House Calendar

Friday, April 01, 2011

87th DAY OF THE BIENNIAL SESSION

House Convenes at 9:30 A.M.

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Favorable

Consent Calendar

ORDERS OF THE DAY

ACTION CALENDAR

Third Reading

H. 443

An act relating to the state's transportation program

H. 446

An act relating to capital construction and state bonding

Amendment to be offered by Rep. Emmons of Springfield to H. 446

First: In Sec. 1, Legislative Intent, in subdivision (b)(2), by striking the phrase "to permanently move" and inserting in lieu thereof the phrase "to move permanently" and, in subdivision (b)(3), by inserting a comma after the word "biennium"

Second: In Sec. 12, Natural Resources, in subdivisions (a)(1)(C) and (b)(1)(C), by striking the word "Principle" where it appears and inserting in lieu thereof "Principal"

Third: In Sec. 12, Natural Resources, in subdivision (a)(6)(B), by inserting after "structures" the following language ". Of this amount, up to $50,000 may be used for improvements to state-owned shooting ranges"

Fourth: In Sec. 14, Public Safety, by inserting a second sentence following the first sentence of subsection (d) to read "For the purpose of allowing the department of buildings and general services to enter into contractual agreements and complete work on this project as soon as possible, it is the intent of the general assembly that these are committed funds not subject to budget adjustment."

Fifth: In Sec. 26, Property Transactions; Miscellaneous, in subdivision (b)(2), by striking the name "Hyde Park" where it appears and inserting in lieu thereof the name "Grand Isle" and by inserting the phrase "to donate the building to Hyde Park, or in the alternative," after "alternative,"

Sixth: In Sec. 33, Bicycle Racks at State Buildings, in subdivision (b)(2) by inserting the phrase "under the jurisdiction and control of the department" after the word "buildings"

Seventh: In Sec. 33, Bicycle Racks at State Buildings, in subsection (a), by deleting the phrase "short-term and long-term"

Eighth: In Sec. 37, Vermont State Hospital, by striking out Sec. 37 in its entirety and inserting in lieu thereof a new Sec. 37 to read:

Sec. 37. VERMONT STATE HOSPITAL

(a) Of the funds appropriated in Sec. 271(a)(3) of No. 215 of the Acts of the 2005 Adj. Sess. (2006) (appropriations), up to $482,646 may be used for planning and design for the replacement of services currently being provided at Vermont State Hospital in Waterbury. In reallocating these funds, the general assembly affirms the priority need to close the existing facility.

(b) The commissioner of mental health shall report orally to the mental health oversight committee at regular intervals when the general assembly is not in session on the status of planning and design for replacement of services currently being provided at Vermont State Hospital in Waterbury.

(c) On or before January 15, 2012, the commissioners of the departments of buildings and general services and of mental health shall report to the house committees on appropriations, on corrections and institutions, and on human services and to the senate committees on appropriations, on institutions, and on health and welfare on the status of planning and design for this project, a proposal for further stages of development, and future appropriations that will be needed to continue that development.

Ninth: In Sec. 38, Department of Corrections Master Plan, in subsection (d), after the date "January 15, 2012 by inserting ", as measured by the daily average of women incarcerated in February 2011""

Tenth: In Sec. 45, 29 V.S.A. § 168, by striking the word "moneys" wherever it appears and replacing it with the word "monies"

Amendment to be offered by Rep. Kilmartin of Newport City to H. 446

amended by striking Sec. 34 in its entirety and inserting in lieu thereof the following:

Sec. 34. RESTROOMS IN STATE BUILDINGS

By July 1, 2012, the commissioner of buildings and general services shall ensure that in any building owned by the state and under the jurisdiction of the commissioner all water closets and lavatories comply with Section 403 of the international plumbing code, and amendments thereto, as adopted under 26 V.S.A. §§ 2174–2175 by the Vermont plumber's examining board and the department of public safety, effective December 15, 2010 unless otherwise grandfathered by 26 V.S.A. § 2176, the international plumbing code, or other applicable law.

Favorable with amendment

H. 155

An act relating to property-assessed clean energy districts

Rep. Cheney of Norwich, for the Committee on **Natural Resources and Energy,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 24 V.S.A. § 3255 is amended to read:

§ 3255. COLLECTION OF ASSESSMENTS; LIENS

(a) Special assessments under this chapter shall constitute a lien on the property against which the assessment is made in the same manner and to the same extent as taxes assessed on the grand list of a municipality, and all procedures and remedies for the collection of taxes shall apply to special assessments.

(b) Notwithstanding subsection (a) of this section, a lien for an assessment under subchapter 2 of this chapter shall be subordinate to all liens on the property in existence at the time the lien for the assessment is filed on the land records, shall be subordinate to a first mortgage on the property recorded after such filing, and shall be superior to any other lien on the property recorded after such filing. In no way shall this subsection affect the status or priority of any municipal lien other than a lien for an assessment under subchapter 2 of this chapter.

Sec. 2. REDESIGNATION

24 V.S.A. chapter 87, subchapter 2 is redesignated to read:

Subchapter 2. Property-Assessed Clean Energy ~~Assessments~~

Sec. 3. 24 V.S.A. § 3261 is amended to read:

§ 3261. PROPERTY-ASSESSED CLEAN ENERGY ~~ASSESSMENT~~ DISTRICTS; APPROVAL OF VOTERS

(a)(1) In this subchapter, "district" means a property-assessed clean energy district.

(2) The legislative body of a town, city, or incorporated village may submit to the voters of the municipality the question of whether to designate the municipality as a property-assessed clean energy ~~assessment~~ district. In a ~~clean energy assessment~~ district, only those property owners who have entered

into written agreements with the municipality under section 3262 of this title would be subject to a special assessment, as set forth in section 3255 of this title.

(b) Upon a vote of approval by a majority of the qualified voters of the municipality voting at an annual or special meeting duly warned for that purpose, the municipality may incur indebtedness for or otherwise finance projects relating to renewable energy, as defined in 30 V.S.A. § 8002(2), or to eligible projects relating to energy efficiency as defined by section 3267 of this title, undertaken by owners of ~~real property~~ dwellings, as defined in Section 103(v) of the federal Truth in Lending Act, within the boundaries of the town, city, or incorporated village.

Sec. 4. 24 V.S.A. § 3262 is amended to read:

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

(a) Upon an affirmative vote made pursuant to section 3261 of this title and the performance of an energy savings analysis pursuant to subsection (b) of this section, an owner of ~~real property~~ a dwelling, as defined in Section 103(v) of the federal Truth in Lending Act, within the boundaries of a ~~clean energy assessment~~ district may enter into a written agreement with the municipality that shall constitute the owner's consent to be subject to a special assessment, as set forth in section 3255 of this title. Entry into such an agreement may occur only after January 1, 2012. A participating municipality shall follow underwriting criteria~~, consistent with responsible underwriting and credit standards as~~ established by the department of banking, insurance, securities, and health care administration, and shall establish other qualifying criteria to provide an adequate level of assurance that property owners will have the ability to meet assessment payment obligations. A participating municipality shall refuse to enter into a written agreement with a property owner who fails to meet the underwriting or other qualifying criteria.

* * *

(c) A written agreement shall provide that:

* * *

(2) ~~At~~ Notwithstanding any other provision of law:

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

(B) In the event of a foreclosure action, the past due balances described in subdivision (A) of this subdivision (2) shall include all payments on an assessment under this subchapter that are due and unpaid as of the date the action is filed, and all payments on the assessment that become due after that date and that accrue up to and including the date title to the property is transferred to the mortgage holder, the lien holder, or a third party in the foreclosure action. The person or entity acquiring title to the property in the foreclosure action shall be responsible for payments on the assessment that become due after the date of such acquisition.

(3) A participating municipality shall disclose to participating property owners ~~the~~ each of the following:

(A) The risks associated with participating in the program, including risks related to the failure of participating property owners to make payments and the risk of foreclosure.

(B) The provisions of subsection (h) of this section that pertain to prepayment of the assessment.

(d) A written agreement or notice of such agreement and the analysis performed pursuant to subsection (b) of this section shall be filed with the clerk of the applicable municipality for recording in the land records of ~~the~~ that municipality and shall be disclosed to potential buyers prior to transfer of property ~~of~~ ownership. Personal financial information provided to a municipality by a participating property owner or potential participating property owner shall not be subject to disclosure as set forth in 1 V.S.A. § 317(c)(7). If a notice of agreement is filed instead of the full written agreement, the notice shall attach the analysis performed pursuant to subsection (b) of this section and shall include at least each of the following:

(1) The name of the property owner as grantor.

(2) The name of the municipality as grantee.

(3) The date of the agreement.

(4) A legal description of the real property against which the assessment is made pursuant to the agreement.

(5) The amount of the assessment and the period during which the assessment will be made on the property.

(6) A statement that the assessment will remain a lien on the property until paid in full or released.

(7) The location at which the original or a true, legible copy of the agreement may be examined.

* * *

(g) ~~In the case of~~ With respect to an agreement ~~with the resident owner of a dwelling, as defined in Section 103(v) of the federal Truth in Lending Act~~ under this section:

(1) the assessments to be repaid under the agreement, when calculated as if they were the repayment of a loan, shall not violate ~~chapter 4 of Title 9~~ 9 V.S.A. §§ 41a, 43, 44, and 46–50.

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

(3) the maximum amount to be repaid for the project, including the participating property owner's contribution to the reserve fund under subsection 3269(c) of this title, shall not exceed $30,000.00 or 15 percent of the assessed value of the property, whichever is less.

(h) There shall be no penalty or premium for prepayment of the outstanding balance of an assessment under this subchapter if the balance is prepaid in full.

Sec. 5. 24 V.S.A. § 3266 is amended to read:

§ 3266. INTERMUNICIPAL AGREEMENTS

Two or more municipalities, by resolution of their respective legislative bodies or boards, may establish and enter into agreements for:

(1) incurring indebtedness or otherwise financing projects under this subchapter; or

(2) pooling loss reserve funds under this subchapter, if each such municipality has determined under subdivision 3269(a)(2) of this title to establish a reserve fund separate from the fund created under subdivision 3269(a)(1) of this title.

Sec. 6. 24 V.S.A. § 3267 is amended to read:

§ 3267. ELIGIBLE ENERGY EFFICIENCY PROJECTS; ASSISTANCE TO MUNICIPALITIES

Those entities appointed as energy efficiency utilities under 30 V.S.A. § 209(d) ~~shall~~:

(1) Shall develop a list of eligible energy efficiency projects and shall make the list available to the public on or before July 1 of each year; and

(2) Shall provide information concerning implementation of this subchapter to each municipality, within the area in which the entity delivers

efficiency services, that requests such information, and shall contact each such municipality that votes to establish a district to offer this information.

Sec. 7. 24 V.S.A. § 3268 is amended to read:

§ 3268. RELEASE OF LIEN

(a) A municipality shall release a participating property owner of the lien on the property against which the assessment under this subchapter is made upon~~:~~

~~(1) Full~~ full payment of the value of the assessment~~; or~~

~~(2) Demand from a party who has filed an action for foreclosure on a participating property~~.

(b) ~~If a municipality releases a participating property owner of a lien upon demand from a party who has filed an action for foreclosure and the participating property owner redeems the property, the municipality shall reinstate the lien on the property against which the assessment under this subchapter is made.~~

~~(c)~~ Notice of ~~the~~ a release ~~or reinstatement~~ of ~~the~~ a lien for an assessment under this subchapter shall be filed with the clerk of the applicable municipality for recording in the land records of ~~the~~ that municipality.

Sec. 8. 24 V.S.A. § 3269 is amended to read:

§ 3269. RESERVE FUND

(a)(1) A ~~participating municipality may create a~~ reserve fund is created for use in paying the past due balances of an assessment under this subchapter in the event ~~of~~ there is a foreclosure upon ~~an assessed~~ the property subject to the assessment and the proceeds resulting from the foreclosure are, after all superior liens have been satisfied, insufficient to pay those past due balances. The reserve fund shall comply with the provisions of subsections (b) through (e) of this section and shall be administered by and in the custody of the entity described in subsection (f) of this section.

(2) Each municipality that establishes a district under this subchapter shall participate in the reserve fund created by subdivision (1) of this subsection unless the municipality chooses to establish a separate reserve fund administered through means other than the entity described in subsection (f) of this section. A municipality may establish such a separate reserve fund by resolution of its legislative body. Any such separate reserve fund shall comply with subsections (b) through (e) of this section.

(b) The reserve fund shall be funded by participating property owners at a level sufficient to provide for the payment of ~~any~~ past due balances ~~on~~

~~assessments under this subchapter and any remaining principal balances on those assessments~~ described in subdivision 3262(c)(2) of this title in the event of a foreclosure upon a participating property and the costs of administering the reserve fund and shall only be used to provide for such payment and administration.

(c) The contribution of each participating property owner to the reserve fund shall be included in the special assessment applicable to the property and shall be subject to section 3255 of this title. From time to time, the commissioner of banking, insurance, securities, and health care administration shall determine the appropriate contribution to the fund in accordance with subsection (d) of this section. A determination by the commissioner under this subsection shall apply to the reserve fund contribution for an assessment concerning which a written agreement under section 3262 is signed after the date of the commissioner's determination and shall not affect the reserve fund contribution for an assessment concerning which such an agreement was signed on or before the date of the commissioner's determination.

~~(b)~~(d) The reserve fund shall be capitalized in accordance with standards and procedures approved by the commissioner of banking, insurance, securities, and health care administration to cover expected foreclosures and fund administration costs based on good lending practice experience. Interest earned shall remain in the fund. The administrator of the reserve fund shall invest and reinvest the moneys in the fund and hold, purchase, sell, assign, transfer, and dispose of the investments in accordance with the standard of care established by the prudent investor rule under chapter 147 of Title 9. The administrator shall apply the same investment objectives and policies adopted by the Vermont state employees' retirement system, where appropriate, to the investment of moneys in the fund.

~~(c)~~(e) The municipality shall disclose in advance to each interested property owner the amount of that property owner's required payment into the reserve fund. Once disclosed, the amount of the reserve fund payment shall not change over the life of the assessment.

(f) An entity appointed under 30 V.S.A. § 209(d)(2) to deliver energy efficiency programs to multiple service territories shall administer the reserve fund created under subdivision (a)(1) of this section.

(1) The entity's costs of administering the reserve fund shall be considered costs of operating the districts under section 3263 of this title.

(2) In the event of foreclosure on a property that is subject to a special assessment and is in a district that participates in the reserve fund administered by the entity, the entity's obligation shall be to disburse, at the direction of the

municipality, moneys from the reserve fund to apply to the past due balances of the assessment. In no event shall other moneys received or held by the entity be available to meet this obligation or the payment of balances on an assessment.

(3) The entity shall keep an accurate account of all activities and receipts and expenditures under this subsection. An audit of the reserve fund administered by the entity shall be conducted as part of any periodic audit of the electric efficiency fund established pursuant to 30 V.S.A. § 209(d)(3).

Sec. 9. 24 V.S.A. § 3270 is added to read:

§ 3270. STATE PACE RESERVE FUND

(a) The state PACE reserve fund is established to be held in the custody of and administered by the state treasurer. The purpose of the state PACE reserve fund shall be to reduce, for those districts for which the entity described in subsection 3269(f) of this title administers the loss reserve fund, the risk faced by an investor making an agreement with a municipality to finance such a district.

(b) The treasurer may invest monies in the fund in accordance with 32 V.S.A. § 434. All balances in the fund 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 fund. The treasurer's annual financial report to the general assembly under 32 V.S.A. § 434 shall contain an accounting of receipts, disbursements, and earnings of the fund.

(c) At the direction of the treasurer, a sum shall be transferred to the fund from moneys deposited into the energy efficiency fund pursuant to 30 V.S.A. § 209(d)(7) (capacity savings payments) and (8) (revenues from the sale of carbon credits).

(1) For a given year, the sum transferred under this subsection shall be:

(A) Five percent of the total amount of those assessments concerning which owners of real property, in the districts described in subsection (a) of this section, are expected to enter into written agreements pursuant to section 3262 of this title during the year; and

(B) Such additional amount, if any, that is necessary to meet the full amount of payments reasonably expected to be made from the state PACE reserve fund during that year.

(2) When directing a transfer under this subsection, the treasurer shall notify the commissioners of finance and management and of public service, the chair of the public service board, and the entity described in subsection 3269(f)

of this title. Monies shall not be disbursed from the state PACE reserve fund until necessary resources are transferred to the fund.

(d) Moneys deposited to the state PACE reserve fund and any interest on moneys in that fund shall be used for the sole purpose of paying claims as described in subsections (e) and (f) of this section. In no event shall any moneys received or held by the state of Vermont, other than moneys deposited into the state PACE reserve fund or interest on moneys in that fund, be available to meet this obligation or the payment of a remaining past due balance or any other obligation under this subchapter.

(e) In this section, "remaining past due balance" means that amount, if any, of a past due balance on an assessment under this subchapter that exists:

(1) Immediately following foreclosure on a property in a district that participates in the loss reserve fund administered by the entity described in subsection 3269(f) of this title; and

(2) After the application, to the past due balances of the assessment on that property, of the proceeds available from the foreclosure, net of superior liens, and of the assets of that loss reserve fund.

(f) The obligation of the state PACE reserve fund shall be to fund 90 percent of a remaining past due balance, upon presentation of a claim and application acceptable to the treasurer and the entity described in subsection 3269(f) of this title, provided that the total amount of all such funding from the state PACE reserve fund shall not exceed the smaller of the following:

(1) $1,000,000.00.

(2) The funds available pursuant to subsection (d) of this section.

(3) Five percent of the total of all assessments under this subchapter in the districts that participate in the loss reserve fund administered by the entity described in subsection 3269(f) of this title.

Sec. 10. UNDERWRITING CRITERIA; ADOPTION

On or before December 31, 2011, the commissioner of banking, insurance, securities, and health care administration shall adopt criteria and standards pursuant to Sec. 4 of this act, 24 V.S.A. § 3262(a), and determine the participating property owner's contribution to the loss reserve fund and adopt standards and procedures pursuant to Sec. 8 of this act, 24 V.S.A. § 3269(c) and (d).

Sec. 11. EFFECTIVE DATES

(a) This section and Secs. 3 (property-assessed clean energy districts) and 10 (underwriting criteria; adoption) of this act shall take effect on passage.

(b) Secs. 1, 2, and 4–9 of this act shall take effect on January 1, 2012, except that in Sec. 4, 24 V.S.A. § 3262(a) (written agreements) shall take effect on passage.

(Committee Vote: 11-0-0)

Rep. Masland of Thetford, for the Committee on **Ways and Means,** recommends the bill ought to pass when amended as recommended by the Committee on **Natural Resources and Energy** and when further amended as follows:

First: By striking Sec. 5 (intermunicipal agreements; pooling loss reserve funds) in its entirety and inserting in lieu thereof "Sec. 5. [Deleted.]"

Second: In Sec. 8, 24 V.S.A. § 3269 (reserve fund), by striking subdivision (a) in its entirety and inserting in lieu thereof:

(a) A ~~participating municipality may create a~~ reserve fund is created for use in paying the past due balances of an assessment under this subchapter in the event ~~of~~ that there is a foreclosure upon ~~an assessed~~ the property subject to the assessment and the proceeds resulting from the foreclosure are, after all superior liens have been satisfied, insufficient to pay those past due balances. The reserve fund shall comply with the provisions of subsections (b) through (e) of this section and shall be administered by and in the custody of the entity described in subsection (f) of this section. Each municipality that establishes a district under this subchapter shall participate in the reserve fund created by this subsection.

(Committee Vote: 9-0-2)

Amendment to be offered by Reps. Marcotte of Coventry and Cheney of Norwich to H. 155

First: After Sec. 9, by inserting Sec. 9a to read:

Sec. 9a. 24 V.S.A. § 3271 is added to read:

§ 3271. MONITORING; COMPLIANCE; UNDERWRITING CRITERIA

The department of public service created under 30 V.S.A. § 1 shall monitor and evaluate, for compliance with the underwriting criteria, standards, and procedures established under subsections 3262(a) (underwriting criteria for assessments) and 3269(c) and (d) (underwriting standards and procedures; loss reserve fund) of this title, all activities to which those criteria, standards, and procedures apply that are undertaken by an entity appointed under 30 V.S.A. § 209(d)(2) to deliver energy efficiency programs. The department shall consult with the department of of banking, insurance, securities, and health care administration in performing these tasks. The department of public service

may combine its tasks under this section with monitoring and evaluation of an energy efficiency entity conducted pursuant to 30 V.S.A. § 209(d) or (e).

Second: In Sec. 10, at the end of the Sec., by inserting: Prior to adoption, the commissioner of banking, insurance, securities, and health care administration shall consult with the commissioner of public service concerning the development of such criteria, standards, and procedures.

(Committee Vote: 10-0-1)

H. 259

An act relating to increasing the number of members on the liquor control board

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

Sec. 1. 7 V.S.A. § 101 is amended to read:

§ 101. COMPOSITION OF DEPARTMENT; COMMISSIONER OF LIQUOR CONTROL; LIQUOR CONTROL BOARD

(a) The department of liquor control, created by section 212 of Title 3, shall include the commissioner of liquor control and the liquor control board.

(b) The liquor control board shall consist of ~~three~~ five persons, not more than ~~two~~ three members of which shall belong to the same political party. Biennially, with the advice and consent of the senate, the governor shall appoint a person as a member of such board for ~~the term of six years~~ a staggered five-year term, whose term of office shall commence on February 1 of the year in which such appointment is made. The governor shall biennially designate a member of such board to be its chairman.

Sec. 2. TRANSITIONAL PROVISIONS

Of the two new member positions on the liquor control board, the governor shall appoint one member for a three-year term and one member for a five-year term.

Sec. 3. EFFECTIVE DATE

This act shall take effect upon passage.

(Committee Vote: 8-0-0)

Rep. Acinapura of Brandon, for the Committee on **Appropriations,** recommends the bill ought to pass when amended as recommended by the Committee on **General, Housing and Military Affairs.**

(Committee Vote: 10-0-1)

H. 420

An act relating to the office of professional regulation

Rep. Evans of Essex, for the Committee on **Government Operations,** recommends the bill be amended as follows:

First: After Sec. 11, by adding a new section to be Sec. 11a to read:

Sec. 11a. 26 V.S.A. chapter 67 is amended to read:

CHAPTER 67. HEARING AID DISPENSERS

* * *

Subchapter 2. Administration

§ 3287. ADVISOR APPOINTEES

(a) The secretary shall appoint three licensed hearing aid dispensers and one member of the public to serve as advisors in matters related to hearing aid dispensers. ~~One~~ Of the licensed hearing aid dispensers, one member shall be an otolaryngologist; one shall be an audiologist; and one shall be a hearing aid dispenser who is neither an otolaryngologist nor an audiologist. ~~They~~ The public member shall be an individual with significant hearing impairment who uses a hearing aid regularly. The members shall be appointed as set forth in 3 V.S.A. § 129b and shall serve at the pleasure of the secretary.

(b) The director shall seek the advice of the ~~hearing aid dispensers~~ advisors appointed under this section in carrying out the provisions of this chapter. Such members shall be entitled to compensation and necessary expenses in the amount provided in 32 V.S.A. § 1010 for attendance at any meeting called by the director for this purpose.

* * *

Second: In Sec. 12, section 3322, by striking subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read:

§ 3322. USE OF LICENSE NUMBER

(a) Each licensee or registrant shall be assigned a license or registration number which shall be used in a report, a contract, engagement letter, or other instrument used by the licensee or registrant in connection with the licensee's or registrant's activities under this chapter. The license number shall be placed

adjacent to or immediately below the title the licensee is entitled to use under this chapter~~, and the~~. The licensed appraiser shall ensure that the registration number and the appraiser's fee for appraisal services shall appear adjacent to or immediately below the appraisal management company's registered name on documents supplied to clients or customers in this state.

(Committee Vote: 10-0-1)

Rep. Clarkson of Woodstock, for the Committee on **Ways and Means,** recommends the bill ought to pass when amended as recommended by the Committee on **Government Operations.**

(Committee Vote: 11-0-0)

NOTICE CALENDAR

Favorable with Amendment

H. 56

An act relating to the Vermont Energy Act of 2011

Rep. Cheney of Norwich, for the Committee on **Natural Resources and Energy,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

TO THE HOUSE OF REPRESENTATIVES:

The Committee on Natural Resources and Energy to which was referred House Bill No. 56 entitled "An act relating to the Vermont Energy Act of 2011" respectfully reports that it has considered the same and recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Net Metering * * *

Sec. 1. 30 V.S.A. § 219a is amended to read:

§ 219a. SELF-GENERATION AND NET METERING

(a) As used in this section:

* * *

(3) "Net metering system" means a facility for generation of electricity that:

(A) is of no more than ~~250 kilowatts (AC)~~ 500 kW capacity;

(B) operates in parallel with facilities of the electric distribution system;

(C) is intended primarily to offset ~~part or all of~~ the customer's own electricity requirements;

(D) is located on the customer's premises or, in the case of a group net metering system, on the premises of a customer who is a member of the group; and

(E)(i) employs a renewable energy source as defined in subdivision 8002(2) of this title; or

(ii) is a qualified micro-combined heat and power system of 20 ~~kilowatts~~ kW or fewer that meets the definition of combined heat and power in 10 V.S.A. § 6523(b) and may use any fuel source that meets air quality standards.

(4) ~~"Farm system" means a facility of no more than 250 kilowatts (AC) output capacity, except as provided in subdivision (k)(5) of this section, that generates electric energy on a farm operated by a person principally engaged in the business of farming, as that term is defined in Regulation 1.175-3 of the Internal Revenue Code of 1986, from the anaerobic digestion of agricultural products, byproducts, or wastes, or other renewable sources as defined in subdivision (3)(E) of this subsection, intended to offset the meters designated under subdivision (g)(1)(A) of this section on the farm or has entered into a contract as specified in subsection (k) of this section.~~ "Facility" means a structure or piece of equipment and associated machinery and fixtures that generates electricity. A group of structures or pieces of equipment shall be considered one facility if it uses the same fuel source and infrastructure and is located in close proximity. Common ownership shall be relevant but not sufficient to determine that such a group constitutes a facility.

(5) "kW" means kilowatt or kilowatts (AC).

(6) "kWh" means kW hour or hours.

(7) "MW" means megawatt or megawatts (AC).

(b) A customer shall pay the same rates, fees, or other payments and be subject to the same conditions and requirements as all other purchasers from the electric company in the same rate-class, except as provided for in this section, and except for appropriate and necessary conditions approved by the board for the safety and reliability of the electric distribution system.

(c) The board shall establish by rule or order standards and procedures governing application for, and issuance or revocation of a certificate of public good for net metering systems under the provisions of section 248 of this title. A net metering system shall be deemed to promote the public good of the state

if it is in compliance with the criteria of this section, and board rules or orders. In developing such rules or orders, the board:

(1) With respect to a solar net metering system of 5 kW or less, shall provide that the system may be installed ten days after the customer's submission to the board and the interconnecting electric company of a completed registration form and certification of compliance with the applicable interconnection requirements. Within that ten-day period, the interconnecting electric company may deliver to the customer and the board a letter detailing any issues concerning the interconnection of the system. The customer shall not commence construction of the system prior to the passage of this ten-day period and, if applicable, resolution by the board of any interconnection issues raised by the electric company in accordance with this subsection. If the ten-day period passes without delivery by the electric company of a letter that raises interconnection issues in accordance with this subsection, a certificate of public good shall be deemed issued on the 11th day without further proceedings, findings of fact, or conclusions of law, and the customer may commence construction of the system. On request, the clerk of the board promptly shall provide the customer with written evidence of the system's approval. For the purpose of this subdivision, the following shall not be included in the computation of time: Saturdays, Sundays, state legal holidays under 1 V.S.A. § 371(a), and federal legal holidays under 5 U.S.C. § 6103(a).

(2) With respect to a net metering system for which a certificate of public good is not deemed issued under subdivision (1) of this subsection:

(A) may waive the requirements of section 248 of this title that are not applicable to net metering systems, including, but not limited to, criteria that are generally applicable to public service companies as defined in this title;

~~(2)~~(B) may modify notice and hearing requirements of this title as it deems appropriate;

~~(3)~~(C) shall seek to simplify the application and review process as appropriate; and

~~(4)~~(D) shall find that such rules are consistent with state power plans.

(d)(1) An applicant for a certificate of public good for a net metering system shall be exempt from the requirements of subsection 202(f) of this title.

(2) Any certificate issued under this section shall be automatically transferred to any subsequent owner of the property served by the net metering system, provided, in accordance with rules adopted by the board, the board and

the electric company are notified of the transfer, and the subsequent owner agrees to comply with the terms and conditions of the certificate.

(3) Nonuse of a certificate of public good for a period of one year following the date on which the certificate is issued or, under subdivision (1) of this subsection, deemed issued shall constitute an abandonment of the net metering system and the certificate shall be considered expired. For the purpose of this section, for a certificate to be considered "used," installation of the net metering system must be completed within the one-year period, unless installation is delayed by litigation or unless, at the time the certificate is issued or in a subsequent proceeding, the board provides that installation may be completed more than one year from the date the certificate is issued.

(e) Consistent with the other provisions of this title, electric energy measurement for net metering systems using a single nondemand meter that are not ~~farm~~ group systems shall be calculated in the following manner:

* * *

(3) If electricity generated by the customer exceeds the electricity supplied by the electric company:

(A) ~~The customer shall be billed for the appropriate charges for that month, in accordance with subsection (b) of this section~~ The electric company shall calculate a monetary credit to the customer by multiplying the excess kWh generated during the billing period by the kWh rate paid by the customer for electricity supplied by the company and shall apply the credit to any remaining charges on the customer's bill for that period;

(B) ~~The customer shall be credited for the excess kilowatt hours generated during the billing period, with this kilowatt hour credit appearing on the bill for the following billing period~~ If application to such charges does not use the entire balance of the credit, the remaining balance of the credit shall appear on the customer's bill for the following billing period; and

(C) Any accumulated ~~kilowatt hour~~ credits shall be used within 12 months, or shall revert to the electric company, without any compensation to the customer. Power reverting to the electric company under this subdivision (3) shall be considered SPEED resources under section 8005 of this title.

* * *

(f) Consistent with the other provisions of this title, electric energy measurement for ~~net metering farm or~~ group net metering systems shall be calculated in the following manner:

(1) Net metering customers that are ~~farm or~~ group net metering systems may credit on-site generation against all meters designated to the ~~farm system or~~ group net metering system under subdivision (g)(1)(A) of this section.

(2) Electric energy measurement for ~~farm or~~ group net metering systems shall be calculated by subtracting total usage of all meters included in the ~~farm or~~ group net metering system from total generation by the ~~farm or~~ group net metering system. If the electricity generated by the ~~farm or~~ group net metering system is less than the total usage of all meters included in the ~~farm or~~ group net metering system during the billing period, the ~~farm or~~ group net metering system shall be credited for any accumulated kilowatt-hour credit and then billed for the net electricity supplied by the electric company, in accordance with the procedures in subsection (g) (group net metering) of this section.

(3) If electricity generated by the ~~farm or~~ group net metering system exceeds the electricity supplied by the electric company~~:~~ ,

~~(A) The farm or group net metering system shall be billed for the appropriate charges for each meter for that month, in accordance with subsection (b) of this section.~~

~~(B) Excess kilowatt-hours generated during the billing period shall be added to the accumulated balance with this kilowatt-hour credit appearing on the bill for the following billing period.~~

~~(C) Any accumulated kilowatt-hour credits shall be used within 12 months or shall revert to the electric company without any compensation to the farm or group net metering system. Power reverting to the electric company under this subdivision (3) shall be considered SPEED resources under section 8005 of this title~~ the provisions of subdivision (e)(3) (credit for excess generation) of this section shall apply, with credits allocated to and appearing on the bill of each member of the group net metering system in accordance with subsection (g) (group net metering) of this section.

(g)(1) In addition to any other requirements of section 248 of this title and this section and board rules thereunder, before a ~~farm or~~ group net metering system including more than one meter may be formed and served by an electric company, the proposed ~~farm or~~ group net metering system shall file with the board, with copies to the department and the serving electric company, the following information:

(A) the meters to be included in the ~~farm or~~ group net metering system, which shall be associated with the buildings and residences owned or occupied by the person operating the ~~farm or~~ group net metering system, or the person's family or employees, or other members of the group, identified by account number and location;

(B) a procedure for adding and removing meters included in the ~~farm or~~ group net metering system, and direction as to the manner in which the electric company shall allocate any accrued credits among the meters included in the system, which allocation subsequently may be changed only on written notice to the electric company in accordance with subdivision (4) of this subsection;

(C) a designated person responsible for all communications from the ~~farm or~~ group net metering system to the serving electric company~~, for receiving and paying bills for any service provided by the serving electric company for the farm or group net metering system, and for receiving any other communications regarding the farm or group net metering system~~ except for communications related to billing, payment, and disconnection; and

(D) a binding process for the resolution of any disputes within the ~~farm or~~ group net metering system relating to net metering that does not rely on the serving electric company, the board, or the department. However, this subdivision (D) shall not apply to disputes between the serving electric company and individual members of a group net metering system regarding billing, payment, or disconnection.

(2) The ~~farm or~~ group net metering system shall, at all times, maintain a written designation to the serving electric company of a person ~~who shall be the sole person authorized to receive and pay bills for any service provided by the serving electric company, and~~ to receive any ~~other~~ communications regarding ~~the farm system,~~ the group net metering system~~,~~ or net metering that do not relate to billing, payment, or disconnection.

(3) The serving electric company shall bill directly and send all communications regarding billing, payment, and disconnection directly to the customer name and address listed for the account of each individual meter designated under subdivision (1)(A) of this subsection as being part of a group net metering system. The usage charges for any account so billed shall be based on the individual meter for the account. The credit applied on that bill for electricity generated by the group net metering system shall be calculated in the manner directed by the system under subdivision (1)(B) of this subsection.

(4) The serving ~~utility~~ electric company shall implement appropriate changes to the ~~farm or~~ group net metering system within 30 days after receiving written notification from the designated person. However, written notification of a change in the person designated under subdivision (2) of this subsection shall be effective upon receipt by the serving ~~utility~~ electric company. The serving ~~utility~~ electric company shall not be liable for action

based on such notification, but shall make any necessary corrections and bill adjustments to implement revised notifications.

~~(4)~~(5) Pursuant to subsection 231(a) of this title, after such notice and opportunity for hearing as the board may require, the board may revoke a certificate of public good issued to a ~~farm or~~ group net metering system.

~~(5)~~(6) A group net metering system may consist only of customers that are located within the service area of the same electric company. Various buildings owned by municipalities, including water and wastewater districts, fire districts, villages, school districts, and towns, may constitute a group net metering system. A union or district school facility shall be considered in the same group net metering system with buildings of its member municipalities that are located within the service area of the same electric company that serves the facility. If it determines that it would promote the general good, the board shall permit a noncontiguous group of net metering customers to comprise a group net metering system.

(h)(1) An electric company:

(A) Shall make net metering available to any customer using a net metering system~~,~~ or group net metering system~~, or farm system~~ on a first-come, first-served basis until the cumulative output capacity of net metering systems equals ~~2.0~~ 4.0 percent of the distribution company's peak demand during 1996; or the peak demand during the most recent full calendar year, whichever is greater. The board may raise the ~~2.0~~ 4.0 percent cap. In determining whether to raise the cap, the board shall consider the following:

(i) the costs and benefits of net metering systems already connected to the system; and

(ii) the potential costs and benefits of exceeding the cap, including potential short and long-term impacts on rates, distribution system costs and benefits, reliability and diversification costs and benefits;

* * *

(E) May require a customer to comply with generation interconnection, safety, and reliability requirements, as determined by the public service board by rule or order, and may charge reasonable fees for interconnection, establishment, special metering, meter reading, accounting, account correcting, and account maintenance of net metering arrangements of greater than 15 ~~kilowatt (AC)~~ kW capacity;

* * *

(J) May in its rate schedules offer credits or other incentives that may include monetary payments to net metering customers. These credits or

incentives shall not displace the benefits provided to such customers under subsections (e) and (f) of this section.

(K) Except as provided in subdivision (1)(K)(v) of this subsection, shall in its rate schedules offer a credit to each net metering customer using solar energy that shall apply to each kWh generated by the customer's solar net metering system and that shall not displace the benefits provided to such customers under subsections (e) and (f) of this section.

(i) The credit required by this subdivision (K) shall be $0.20 minus the highest residential rate per kWh paid by the company as of the date it files with the board a proposed modification to its rate schedules to effect this subdivision (K) or to revise a credit previously instituted under this subdivision (K). Notwithstanding the basis for this credit calculation, the amount of the credit shall not fluctuate with changes in the underlying residential rate used to calculate the amount.

(ii) The electric company shall apply the credit calculated in accordance with subdivision (1)(K)(i) of this subsection to generation from each net metering system using solar energy regardless of the customer's rate class. A credit under this subdivision (K) shall be applied to all charges on the customer's bill from the electric company and shall be subject to the provisions of subdivisions (e)(3)(B) (credit for unused balance) and (C) (12-month reversion) and (f)(3) (credit for excess generation; group net metering) of this section.

(iii) An electric company's proposed modification to a rate schedule to offer a credit under this subdivision (K) and any investigation initiated by the board or party other than the company of an existing credit contained in such a rate schedule shall be reviewed in accordance with the procedures set forth in section 225 of this title, except that:

(I) A company's proposed modification shall take effect on filing with the board and shall not be subject to suspension under section 226 of this title;

(II) Such a modification or investigation into an existing credit shall not require review of the company's entire cost of service; and

(III) Such a modification or existing credit may be altered by the board for prospective effect only commencing with the date of the board's decision.

(iv) Within 30 days of this subdivision's effective date, each electric company shall file a proposed modification to its rate schedule that complies with this subdivision (K). Such proposed modification, as it may be

revised by the board, shall not be changed for two years starting with the date of the board's decision on the modification. After the passage of that two-year period, further modifications to the amount of a credit under this subdivision may be made in accordance with subdivisions (1)(K)(i)-(iii) of this subsection.

(v) An electric company shall not be required to offer a credit under this subdivision (K) if, as of the effective date of this subdivision, the result of the calculation described in subdivision (1)(K)(i) of this subsection is zero or less.

(vi) A solar net metering system shall receive the amount of the credit under this subdivision (K) that is in effect for the service territory in which the system is installed as of the date of the system's installation and shall continue to receive that amount for not less than 10 years after that date regardless of any subsequent modification to the credit as contained in the electric company's rate schedules.

(2) All such requirements or credits or other incentives shall be pursuant to and governed by a tariff approved by the board and any applicable board rule, which tariffs and rules shall be designed in a manner reasonably likely to facilitate net metering. With respect to a credit or incentive under subdivision (1)(J) (optional credit or incentive) or (K) (solar credit) of this subsection that is provided to a net metering system that constitutes new renewable energy under subdivision 8002(4) of this title:

(A) If the credit or incentive applies to each kWh generated by the system, then the system's energy production shall count toward the goals and requirements of subsection 8005(d) of this title.

(B) If the credit or incentive applies only to the system's net energy production supplied to the company, then the increment of net energy production supplied by the customer to the company through a net metering system that is supported by such additional credit or incentive shall count toward the goals and requirements of subsection 8005(d) of this title.

* * *

(k) Notwithstanding the provisions of subsections (f) and (g) of this section, an electric company may contract to purchase all or a portion of the output products from a ~~farm or~~ group net metering system, provided:

(1) the ~~farm or~~ group net metering system obtains a certificate of public good under the terms of subsections (c) and (d) of this section;

(2) any contracted power shall be subject to the limitations set forth in subdivision (h)(1) of this section;

(3) any contract shall be subject to interconnection and metering requirements in subdivisions (h)(1)(C)~~,~~ and (i)(2) and (3) of this section;

(4) any contract may permit all or a portion of the tradeable renewable energy credits for which the ~~farm~~ system is eligible to be transferred to the electric company;

(5) the output capacity of a system may exceed ~~250 kilowatts~~ 500 kW, provided:

(A) the contract assigns the amount of power to be net metered; and

(B) the net metered amount does not exceed ~~250 kilowatts~~ 500 kW; and

(C) only the amount assigned to net metering is assessed to the cap provided in subdivision (h)(1)(A) of this section.

* * *

(m) A facility for the generation of electricity to be consumed primarily by the military department established under 3 V.S.A. § 212 and 20 V.S.A. § 361(a) or the National Guard as defined in 32 U.S.C. § 101(3), and installed on property of the military department or National Guard located in Vermont, shall be considered a net metering system for purposes of this section if it has a capacity of 2.2 MW ~~(AC)~~ or less and meets the provisions of subdivisions (a)(3)(B) through (E) of this section. Such a facility shall not be subject to and shall not count toward the capacity limits of subdivisions (a)(3)(A) (no more than ~~250~~ 500 kW) and (h)(1)(A) (~~two~~ four percent of peak demand) of this section.

Sec. 2. IMPLEMENTATION; RETROACTIVE APPLICATION

(a) In Sec. 1 of this act, 30 V.S.A. § 219a(h)(1)(J) (optional credits or incentives) and (K) (required credit; solar systems) shall apply to petitions pertaining to net metering systems filed by an electric company with the public service board on and after May 1, 2010. Notwithstanding 30 V.S.A. § 225(a), an electric company may amend the proof in support of such a petition that is pending as of the effective date of this section if the amendment is to effect compliance with Sec. 1, 30 V.S.A. § 219a(h)(1)(K).

(b) With respect to farm net metering systems under 30 V.S.A. § 219a as it existed prior to the effective date of this section, each such system for which a certificate of public good was issued prior to or for which an application for a certificate of public good is pending as of that date shall be deemed to be a group net metering system under Sec. 1 of this act.

(c) With respect to group net metering systems under Sec. 1 of this act in existence as of the effective date of this section:

(1) Within 30 days of that date, each electric distribution company subject to jurisdiction under 30 V.S.A. § 203 shall provide notice to each such system that it serves, in a form acceptable to the commissioner of public service, of the provisions respecting such systems contained in Sec. 1 of this act and this section, and shall request the system's allocation of credits pursuant to Sec. 1, 30 V.S.A. § 219a(g)(1)(B).

(2) Within 60 days of that date, each such system shall provide direction to the serving electric company of the allocation of credits pursuant to Sec. 1, 30 V.S.A. § 219a(g)(1)(B).

(d) Within 60 days of the effective date of this section, each electric distribution company subject to jurisdiction under 30 V.S.A. § 203 shall take all actions necessary to implement Sec. 1 of this act, 30 V.S.A. § 219a(e)(3) (credit for excess generation), (f)(3) (credit for excess generation), and (g) (group net metering; allocation of credits; direct billing of group members).

(e) No later than 180 days after the effective date of this section, the public service board shall revise its rules and take all actions necessary to implement the amendments to 30 V.S.A. § 219a(c)(1) (systems of 5 kW or less) contained in Sec. 1 of this act. For the purpose of this subsection, the board is authorized to and shall use the procedures for emergency rules pursuant to 3 V.S.A. § 844, except that the board need not determine that there exists an imminent peril to public health, safety, or welfare, and the provisions of 3 V.S.A. § 844(b) (expiration of emergency rules) shall not apply. Prior to adopting the rule revisions, the board shall issue a draft of the revisions and provide notice of and opportunity to comment on the draft revisions in a manner that is consistent with the time frame for adoption required by this subsection.

* * * Self-Managed Energy Efficiency Programs * * *

Sec. 3. 30 V.S.A. § 209(h) is amended to read:

(h)(1) ~~No later than September 1, 2009, the department shall recommend to the board a three-year pilot project for~~ There shall be a class of self-managed energy efficiency programs for transmission and industrial electric ratepayers only.

(2) The board ~~will review the department's recommendation and~~, by order, shall enact ~~a~~ this class of ~~self-managed energy efficiency~~ programs ~~by December 31, 2009, to take effect for a three-year period beginning January 1, 2010~~.

(3) Entities approved to participate in the self-managed energy efficiency program class shall be exempt from all statewide charges under subdivision (d)(3) of this section that support energy efficiency programs performed by or on behalf of Vermont electric utilities.

(4) All of the following shall apply to a class of programs under this subsection:

* * *

(D) An applicant shall commit to ~~a three-year minimum energy efficiency investment of~~ an annual average energy efficiency investment during each three-year period that the applicant participates in the program of no less than $1 million.

* * *

(H) Upon approval of an application by the board, the applicant shall be able to participate in the class of self-managed energy efficiency programs ~~for a three-year period~~.

* * *

(N) If, at the end of ~~the~~ every third year after an applicant's approval to participate in the self-managed efficiency program (the three-year period), the applicant has not met the commitment required by subdivision (4)(D) of this subsection, the applicant shall pay to the electric efficiency fund described in subdivision (d)(3) of this section the difference between the investment the applicant made while in the self-managed energy efficiency program and the charges the applicant would have incurred under subdivision (d)(3) of this section during the three-year period had the applicant not been a participant in the program. This payment shall be made no later than 90 days after the end of the three-year period.

Sec. 4. RETROACTIVE APPLICATION

(a) Sec. 3 of this act shall apply to the public service board's order on the self-managed energy efficiency program entered December 28, 2009 and its clarifying order on the same program entered April 7, 2010, including the approval in those orders of an entity's participation in the program. Such approval shall be ongoing under the terms and conditions of 30 V.S.A. § 209(h) as amended by Sec. 3 of this act and shall not be limited to the three years commencing January 1, 2010.

(b) Within 60 days of this section's effective date, the board shall take all appropriate steps to implement Sec. 3 of this act.

* * * Section 248 Certificates; Long-term Electricity Purchases, Out-of-State Resources * * *

Sec. 5. 30 V.S.A. § 248 is amended to read:

§ 248. NEW GAS AND ELECTRIC PURCHASES, INVESTMENTS, AND FACILITIES; CERTIFICATE OF PUBLIC GOOD

(a)(1) No company, as defined in section 201 of this title, may:

(A) in any way purchase electric capacity or energy from outside the state:

(i) for a period exceeding five years, that represents more than ~~one~~ three percent of its historic peak demand, unless the purchase is from a plant as defined in subdivision 8002(12) of this title that produces electricity from renewable energy as defined under subdivision 8002(2); or

(ii) for a period exceeding ten years, that represents more than ten percent of its historic peak demand, if the purchase is from a plant as defined in subdivision 8002(12) of this title that produces electricity from renewable energy as defined under subdivision 8002(2); or

(B) invest in an electric generation or transmission facility located outside this state unless the public service board first finds that the same will promote the general good of the state and issues a certificate to that effect.

* * *

* * * Revisions to SPEED Program and Standard Offer * * *

Sec. 6. 30 V.S.A. § 8001 is amended to read:

§ 8001. RENEWABLE ENERGY GOALS

(a) The general assembly finds it in the interest of the people of the state to promote the state energy policy established in section 202a of this title by:

(1) Balancing the benefits, lifetime costs, and rates of the state's overall energy portfolio to ensure that to the greatest extent possible the economic benefits of renewable energy in the state flow to the Vermont economy in general, and to the rate paying citizens of the state in particular.

(2) Supporting development of renewable energy and related planned energy industries in Vermont, ~~in particular~~ and the jobs and economic benefits associated with such development, while retaining and supporting existing renewable energy infrastructure.

(3) Providing an incentive for the state's retail electricity providers to enter into affordable, long-term, stably priced renewable energy contracts that mitigate market price fluctuation for Vermonters.

(4) Developing viable markets for renewable energy and energy efficiency projects.

(5) Protecting and promoting air and water quality by means of renewable energy programs.

(6) Contributing to reductions in global climate change and anticipating the impacts on the state's economy that might be caused by federal regulation designed to attain those reductions.

(7) Supporting and providing incentives for small, distributed renewable energy generation, including incentives that support locating such generation in areas that will provide benefit to the operation and management of the state's electric grid.

* * *

Sec. 7. 30 V.S.A. § 8002 is amended to read:

§ 8002. DEFINITIONS

* * *

(4) "New renewable energy" means renewable energy produced by a generating resource coming into service after December 31, 2004. ~~This~~ With respect to a system of generating resources that includes renewable energy, the percentage of the system that constitutes new renewable energy shall be determined through dividing the plant capacity of the system's generating resources coming into service after December 31, 2004 that produce renewable energy by the total plant capacity of the system. "New renewable energy" also may include the additional energy from an existing renewable facility retrofitted with advanced technologies or otherwise operated, modified, or expanded to increase the kwh output of the facility in excess of an historical baseline established by calculating the average output of that facility for the 10-year period that ended December 31, 2004. If the production of new renewable energy through changes in operations, modification, or expansion involves combustion of the resource, the system also must result in an incrementally higher level of energy conversion efficiency or significantly reduced emissions. For the purposes of this chapter, renewable energy refers to either "existing renewable energy" or "new renewable energy."

* * *

(10) "Board" means the public service board under section 3 of this title, except when used as part of the phrase "clean energy development board" or when the context clearly refers to the latter board.

* * *

(16) "Department" means the department of public service under section 1 of this title, unless the context clearly indicates otherwise.

(17) "kW" means kilowatt or kilowatts (AC).

(18) "kWh" means kW hour or hours.

(19) "MW" means megawatt or megawatts (AC).

(20) "MWH" means MW hour or hours.

Sec. 8. 30 V.S.A. § 8005 is amended to read:

§ 8005. SUSTAINABLY PRICED ENERGY ENTERPRISE DEVELOPMENT (SPEED) PROGRAM

* * *

(b) The SPEED program shall be established, by rule, order, or contract, by the public service board ~~by January 1, 2007~~. As part of the SPEED program, the public service board may, and in the case of subdivisions (1), (2), and (5) of this subsection shall:

* * *

(2) ~~No later than September 30, 2009, put into effect, on behalf of all Vermont retail electricity providers,~~ Issue standard offers for qualifying SPEED resources with a plant capacity of 2.2 MW or less. These standard offers shall be available until the cumulative plant capacity of all such resources commissioned in the state that have accepted a standard offer under this subdivision (2) equals or exceeds 50 MW; provided, however, that a plant owned and operated by a Vermont retail electricity provider shall count toward this 50-MW ceiling if the plant has a plant capacity of 2.2 MW or less and is commissioned on or after September 30, 2009. The term of a standard offer required by this subdivision (2) shall be 10 to 20 years, except that the term of a standard offer for a plant using solar power shall be 10 to 25 years. The price paid to a plant owner under a standard offer required by this subdivision shall include an amount for each kilowatt-hour (kWh) generated that shall be set as follows:

* * *

(G) Notwithstanding the requirement of this subsection (b) that a standard offer be available for qualifying SPEED resources, the board shall

make a standard offer available under this subdivision (2) to an existing hydroelectric plant that does not exceed the 2.2 MW plant capacity limit of this subsection. To such plants, the board shall not allocate more of the cumulative 50-MW plant capacity under this subdivision (2) than exceeds the amount of such capacity that is unsubscribed as of January 1, 2012. Before making this standard offer available, the board shall notify potentially eligible plants known to it and shall publish broad public notice of the future availability of the standard offer. The notice shall direct that all potentially eligible plants shall file with the board a statement of interest in the standard offer by a date to be no less than 30 days from the date of the notice. No plant may participate in this standard offer unless it timely files such a statement. The filing of such a statement shall constitute the consent of the plant owner to produce such information as the board may reasonably require to carry out this subdivision (2)(G), including information the board deems necessary to determine a generic cost in setting the price. The board shall have authority to require the production of such information from a plant that files a statement of interest. For the purpose of this subdivision (2)(G):

(i) "Existing hydroelectric plant" means a hydroelectric plant located in the state that was in service as of January 1, 2009 and does not, as of the effective date of this subdivision (2)(G), have an agreement with the public service board's purchasing agent for the purchase of its power pursuant to subdivision 209(a)(8) of this title and board rules adopted under that subdivision. The term includes hydroelectric plants that have never had such an agreement and hydroelectric plants for which such an agreement expired prior to the effective date of this subdivision (2)(G).

(ii) The provisions of subdivisions (2)(B)(i)(I)–(III) of this subsection (standard offer pricing criteria) shall apply, except that:

(I) The term "generic cost," when applied by the board to determine the price of a standard offer for an existing hydroelectric plant, shall mean the cost to own, reliably operate, and maintain such a plant for the duration of the standard offer contract. In determining this cost, the board shall consider including a generic assumption with respect to rehabilitation costs based on relevant factors such as the age of the potentially eligible plants; recently constructed or currently proposed rehabilitations to such plants; the investment that a reasonably prudent person would have made in such a plant to date under the circumstances of the plant, including the price received for power; and the availability for such a plant of improved technology.

(II) The incentive described under subdivision (2)(B)(i)(III) of this subsection shall be an incentive for continued safe, efficient, and reliable operation of existing hydroelectric plants.

* * *

(5) Require all Vermont retail electricity providers to purchase ~~through~~ from the SPEED ~~program~~ facilitator, in accordance with subdivision (g)(2) of this section, the power generated by the plants that accept the standard offer required to be issued under subdivision (2) of this subsection. For the purpose of this subdivision (5), the board and the SPEED facilitator constitute instrumentalities of the state.

* * *

(e) ~~By no later than September 1, 2006, the public service~~ The board shall provide, by order or rule, the regulations and procedures that are necessary to allow the public service board and the department of public service to implement, and to supervise further the implementation and maintenance of the SPEED program. These rules shall assure that decisions with respect to certificate of public good applications for SPEED resources shall be made in a timely manner.

* * *

(g) With respect to executed contracts for standard offers under this section:

* * *

(2) The SPEED facilitator shall distribute the electricity purchased ~~and any associated costs~~ to the Vermont retail electricity providers at the price paid to the plant owners, allocated to the providers based on their pro rata share of total Vermont retail kWh sales for the previous calendar year, and the Vermont retail electricity providers shall accept and pay the SPEED facilitator for ~~those costs~~ the electricity. ~~For the purpose of this subdivision, a Vermont retail electricity provider shall receive a credit toward its share of those costs for any plant with a plant capacity of 2.2 MW or less that it owns or operates and that is commissioned on or after September 30, 2009. The amount of such credit shall be the amount that the plant owner otherwise would be eligible to receive, if the owner were not a retail electricity provider, under a standard offer in effect at the time of commissioning. The amount of any such credit shall be redistributed to the Vermont retail electricity providers on a basis such that all providers pay for a proportionate volume of plant capacity up to the 50 MW ceiling for standard offer contracts stated in subdivision (b)(2) of this section.~~

* * *

(m) The state and its instrumentalities shall not be liable to a plant owner or retail electricity provider with respect to any matter related to SPEED, including costs associated with a standard offer contract under this section or

any damages arising from breach of such a contract, the flow of power between a plant and the electric grid, or the interconnection of a plant to that grid.

* * *

Sec. 9. IMPLEMENTATION; BOARD PROCEEDINGS

(a) By October 1, 2011, the board shall take all appropriate steps to effect the notice required by Sec. 8, 30 V.S.A. § 8005(b)(2)(G) (existing hydroelectric plants).

(b) By March 1, 2012, the board shall conduct and complete such proceedings and issue such orders as necessary to effect the standard offer required by Sec. 8 of this act, 30 V.S.A. § 8005(b)(2)(G) (existing hydroelectric plants). The board shall not be required to conduct such proceedings as a contested case under 3 V.S.A. chapter 25.

(c) Commencing April 1, 2012, the board shall make available the standard offer required by Sec. 8 of this act, 30 V.S.A. § 8005(b)(2)(G) (existing hydroelectric plants).

Sec. 10. 30 V.S.A. § 30 is amended to read:

§ 30. PENALTIES; AFFIDAVIT OF COMPLIANCE

(a)(1) A person, company or corporation subject to the supervision of the board or the department of public service, who refuses the board or the department of public service access to the books, accounts or papers of such person, company or corporation within this state, so far as may be necessary under the provisions of this title, or who fails, other than through negligence, to furnish any returns, reports or information lawfully required by it, or who willfully hinders, delays or obstructs it in the discharge of the duties imposed upon it, or who fails within a reasonable time to obey a final order or decree of the board, or who violates a provision of ~~chapters~~ chapter 7 ~~or~~, 75, or 89 of this title, or a provision of section 231 or 248 of this title, or a rule of the board, shall be required to pay a civil penalty as provided in subsection (b) of this section, after notice and opportunity for hearing.

* * *

* * * Baseload Renewable Portfolio Requirement * * *

Sec. 11. 30 V.S.A. § 8009 is added to read:

§ 8009. BASELOAD RENEWABLE POWER PORTFOLIO REQUIREMENT

(a) In this section:

(1) "Baseload renewable power" means a plant that generates electricity from renewable energy; that, during normal operation, is capable of taking all or part of the minimum load on an electric transmission or distribution system; and that produces electricity essentially continuously at a constant rate.

(2) "Baseload renewable power portfolio requirement" means an annual average of 175,000 MWh of baseload renewable power from an in-state woody biomass plant that was commissioned prior to September 30, 2009, has a nominal capacity of 20.5 MW, and was in service as of January 1, 2011.

(3) "Biomass" means organic nonfossil material of biological origin constituting a source of renewable energy within the meaning of 30 V.S.A. § 8002(2).

(4) "Vermont composite electric utility system" means the combined generation, transmission, and distribution resources along with the combined retail load requirements of the Vermont retail electricity providers.

(b) Notwithstanding subsection 8004(a) and subdivision 8005(d)(1) of this title, commencing November 1, 2012, the electricity supplied by each Vermont retail electricity provider to its customers shall include the provider's pro rata share of the baseload renewable power portfolio requirement, which shall be based on the total Vermont retail kWh sales of all such providers for the previous calendar year. The obligation created by this subsection shall cease on November 1, 2022.

(c) A plant used to satisfy the baseload renewable power portfolio requirement shall be a qualifying small power production facility under 16 U.S.C. § 796(17)(C) and 18 C.F.R. part 292.

(d) The board shall determine the price to be paid to a plant used to satisfy the baseload renewable power portfolio requirement. The board shall not be required to make this determination as a contested case under 3 V.S.A. chapter 25. The price shall be the avoided cost of the Vermont composite electric utility system. For the purpose of this subsection, the term "avoided cost" means the incremental cost to retail electricity providers of electric energy or capacity or both, which, but for the purchase from the plant proposed to satisfy the baseload renewable power portfolio requirement, such providers would obtain from a new source using the same generation technology as the proposed plant. For the purpose of this subsection, the term "avoided cost" also includes the board's consideration of each of the following:

(1) The relevant cost data of the Vermont composite electric utility system.

(2) The terms of the potential contract, including the duration of the obligation.

(3) The availability, during the system's daily and seasonal peak periods, of capacity or energy from a proposed plant.

(4) The relationship of the availability of energy or capacity from the proposed plant to the ability of the Vermont composite electric utility system or a portion thereof to avoid costs.

(5) The costs or savings resulting from variations in line losses from those that would have existed in the absence of purchases from the proposed plant.

(6) The supply and cost characteristics of the proposed plant, including the costs of operation and maintenance of an existing plant during the term of a proposed contract.

(e) In determining the price under subsection (d) of this section, the board may require a plant proposed to be used to satisfy the baseload renewable power portfolio requirement to produce such information as the board reasonably deems necessary.

(f) With respect to a plant used to satisfy the baseload renewable power portfolio requirement:

(1) The electricity purchased and any associated costs shall be allocated to the Vermont retail electricity providers based on their pro rata share of total Vermont retail kWh sales for the previous calendar year, and the Vermont retail electricity providers shall accept and pay those costs.

(2) Any tradeable renewable energy credits attributable to the electricity purchased shall be transferred to the Vermont retail electricity providers in accordance with their pro rata share of the costs for such electricity as determined under subdivision (1) of this subsection.

(3) All capacity rights attributable to the plant capacity associated with the electricity purchased shall be transferred to the Vermont retail electricity providers in accordance with their pro rata share of the costs for such electricity as determined under subdivision (1) of this subsection.

(4) All reasonable costs of a Vermont retail electricity provider incurred under this section shall be included in the provider's revenue requirement for purposes of ratemaking under sections 218, 218d, 225, and 227 of this title. In including such costs, the board shall appropriately account for any credits received under subdivision (2) of this subsection. Costs included in a retail electricity provider's revenue requirement under this subdivision shall be allocated to the provider's ratepayers as directed by the board.

(g) A retail electricity provider shall be exempt from the requirements of this section if, and for so long as, one-third of the electricity supplied by the provider to its customers is from a plant that produces electricity from woody biomass.

(h) The board may issue rules or orders to carry out this section.

* * * Clean Energy Development Fund and Support Charge * * *

Sec. 12. 10 V.S.A § 6523 is amended to read:

§ 6523. VERMONT CLEAN ENERGY DEVELOPMENT FUND

(a) Creation of fund.

(1) There is established the Vermont clean energy development fund to consist of each of the following:

(A) The proceeds due the state under the terms of the memorandum of understanding between the department of public service and Entergy Nuclear VY and Entergy Nuclear Operations, Inc. that was entered under public service board docket 6812; together with the proceeds due the state under the terms of any subsequent memoranda of understanding entered before July 1, 2005 between the department of public service and Entergy Nuclear VY and Entergy Nuclear Operations, Inc.

(B) The proceeds of the clean energy support charge established under section 6525 of this title.

(C) Any other monies that may be appropriated to or deposited into the fund.

* * *

(c) Purposes of fund. The purposes of the fund shall be to promote the development and deployment of cost-effective and environmentally sustainable electric power and thermal energy or geothermal resources~~, and emerging energy-efficient technologies,~~ for the long-term benefit of Vermont consumers, primarily with respect to renewable energy resources, and the use of combined heat and power technologies. The fund also may be used to support natural gas vehicles in accordance with subdivision (d)(1)(K) of this section. The general assembly expects and intends that the public service board, public service department, and the state's power and efficiency utilities will actively implement the authority granted in Title 30 to acquire all reasonably available cost-effective energy efficiency resources for the benefit of Vermont ratepayers and the power system.

(d) Expenditures authorized.

* * *

(2) If during a particular year, the ~~clean energy development board~~ commissioner of public service determines that there is a lack of high value projects eligible for funding, as identified in the five-year plan, or as otherwise identified, the ~~clean energy development board may~~ commissioner shall consult with the ~~public service~~ clean energy development board, and shall consider transferring funds to the energy efficiency fund established under the provisions of 30 V.S.A. § 209(d). Such a transfer may take place only in response to an opportunity for a particularly cost-effective investment in energy efficiency, and only as a temporary supplement to funds collected under that subsection, not as replacement funding.

(3) A sum equal to the cost for the 2010 and preceding tax years of the business solar energy income tax credits authorized in 32 V.S.A. § 5822(d) and 5930z(a), net of any such costs for which a transfer has already been made under this subdivision, shall be transferred ~~annually~~ from the clean energy development fund to the general fund.

(e) Management of fund.

(1) ~~There is created the clean energy development board, which shall consist of the following nine directors:~~

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

~~(B) Three at-large directors appointed by the president pro tempore of the senate.~~

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

~~(D) The state treasurer, ex officio.~~ This fund shall be administered by the department of public service to facilitate the development and implementation of clean energy resources. The department is authorized to expend moneys from the clean energy development fund in accordance with this section. The commissioner of the department shall make all decisions necessary to implement this section and administer the fund except those decisions committed to the clean energy development board under this subsection. The department shall assure an open public process in the administration of the fund for the purposes established in this subchapter.

(2) During fiscal years after FY 2006, up to five percent of amounts appropriated to the public service department from the fund may be used for administrative costs related to the clean energy development fund ~~and after FY 2007, another five percent of amounts appropriated to the public service department from the fund not to exceed $300,000.00 in any fiscal year shall be~~

~~transferred to the secretary of the agency of agriculture, food and markets for agricultural and farm-based energy project development activities~~.

(3) ~~A quorum of the clean energy development board shall consist of five directors. The directors of the board shall select a chair and vice chair.~~ There is created the clean energy development board, which shall consist of seven persons appointed in accordance with subdivision (4) of this subsection. The clean energy development board shall have decision-making and approval authority with respect to the plans, budget, and program designs described in subdivisions (7)(B)–(D) of this subsection. The clean energy development board shall function in an advisory capacity to the commissioner on all other aspects of this section's implementation.

(4) ~~In making appointments of at-large directors to the clean energy development board, the appointing authorities shall give consideration to citizens of the state with knowledge of relevant technology, regulatory law, infrastructure, finance, and environmental permitting. A director shall recuse himself or herself from all matters and decisions pertaining to a company or corporation of which the director is an employee, officer, partner, proprietor, or board member. The at-large directors of the board shall serve terms of four years beginning July 1 of the year of appointment. However, one at-large director appointed by the speaker and one at-large director appointed by the president pro tempore shall serve an initial term of two years. Any vacancy occurring among the at-large directors shall be filled by the respective appointing authority and shall be filled for the balance of the unexpired term. A director may be reappointed.~~ The commissioner of public service shall appoint three members of the clean energy development board, and the chairs of the house and senate committees on natural resources and energy each shall appoint two members of the clean energy development board. The terms of the members of the clean energy development board shall be four years, except that when appointments to this board are made for the first time after the effective date of this act, each appointing authority shall appoint one member for a two-year term and the remaining members for four-year terms. When a vacancy occurs in the board during the term of a member, the authority who appointed that member shall appoint a new member for the balance of the departing member's term.

(5) Except for those ~~directors~~ members of the clean energy development board otherwise regularly employed by the state, the compensation of the ~~directors~~ members shall be the same as that provided by ~~subsection~~ 32 V.S.A. § 1010(a) ~~of Title 32. All directors of the clean energy development board, including those directors otherwise regularly employed by the state, shall receive their actual and necessary expenses when away from home or office upon their official duties~~.

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

~~(7)~~ In performing its duties, the clean energy development board may utilize the legal and technical resources of the department of public service ~~or, alternatively, may utilize reasonable amounts from the clean energy development fund to retain qualified private legal and technical service providers~~. The department of public service shall provide the clean energy development board ~~and its fund manager~~ with administrative services.

~~(8)~~(7) The ~~clean energy development board~~ department shall perform each of the following:

(A) By January 15 of each year, ~~commencing in 2010,~~ provide to the house and senate committees on natural resources and energy, the senate committee on finance, and the house committee on commerce and economic development a report for the fiscal year ending the preceding June 30 detailing the activities undertaken, the revenues collected, and the expenditures made under this subchapter.

(B) Develop, and submit to the clean energy development board for review and approval, a five-year strategic plan and an annual program plan, both of which shall be developed with input from a public stakeholder process and shall be consistent with state energy planning principles.

(C) Develop, and submit to the clean energy development board for review and approval, an annual operating budget.

(D) Develop, and submit to the clean energy development board for review and approval, proposed program designs to facilitate clean energy market and project development (including use of financial assistance, investments, competitive solicitations, technical assistance, and other incentive programs and strategies).

~~(9)~~(8) At least ~~quarterly~~ annually, the clean energy development board and the commissioner or designee jointly shall hold a public meeting to review and discuss the status of the fund, fund projects, the performance of the fund manager, any reports, information, or inquiries submitted by the fund manager or the public, and any additional matters ~~the clean energy development board deems~~ they deem necessary to fulfill ~~its~~ their obligations under this section.

~~(10) The clean energy development board shall administer and is authorized to expend monies from the clean energy development fund in accordance with this section.~~

(f) Clean energy development fund manager. The clean energy development fund shall have a fund manager who shall be ~~a state~~ an employee ~~retained and supervised by the board and housed within and assigned for administrative purposes to~~ of the department of public service.

(g) Bonds. The commissioner of public service, in consultation with the clean energy development board, may explore use of the fund to establish one or more loan-loss reserve funds to back issuance of bonds by the state treasurer otherwise authorized by law, including clean renewable energy bonds, that support the purposes of the fund.

(h) ARRA funds. All American Recovery and Reinvestment Act (ARRA) funds described in section 6524 of this title shall be disbursed, administered, and accounted for in a manner that ensures rapid deployment of the funds and is consistent with all applicable requirements of ARRA, including requirements for administration of funds received and for timeliness, energy savings, matching, transparency, and accountability. These funds shall be expended for the following categories listed in this subsection, provided that no single project directly or indirectly receives a grant in more than one of these categories. ~~The~~ After consultation with the clean energy development board, the commissioner of public service shall have discretion to use non-ARRA moneys within the fund to support all or a portion of these categories and shall direct any ARRA moneys for which non-ARRA moneys have been substituted to the support of other eligible projects, programs, or activities under ARRA and this section.

* * *

(4) $2 million for a public-serving institution efficiency and renewable energy program that may include grants and loans and create a revolving loan fund. For the purpose of this subsection, "public-serving institution" means government buildings and nonprofit public and private universities, colleges, and hospitals. In this program, awards shall be made through a competitive bid process. ~~On or before January 15, 2011, the clean energy development board shall report to the general assembly on the status of this program, including each award made and, for each such award, the expected energy savings or generation and the actual energy savings or generation achieved.~~

* * *

(8) Concerning the funds authorized for use in subdivisions (4)–(7) of this subsection:

(A) To the extent permissible under ARRA, up to five percent may be spent for administration of the funds received.

(B) In the event that the ~~clean energy development board~~ commissioner of public service determines that a recipient of such funds has insufficient eligible projects, programs, or activities to fully utilize the authorized funds, then after consultation with the clean energy development board, the commissioner shall have discretion to reallocate the balance to other eligible projects, programs, or activities under this section.

(9) The ~~clean energy development board~~ commissioner of public service is authorized, to the extent allowable under ARRA, to utilize up to 10 percent of ARRA funds received for the purpose of administration. The ~~board~~ commissioner shall allocate a portion of the amount utilized for administration to retain permanent, temporary, or limited service positions or contractors and the remaining portion to the oversight of specific projects receiving ARRA funding ~~through the board~~ pursuant to section 6524 of this title.

(i) Rules. The department and the clean energy development board each may adopt rules pursuant to 3 V.S.A. chapter 25 to carry out its functions under this section~~. The board~~ and shall consult with ~~the commissioner of public service~~ each other either before or during the rulemaking process.

~~(j) Governor disapproval. The governor shall have the authority within 30 days of approval or adoption to disapprove a project, program, or other activity approved by the clean energy development board if the source of the funds is ARRA; and any rules adopted under subsection (i) of this section. The governor may at any time waive his or her authority to disapprove any project, program, or other activity or rule under this subsection.~~

Sec. 13. CLEAN ENERGY DEVELOPMENT BOARD; TRANSITION; TERM EXPIRATION; NEW APPOINTMENTS

(a) The terms of all members of the clean energy development board under 10 V.S.A. § 6523 appointed prior to the effective date of this section shall expire on September 30, 2011.

(b) No later than August 31, 2011, the appointing authorities under Sec. 12 of this act, 10 V.S.A. § 6523(e)(4), shall appoint the members of the clean energy development board created by Sec. 12, 10 V.S.A. § 6523(e)(3). The terms of the members so appointed shall commence on October 1, 2011. The appointing authorities may appoint members of the clean energy development board as it existed prior to the effective date of this section.

(c) With respect to the clean energy development fund established under 10 V.S.A. § 6523, as of October 1, 2011:

(1) The department of public service shall be the successor to the clean energy development board as it existed on September 30, 2011, and any legal obligations incurred by the clean energy development board as of September 30, 2011 shall become legal obligations of the department of public service.

(2) The clean energy development board shall exercise prospectively such functions and authority as this act confers on that board.

Sec. 14. 10 V.S.A. § 6524 is amended to read:

§ 6524. ARRA ENERGY MONEYS

The expenditure of each of the following shall be subject to the direction and approval of the commissioner of public service, after consultation with the clean energy development board established under subdivision ~~6523(e)(1)~~ 6523(e)(4) of this title, and shall be made in accordance with subdivisions 6523(d)(1)(expenditures authorized), ~~(e)(3)(quorum), (e)(4)(appointments; recusal), (e)(5)(compensation), (e)(7)(assistance, administrative support),~~ and (e)(8)(A)(reporting) and subsections 6523(f)(fund manager), (h)(ARRA funds), and (i)(rules)~~, and (j)(governor disapproval)~~ of this title and applicable federal law and regulations:

(1) The amount of $21,999,000.00 in funds received by the state under the appropriation contained in the American Recovery and Reinvestment Act (ARRA) of 2009, Pub.L. No. 111-5, to the state energy program authorized under 42 U.S.C. § 6321 et seq.

(2) The amount of $9,593,500.00 received by the state under ARRA from the United States Department of Energy through the energy efficiency and conservation block grant program.

Sec. 15. 10 V.S.A. § 6525 is added to read:

§ 6525. CLEAN ENERGY SUPPORT CHARGE

(a) Monthly, each Vermont retail electricity provider shall assess on each retail customer's electric bill a clean energy support charge of $0.55.

(b) At the end of each monthly billing cycle, a Vermont retail electricity provider shall transmit to the clean energy development fund the total amount of the clean energy support charge assessed to the provider's customers during the immediately preceding monthly billing cycle.

(c) The amount of the clean energy support charge shall be part of the total payment due on the customer's electric bill and shall be subject to the deposit and disconnection rules of the board.

Sec. 16. NOTICE; IMPLEMENTATION

A Vermont retail electricity provider within the meaning of 30 V.S.A. § 8002(9) shall:

(1) No later than 60 days after passage of this act, provide notice to its customers, in a form directed by the commissioner of public service, of the clean energy support charge under Sec. 15 (10 V.S.A. § 6525) of this act.

(2) Implement Sec. 15 of this act (clean energy support charge) on bills rendered on and after 90 days following passage of this act.

Sec. 17. RECODIFICATION; REDESIGNATION; PROSPECTIVE REPEAL

(a) 10 V.S.A. §§ 6523, 6524, and 6525 are recodified respectively as 30 V.S.A. §§ 8015, 8016, and 8017. The office of legislative council shall revise accordingly any references to these statutes contained in the Vermont Statutes Annotated. Any references in session law to these statutes as previously codified shall be deemed to refer to the statutes as recodified by this act.

(b) Within 30 V.S.A. chapter 89 (renewable energy programs):

(1) §§ 8001–8014 shall be within subchapter 1 and designated to read:

Subchapter 1. General Provisions

(2) §§ 8015–8017 shall be within subchapter 2 and designated to read:

Subchapter 2. Clean Energy Development Fund

(c) 30 V.S.A. § 8017 (clean energy support charge) shall be repealed on July 1, 2014.

Sec. 18. STATUTORY REVISION

In all provisions of 30 V.S.A. chapter 89, except 30 V.S.A. § 8002(10) and (16)–(20), the office of legislative council shall substitute "board" for "public service board," "department" for "department of public service," "kW" for "kilowatt" or "kilowatts (AC)," "kWh" for "kilowatt hours," and "MW" for "megawatt" or "megawatts."

* * * Heating Oil; Low Sulfur; Biodiesel * * *

Sec. 19. 10 V.S.A. § 585 is added to read:

§ 585. HEATING OIL CONTENT; SULFUR, BIODIESEL

(a) Definitions.

(1) In this section, "heating oil" means No. 2 distillate that meets the specifications or quality certification standard for use in residential,

commercial, or industrial heating applications established by the American Society for Testing and Materials (ASTM).

(2) "Biodiesel" means monoalkyl esters derived from plant or animal matter which meet the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. § 7545), and the requirements of ASTM D6751-10.

(b) Sulfur content. Unless a requirement of this subsection is waived pursuant to subsection (e) of this section:

(1) On or before July 1, 2014, all heating oil sold within the state for residential, commercial, or industrial uses, including space and water heating, shall have a sulfur content of 500 parts per million or less.

(2) On or before July 1, 2018, all heating oil sold within the state for residential, commercial, or industrial uses, including space and water heating, shall have a sulfur content of 15 parts per million or less.

(c) Biodiesel content. Unless a requirement of this subsection is waived pursuant to subsection (e) of this section, all heating oil sold within the state for residential, commercial, or industrial uses, including space and water heating, by volume shall:

(1) On or before July 1, 2012, contain at least three percent biodiesel.

(2) On or before July 1, 2015, contain at least five percent biodiesel.

(3) On or before July 1, 2016, contain at least seven percent biodiesel.

(d) Blending; certification. In the case of biodiesel and heating oil that has been blended by a dealer or seller of heating oil, the secretary may allow the dealer or seller to demonstrate compliance with this section by providing documentation that the content of the blended fuel in each delivery load meets the requirements of this section.

(e) Temporary suspension. The governor, by executive order, may temporarily suspend the implementation and enforcement of subsection (b) or (c) of this section if the governor determines, after consulting with the secretary and the commissioner of public service, that meeting the requirements is not feasible due to an inadequate supply of the required fuel.

(f) The secretary may adopt rules to implement this section. This section does not limit any authority of the secretary to control the sulfur or biodiesel content of distillate or residual oils that do not constitute heating oil as defined in this section.

* * * Report; Payment of Utility Bills by Credit or Debit Card * * *

Sec. 20. UTILITY BILL PAYMENT; CREDIT OR DEBIT CARD; REPORT

On or before January 15, 2012, the public service board shall submit to the general assembly a report on whether, in the board's opinion, it is in the public interest for the cost of service of a company subject to the board's jurisdiction under 30 V.S.A. § 203 to include fees and expenses incurred by the company in accepting payments from customers of retail charges by credit or debit card. In its report, the board shall consider and discuss the advantages and disadvantages of including these fees and expenses in a company's cost of service, including the extent to which allowing inclusion of such fees and expenses may avoid or reduce costs that would otherwise be incurred by the company, shall quantify on a statewide basis the expected cost impacts of allowing such inclusion, and shall attach a draft statute or statutory amendment that would authorize such inclusion.

Sec. 21. EFFECTIVE DATES

(a) This section shall take effect on passage.

(b) The following shall take effect on passage:

(1) Sec. 1 of this act (net metering), except that 30 V.S.A. § 219a(c)(1) (systems of 5 kW or less) shall take effect on January 1, 2012. Sec. 2(d) of this act shall govern the date by which an electric distribution company shall implement the following provisions contained in Sec. 1 of this act: 30 V.S.A. § 219a(e)(3) (credit for excess generation), (f)(3) (credit for excess generation), and (g) (group net metering; allocation of credits; direct billing of group members).

(2) Secs. 2 (implementation; retroactive application), 3 (self-managed energy efficiency programs), 4 (retroactive application), 6 (renewable energy goals), 7 (definitions, renewable energy chapter), 9 (implementation; board proceedings), 10 (penalties), 13 (clean energy development board; term expiration; transition; new appointments), 16 (notice; implementation), and 20 (payment of utility bills by credit or debit card) of this act.

(3) Sec. 8 (SPEED program) of this act, except that Sec. 9 (board proceedings) of this act shall govern the date on which the availability of the standard offer revision described in Sec. 9(c) (existing hydroelectric plants) shall commence.

(4) In Sec. 12 (clean energy development fund) of this act: 10 V.S.A. § 6523(e)(3) (clean energy development board) and (4) (appointments to clean energy development board) for the purpose of Sec. 13 of this act.

(c) The following shall take effect on July 1, 2011: Secs. 5 (new gas and electric purchases); 11 (baseload renewable power portfolio requirement); 17 (recodification; redesignation); 18 (statutory revision); and 19 (heating oil) of this act, except for 10 V.S.A. § 585(c) (heating oil; biodiesel requirement).

(d) Except as provided under subdivision (b)(4) of this section, Secs. 12 (clean energy development fund) and 14 (ARRA energy moneys) shall take effect on October 1, 2011.

(e) Sec. 15 (clean energy support charge) of this act shall take effect 90 days after the act's passage.

(f)(1) In Sec. 19 of this act, 10 V.S.A. § 585(c) (heating fuel; biodiesel requirement) shall take effect on the later of the following:

(A) July 1, 2012.

(B) The date on which, through legislation, rule, agreement, or other binding means, the last of the surrounding states has adopted requirements that are substantially similar to or more stringent than the requirements contained in 10 V.S.A. § 585(c). The attorney general shall determine when this date has occurred.

(2) For the purpose of this subsection, the term "surrounding states" means the states of Massachusetts, New Hampshire, and New York, and the term "last" requires that all three of the surrounding states have adopted a substantially similar or more stringent requirement.

(Committee Vote: 9-2-0)

Rep. Greshin of Warren, for the Committee on **Ways and Means,** recommends the bill ought to pass when amended as recommended by the Committee on **Natural Resources and Energy** and when further amended as follows:

First: In Sec. 12, 10 V.S.A. § 6523 (clean energy development fund), in subsection (a), in subdivision (1)(B), by striking "section 6525 of this title" and inserting in lieu thereof "Sec. 15 of this act"

Second: By striking Secs. 15 (clean energy support charge) and 16 (notice; implementation) in their entirety and inserting in lieu thereof:

Sec. 15. CLEAN ENERGY SUPPORT CHARGE

(a) Each Vermont retail electricity provider as defined in 30 V.S.A. § 8002(9) shall assess on each customer for a period of 12 months commencing with the provider's August 2011 billing cycle a clean energy support charge of $0.55 per month.

(b) For the purpose of this section, "customer" shall mean a meter that measures the flow of electricity from the provider to a consumer. If a person consumes electricity that flows through more than one meter, each meter shall be assessed the charge under subsection (a) of this section.

(c) At the end of each monthly billing cycle during the period described in in subsection (a) of this section, a Vermont retail electricity provider shall transmit to the clean energy development fund the total amount of the clean energy support charge assessed to the provider's customers during the immediately preceding monthly billing cycle.

(d) The amount of the clean energy support charge shall be part of the total payment due on the customer's electric bill during the period described in subsection (a) of this section and shall be subject to the deposit and disconnection rules of the board.

Sec. 16. NOTICE

A Vermont retail electricity provider within the meaning of 30 V.S.A. § 8002(9) during its July 2011 billing cycle shall provide notice to its customers, in a form directed by the commissioner of public service, of the clean energy support charge under Sec. 15 of this act.

Third: By striking Sec. 17 (recodification; redesignation; prospective repeal) and inserting in lieu thereof a new Sec. 17 to read:

Sec. 17. RECODIFICATION; REDESIGNATION

(a) 10 V.S.A. §§ 6523 and 6524 are recodified respectively as 30 V.S.A. §§ 8015 and 8016. The office of legislative council shall revise accordingly any references to these statutes contained in the Vermont Statutes Annotated. Any references in session law to these statutes as previously codified shall be deemed to refer to the statutes as recodified by this act.

(b) Within 30 V.S.A. chapter 89 (renewable energy programs):

(1) §§ 8001–8014 shall be within subchapter 1 and designated to read:

Subchapter 1. General Provisions

(2) §§ 8015–8016 shall be within subchapter 2 and designated to read:

Subchapter 2. Clean Energy Development Fund

(c) In 30 V.S.A. § 8015(a)(1)(B) (clean energy support charge), the office of legislative council shall revise "Sec. 15 of this act" to refer to Sec. 15 of the act number of this session assigned to this act on passage.

Fourth: In Sec. 21 (effective dates), by striking subsection (e) and inserting in lieu thereof:

(e) Sec. 15 (clean energy support charge) of this act shall take effect on passage.

and that when so amended the bill ought to pass

(Committee Vote: 10-1-0)

H. 73

An act relating to establishing a government transparency office to enforce the public records act

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

Sec. 1. 1 V.S.A. § 315 is amended to read:

§ 315. STATEMENT OF POLICY

It is the policy of this subchapter to provide for ~~free and~~ open examination of records consistent with Chapter I, Article 6 of the Vermont Constitution. Officers of government are trustees and servants of the people and it is in the public interest to enable any person to review and criticize their decisions even though such examination may cause inconvenience or embarrassment. All people, however, have a right to privacy in their personal and economic pursuits, which ought to be protected unless specific information is needed to review the action of a governmental officer. Consistent with these principles, the general assembly hereby declares that certain public records shall be made available to any person as hereinafter provided. To that end, the provisions of this subchapter shall be liberally construed ~~with the view towards carrying out the above declaration of public policy~~ to implement this policy, and the burden of proof shall be on the public agency to sustain its action.

Sec. 2. 1 V.S.A. § 316 is amended to read:

§ 316. ACCESS TO PUBLIC RECORDS AND DOCUMENTS

(a) Any person may inspect or copy any public record ~~or document~~ of a public agency, as follows:

(1) For any agency, board, department, commission, committee, branch instrumentality, or authority of the state, a person may inspect a public record on any day other than a Saturday, Sunday, or a legal holiday, between the hours of nine o'clock and 12 o'clock in the forenoon and between one o'clock and four o'clock in the afternoon; ~~provided, however, if the public agency is not regularly open to the public during those hours, inspection or copying may be made~~

(2) For any agency, board, committee, department, instrumentality, commission, or authority of a political subdivision of the state, a person may inspect a public record during customary ~~office~~ business hours.

(b) If copying equipment maintained for use by a public agency is used by the agency to copy the public record or document requested, the agency may charge and collect from the person requesting the copy the actual cost of providing the copy. The agency may also charge and collect from the person making the request, the costs associated with mailing or transmitting the record by facsimile or other electronic means. Nothing in this section shall exempt any person from paying fees otherwise established by law for obtaining copies of public records or documents, but if such fee is established for the copy, no additional costs or fees shall be charged.

(c) In the following instances an agency may also charge and collect the cost of staff time associated with complying with a request ~~for a~~ to inspect or to copy of a public record: (1) the time directly involved in complying with the request exceeds ~~30 minutes~~ two hours; (2) the agency agrees to create a public record; or (3) the agency agrees to provide the public record in a nonstandard format and the time directly involved in complying with the request exceeds ~~30 minutes~~ two hours. The agency may require that requests subject to staff time charges under this subsection be made in writing and that all charges be paid, in whole or in part, prior to delivery of the copies. Upon request, the agency shall provide an estimate of the charge.

(d) The secretary of state, after consultation with the secretary of administration, shall establish the actual cost of providing a copy of a public record that may be charged by state agencies. The secretary shall also establish the amount that may be charged for staff time, when such a charge is authorized under this section. To determine "actual cost" the secretary shall consider the following only: the cost of the paper or the electronic media onto which a public record is copied, a prorated amount for maintenance and replacement of the machine or equipment used to copy the record and any utility charges directly associated with copying a record. The secretary of state shall adopt, by rule, a uniform schedule of public record charges for state agencies.

(e) After public hearing, the legislative body of a political subdivision shall establish actual cost charges for copies of public records. The legislative body shall also establish the amount that may be charged for staff time, when such a charge is authorized under this section. To determine actual cost charges, the legislative body shall use the same factors used by the secretary of state. If a legislative body fails to establish a uniform schedule of charges, the charges for that political subdivision shall be the uniform schedule of charges

established by the secretary of state until the local legislative body establishes such a schedule. A schedule of public records charges shall be posted in prominent locations in the town offices.

* * *

Sec. 3. 1 V.S.A. § 317 is amended to read:

§ 317. DEFINITIONS; PUBLIC AGENCY; PUBLIC RECORDS AND DOCUMENTS

(a) As used in this subchapter~~,~~:

(1) "~~public~~ Public agency" or "agency" means any agency, board, department, commission, committee, branch, instrumentality, or authority of the state or any agency, board, committee, department, branch, instrumentality, commission, or authority of any political subdivision of the state. "Public agency" shall include a quasi-public agency.

(2) "Public record" or "public document" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired in the course of public agency business. Individual salaries and benefits of and salary schedules relating to elected or appointed officials and employees of public agencies shall not be exempt from public inspection and copying. "Public record" shall include written or recorded information produced or acquired by a quasi-public agency that relates to the governmental function performed by the quasi-public agency.

(3) "Quasi-public agency" means a nongovernmental authority that:

(A) receives $250,000.00 or more a year by or through a public agency; and

(B) performs a governmental function on behalf of a public agency.

(b) ~~As used in this subchapter, "public record" or "public document" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired in the course of public agency business. Individual salaries and benefits of and salary schedules relating to elected or appointed officials and employees of public agencies shall not be exempt from public inspection and copying~~

(1) A person's "right to privacy" or "personal privacy," as these terms are used in this subchapter, is violated or invaded only if disclosure of information about the person reveals intimate details of a person's life, including any information that might subject the person to embarrassment, harassment, disgrace, or loss of employment or friends.

(2) The provisions of this subchapter addressing the "right to privacy" or "personal privacy" in personal and economic pursuits do not create any right beyond the rights specified under subsection (c) of this section as express exemptions to the public's right to inspect or copy public records.

* * *

(c) The following public records are exempt from public inspection and copying:

* * *

(7) personal documents relating to an individual, including information in any files maintained to hire, evaluate, promote or discipline any employee of a public agency, information in any files relating to personal finances, medical or psychological facts concerning any individual or corporation if disclosure of information would violate the individual's right to privacy as defined in subsection (b) of this section; provided, however, that all information in personnel files of an individual employee of any public agency shall be made available to that individual employee or his or her designated representative;

Sec. 4. 1 V.S.A. § 318 is amended to read:

§ 318. PROCEDURE

(a) Upon request, the custodian of a public record shall promptly produce the record for inspection, except that:

(1) if the record is in active use or in storage and therefore not available for use at the time the person asks to examine it, the custodian shall so certify this fact in writing to the applicant and set a date and hour within one calendar week of the request when the record will be available for examination;

(2) if the custodian considers the record to be exempt from inspection under the provisions of this subchapter, the custodian shall so certify in writing. Such certification shall identify the records withheld and the basis for the denial. ~~The~~ A record shall be produced for inspection or a certification shall be made that a record is exempt within ~~two~~ three business days of receipt of the request, unless otherwise provided in subdivision (5) of this subsection. The certification shall include the asserted statutory basis for denial and a brief statement of the reasons and supporting facts for denial. The custodian shall also notify the person of his or her right to appeal to the head of the agency any adverse determination;

(3) if appealed to the head of the agency, the head of the agency shall make a determination with respect to any appeal within five business days, excepting Saturdays, Sundays, and legal public holidays, after the receipt of such appeal. If an appeal of the denial of the request for records is in whole or

in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under section 319 of this title;

(4) if a record does not exist, the custodian shall certify in writing that the record does not exist under the name given to the custodian by the applicant or by any other name known to the custodian;

(5) in unusual circumstances as herein specified the time limits prescribed in this subsection may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten ~~working~~ business days from receipt of the request. As used in this subdivision, "unusual circumstances" means to the extent reasonably necessary to the proper processing of the particular request:

(A) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(B) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(C) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein, or with the attorney general.

(b) Any person making a request to any agency for records under subsection (a) of this section shall be deemed to have exhausted the person's administrative remedies with respect to each request if the agency fails to comply within the applicable time limit provisions of this section. Upon any determination by an agency to comply with a request for records, the records shall be made available promptly to the person making such request. Any notification of denial of any request for records under this section shall set forth the names and titles or positions of each person responsible for the denial of such request.

(c)(1) Any denial of access by the custodian of a public record may be appealed to the head of the agency. The head of the agency shall make a written determination on an appeal within five business days after the receipt of the appeal. A written determination shall include the asserted statutory basis for denial and a brief statement of the reasons and supporting facts for denial.

(2) If the head of the agency reverses the denial of a request for records, the records shall be promptly made available to the person making the request. A failure by the agency to comply with any of the time limit provisions of this section shall be deemed a final denial of the request for records by the agency.

(d) In responding to a request to inspect or copy a record under this subchapter, a public agency shall consult with the person making the request in order to clarify the request or to obtain additional information that will assist the public agency in responding to the request and, when authorized by this subchapter, in facilitating production of the requested record for inspection or copying. In unusual circumstances, as that term is defined in subdivision (a)(5) of this section, a public agency may request that a person seeking a voluminous amount of separate and distinct records narrow the scope of a public records request.

(e) A public agency shall not withhold any record in its entirety on the basis that it contains some exempt content if the record is otherwise subject to disclosure; instead, the public agency shall redact the information it considers to be exempt and produce the record accompanied by an explanation of the basis for denial of the redacted information.

(f) If a person making the request has a disability which requires accommodation to gain equal access to the public record sought, the person shall notify the public agency of the type of accommodation requested. The public agency shall give primary consideration to the accommodation choice expressed by the requestor, but may propose an alternative accommodation so long as it achieves equal access. The public agency shall provide accommodation to the person making the request unless the agency can demonstrate that accommodation would result in a fundamental alteration in the nature of its service, programs, activities, or in undue financial and administrative burden.

(g) A request for a public record produced or acquired by a quasi-public agency shall be submitted to the public records officer of the public agency by or through which the quasi-public agency is funded. A person aggrieved by a denial of a request for a public record produced or acquired by a quasi-public agency may seek against the public agency that funded the quasi-public agency enforcement under section 319 of this title of the requirements of this subchapter.

Sec. 5. 1 V.S.A. § 319 is amended to read:

§ 319. ENFORCEMENT

(a) Any person aggrieved by the denial of a request for public records under this subchapter may apply to the civil division of the superior court in

the county in which the complainant resides, or has his or her personal place of business, or in which the public records are situated, or in the civil division of the superior court of Washington County, to enjoin the public agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case, the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in section 317 of this title, and the burden ~~is~~ of proof shall be on the public agency to sustain its action.

(b) Except as to cases the court considers of greater importance, proceedings before the civil division of the superior court, as authorized by this section, and appeals there from, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(c) If the public agency can show the court that exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records.

(d) The court ~~may~~ shall assess against the public agency reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed, except that if an attorney who enters an appearance on behalf of the public agency concedes that a contested record or records are public within 10 business days of entering an appearance, the court, in its discretion, may award attorney's fees to the substantially prevailing party.

Sec. 6. 1 V.S.A. § 320(b) is amended to read:

(b) In the event of noncompliance with the order of the court, the civil division of the superior court may punish for contempt the responsible employee or official, and in the case of a uniformed service, the responsible member.

Sec. 7. 3 V.S.A. § 117(g) is amended to read:

(g) In fulfilling the duties of the state archives and records administration program, the state archivist shall:

(1) establish and administer a records management program for the application of effective and efficient methods to the creation, utilization, maintenance, reformatting, retention, destruction, and preservation of public records;

(2) cooperate with the heads of state agencies or public bodies to establish and maintain a program for the appraisal and scheduling of public records;

(3) analyze, develop, establish, and coordinate standards, procedures, and techniques for the creation of, preservation of, and access to public records;

(4) take custody of archival records in accordance with record schedules approved by the state archivist;

(5) maintain a record center to hold inactive records in accordance with records schedules approved by the state archivist;

(6) arrange, describe, and preserve archival records, and promote their use by government officials and the public;

(7) permit the public to inspect, examine, and study the archives, provided that any record placed in the keeping of the office of the secretary of state under special terms or conditions of law restricting their use shall be made accessible only in accord with those terms and conditions;

(8) cooperate with and assist to the extent practicable state institutions, departments, agencies, municipalities, and other political subdivisions and individuals engaged in the activities in the ~~field~~ management of public records, archives, manuscripts, and history;

(9) accept for filing copies of land records submitted in microfilm, electronic media, or similar compressed form by municipal or county clerks;

(10) receive grants, gifts, aid, or assistance, of any kind, from any source, public or private, for the purpose of managing or publishing public records; ~~and~~

(11) serve on the Vermont historical records advisory board, as described in 44 U.S.C. § 2104, to encourage systematic documentation in Vermont and the collecting of archival records;

(12) have the authority, on its own motion, to issue advisory opinions as to whether a particular type of record is public and available for inspection and copying;

(13) provide municipal public agencies and members of the public information and advice regarding the requirements of the public records act, including an informational website and a toll-free telephone number during the regular business hours of the office;

(14) establish a training program for the public records officers of public agencies regarding the requirements of the public records act and the procedure and process for responding to requests to inspect or copy a public record.

Sec. 8. 1 V.S.A. § 313(a)(6) is amended to read:

(6) Discussion or consideration of records or documents excepted from the access to public records provisions of ~~subsection~~ section 317~~(b)~~ of this title. Discussion or consideration of the excepted record or document shall not itself permit an extension of the executive session to the general subject to which the record or document pertains;

Sec. 9. 3 V.S.A. § 218(d) is amended to read:

(d) The head of each state agency or department shall designate a member of his or her staff as the records officer for his or her agency or department, and shall notify the Vermont state archives and records administration in writing of the name and title of the person designated, and shall post the name and contact information of the person on the agency or department website, if one exists. The public records officer shall manage the agency's compliance with the requirements of this section and with the requirements of the public records act, as set forth in 1 V.S.A. chapter 5, subchapter 3, regarding receipt and response to requests for public records. A public records officer annually shall complete a records management training course offered by the Vermont state archives and records administration.

Sec. 10. 24 V.S.A. chapter 33, subchapter 14 is added to read:

Subchapter 14. Municipal Public Records Officer

§ 1146. MUNICIPAL PUBLIC RECORDS OFFICER

(a) On or before January 1, 2012, the legislative body of a municipality shall appoint, and determine the term of service for, a municipal public records officer.

(b) A municipal public records officer shall manage the municipality's compliance with the requirements of the public records act, as set forth in 1 V.S.A. chapter 5, subchapter 3. The municipal public records officer shall provide guidance to any agency, board, committee, department, branch, instrumentality, commission, or authority of the municipality regarding compliance with the requirements of the public records act.

(c) The name, title, and contact information for the municipal public records officer shall be posted on the municipality's website, if one exists, and in a prominent location in the municipal offices or office of the municipal clerk.

(d) A public records officer annually shall complete a records management training course offered by the Vermont state archives and records administration.

(e) As used in this section, "municipality" shall mean a city, town, or village of the state and shall mean a school district, as that term is defined in 16 V.S.A. § 11(a)(10).

Sec. 11. 9 V.S.A. § 4113(b) is amended to read:

(b) Reports filed pursuant to this section shall be an exempt record and confidential pursuant to ~~subdivision 317(b)(1) of Title 1~~ 1 V.S.A. § 317(c)(1) and shall be maintained for the sole and confidential use of the commissioner, except that the reports may be disclosed to the federal government or to the appropriate energy agency or department of another state with substantially similar confidentiality statutes for regulations with respect to such reports. However, the commissioner shall make available to appropriate committees of the general assembly statistical information derived from the reports required by this section, provided that this may be done in a manner which preserves the confidentiality of the reports submitted by particular persons.

Sec. 12. 17 V.S.A. § 2154(b) is amended to read:

(b) A registered voter's month and day of birth, driver's license number, the last four digits of the applicant's Social Security number, and street address if different from the applicant's mailing address shall not be considered a public record as defined in ~~subsection 317(b) of Title 1~~ 1 V.S.A. § 317(a)(2). Any person wishing to obtain a copy of all of the statewide voter checklist must swear or affirm, under penalty of perjury pursuant to chapter 65 of Title 13, that the person will not use the checklist for commercial purposes. The affirmation shall be filed with the secretary of state.

Sec. 13. 32 V.S.A. § 3755(e) is amended to read:

(e) Any applicant for appraisal under this subchapter bears the burden of proof as to his or her qualification. Any documents submitted by an applicant as evidence of income shall be held in confidence by any person accepting or reviewing them pursuant to provisions of this subchapter, and shall not be made available for public examination, whether or not such person is subject to the provisions of ~~subdivision 317(a)(6) of Title 1~~ 1 V.S.A. § 317(c)(6).

Sec. 14. PUBLIC RECORDS LEGISLATIVE STUDY COMMITTEE

(a) There is established a legislative study committee to review the requirements of the public records act and the numerous exemptions to that act in order to assure the integrity, viability, and the ultimate purposes of the act. The review committee shall consist of:

(1) Three members of the house of representatives, appointed by the speaker of the house; and

(2) Three members of the senate, appointed by the committee on committees.

(b) The review committee shall review the exemptions set forth in 1 V.S.A. § 317 or elsewhere in the Vermont Statutes Annotated to the inspection and copying of public records under the public records act, 1 V.S.A. chapter 5, subchapter 3. Prior to each legislative session, the committee shall submit to the house and senate committees on government operations and the house and senate committees on judiciary recommendations concerning whether the public records act and exemptions under the act from inspection and copying of a public record should be repealed, amended, or remain unchanged. The report of the committee may take the form of draft legislation.

(c) In reviewing and making a recommendation under subsection (b) of this section, the study committee may review:

(1) Whether the public records act requires revision;

(2) Whether an exemption to inspection or copying under the public records act is necessary, antiquated, or in need of revision;

(3) Whether an exemption to inspection or copying under the public records act is as narrowly tailored as possible; and

(4) Any other criteria that assist the review committee in determining the value of an exemption as compared to the public's interest in the record protected by the exemption.

(d) In developing recommendations authorized under subsection (a) of this section, the study committee shall consult with the secretary of administration, the secretary of state, the office of the attorney general, representatives of municipal interests, representatives of school or education interests, representatives of the media, and advocates for access to public records.

(e) The study committee shall elect co-chairs from among its members. For attendance at a meeting when the general assembly is not in session, legislative members of the commission shall be entitled to the same per diem compensation and reimbursement for actual and necessary expenses as provided members of standing committees under 2 V.S.A. § 406. The study committee is authorized to meet no more than three times each year during the interim between sessions of the general assembly.

(f) Legislative council shall provide legal and administrative services to the study committee. The study committee may utilize the legal, research, and administrative services of other entities, such as educational institutions and,

when necessary for the performance of its duties, the Vermont state archives and records administration.

Sec. 15. LEGISLATIVE COUNCIL; LIST OF PUBLIC RECORDS ACT EXEMPTIONS

The legislative council, under its statutory revision authority set forth in 2 V.S.A. § 421, shall compile a list of all known Vermont statutory exemptions to the inspection and copying of public records under the public records act, 1 V.S.A. chapter 5, subchapter 3. Legislative council shall publish the list of exemptions compiled under this section as a statutory revision note to 1 V.S.A. § 317 and shall update the list as necessary.

Sec. 16. REPEAL

1 V.S.A. § 321 (public records legislative study committee) is repealed on January 15, 2015.

Sec. 17. EFFECTIVE DATE

This act shall take effect on July 1, 2011.

(Committee Vote: 10-0-1)

Rep. Keenan of St. Albans City, for the Committee on **Appropriations,** recommends the bill ought to pass when amended as recommended by the Committee on **Government Operations.**

(Committee Vote: 10-0-1)

Amendment to be offered by Rep. Hubert of Milton to the recommendation of amendment of the Committee on Government Operations to H. 73

First: In Sec. 3, 1 V.S.A. § 317, by striking subsection (a) in its entirety and inserting in lieu thereof the following:

(a) As used in this subchapter~~,~~:

(1) "~~public~~ Public agency" or "agency" means any agency, board, department, commission, committee, branch, instrumentality, or authority of the state or any agency, board, committee, department, branch, instrumentality, commission, or authority of any political subdivision of the state.

(2) "Public record" or "public document" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired in the course of public agency business. Individual salaries and benefits of and salary schedules relating to elected or appointed officials and

employees of public agencies shall not be exempt from public inspection and copying.

Second: In Sec. 4, 1 V.S.A. § 318(g), by striking subsection (g) in its entirety

Third: In Sec. 14, by striking subsection (c) in its entirety and inserting in lieu thereof the following:

(c) In reviewing and making a recommendation under subsection (b) of this section, the study committee may review:

(1) Whether the public records act requires revision;

(2) Whether an exemption to inspection or copying under the public records act is necessary, antiquated, or in need of revision;

(3) Whether an exemption to inspection or copying under the public records act is as narrowly tailored as possible;

(4) Whether the public records act should be amended to clarify application of the act to contracts between a public agency and a private entity for the performance of a governmental function; and

(5) Any other criteria that assist the review committee in determining the value of an exemption as compared to the public's interest in the record protected by the exemption.

S. 2

An act relating to sexual exploitation of a minor and the sex offender registry

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

Sec. 1. 13 V.S.A. § 5401 is amended to read:

§ 5401. DEFINITIONS

As used in this subchapter:

* * *

(10) "Sex offender" means:

* * *

(B) A person who is convicted of any of the following offenses against a victim who is a minor, except that, for purposes of this subdivision, conduct which is criminal only because of the age of the victim shall not be

considered an offense for purposes of the registry if the perpetrator is under the age of 18 and the victim is at least 12 years old:

* * *

(ix) sexual exploitation of a minor as defined in 13 V.S.A. § ~~3258(b)~~ 3258.

* * *

Sec. 2. 13 V.S.A. § 5411a is amended to read:

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

(a) Notwithstanding 20 V.S.A. §§ 2056a-2056e, the department shall electronically post information on the Internet in accordance with subsection (b) of this section regarding the following sex offenders, upon their release from confinement:

(1) Sex offenders who have been convicted of:

* * *

(I) ~~Sexual~~ A felony violation of sexual exploitation of a minor (13 V.S.A. § ~~3258(b)~~ 3258(c)).

* * *

(b) The department shall electronically post the following information on sex offenders designated in subsection (a) of this section:

* * *

(6) ~~except as provided in subsection (l) of this section, the offender's address or, if the offender does not have a fixed address, other information about where the offender habitually lives, if:~~ the date and nature of the offender's conviction;

* * *

Sec. 3. 16 V.S.A. § 255 is amended to read:

§ 255. PUBLIC AND INDEPENDENT SCHOOL EMPLOYEES; CONTRACTORS

(a) Superintendents, headmasters of recognized or approved ~~Vermont~~ independent schools, and their contractors shall request criminal record information for the following:

(1) The person a superintendent or headmaster is prepared to recommend for any full-time, part-time or temporary employment.

(2) Any person directly under contract to an independent school or school district who may have unsupervised contact with school children.

(3) Any employee of a contractor under contract to an independent school or school district who is in a position that may result in unsupervised contact with school children.

(4) Any student working toward a degree in teaching who is a student teacher in a school within the superintendent's or headmaster's jurisdiction.

(b) After signing a user agreement, a superintendent or a headmaster shall make a request directly to the Vermont criminal information center. A contractor shall make a request through a superintendent or headmaster.

(c) A request made under subsection (b) of this section shall be accompanied by a set of the person's fingerprints and a fee established by the Vermont criminal information center which shall reflect the cost of obtaining the record from the FBI. The fee shall be paid in accordance with adopted school board policy.

* * *

(h) A superintendent or headmaster shall request and obtain information from the child protection registry maintained by the department for children and families and from the vulnerable adult abuse, neglect, and exploitation registry maintained by the department of disabilities, aging, and independent living (collectively, the "registries") for any person for whom a criminal record check is required under subsection (a) of this section. The department for children and families and the department of disabilities, aging, and independent living shall adopt rules governing the process for obtaining information from the registries and for disseminating and maintaining records of that information under this subsection.

(i) A person convicted of a sex offense that requires registration pursuant to chapter 167, subchapter 3 of Title 13 shall not be eligible for employment under this section.

(j) The board of trustees of a recognized or approved independent school shall request a criminal record check and a check of the registries pursuant to the provisions of this section prior to offering employment to a headmaster.

Sec. 4. 4 V.S.A. § 952 is amended to read:

§ 952. RULES OF COURT ADMINISTRATOR

(a) The court administrator, subject to the approval of the supreme court, shall make rules regarding the qualifications, lists, and selection of all jurors and prepare questionnaires for prospective jurors. Each superior court clerk

shall, in conformity with the rules, prepare a list of jurors from residents of its unit. The rules shall be designed to assure that the list of jurors prepared by the ~~jury commission~~ superior court clerk shall be representative of the citizens of its unit in terms of age, sex, occupation, economic status, and geographical distribution.

(b) Rules adopted under this section shall be consistent with the provisions of this chapter.

(Committee vote: 6-0-5)

(No Senate amendments)

Favorable

H. 439

An act relating to the bill-back authority of the department of public service and the public service board.

(Rep. Ralston of Middlebury will speak for the Committee on **Commerce and Economic Development.)**

Rep. Keenan of St. Albans City, for the Committee on **Appropriations,** recommends the bill ought to pass.

(Committee Vote: 10-0-1)

Consent Calendar

Concurrent Resolutions for Adoption Under Joint Rule 16a

The following concurrent resolutions have been introduced for approval by the Senate and House and will be adopted automatically unless a Senator or Representative requests floor consideration before today's adjournment. Requests for floor consideration in either chamber should be communicated to the Secretary's office and/or the House Clerk's office, respectively. For text of resolutions, see Addendum to House Calendar and Senate Calendar of March 31, 2011.

H.C.R. 108

House concurrent resolution congratulating the winning teams at the 4th annual Jr. Iron Chef VT competition

H.C.R. 109

House concurrent resolution congratulating the 2011 Barre Blades Pee Wee B hockey team on winning the Vermont State Amateur Hockey Association championship

H.C.R. 110

House concurrent resolution congratulating Amanda Eldridge on winning the 2010 Positive Youth Sports Alliance of Essex's coach of the year award

H.C.R. 111

House concurrent resolution congratulating Meigan Clark on winning the 2011 Vermont state spelling bee

H.C.R. 112

House concurrent resolution honoring the women and girls associated with the Wells River Congregational Church

H.C.R. 113

House concurrent resolution congratulating the 2011 Norwich University Cadets NCAA Division III championship women's ice hockey team

H.C.R. 114

House concurrent resolution congratulating the 2011 Poultney High School Blue Devils Division IV championship basketball team

H.C.R. 115

House concurrent resolution congratulating the 2011 Windsor High School Yellow Jackets Division III championship girls' basketball team

H.C.R. 116

House concurrent resolution congratulating the 2011 Middlebury Union High School Tigers Division II championship boys' ice hockey team

H.C.R. 117

House concurrent resolution commemorating the 30th anniversary of the Medicare hospice program

H.C.R. 118

House concurrent resolution congratulating the 2011 Lamoille Union High School Lancers Division II girls' basketball championship team

H.C.R. 119

House concurrent resolution congratulating the Winooski High School Spartans Division III championship boys' basketball team

For Informational Purposes

Anyone interested in the latest submitted list of Legislative Reports may do so by going to our website (www.leg.state.vt.us) and click on Reports submitted to Legislature.

Public Hearings

Thursday, April 7, 2011 - Room 11 - 6 - 8 PM - Senate Health and Welfare Committee - S. 57 Health Care Reform - Business and Provider Hearing

March 31, 2011 - 6:00 - 8:00 PM - House Chamber - Senate Committee on Health and Welfare - S. 57. Health Care Reform