the effective date of this title, was previously allowed;

(2) any trust during any period that the trust may be revoked or amended by its settlor; or

(3) a trust if contributions to the trust qualify for the annual exclusion under Section 2503(c) of the Internal Revenue Code of 1986, as in effect on the effective date of this title.

§ 815. GENERAL POWERS OF TRUSTEE

(a) A trustee, without authorization by the probate court, may exercise:

(1) powers conferred by the terms of the trust; and

(2) except as limited by the terms of the trust:

(A) all powers over the trust property which an unmarried competent owner has over individually owned property;

(B) any other powers appropriate to achieve the proper investment, management, and distribution of the trust property; and

(C) any other powers conferred by this title.

(b) The exercise of a power is subject to the fiduciary duties prescribed by this chapter.

§ 816. SPECIFIC POWERS OF TRUSTEE

Without limiting the authority conferred by section 815 of this title, a trustee may:

(1) collect trust property and accept or reject additions to the trust property from a settlor or any other person;

(2) acquire or sell property, for cash or on credit, at public or private sale;

(3) exchange, partition, or otherwise change the character of trust property;

(4) deposit trust money in an account in a regulated financial service institution;

(5) borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

(6) with respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;

(7) with respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:

(A) vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;

(B) hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;

(C) pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and

(D) deposit the securities with a depository or other regulated financial service institution;

(8) with respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries;

(9) enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

(10) grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;

(11) insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;

(12) abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;

(13) with respect to possible liability for violation of environmental law:

(A) inspect or investigate property the trustee holds or has been asked to hold or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest for the purpose of determining the application of environmental law with respect to the property;

(B) take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

(C) decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

(D) compromise claims against the trust which may be asserted for an alleged violation of environmental law; and

(E) pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;

(14) pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

(15) pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;

(16) exercise elections with respect to federal, state, and local taxes;

(17) select a mode of payment under any employee benefit or retirement plan or account, annuity, or life insurance payable to the trustee, exercise rights

thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;

(18) make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;

(19) pledge trust property to guarantee loans made by others to the beneficiary;

(20) appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;

(21) pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

(A) paying it to the beneficiary's guardian of the property or, if the beneficiary does not have a guardian of the property, the beneficiary's guardian of the person;

(B) paying it to the beneficiary's custodian under the Uniform Gifts to Minors Act, and, for that purpose, creating a custodianship; or

(C) managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;

(22) on distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;

(23) resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

(24) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

(25) sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers; and

(26) on termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it.

§ 817. DISTRIBUTION UPON TERMINATION

(a) Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within 30 days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

(b) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.

(c) A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:

(1) it was induced by improper conduct of the trustee; or

(2) the beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.

CHAPTER 9. UNIFORM PRUDENT INVESTOR ACT AND UNITRUSTS

§ 901. PRUDENT INVESTOR RULE

(a) Except as otherwise provided in subsection (b) of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this chapter.

(b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

§ 902. STANDARD OF CARE; PORTFOLIO STRATEGY; RISK AND RETURN OBJECTIVES

(a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio

as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

(1) general economic conditions;

(2) the possible effect of inflation or deflation;

(3) the expected tax consequences of investment decisions or strategies;

(4) the role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;

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

(6) other resources of the beneficiaries;

(7) needs for liquidity, regularity of income, and preservation or appreciation of capital; and

(8) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) A trustee may invest in any kind of property or type of investment consistent with the standards of this chapter.

§ 903. DIVERSIFICATION

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

§ 904. DUTIES AT INCEPTION OF TRUSTEESHIP

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust and with the requirements of this chapter.

§ 905. REVIEWING COMPLIANCE

Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

§ 906. LANGUAGE INVOKING STANDARD OF THIS CHAPTER

The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this chapter: "investments permissible by law for investment of trust funds," "legal investments," "authorized investments," "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital," "prudent man rule," "prudent trustee rule," "prudent person rule," and "prudent investor rule."

§ 907. TOTAL RETURN UNITRUSTS

(a) In this section:

(1) "Disinterested person" means a person who is not a "related or subordinate party" (as defined in Section 672(c) of the Internal Revenue Code of 1986, as in effect on the effective date of this title (referred to in this section as the "I.R.C.)) with respect to the person then acting as trustee of the trust and excludes the settlor of the trust and any interested trustee.

(2) "Income trust" means a trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to one or more persons, either in fixed proportions or in amounts or proportions determined by the trustee and regardless of whether the trust directs or permits the trustee to distribute the principal of the trust to one or more such persons.

(3) "Interested distributee" means a person to whom distributions of income or principal can currently be made who has the power to remove the existing trustee and designate as successor a person who may be a "related or subordinate party" (as defined in I.R.C. § 672(c)) with respect to such distributee.

(4) "Interested trustee" means any or all of the following:

(A) An individual trustee to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were then to terminate and be distributed;

(B) Any trustee who may be removed and replaced by an interested distributee;

(C) An individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.

(5) "Total return unitrust" means an income trust which has been converted under and meets the provisions of this section.

(6) "Settlor" means an individual who created an inter vivos or a testamentary trust.

(7) "Unitrust amount" means an amount computed as a percentage of the fair market value of the trust.

(b) A trustee, other than an interested trustee, or when two or more persons are acting as trustee, a majority of the trustees who are not an interested trustee (in either case referred to in this subsection as "trustee"), may, in its sole discretion and without the approval of the probate court:

(1) Convert an income trust to a total return unitrust;

(2) Reconvert a total return unitrust to an income trust; or

(3) Change the percentage used to calculate the unitrust amount and the method used to determine the fair market value of the trust if:

(A) The trustee adopts a written policy for the trust providing:

(i) In the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income;

(ii) In the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts; or

(iii) That the percentage used to calculate the unitrust amount and the method used to determine the fair market value of the trust will be changed as stated in the policy;

(B) The trustee sends written notice of its intention to take such action, along with copies of such written policy and this section, to:

(i) The settlor of the trust, if living;

(ii) All qualified beneficiaries; and

(iii) All persons acting as trust protectors or trust advisors of the trust;

(C) At least one person receiving such notice in each tier described in subdivision 103(13) of this title is legally competent; and

(D) No person receiving such notice objects, by written instrument delivered to the trustee, to the proposed action of the trustee within 30 days of receipt of such notice.

(c) If there is no trustee of the trust other than an interested trustee, the interested trustee or, when two or more persons are acting as trustee and are interested trustees, a majority of such interested trustees may, in its sole discretion and without the approval of the probate court:

(1) Convert an income trust to a total return unitrust;

(2) Reconvert a total return unitrust to an income trust; or

(3) Change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust or both if:

(A) The trustee adopts a written policy for the trust providing:

(i) In the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income;

(ii) In the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts; or

(iii) That the percentage used to calculate the unitrust amount and the method used to determine the fair market value of the trust will be changed as stated in the policy;

(B) The trustee appoints a disinterested person who, in its sole discretion but acting in a fiduciary capacity, determines for the trustee:

(i) The percentage to be used to calculate the unitrust amount;

(ii) The method to be used in determining the fair market value of the trust; and

(iii) Which assets, if any, are to be excluded in determining the unitrust amount;

(C) The trustee sends written notice of its intention to take such action, along with copies of such written policy and this section, and the determinations of the disinterested person to:

(i) The settlor of the trust, if living;

(ii) All qualified beneficiaries; and

(iii) All persons acting as trust protector or trust advisor of the trust;

(D) At least one person receiving such notice in each tier described in subdivision 103(13) of this title (first tier, second tier and final beneficiaries) is legally competent; and

(E) No person receiving such notice objects, by written instrument delivered to the trustee, to the proposed action or the determinations of the disinterested person within 30 days of receipt of such notice.

(d) A trustee who desires to: convert an income trust to a total return unitrust; reconvert a total return unitrust to an income trust, or change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust but does not have the ability or elects not to do it under the provisions of subsection (b) or (c) of this section, the trustee may petition the probate court for such order as the trustee deems appropriate. If there is only one trustee of such trust and such trustee is an interested trustee or in the event there are two or more trustees of such trust and a majority of them are interested trustees, the probate court, in its own discretion or on the petition of such trustee or trustees or any person interested in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present such information to the probate court as shall be necessary to enable the probate court to make its determinations hereunder.

(e) The fair market value of the trust shall be determined at least annually, using such valuation date or dates or averages of valuation dates as are deemed appropriate. Assets for which a fair market value cannot be readily ascertained shall be valued using such valuation methods as are deemed reasonable and appropriate. Assets used by a trust beneficiary, such as a residence property or tangible personal property, may be excluded from fair market value for computing the unitrust amount.

(f) The percentage to be used in determining the unitrust amount shall be a reasonable current return from the trust, in any event not less than three percent nor more than five percent, taking into account the intentions of the settlor of the trust as expressed in the governing instrument, the needs of the beneficiaries, general economic conditions, projected current earnings and appreciation for the trust, and projected inflation and its impact on the trust.

(g) A trustee may act pursuant to subsection (b) or (c) of this section with respect to a trust for which both income and principal have been permanently set aside for charitable purposes under the governing instrument and for which a federal estate or gift tax deduction has been taken, provided that:

(1) Instead of sending written notice as provided in subsection (b) or (c) of this section, the trustee shall send such written notice to the named charity or charities then entitled to receive income of the trust and, if no named charity

or charities are entitled to receive all of such income, to the attorney general of this state;

(2) Subdivision (b)(3)(C) or (c)(3)(D) of this section (relating to legal competence of qualified beneficiaries), as the case may be, shall not apply to such action; and

(3) In each taxable year, the trustee shall distribute the greater of the unitrust amount or the amount required by I.R.C. § 4942.

(h) Following the conversion of an income trust to a total return unitrust, the trustee:

(1) Shall consider the unitrust amount as paid from net accounting income determined as if the trust were not a unitrust;

(2) Shall then consider the unitrust amount as paid from ordinary income not allocable to net accounting income;

(3) After calculating the trust's capital gain net income described in I.R.C. § 1222(9), may consider the unitrust amount as paid from net short-term capital gain described in I.R.C. § 1222(5) and then from net long-term capital gain described in I.R.C. § 1222(7); and

(4) Shall then consider the unitrust amount as coming from the principal of the trust.

(i) In administering a total return unitrust, the trustee may, in its sole discretion but subject to the provisions of the governing instrument, determine:

(1) The effective date of the conversion;

(2) The timing of distributions (including provisions for prorating a distribution for a short year in which a beneficiary's right to payments commences or ceases);

(3) Whether distributions are to be made in cash or in kind or partly in cash and partly in kind;

(4) If the trust is reconverted to an income trust, the effective date of such reconversion; and

(5) Such other administrative issues as may be necessary or appropriate to carry out the purposes of this section.

(j) Conversion to a total return unitrust under the provisions of this section shall not affect any other provision of the governing instrument, if any, regarding distributions of principal.

(k) In the case of a trust for which a marital deduction has been taken for federal tax purposes under I.R.C. § 2056 or § 2523, the spouse otherwise

entitled to receive the net income of the trust shall have the right, by written instrument delivered to the trustee, to compel the reconversion during that spouse's lifetime of the trust from a total return unitrust to an income trust, notwithstanding anything in this section to the contrary.

(l) This section shall be construed as pertaining to the administration of a trust and shall be available to any trust that is administered in Vermont under Vermont law or to any trust, regardless of its place of administration, whose governing instrument provides that Vermont law governs matters of construction or administration unless:

(1) The governing instrument reflects an intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust;

(2) The trust is a pooled income fund described in I.R.C. § 642(c)(5) or a charitable-remainder trust described in I.R.C. § 664(d);

(3) The governing instrument expressly prohibits use of this section by specific reference to the section or expressly states the settlor's intent that net income not be calculated as a unitrust amount. A provision in the governing instrument that "The provisions of 14A V.S.A. § 907, as amended, or any corresponding provision of future law, shall not be used in the administration of this trust" or "My trustee shall not determine the distributions to the income beneficiary as a unitrust amount" or similar words reflecting such intent shall be sufficient to preclude the use of this section.

(m) Any trustee or disinterested person who in good faith takes or fails to take any action under this section shall not be liable to any person affected by such action or inaction, regardless of whether such person received written notice as provided in this section and regardless of whether such person was under a legal disability at the time of the delivery of such notice. Such person's exclusive remedy shall be to obtain an order of the probate court directing the trustee to convert an income trust to a total return unitrust, to reconvert from a total return unitrust to an income trust, or to change the percentage used to calculate the unitrust amount.

§ 908. EXPRESS TOTAL RETURN UNITRUSTS

(a) The following provisions shall apply to a trust that, by its governing instrument, requires or permits the distribution, at least annually, of a unitrust amount equal to a fixed percentage of not less than three nor more than five percent per year of the fair market value of the trust's assets, valued at least annually, such trust to be referred to in this section as an "express total return unitrust."

(b) The unitrust amount for an express total return unitrust may be determined by reference to the fair market value of the trust's assets in one year or more than one year.

(c) Distribution of such a fixed percentage unitrust amount is considered a distribution of all of the income of the express total return unitrust.

(d) An express total return unitrust may provide a mechanism for changing the unitrust percentage similar to the mechanism provided under section 907 of this title, based upon the factors noted therein, and may provide for a conversion from a unitrust to an income trust or a reconversion of an income trust to a unitrust similar to the mechanism under section 907 of this title.

(e) If an express total return unitrust does not specifically or by reference to section 907 of this title deny a power to change the unitrust percentage or to convert to an income trust, then the trustee shall have such power.

(f) The distribution of a fixed percentage of not less than three percent nor more than five percent reasonably apportions the total return of an express total return unitrust.

(g) The trust instrument may grant discretion to the trustee to adopt a consistent practice of treating capital gains as part of the unitrust distribution, to the extent that the unitrust distribution exceeds the net accounting income, or it may specify the ordering of such classes of income.

(h) Unless the terms of the trust specifically provide otherwise, a distribution of the unitrust amount from an express total return unitrust shall be considered to have been made from the following sources in order of priority:

(1) From net accounting income determined as if the trust were not a unitrust;

(2) From ordinary income not allocable to net accounting income;

(3) After calculating the trust's capital gain net income as described in the Internal Revenue Code of 1986 (as in effect on the effective date of this title and referred to in this section as the "I.R.C."), § 1222(9), from net realized short-term capital gain as described in I.R.C. § 1222(5) and then from net realized long-term capital gain described in I.R.C. § 1222(7); and

(4) From the principal of the trust.

(i) The trust instrument may provide that:

(1) Assets for which a fair market value cannot be readily ascertained shall be valued using such valuation methods as are deemed reasonable and appropriate; and

(2) Assets used by a trust beneficiary, such as a residence property or tangible personal property, may be excluded from the net fair market value for computing the unitrust amount.

CHAPTER 10. LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS
DEALING WITH TRUSTEE

§ 1001. REMEDIES FOR BREACH OF TRUST

(a) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.

(b) To remedy a breach of trust that has occurred or may occur, the probate court may:

(1) compel the trustee to perform the trustee's duties;

(2) enjoin the trustee from committing a breach of trust;

(3) compel the trustee to redress a breach of trust by paying money, restoring property, or other means;

(4) order a trustee to account;

(5) appoint a special fiduciary to take possession of the trust property and administer the trust;

(6) suspend the trustee;

(7) remove the trustee as provided in section 706 of this title;

(8) reduce or deny compensation to the trustee;

(9) subject to section 1012 of this title, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or

(10) order any other appropriate relief.

§ 1002. DAMAGES FOR BREACH OF TRUST

(a) A trustee who commits a breach of trust is liable to the beneficiaries affected for the greater of:

(1) the amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred;
or

(2) the profit the trustee made by reason of the breach.

(b) Except as otherwise provided in this subsection, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to

contribution from the other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

§ 1003. DAMAGES IN ABSENCE OF BREACH

(a) A trustee is accountable to an affected beneficiary for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust. Nothing in this section limits a trustee's right to reasonable compensation under section 708 of this title.

(b) Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.

§ 1004. ATTORNEY'S FEES AND COSTS

In a judicial proceeding involving the administration of a trust, the probate court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

§ 1005. LIMITATION OF ACTION AGAINST TRUSTEE

(a) A beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.

(b) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into its existence.

(c) If subsection (a) of this section does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within three years after the first to occur of:

- (1) the removal, resignation, or death of the trustee;
- (2) the termination of the beneficiary's interest in the trust; or
- (3) the termination of the trust.

(d) Subsections (a) through (c) of this section shall not apply to the filing of a petition in probate court by the attorney general for breach of trust against the trustee of a charitable trust with a principal place of administration in this state.

The attorney general may file a petition within three years after the potential claim arises.

§ 1006. RELIANCE ON TRUST INSTRUMENT

A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

§ 1007. EVENT AFFECTING ADMINISTRATION OR DISTRIBUTION

If the happening of an event, including, but not limited to, marriage, divorce, performance of educational requirements, attainment of a specified age, or death, affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge.

§ 1008. EXCULPATION OF TRUSTEE

(a) A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that it:

(1) relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries; or

(2) was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.

(b) An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that the exculpatory term is fair under the circumstances and that its existence and contents were adequately communicated to the settlor.

§ 1009. BENEFICIARY'S CONSENT, RELEASE, OR RATIFICATION

A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless:

(1) the consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or

(2) at the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach.

§ 1010. LIMITATION ON PERSONAL LIABILITY OF TRUSTEE

(a) Except as otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee in making the contract disclosed the fiduciary capacity. The addition of the phrase "trustee" or "as trustee" or a similar designation to the signature of a trustee on a written contract is considered prima facie evidence of a disclosure of fiduciary capacity.

(b) A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault.

(c) A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administering a trust, may be asserted in a judicial proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim.

§ 1011. INTEREST AS GENERAL PARTNER

(a) Except as otherwise provided in subsection (c) of this section or unless personal liability is imposed in the contract, a trustee who holds, in a fiduciary capacity, an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract. The requirement of disclosure in the contract will be satisfied if the trustee signs the contract or signs another writing which is contemporaneously delivered to the other parties to the contract in a manner that clearly evidences that the trustee executed the contract in a fiduciary capacity.

(b) Except as otherwise provided in subsection (c) of this section, a trustee who holds an interest as a general partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault.

(c) The immunity provided by this section does not apply if an interest in the partnership is held by the trustee in a capacity other than that of trustee or is held by the trustee's spouse or one or more of the trustee's descendants, siblings, or parents, or the spouse of any of them.

(d) If the trustee of a revocable trust holds an interest as a general partner, the settlor is personally liable for contracts and other obligations of the partnership as if the settlor were a general partner.

§ 1012. PROTECTION OF PERSON DEALING WITH TRUSTEE

(a) A person other than a beneficiary who in good faith assists a trustee or who in good faith and for value deals with a trustee without knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised the power.

(b) A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.

(c) A person who in good faith delivers assets to a trustee need not ensure their proper application.

(d) A person other than a beneficiary who in good faith assists a former trustee or who in good faith and for value deals with a former trustee without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.

(e) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

§ 1013. CERTIFICATION OF TRUST

(a) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee of a trust at any time after execution or creation of a trust may execute a certificate of trust that sets forth less than all of the provisions of a trust instrument and any amendments to the instrument. The certificate of trust may be used as evidence of authority to sell, convey, pledge, mortgage, lease, or transfer title to any interest in real or personal property. The certificate of trust shall be upon the representation of the trustee that the statements contained in the certificate of trust are true and correct. The signature of the trustee must be under oath before a notary public or other official authorized to administer oaths. The certificate of trust must include:

(1) the name of the trust, if one is given;

(2) the date of the trust instrument;

(3) the name of each grantor or settlor;

(4) the name of each original trustee;

(5) the name and address of each trustee empowered to act under the trust instrument at the time of execution of the certificate;

(6) an abstract of the provisions of the trust instrument authorizing the trustee to act in the manner contemplated by the instrument;

(7) a statement that the trust instrument has not been revoked or amended as to the authorizing provisions, and a statement that the trust exists;

(8) a statement that no provisions of the trust instrument limit the authority so granted; and

(9) a statement as to whether the trust is supervised by any court and, if so, a statement that all necessary approval has been obtained for the trustees to act.

(b) A certificate of trust executed under subsection (a) of this section may be recorded in the municipal land records where the land identified in the certificate of trust or any attachment to it is located. When it is so recorded or filed for recording, or in the case of personal property, when it is presented to a third party, the certificate of trust serves to document the existence of the trust, the identity of the trustee, the powers of the trustee and any limitations on those powers, and other matters set forth in the certificate of trust, as though the full trust instrument had been recorded, filed, or presented.

(c) A certificate of trust is conclusive proof as to the matters contained in the certificate, and any party may rely upon the continued effectiveness of the certificate unless:

(1) a party dealing with the trustee or trustees has actual knowledge of facts to the contrary;

(2) the certificate is amended or revoked under subsection (d) of this section; or

(3) the full trust instrument including all amendments is recorded or filed.

(d) Amendment or revocation of a certificate of trust may be made only by a written instrument executed by the trustee of a trust. Amendment or revocation of a certificate of trust is not effective as to a party unless that party has actual notice of the amendment or revocation. For purposes of this subsection, "actual notice" means that a written instrument of amendment or revocation has been received by the party or, in the case of real property, that either a written instrument of amendment or revocation has been received by the party or that a written instrument of amendment or revocation identifying the real property involved has been recorded in the municipal land records where the real property is located.

(e) A certification of trust may be signed or otherwise authenticated by any trustee.

(f) A certification of trust need not contain the dispositive terms of a trust.

(g) A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments which designate the trustee and confer upon the trustee the power to act in the pending transaction.

(h) A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

(i) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

CHAPTER 11. TRUST PROTECTORS AND TRUST ADVISORS

§ 1101. TRUST ADVISORS AND TRUST PROTECTORS

(a) A trust protector or trust advisor is any person, other than a trustee, who under the terms of the trust, an agreement of the qualified beneficiaries authorized by the terms of the trust, or a court order has a power or duty with respect to a trust, including, without limitation, one or more of the following powers:

(1) the power to modify or amend the trust instrument to achieve favorable tax status or respond to changes in any applicable federal, state, or other tax law affecting the trust, including any rulings, regulations, or other guidance implementing or interpreting such laws;

(2) the power to amend or modify the trust instrument to take advantage of changes in the rule against perpetuities, laws governing restraints on alienation, or other state laws restricting the terms of the trust, the distribution of trust property, or the administration of the trust;

(3) the power to appoint a successor trust protector or trust advisor;

(4) the power to review and approve a trustee's trust reports or accountings;

(5) the power to change the governing law or principal place of administration of the trust;

(6) the power to remove and replace any trust advisor or trust protector for the reasons stated in the trust instrument;

(7) the power to remove a trustee, cotrustee, or successor trustee for the reasons stated in the trust instrument, and to appoint a successor;

(8) the power to consent to a trustee's or cotrustee's action or inaction in making distributions to beneficiaries;

(9) the power to increase or decrease any interest of the beneficiaries in the trust, to grant a power of appointment to one or more trust beneficiaries, or to terminate or amend any power of appointment granted in the trust; however, a modification, amendment, or grant of a power of appointment may not grant a beneficial interest in a charitable trust with only charitable beneficiaries to any noncharitable interest or purpose and may not grant a beneficial interest in any trust to the trust protector or trust advisor or to the estate or for the benefit of the creditors of such trust protector or such trust advisor;

(10) the power to perform a specific duty or function that would normally be required of a trustee or cotrustee;

(11) the power to advise the trustee or cotrustee concerning any beneficiary;

(12) the power to consent to a trustee's or cotrustee's action or inaction relating to investments of trust assets; and

(13) the power to direct the acquisition, disposition, or retention of any trust investment.

(b) The exercise of a power by a trust advisor or a trust protector shall be exercised in the sole and absolute discretion of the trust advisor or trust protector and shall be binding on all other persons.

§ 1102. TRUST ADVISORS AND TRUST PROTECTORS AS FIDUCIARIES

(a) A trust advisor or trust protector is a fiduciary with respect to each power granted to such trust advisor or trust protector. In exercising any power or refraining from exercising any power, a trust advisor or trust protector shall act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(b) A trust advisor or trust protector is an excluded fiduciary with respect to each power granted or reserved exclusively to any one or more other trustees, trust advisors, or trust protectors.

§ 1103. TRUST ADVISOR AND TRUST PROTECTOR SUBJECT TO COURT JURISDICTION

By accepting appointment to serve as a trust advisor or trust protector, the trust advisor or the trust protector submits personally to the jurisdiction of the courts of this state even if investment advisory agreements or other related agreements provide otherwise, and the trust advisor or trust protector may be made a party to any action or proceeding relating to a decision, action, or inaction of the trust advisor or trust protector.

§ 1104. NO DUTY TO REVIEW ACTIONS OF TRUSTEE, TRUST ADVISOR, OR TRUST PROTECTOR

(a) Whenever, pursuant to the terms of a trust, an agreement of the qualified beneficiaries authorized by the terms of the trust, or a court order, an excluded fiduciary is to follow the direction of a trustee, trust advisor, or trust protector with respect to investment decisions, distribution decisions, or other decisions of the non-excluded fiduciary, then, except to the extent that the terms of the trust, the agreement of the qualified beneficiaries, or the court order provide otherwise, the excluded fiduciary shall have no duty to:

(1) monitor the conduct of the trustee, trust advisor, or trust protector;

(2) provide advice to the trustee, trust advisor, or trust protector or consult with the trustee, trust advisor, or trust protector; or

(3) communicate with or warn or apprise any beneficiary or third party concerning instances in which the excluded fiduciary would or might have exercised the excluded fiduciary's own discretion in a manner different from the manner directed by the trustee, trust advisor, or trust protector.

(b) Absent clear and convincing evidence to the contrary, the actions of the excluded fiduciary pertaining to matters within the scope of the trustee's, trust advisor's, or trust protector's authority including confirming that the trustee's, trust advisor's, or trust protector's directions have been carried out, recording and reporting actions taken at the trustee's, trust advisor's, or trust protector's direction, or taking action pursuant to section 813 of this title, shall be presumed to be administrative actions taken by the excluded fiduciary solely to allow the excluded fiduciary to perform those duties assigned to the excluded fiduciary under the terms of the trust, the agreement of the qualified beneficiaries, or the court order, and such administrative actions shall not be deemed to constitute an undertaking by the excluded fiduciary to monitor the trustee, trust advisor, or trust protector or otherwise participate in actions within the scope of the trustee's, trust advisor's, or trust protector's authority.

§ 1105. FIDUCIARY'S LIABILITY FOR ACTION OR INACTION OF TRUSTEE, TRUST ADVISOR, AND TRUST PROTECTOR

An excluded fiduciary is not liable for:

(1) any loss resulting from any action or inaction of a trustee, trust advisor, or trust protector; or

(2) any loss that results from the failure of a trustee, trust advisor, or trust protector to take any action proposed by the excluded fiduciary where such action requires the authorization of the trustee, trust advisor, or trust

protector, provided that an excluded fiduciary who had a duty to propose such action timely sought but failed to obtain the authorization.

CHAPTER 12. MISCELLANEOUS PROVISIONS

§ 1201. UNIFORMITY OF APPLICATION AND CONSTRUCTION

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

§ 1202. ELECTRONIC RECORDS AND SIGNATURES

The provisions of this title governing the legal effect, validity, or enforceability of electronic records or electronic signatures and of contracts formed or performed with the use of such records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7002) and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

§ 1203. SEVERABILITY CLAUSE

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

§ 1204. APPLICATION TO EXISTING RELATIONSHIPS

(a) Except as otherwise provided in this title, on the effective date of this title:

(1) this title applies to all trusts created before, on, or after its effective date;

(2) this title applies to all judicial proceedings concerning trusts commenced on or after its effective date;

(3) this title applies to judicial proceedings concerning testamentary trusts commenced before its effective date except that accountings shall continue to be due from the trustees of such trusts in the same manner and in the same frequency as required by the probate court prior to this title unless otherwise ordered by the probate court;

(4) this title applies to all other judicial proceedings concerning trusts commenced before its effective date unless the probate court finds that application of a particular provision of this title would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of

the parties, in which case the particular provision of this title does not apply and the superseded law applies;

(5) any rule of construction or presumption provided in this title applies to trust instruments executed before the effective date of this title unless there is a clear indication of a contrary intent in the terms of the trust; and

(6) an act done before the effective date of this title is not affected by this title.

(b) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before the effective date of this title, that statute continues to apply to the right even if it has been repealed or superseded.

Sec. 2. 4 V.S.A. § 111a is amended to read:

§ 111a. DESIGNATION AND JURISDICTION OF SUPERIOR COURT

Until otherwise provided by law or by judicial rules adopted by the supreme court not inconsistent with law, a court designated as the superior court, to be presided over by a superior judge or a judge designated under section 74 of this title, shall be held in each county of this state. The setting of terms of the superior court shall be as was heretofore provided for the county courts under section 115 of this title. The jurisdiction of the superior court shall be the same as heretofore provided by law for the county courts in the Vermont Statutes Annotated, with the exception of actions relating to the administration of trusts as provided in section 311 of this title and as provided in Title 14A.

Sec. 3. 4 V.S.A. § 311 is amended to read:

§ 311. JURISDICTION GENERALLY

The probate court shall have jurisdiction of the probate of wills, the settlement of estates, the administration of trusts created by will pursuant to Title 14A, trusts of absent person's estates, charitable, cemetery and philanthropic trusts, irrevocable trusts created by inter vivos agreements solely for the purpose of removal and replacement of trustees pursuant to subsection 2314(c) of Title 14, the appointment of guardians, and of the powers, duties and rights of guardians and wards, proceedings concerning chapter 231 of Title 18, accountings of attorneys in fact where no guardian has been appointed and the agent has reason to believe the principal is incompetent, relinquishment for adoption, adoptions, uniform gifts to minors, changes of name, issuance of new birth certificates, amendment of birth certificates, correction or amendment of marriage certificates, correction or amendment of death certificates, emergency waiver of premarital medical certificates, proceedings relating to cemetery lots, trusts relating to community mausoleums or columbariums, civil actions

brought under subchapter 3 of chapter 107 of Title 18 relating to disposition of remains, proceedings relating to the conveyance of a homestead interest of a spouse under a legal disability, the issuance of declaratory judgments, issuance of certificates of public good authorizing the marriage of persons under 16 years of age, appointment of administrators to discharge mortgages held by deceased mortgagees, appointment of trustees for persons confined under sentences of imprisonment, fixation of compensation and expenses of boards of arbitrators of death taxes of Vermont domiciliaries, and as otherwise provided by law.

Sec. 4. 4 V.S.A. § 311a is amended to read:

§ 311a. VENUE GENERALLY

For proceedings authorized to probate courts, venue shall lie as provided in Title 14A for the administration of trusts, and otherwise in a district of the court as follows:

- (1) Decedent's estate for a resident of this state: in the district where the decedent resided at the time of death.
- (2) Decedent's estate for a nonresident of this state: in any district where estate of the decedent is situated.
- (3) Appointment of a conservator for the estate of an absent person:
 - (A) in the district of the absent person's last legal domicile; or
 - (B) if a nonresident of this state, in any district where estate of the absent person is situated.
- (4) Trust estate created by will: in the district where the decedent's will is allowed.
- (5) Appointment of a trustee for the estate of an absent person:
 - (A) in the district of the absent person's last legal domicile; or
 - (B) if the absent person has no domicile in this state, in any district where property of the absent person is situated; or
 - (C) in any district of residence of a fiduciary or representative of an estate having possession and control of property the absent person received by virtue of a legacy or as an heir of an estate.
- (6) Charitable, cemetery and philanthropic trusts:
 - (A) in the district where the trustee resides; or
 - (B) in the district where the creation of the trust is recorded.
- (7) Appointment of a guardian of a person resident in this state:

(A) in the district where the ward resides at the time of appointment; except

(B) when the guardian is appointed for a minor who is interested in a decedent's estate as an heir, devisee or legatee or representative of either, in the district where the decedent's estate is being probated.

(8) Appointment of a guardian for a nonresident minor: in the district where the minor owns or has an interest in real estate.

(9) Termination or modification of a guardianship or change of a guardian:

(A) in the district of the appointing court; or

(B) in the district where the ward resides.

~~(10) Estate of a nonresident testamentary trust: in the district where the estate is situated.~~

(11) Estate of a nonresident charitable or philanthropic testamentary trust:

(A) in any district where the legacy or gift is to be paid or distributed; or

(B) in any district where the beneficiary or beneficiaries reside or are located.

(12) Appointment of a guardian as to the estate of a nonresident subject to guardianship in this state or under guardianship in another state: in any district where estate of the nonresident ward or prospective ward is situated.

(13) Change of residential placement for a ward under total or limited guardianship:

(A) in the district of the appointing court; or

(B) in the district where the ward resides.

(14) Petition to determine title to property in the name of a person deceased seven or more years without probate of a decedent estate: in the district where the property is situated.

(15) Uniform gifts to minors:

(A) petition to expend custodial property for a minor's support, education or maintenance: in the district where the minor resides;

(B) petition for permission to resign or for designation of a successor custodian: in the district where the minor resides.

(16) Relinquishment for adoption:

(A) in the district where a written relinquishment is executed; or

(B) in the district where a licensed child placing agency to which written relinquishment is made has its principal office.

(17) Adoption:

(A) if the adopting person or persons are residents of this state, in the district where they reside; or

(B) if the adopting person or persons are nonresidents, in a court of competent jurisdiction where they reside; or

(C) if the prospective adoptee is a minor who has been relinquished or committed to the department of social and rehabilitation services or a licensed child placing agency, in the district where the department or agency is located or has its principal office.

(18) Change of name: in the district where the person resides.

(19) Issuance of new or amended birth certificate: in the district where the birth occurred.

(20) Correction or amendment of a marriage certificate: in the district where the original certificate is filed.

(21) Correction or amendment of a death certificate: in the district where the original certificate is filed.

(22) Emergency waiver of premarital medical certificate: in the district where application is made for the marriage license.

(23) Proceedings relating to cemetery lots: in the district where the cemetery lot is located.

(24) Trusts relating to community mausoleums or columbariums: in the district where the community mausoleum or columbarium is located.

(25) Petition for license to convey homestead interest of an insane spouse: in the district where the homestead is situated.

(26) Declaratory judgments (unless otherwise provided in Title 14A for proceedings relating to the administration of trusts):

(A) if any related proceeding is then pending in any probate court, in that district;

(B) if no proceeding is pending:

(i) in the district where the petitioner resides; or

(ii) if a decedent's estate, a guardian or ward, or trust governed by Title 14 is the subject of the proceeding, in any district where venue lies for a proceeding thereon.

(27) Issuance of certificates of public good authorizing the marriage of persons under 16 years of age: in the district or county where either applicant resides, if either is a resident of the state; otherwise in the district or county in which the marriage is sought to be consummated.

(28) Appointment of a trustee for a person confined under a sentence of imprisonment: in the district or county in which the person resided at the time of sentence, or in the district or county in which the sentence was imposed.

(29) Proceedings concerning chapter 231 of Title 18: in the district where the principal resides or in the district where the principal is a patient admitted to a health care facility.

(30) Proceedings under subchapter 3 of chapter 107 of Title 18, in the district where the decedent resided at the time of death or where the remains are currently located.

Sec. 5. 12 V.S.A. § 4251 is amended to read:

§ 4251. ACTIONS FOR ACCOUNTING—JURY

The superior courts shall have original jurisdiction, exclusive of the district court, in actions for an accounting other than accountings involved in the administration of trusts under Title 14A. When the defendant in such an action brought in one of the following ways pleads in defense an answer which, if true, makes him or her not liable to account, the issue thus raised may be tried to a jury:

(1) By one joint tenant, tenant in common or coparcener, his or her administrator or executor against the other, his or her administrator or executor, as bailiff for receiving more than his or her just proportion of any estate or interest;

(2) By an administrator or executor against his or her coadministrator or coexecutor, who neglects to pay the debts and funeral charges of the intestate or testator, in proportion to the estate in his or her hands, and he or she may recover such proportion of such estate as is just;

(3) By an executor, being a residuary legatee, against the coexecutor to recover his or her equal and ratable part of the estate in the hands of such coexecutor;

(4) By a residuary legatee against the executor;

(5) On book account.

Sec. 6. 14 V.S.A. § 202 is amended to read:

§ 202. WHEN PARTIES BOUND BY OTHERS

In judicial proceedings involving trusts under this title or estates of decedents, minors, or persons under guardianship, the following apply:

(1) Persons are bound by orders binding others in the following cases:

(A) Orders binding the sole holder or all co-holders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

(B) To the extent there is no conflict of interest between them or among persons represented, orders binding a guardian bind the person whose estate he or she controls; orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary and in proceedings involving creditors or other third parties; and orders binding a personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate. If there is no conflict of interest and no guardian has been appointed, a parent may represent his or her minor child.

(C) An unborn or unascertained person who is not otherwise represented is bound by an order to the extent his or her interest is adequately represented by another party having a substantially identical interest in the proceeding.

(2) At any point in a proceeding, a probate court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.

(3) Parties shall be those persons so defined by the rules of probate procedure.

Sec. 7. 14 V.S.A. § 2301 is amended to read:

~~§ 2301. TRUSTEES; BOND; WHEN REQUIRED~~

~~Before entering upon the duties of office, a trustee appointed in a will shall file a petition and give a bond with surety to the probate court for the benefit of persons interested in the trust estate and conditioned for the faithful performance of duties. Unless the court deems it proper to require a bond with surety, only the individual bond of the trustees shall be required in a case in which the testator in the will appointing the trustee has directed that no bond, or a bond without surety, be required.~~

Sec. 8. 14 V.S.A. § 2302 is amended to read:

~~§ 2302. CONDITIONS~~

The conditions of the bond shall be as follows:

~~(1) To make a true inventory of the real estate and goods, chattels, rights and credits belonging to him as trustee, and which shall come to his possession or knowledge, and to return the same to the probate court at such time as the court directs;~~

~~(2) To manage and dispose of such estate and effects, and faithfully discharge his trust in relation to the same, according to law and the will of the testator;~~

~~(3) To render an account of the property in his hands, and of the management and disposition of the same within one year, and at other times when required by the probate court;~~

~~(4) To settle his accounts with the probate court at the expiration of his trust, and to pay over and deliver the estate and effects remaining in his hands, or due from him on such settlement to the persons entitled to the same, according to law and the will of the testator.~~

Sec. 9. 14 V.S.A. § 2304 is amended to read:

~~§ 2304. BOND WHEN MORE THAN ONE TRUSTEE~~

~~When two or more persons are appointed trustees by a will, the probate court may take a separate bond from each, with sureties, or a joint bond from all, with sureties.~~

Sec. 10. 14 V.S.A. § 2311 is amended to read:

~~§ 2311. TRUSTEES OF NONRESIDENT DECEDENTS; NONRESIDENT TRUSTEE; DECREE~~

~~When a nonresident testator has devised or bequeathed property, a minor portion of which is in this state, to a nonresident trustee for the benefit of nonresident beneficiaries, and a trustee under the will has been appointed in the state of the testator's domicile, and the domiciliary estate fully settled, the~~

~~probate court in this state, on petition of the nonresident trustee and after notice to the commissioner of taxes, upon final settlement, may decree the trust property in this state to the nonresident trustee to be administered as a part of the foreign testamentary trust.~~

Sec. 11. 14 V.S.A. § 2312 is amended to read:

~~§ 2312. TRUSTEE FAILING TO GIVE BOND; EFFECT~~

~~A person appointed a trustee who neglects to give a bond when required and within the time directed by the probate court, shall be considered as having declined the trust.~~

Sec. 12. 14 V.S.A. § 2313 is amended to read:

~~§ 2313. RESIGNATION, REMOVAL AND APPOINTMENT OF TRUSTEES; TRUSTEE MAY DECLINE OR RESIGN~~

~~A trustee may decline or resign his trust, when the probate court deems it proper to allow the same.~~

Sec. 13. 14 V.S.A. § 2314 is amended to read:

~~§ 2314. TRUSTEE MAY BE REMOVED; SPECIAL FIDUCIARY; PETITION FOR REMOVAL BY BENEFICIARY OR CO-TRUSTEE~~

~~(a) When a trustee becomes incapacitated or otherwise unable to discharge the trust, or is obviously unsuitable, and when, for any cause, the interests of the trust estate require it, after giving notice as provided by the rules of probate procedure, the probate court may remove the trustee.~~

~~(b) When a trustee fails to perform duties required by law, the rules of probate procedure or order of the probate court, the court may suspend the trustee from further duties and appoint a special fiduciary to assume temporarily the powers and duties of the trustee replaced. A special fiduciary shall give a bond as is otherwise required in the proceeding.~~

~~(c) A co-trustee or a majority of the beneficiaries to whom or for whose use the current net income of the trust estate is at the time authorized or required to be paid or applied and who shall at the time be at least 18 years of age who believe that an existing trustee should be replaced by a more suitable trustee may petition the court for a replacement. The court may grant the petition, remove an existing trustee, and appoint a replacement trustee if, after giving notice as provided by the Vermont Rules of Probate Procedure, the court finds that a change in trustee would be in keeping with the intent of the grantor. In deciding whether to replace a trustee, the court may consider the following factors:~~

~~(1) Whether removal would substantially improve or benefit the administration of the trust.~~

~~(2) The relationship between the grantor and the trustee as it existed at the time the trust was created.~~

~~(3) Changes in the nature of the trustee since the creation of the trust.~~

~~(4) The relationship between the trustee and the beneficiaries.~~

~~(5) The responsiveness of the trustee to the beneficiaries.~~

~~(6) The experience and skill level of the trustee.~~

~~(7) The investment performance of the trustee.~~

~~(8) The charges for services performed by the trustee.~~

~~(9) Any other relevant factors pertaining to the administration of the trust.~~

~~(d) As used in subsection (c) of this section:~~

~~(1) "Beneficiary" means a person who:~~

~~(A) has a present or future beneficial interest in a trust, vested or contingent; or~~

~~(B) in a capacity other than that of trustee, holds a power of appointment over trust property.~~

~~(2) "Court" means the probate court of the district in which the grantor resides or resided before dying or moving out of state, or where a co-trustee resides, or where a beneficiary resides.~~

~~(3) "Grantor" means a person, including a testator, who creates or contributes property to a trust. If more than one person creates or contributes property to a trust, each person is a grantor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.~~

~~(4) "Settler" and "grantor" have the same meaning.~~

~~(5) "Trust" means an express trust created by a trust instrument, including a will, whereby a trustee has the duty to administer a trust asset for the benefit of a named or otherwise described income or principal beneficiary, or both; "trust" does not include a resulting or constructive trust, a business trust which provides for certificates to be issued to the beneficiary, an investment trust, a voting trust, a security instrument, a trust created by the judgment or decree of a court, a liquidation trust, or a trust for the primary purpose of paying dividends, interest, interest coupons, salaries, wages,~~

~~pensions or profits, or employee benefits of any kind, an instrument wherein a person is nominee or escrowee for another, a trust created in deposits in any financial institution as defined in 8 V.S.A. § 10205(5), or other trust the nature of which does not admit of general trust administration.~~

~~(6) "Trustee" means an original, added, or successor trustee or co-trustee.~~

~~(e) A court may order trustees who are replaced pursuant to an action brought under this section to reimburse the trust for attorney fees and court costs paid by the trust relating to the action.~~

Sec. 14. 14 V.S.A. § 2315 is amended to read:

~~§ 2315. ADDITIONAL TRUSTEE MAY BE APPOINTED~~

~~When the interests of the trust estate require it and upon notice as provided by the rules of probate procedure the probate court may appoint an additional trustee, who shall act jointly with the other or others and be subject to the same conditions.~~

Sec. 15. 14 V.S.A. § 2316 is amended to read:

~~§ 2316. VACANCY, NEW TRUSTEE APPOINTED~~

~~When a person appointed trustee declines or resigns the trust, dies, or is removed before the object for which appointment was made is accomplished, and where adequate provision is not made by the will to fill the vacancy, after notice as provided by the rules of probate procedure, the probate court may appoint a new trustee to act alone or jointly with the others.~~

Sec. 16. 14 V.S.A. § 2317 is amended to read:

~~§ 2317. AUTHORITY OF NEW TRUSTEE; CONVEYANCE TO~~

~~The trustee so appointed shall have the same authority as if originally appointed by the testator or the probate court and the trust estate shall vest in him in the same manner. The probate court may order such conveyances to be made by the former trustee, or his representatives, or by the remaining trustees, as are necessary or proper to vest in the new trustee, either alone or jointly with others, the estate and effects which are to be held in trust.~~

Sec. 17. 14 V.S.A. § 2319 is amended to read:

~~§ 2319. BOND~~

~~A trustee appointed by the probate court shall give a bond as provided for a trustee appointed by a will with such necessary changes as the court directs.~~

Sec. 18. 14 V.S.A. § 2320 is amended to read:

~~§ 2320. DUTIES OF TRUSTEES AND SETTLEMENT OF ACCOUNT;
INVENTORY AND APPRAISAL~~

~~In accordance with the rules of probate procedure, trustees shall make and return an inventory, when an inventory is required, and the estate shall be appraised as provided in case of a decedent's estate.~~

Sec. 19. 14 V.S.A. § 2321 is amended to read:

~~§ 2321. DUTIES OF TRUSTEES; PROPERTY KEPT SEPARATE~~

~~In the management of the trust estate, trustees shall perform the duties specified in their bonds and shall keep separate and distinct all moneys, property or securities received by them in the capacity of trustees.~~

Sec. 20. 14 V.S.A. § 2322 is amended to read:

~~§ 2322. LICENSE; SALE AND INVESTMENT OF ESTATE; SUPPORT OF
FAMILY~~

~~On motion, the probate court may authorize or require the trustee to sell all or a part of the real estate, stock or other personal estate belonging to the trust estate, when it appears to the court to be beneficial to the trust estate and to the parties interested therein, or necessary or desirable in order to carry out the terms of the trust, and with moneys in the hands of the trustee, invest the proceeds of such sale in real estate or in such other manner as the court judges most beneficial to those interested in such trust estate. The court may make further order or decree for the managing, investing or disposing of the trust fund as the case requires, consistent with the trust. In case of an absent person, the probate court may make such order for the support of the family as it deems necessary.~~

Sec. 21. 14 V.S.A. § 2323 is amended to read:

~~§ 2323. SALE OF REAL PROPERTY; ORDER OF COURT;
REGULATIONS~~

~~The order of the probate court licensing the sale of real estate belonging to a trust estate shall be made under the following regulations:~~

~~(1) On motion, the probate court shall schedule a hearing and notice shall be given as provided by the rules of probate procedure;~~

~~(2) At the hearing, the petitioner shall produce evidence of the value of the real estate to be sold, the interest of the trust estate therein, and of the necessity or desirability of such sale;~~

~~(3) Before license is granted, and if the probate court requires, the trustee shall give an additional bond with sufficient sureties for a suitable amount, conditioned that the trustee will account for the proceeds of the sale, according to law, and shall also be sworn to sell the real estate as in the trustee's judgment will be most beneficial to the trust estate; and a certificate of the oath, made by the authority administering it, shall be returned to the court before the license issues;~~

~~(4) If the foregoing requisites are complied with, the probate court may order the sale of the real estate of the trust estate, or its interest in the same, or that part thereof as the court deems necessary, at public or private sale, and shall furnish the trustee with a certified copy of its order;~~

~~(5) If the probate court directs a public sale, the order shall designate the mode of giving notice of the time and place thereof, and the sale shall be held in one of the towns where the real estate is located;~~

~~(6) The order of sale shall state that the requisites mentioned in subdivisions (1) (3) of this section have been complied with, and a copy thereof shall be recorded, previous to the sale, in the office where a deed of that real estate is required to be recorded.~~

Sec. 22. 14 V.S.A. § 2324 is amended to read:

~~§ 2324. ACCOUNTS, TIME~~

~~Trustees shall annually render a full account of the management of trust estates, showing their receipts, disbursements and charges therein and the condition of such estates. Notice of the accounting shall be given as provided by the rules of probate procedure. The decision of the court therein shall have the same effect as in case of settlement of accounts by executors or administrators.~~

Sec. 23. 14 V.S.A. § 2325 is amended to read:

~~§ 2325. EXAMINATIONS OF TRUSTEE~~

~~The probate court shall examine a trustee upon oath as to the correctness of the account before it is allowed by the court, but may dispense with an examination when objection is not made to the account.~~

Sec. 24. 14 V.S.A. § 2326 is amended to read:

~~§ 2326. RIGHT OF SURETY ON ACCOUNTING~~

~~Upon the filing of a trustee's account, a person interested as surety in respect to the account may intervene as a party with the same rights as are given to the surety of an administrator.~~

Sec. 25. 14 V.S.A. § 2328 is amended to read:

~~§ 2328. TRUSTS, DEVISE OR BEQUEST FOR CHARITY, CY PRES~~

~~If a trust for charity is or becomes illegal, impossible or impracticable of enforcement or if a devise or bequest for charity, at the time it was intended to become effective, is illegal, impossible or impracticable of enforcement and if the settlor or testator manifested a general intention to devote the property to charity, the superior court, on motion of any trustee, or any interested person, or the attorney general of the state, may order an administration of the trust, devise or bequest as nearly as possible to fulfill the general charitable intention of the settlor or testator.~~

Sec. 26. 14 V.S.A. § 2501 is amended to read:

§ 2501. CHARITABLE, CEMETERY, AND PHILANTHROPIC TRUSTS;
ANNUAL REPORTS

Every trustee or board of trustees, incorporated or unincorporated, who holds in trust, within this state, property given, devised, or bequeathed ~~for benevolent, charitable, humane or philanthropic purposes, including to~~ cemetery associations or societies and towns which hold funds for cemetery purposes, and who administers or is under a duty to administer the same in whole or in part for such purposes, annually, on or before the first day of September, shall make a written report to the probate court showing the property so held and administered, the receipts and expenditures in connection therewith, the whole number of beneficiaries thereof and such other information as the probate court may require.

Sec. 27. 27 V.S.A. § 352 is amended to read:

~~§ 352. CERTIFICATE OF TRUST~~

~~(a) The settlor or trustee of a trust, at any time after execution or creation of a trust, may execute a certificate of trust that sets forth less than all of the provisions of a trust instrument and any amendments to the instrument. The certificate of trust may be used as evidence of authority to sell, convey, pledge, mortgage, lease, or transfer title to any interest in real or personal property. The certificate of trust shall be upon the representation of the settlors, grantors, or trustees that the statements contained in the certificate of trust are true and correct. The signature of the grantors or trustees must be under oath before a notary public or other official authorized to administer oaths. The certificate of trust must include:~~

- ~~(1) the name of the trust, if one is given;~~
- ~~(2) the date of the trust instrument;~~
- ~~(3) the name of each grantor or settlor;~~

~~(4) the name of each original trustee;~~

~~(5) the name and address of each trustee empowered to act under the trust instrument at the time of execution of the certificate;~~

~~(6) an abstract of the provisions of the trust instrument authorizing the trustee to act in the manner contemplated by the instrument;~~

~~(7) a statement that the trust instrument has not been revoked or amended as to the authorizing provisions;~~

~~(8) a statement that no provisions of the trust instrument limit the authority so granted; and~~

~~(9) a statement as to whether the trust is supervised by any court and, if so, a statement that all necessary approval has been obtained for the trustees to act.~~

~~(b) A certificate of trust executed under subsection (a) of this section may be recorded in the land records of the municipality where the land identified in the certificate of trust or any attachment to it is situated. When it is so recorded or filed for recording, or in the case of personal property, when it is presented to a third party, the certificate of trust serves to document the existence of the trust, the identity of the trustees, the powers of the trustees and any limitations on those powers, and other matters set forth in the certificate of trust, as though the full trust instrument had been recorded, filed, or presented.~~

~~(c) A certificate of trust is conclusive proof as to the matters contained in it, and any party may rely upon the continued effectiveness of the certificate unless:~~

~~(1) a party dealing with the trustee or trustees has actual knowledge of facts to the contrary;~~

~~(2) the certificate is amended or revoked under subsection (d) of this section; or~~

~~(3) the full trust instrument is recorded, filed, or presented.~~

~~(d) Amendment or revocation of a certificate of trust may be made only by a written instrument executed by the settlor or trustee of a trust. Amendment or revocation of a certificate of trust is not effective as to a party unless that party has actual notice of the amendment or revocation. For purposes of this subsection, "actual notice" means that a written instrument of amendment or revocation has been received by the party or, in the case of real property, that either a written instrument of amendment or revocation has been received by the party or that a written instrument of amendment or revocation identifying~~

~~the real property involved has been recorded in the municipal land records where the real property is situated.~~

Sec. 28. EFFECTIVE DATE

This act shall take effect on July 1, 2009.

Sec. 29. REPEAL

9 V.S.A. §§ 4651-4662 (Uniform Prudent Investor Act) are repealed.

Sec. 30. 32 V.S.A. § 1434 is amended to read:

§ 1434. PROBATE COURTS

(a) The following entry fees shall be paid to the probate court for the benefit of the state, except for subdivision (17) of this subsection which shall be for the benefit of the county in which the fee was collected:

* * *

(9) Testamentary trusts of \$20,000.00	\$50.00 <u>150.00</u>
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~~or less~~ For all trust petitions, other than

those described in subdivision (11) of this subsection,

where the corpus of the trust at the time the petition

is filed is \$100,000.00 or less, including petitions to

modify or terminate a trust, to remove or substitute a

trustee or trustees, or seeking remedies for breach of trust

(10) Testamentary trusts of more than	\$20,000.00
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For all trust petitions, other than those

described in subdivision (11) of this subsection,

where the corpus of the trust is more than

\$100,000.00, including petitions to modify or

terminate a trust, to remove or substitute a

trustee or trustees, or seeking remedies for

breach of trust

\$100.00 <u>\$250.00</u>

(11) Annual accounts on testamentary	\$30.00
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~~trusts of more than \$20,000.00~~

* * *

(21) Petitions for the removal of a	\$50.00
trustee pursuant to 14 V.S.A. § 2314(c) of trusts	
of \$20,000.00 or less	
(22) Petitions for removal of a	\$100.00
trustee pursuant to 14 V.S.A. § 2314(c) of trusts	
more than \$20,000.00	
(23) Petitions concerning advance	\$75.00
directives pursuant to 18 V.S.A. § 9718	

* * *

Rep. Clarkson of Woodstock, for the committee on Ways and Means, recommended the bill ought to pass in concurrence when amended as recommended by the committee on Commerce and Economic Development.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time.

Pending the question, Shall the House propose to the Senate to amend the bill as recommended by the committee on Commerce and Economic Development? **Reps. Jewett of Ripton and Koch of Barre Town** moved to amend the recommendation of proposal of amendment offered by the committee on Commerce and Economic Development, as follows:

First: In Sec. 1, 14A V.S.A. § 401, by striking out subdivision (5) in its entirety and inserting in lieu thereof a new subdivision (5) to read as follows:

(5)(A) by an agent or attorney-in-fact under a power of attorney that expressly grants authority to create the trust; or

(B) by an agent or attorney-in-fact under a power of attorney that grants the agent or attorney-in-fact the authority to act in the management and disposition of the principal's property that is as broad or comprehensive as the principal could exercise for himself or herself and that does not expressly exclude the authority to create a trust, provided that any trust so created does not include any authority or powers that are otherwise prohibited by section 3504 of title 14. An agent or attorney-in-fact may petition the probate court to determine whether a power of attorney described in this subdivision grants the agent or attorney-in-fact authority that is as broad or comprehensive as that which the principal could exercise for himself or herself.

Second: In Sec. 1, 14A V.S.A. § 402, by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read as follows:

(b) A settlor is deemed to have the capacity to create a trust if:

(1) the trust is created by an agent of the settlor under a power of attorney as described in subdivision 401(5) of this title; and

(2) the settlor had capacity to create a trust at the time the power of attorney was executed.

Third: In Sec. 1, 14A V.S.A. § 702, by striking out subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read as follows:

(a) A trustee shall give bond to secure performance of the trustee's duties only if the probate court finds that a bond is required by the terms of the trust and the probate court has not dispensed with the requirement, or the probate court finds by clear and convincing evidence that a bond is needed to protect the interests of the beneficiaries.

Fourth: In Sec. 1, 14A V.S.A. § 1005, by striking out subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read as follows:

(a) A beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust.

Fifth: In Sec. 1, 14A V.S.A. § 1005, by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read as follows:

(b) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows or has reason to know of the potential claim or that the beneficiary had a duty to inquire further and the response to such an inquiry would have disclosed the potential claim. If written notice is given to the trustee by a beneficiary or representative within the time for commencing an action under subsection (a) of this section stating that the beneficiary or representative has received insufficient information from the trustee's report to determine whether to commence an action for breach of trust, the time for commencing an action shall be extended by six months. If no proceeding is commenced within the extended time, it shall be conclusively presumed that the report adequately disclosed the existence of any potential claim.

Sixth: In Sec. 1, 14A V.S.A. § 1013, by striking out subsection (g) in its entirety and inserting in lieu thereof a new subsection (g) to read as follows:

(g) A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments which designate the trustee and confer upon the trustee the power

to act in the pending transaction. Nothing in this subsection shall be construed to require a trustee to furnish the entire trust instrument to the recipient of a certification of trust.

Which was agreed to and the report of the committees on Commerce and Economic Development, as amended and Ways and Means, agreed to and third reading was ordered.

Recess

At eleven o'clock and twenty-five minutes in the forenoon, the Speaker declared a recess until the fall of the gavel.

At one o'clock and fifteen minutes in the afternoon, the Speaker called the House to order.

Favorable Report; Third Reading Ordered

H. 448

Rep. Consejo of Sheldon, for the committee on Government Operations, to which had been referred House bill, entitled

An act relating to codification and approval of amendments to the charter of the village of Swanton

Reported in favor of its passage. The bill, having appeared on the Calendar one day for notice, was taken up, read the second time and third reading ordered.

House Resolution Adopted

H.R. 15

House resolution, entitled

House resolution in opposition to the federal regulation or chartering of insurance companies

Was taken up and adopted on the part of the House.

Adjournment

At one o'clock and twenty minutes in the afternoon, on motion of **Rep. McDonald of Berlin**, the House adjourned until Monday, April 27, 2009, at one o'clock in the afternoon.