House Calendar

Tuesday, April 05, 2011

91st DAY OF THE BIENNIAL SESSION

House Convenes at 10:00 A.M.

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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)

Amendment to be offered by Reps. Marcotte of Coventry, Scheuermann of Stowe, Condon of Colchester, Greshin of Warren, Howard of Cambridge, Ralston of Middlebury, Wilson of Manchester, and Young of Albany to H. 259

In Sec. 1, 7 V.S.A. § 101, in subsection (b), at the end of the first sentence before the period, by inserting "and at least one of whom shall be a licensee under this title"

NEW BUSINESS

Third Reading

H. 155

An act relating to property-assessed clean energy districts

H. 420

An act relating to the office of professional regulation

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)

Amendment to be offered by Rep. Olsen of Jamaica to H. 56

First: In Sec. 12, 10 V.S.A. § 6523 (clean energy development fund), in subsection (e), in subdivision (3), before the first new sentence, by inserting "(A)" and, after the end of the subdivision, by inserting:

(B) During a board member's term and for a period of one year after the member leaves the board, the clean energy development fund shall not make any award of funds to and shall confer no financial benefit on a company or corporation of which the member is an employee, officer, partner, proprietor, or board member or of which the member owns more than 10 percent of the outstanding voting securities. This prohibition shall not apply to a financial benefit that is available to any person and is not awarded on a competitive basis or offered only to a limited number of persons.

Second: In Sec. 12, 10 V.S.A. § 6523 (clean energy development fund), in subsection (e), in subdivision (7)(D), at the end of the subdivision, by inserting: Prior to any approval of a new program or of a substantial modification to a previously approved program of the clean energy development fund, the department of public service shall publish online the proposed program or modification, shall provide an opportunity for public comment of no less than 30 days, and shall provide to the clean energy development board copies of all comments received on the proposed program or modification. For the purpose of this subdivision (D), "substantial modification" shall include a change to a program's application criteria or application deadlines and shall include any change to a program if advance knowledge of the change could unfairly benefit one applicant over another applicant. For the purpose of 3 V.S.A. § 831(b) (initiating rulemaking on request), a new program or substantial modification of a previously approved program shall be treated as if it were an existing practice or procedure.

Third: In Sec. 13 (clean energy development board; transition; term expiration; new appointments), in subsection (b), at the end of the subsection, by inserting:

10 V.S.A. § 6523(e)(3)(B) (board members; prohibition; financial benefits) shall apply only to members of the clean energy development board appointed to terms commencing on and after October 1, 2011.

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.

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)

NOTICE CALENDAR

Favorable with Amendment

H. 21

An act relating to the Uniform Limited Cooperative Association Act

Rep. Dickinson of St. Albans Town, for the Committee on **Commerce and Economic Development,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. Title 11C is added to read:

TITLE 11C. MUTUAL BENEFIT ENTERPRISES

Article 1. General Provisions

§ 101. SHORT TITLE

This title may be cited as the Mutual Benefit Enterprise Act.

§ 102. DEFINITIONS

For purposes of this title, the following words have the following meanings:

(1) "Articles of organization" means the articles of organization of a mutual benefit enterprise required by section 302 of this title. The term includes the articles as amended or restated.

(2) "Board of directors" means the board of directors of a mutual benefit enterprise.

(3) "Bylaws" means the bylaws of a mutual benefit enterprise. The term includes the bylaws as amended or restated.

(4) "Certificate of authority" means a certificate issued by the secretary of state for a foreign enterprise to transact business in this state.

(5) "Contribution," except as used in subsection 1008(c) of this title, means a benefit that a person provides to a mutual benefit enterprise to become or remain a member or in the person's capacity as a member.

(6) "Cooperative" means an entity organized under any cooperative law of any jurisdiction.

(7) "Designated office" means the office that a mutual benefit enterprise or a foreign enterprise is required to designate and maintain under subdivision 117(a)(1) of this title.

(8) "Director" means a director of a mutual benefit enterprise.

(9) "Distribution," except as used in subsection 1007(e) of this title, means a transfer of money or other property from a mutual benefit enterprise to a member because of the member's financial rights or to a transferee of a member's financial rights.

(10) "Entity" means a person other than an individual.

(11) "Financial right" means the right to participate in allocations and distributions as provided in Articles 10 and 12 of this title but does not include rights or obligations under a marketing contract governed by Article 7 of this title.

(12) "Foreign enterprise" means an entity organized in a jurisdiction other than this state under a law similar to this title.

(13) "Governance right" means the right to participate in governance of a mutual benefit enterprise.

(14) "Investor member" means a member that has made a contribution to a mutual benefit enterprise and:

(A) is not required by the organic rules to conduct patronage with the enterprise in the member's capacity as an investor member in order to receive the member's interest; or

(B) is not permitted by the organic rules to conduct patronage with the enterprise in the member's capacity as an investor member in order to receive the member's interest.

(15) "Mutual benefit enterprise" means an enterprise organized under this title.

(16) "Member" means a person that is admitted as a patron member or investor member or both in a mutual benefit enterprise. The term does not include a person that has dissociated as a member.

(17) "Member's interest" means the interest of a patron member or investor member under section 601 of this title.

(18) "Members' meeting" means an annual members' meeting or special meeting of members.

(19) "Organic law" means the statute providing for the creation of an entity or principally governing its internal affairs.

(20) "Organic rules" means the articles of organization and bylaws of a mutual benefit enterprise.

(21) "Organizer" means an individual who signs the initial articles of organization.

(22) "Patron member" means a member that has made a contribution to a mutual benefit enterprise and:

(A) is required by the organic rules to conduct patronage with the enterprise in the member's capacity as a patron member in order to receive the member's interest; or

(B) is permitted by the organic rules to conduct patronage with the enterprise in the member's capacity as a patron member in order to receive the member's interest.

(23) "Patronage" means business transactions between a mutual benefit enterprise and a person which entitle the person to receive financial rights based on the value or quantity of business done between the enterprise and the person.

(24) "Person" means an individual; corporation; business trust; cooperative; estate; trust' partnership; limited partnership; limited liability company; mutual benefit enterprise; joint venture; association; public corporation; government or governmental subdivision, agency, or instrumentality; or any other legal or commercial entity.

(25) "Principal office" means the principal executive office of a mutual benefit enterprise or foreign enterprise, whether or not in this state.

(26) "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(27) "Required information" means the information a mutual benefit enterprise is required to maintain under section 114 of this title.

(28) "Sign" means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(29) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(30) "Transfer" includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law.

(31) "Voting group" means any combination of one or more voting members in one or more districts or classes that under the organic rules or this title are entitled to vote and can be counted together collectively on a matter at a members' meeting.

(32) "Voting member" means a member that, under the organic law or organic rules, has a right to vote on matters subject to vote by members under the organic law or organic rules.

(33) "Voting power" means the total current power of members to vote on a particular matter for which a vote may or is to be taken.

§ 103. MUTUAL BENEFIT ENTERPRISE SUBJECT TO AMENDMENT OR REPEAL

A mutual benefit enterprise governed by this title is subject to any amendment or repeal.

§ 104. NATURE OF MUTUAL BENEFIT ENTERPRISE

(a) A mutual benefit enterprise organized under this title is an autonomous, unincorporated association of persons united to meet their mutual interests through a jointly owned enterprise primarily controlled by those persons, which permits combining:

(1) ownership, financing, and receipt of benefits by the members for whose interests the enterprise is formed; and

(2) separate investments in the enterprise by members who may receive returns on their investments and a share of control.

(b) The fact that a mutual benefit enterprise does not have one or more of the characteristics described in subsection (a) of this section does not alone prevent the enterprise from being formed under and governed by this title nor does it alone provide a basis for an action against the enterprise.

§ 105. PURPOSE AND DURATION OF MUTUAL BENEFIT ENTERPRISE

(a) A mutual benefit enterprise is an entity distinct from its members.

(b) A mutual benefit enterprise may be organized for any lawful purpose, whether or not for profit.

(c) Unless the articles of organization state a term for a mutual benefit enterprise's existence, the enterprise has perpetual duration.

§ 106. POWERS

A mutual benefit enterprise may sue and be sued in its own name and do all things necessary or convenient to carry on its activities. An enterprise may maintain an action against a member for harm caused to the enterprise by the member's violation of a duty to the enterprise or of the organic laws or organic rules.

§ 107. GOVERNING LAW

The law of this state governs:

(1) the internal affairs of a mutual benefit enterprise; and

(2) the liability of a member as member and a director as director for the debts, obligations, or other liabilities of a mutual benefit enterprise.

§ 108. SUPPLEMENTAL PRINCIPLES OF LAW

Unless displaced by particular provisions, the principles of law and equity supplement this title.

§ 109. REQUIREMENTS OF OTHER LAWS

(a) This title does not alter or amend any law that governs the licensing and regulation of an individual or entity in carrying on a specific business or profession even if that law permits the business or profession to be conducted by a mutual benefit enterprise, a foreign enterprise, or a member of either.

(b) A mutual benefit enterprise may not conduct an activity that, under law of this state other than this title, may be conducted only by an entity that meets specific requirements for the internal affairs of that entity unless the organic rules of the enterprise conform to those requirements.

(c) If an activity of a mutual benefit enterprise is within the scope of the Uniform Common Interest Ownership Act, the requirements of the Uniform Common Interest Ownership Act apply, even if there is a conflicting provision in this title.

§ 110. RELATION TO RESTRAINT OF TRADE AND ANTITRUST LAWS

To the extent that a mutual benefit enterprise or activities conducted by the enterprise in this state meet the material requirements for other cooperatives entitled to an exemption from or immunity under any provision of the restraint of trade or antitrust laws of this state, the enterprise and its activities are entitled to the exemption or immunity. This section does not create any new exemption or immunity for an enterprise or affect any exemption or immunity provided to a cooperative organized under any other law.

§ 111. NAME

(a) The name of a mutual benefit enterprise shall contain the words "mutual benefit enterprise" or the abbreviation "M.B.E." or "MBE." "Mutual" may be abbreviated as "Mut." "Benefit" may be abbreviated as "Ben." "Enterprise" may be abbreviated as "Ent."

(b) Unless otherwise provided in this title, a mutual benefit enterprise may apply to the secretary of state for authorization to use a name under the procedures and subject to the rules for associations of individuals set forth in chapter 15 of Title 11.

§ 112. RESERVATION OF NAME

(a) A person may reserve the exclusive use of the name of a mutual benefit enterprise, including a fictitious name for a foreign enterprise whose name is not available under section 111 of this title, by delivering an application to the secretary of state for filing. The application shall set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the name applied for is available under section 111 of this title, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable period of 120 days.

(b) A person who has reserved a name for a mutual benefit enterprise may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer which states the name, street address, and, if different, the mailing address of the transferee. If the person is an organizer of

the enterprise and the name of the enterprise is the same as the reserved name, the delivery of articles of organization for filing by the secretary of state is a transfer by the person to the enterprise.

§ 113. EFFECT OF ORGANIC RULES

(a) The relations between a mutual benefit enterprise and its members are consensual. Unless required, limited, or prohibited by this title, the organic rules may provide for any matter concerning the relations among the members of the enterprise and between the members and the enterprise, the activities of the enterprise, and the conduct of its activities.

(b) The matters referred to in subdivisions (1) through (12) of this subsection may be varied only in the articles of organization. The articles may:

(1) state a term of existence for the enterprise under subsection 105(c) of this title;

(2) limit or eliminate the acceptance of new or additional members by the initial board of directors under subsection 303(b) of this title;

(3) vary the limitations on the obligations and liability of members for enterprise obligations under section 504 of this title;

(4) require a notice of an annual members' meeting to state a purpose of the meeting under subsection 508(b) of this title;

(5) vary the board of directors meeting quorum under subsection 815(a) of this title;

(6) vary the matters the board of directors may consider in making a decision under section 820 of this title;

(7) specify causes of dissolution under subdivision 1202(1) of this title;

(8) delegate amendment of the bylaws to the board of directors pursuant to subsection 405(f) of this title;

(9) provide for member approval of asset dispositions under section 1501 of this title;

(10) subject to section 820 of this title, provide for the elimination or limitation of liability of a director to the enterprise or its members for money damages pursuant to section 818 of this title;

(11) provide for permitting or making obligatory indemnification under subsection 901(a) of this title; and

(12) provide for any matters that may be contained in the organic rules, including those under subsection (c) of this section.

(c) The matters referred to in subdivisions (1) through (25) of this subsection may be varied only in the organic rules. The organic rules may:

(1) require more information to be maintained under section 114 of this title or provided to members under subsection 505(k) of this title;

(2) provide restrictions on transactions between a member and an enterprise under section 115 of this title;

(3) provide for the percentage and manner of voting on amendments to the organic rules by district, class, or voting group under subsection 404(a) of this title;

(4) provide for the percentage vote required to amend the bylaws concerning the admission of new members under subdivision 405(e)(5) of this title;

(5) provide for terms and conditions to become a member under section 502 of this title;

(6) restrict the manner of conducting members' meetings under subsections 506(c) and 507(e) of this title;

(7) designate the presiding officer of members' meetings under subsections 506(e) and 507(g) of this title;

(8) require a statement of purpose in the annual meeting notice under subsection 508(b) of this title;

(9) increase quorum requirements for members' meetings under section 510 of this title and board of directors meetings under section 815 of this title;

(10) allocate voting power among members, including patron members and investor members, and provide for the manner of member voting and action as permitted by sections 511 through 517 of this title;

(11) authorize investor members and expand or restrict the transferability of members' interests to the extent provided in sections 602 through 604 of this title;

(12) provide for enforcement of a marketing contract under subsection 704(a) of this title;

(13) provide for qualification, election, terms, removal, filling vacancies, and member approval for compensation of directors in accordance with sections 803 through 805, 807, 809, and 810 of this title;

(14) restrict the manner of conducting board meetings and taking action without a meeting under sections 811 and 812 of this title;

(15) provide for frequency, location, notice, and waivers of notice for board meetings under sections 813 and 814 of this title;

(16) increase the percentage of votes necessary for board action under subsection 816(b) of this title;

(17) provide for the creation of committees of the board of directors and matters related to the committees in accordance with section 817 of this title;

(18) provide for officers and their appointment, designation, and authority under section 822 of this title;

(19) provide for forms and values of contributions under section 1002 of this title;

(20) provide for remedies for failure to make a contribution under subsection 1003(b) of this title;

(21) provide for the allocation of profits and losses of the enterprise, distributions, and the redemption or repurchase of distributed property other than money in accordance with sections 1004 through 1007 of this title;

(22) specify when a member's dissociation is wrongful and the liability incurred by the dissociating member for damage to the enterprise under subsections 1101(b) and (c) of this title;

(23) provide the personal representative or other legal representative of a deceased member or a member adjudged incompetent with additional rights under section 1103 of this title;

(24) increase the percentage of votes required for board of director approval of:

(A) a resolution to dissolve under subdivision 1205(a)(1) of this title;

(B) a proposed amendment to the organic rules under subdivision 402(a)(1) of this title;

(C) a plan of conversion under subsection 1603(a) of this title;

(D) a plan of merger under subsection 1607(a) of this title; and

(E) a proposed disposition of assets under subsection 1503(1) of this title; and

(25) vary the percentage of votes required for members' approval of:

(A) a resolution to dissolve under section 1205 of this title;

(B) an amendment to the organic rules under section 405 of this title;

(C) a plan of conversion under section 1603 of this title;

(D) a plan of merger under section 1608 of this title; and

(E) a disposition of assets under section 1504 of this title.

(d) The organic rules shall address members' contributions pursuant to section 1001 of this title.

§ 114. REQUIRED INFORMATION

(a) Subject to subsection (b) of this section, a mutual benefit enterprise shall maintain in a record available at its principal office:

(1) a list containing the name, last known street address and, if different, mailing address, and term of office of each director and officer;

(2) the initial articles of organization and all amendments to and restatements of the articles, together with a signed copy of any power of attorney under which any article, amendment, or restatement has been signed;

(3) the initial bylaws and all amendments to and restatements of the bylaws;

(4) all filed articles of merger and statements of conversion;

(5) all financial statements of the enterprise for the six most recent years;

(6) the six most recent annual reports delivered by the enterprise to the secretary of state;

(7) the minutes of members' meetings for the six most recent years;

(8) evidence of all actions taken by members without a meeting for the six most recent years;

(9) a list containing:

(A) the name, in alphabetical order, and last known street address and, if different, mailing address of each patron member and each investor member; and

(B) if the enterprise has districts or classes of members, information from which each current member in a district or class may be identified;

(10) the federal income tax returns, any state and local income tax returns, and any tax reports of the enterprise for the six most recent years;

(11) accounting records maintained by the enterprise in the ordinary course of its operations for the six most recent years;

(12) the minutes of directors' meetings for the six most recent years;

(13) evidence of all actions taken by directors without a meeting for the six most recent years;

(14) the amount of money contributed and agreed to be contributed by each member;

(15) a description and statement of the agreed value of contributions other than money made and agreed to be made by each member;

(16) the times at which or events on the happening of which any additional contribution is to be made by each member;

(17) for each member, a description and statement of the member's interest or information from which the description and statement can be derived; and

(18) all communications concerning the enterprise made in a record to all members or to all members in a district or class for the six most recent years.

(b) If a mutual benefit enterprise has existed for less than the period for which records shall be maintained under subsection (a) of this section, the period for which records shall be kept is the period of the enterprise's existence.

(c) The organic rules may require that more information be maintained.

§ 115. BUSINESS TRANSACTIONS OF MEMBER WITH MUTUAL BENEFIT ENTERPRISE

Subject to sections 818 and 819-819c of this title and except as otherwise provided in the organic rules or a specific contract relating to a transaction, a member may lend money to and transact other business with a mutual benefit enterprise in the same manner as a person who is not a member.

§ 116. DUAL CAPACITY

A person may have a patron member's interest and an investor member's interest in a mutual benefit enterprise. When such person acts as a patron member, the person is subject to this title and the organic rules governing patron members. When such person acts as an investor member, the person is subject to this title and the organic rules governing investor members.

§ 117. DESIGNATED OFFICE AND AGENT FOR SERVICE OF PROCESS

(a) A mutual benefit enterprise or a foreign enterprise that has a certificate of authority under section 1404 of this title shall designate and continuously maintain in this state:

(1) an office, as its designated office, which need not be a place of the enterprise's or foreign enterprise's activity in this state; and

(2) an agent for service of process at the designated office.

(b) An agent for service of process of a mutual benefit enterprise or foreign enterprise shall be an individual who is a resident of this state or an entity that is authorized to do business in this state.

§ 118. CHANGE OF DESIGNATED OFFICE OR AGENT FOR SERVICE OF PROCESS

(a) Except as otherwise provided in subsection 207(e) of this title, to change its designated office, its agent for service of process, or the street address or, if different, mailing address of its principal office, a mutual benefit enterprise shall deliver to the secretary of state for filing a statement of change containing:

(1) the name of the mutual benefit enterprise;

(2) the street address and, if different, mailing address of its designated office;

(3) if the designated office is to be changed, the street address and, if different, mailing address of the new designated office;

(4) the name of its agent for service of process; and

(5) if the agent for service of process is to be changed, the name of the new agent.

(b) Except as otherwise provided in subsection 207(e) of this title, to change its agent for service of process, the address of its designated office, or the street address or, if different, mailing address of its principal office, a foreign enterprise shall deliver to the secretary of state for filing a statement of change containing:

(1) the name of the foreign enterprise;

(2) the name, street address and, if different, mailing address of its designated office;

(3) if the current agent for service of process or an address of the designated office is to be changed, the new information;

(4) the street address and, if different, the mailing address of its principal office; and

(5) if the street address or, if different, the mailing address of its principal office is to be changed, the street address and, if different, the mailing address of the new principal office.

(c) Except as otherwise provided in section 204 of this title, a statement of change is effective when filed by the secretary of state.

§ 119. RESIGNATION OF AGENT FOR SERVICE OF PROCESS

(a) To resign as an agent for service of process of a mutual benefit enterprise or foreign enterprise, the agent shall deliver to the secretary of state for filing a statement of resignation containing the name of the agent and the name of the enterprise or foreign enterprise.

(b) After receiving a statement of resignation under subsection (a) of this section, the secretary of state shall file it and mail or otherwise provide or deliver a copy to the mutual benefit enterprise or foreign enterprise at its principal office.

(c) An agency for service of process of a mutual benefit enterprise or foreign enterprise terminates on the earlier of:

(1) the 31st day after the secretary of state files a statement of resignation under subsection (b) of this section; or

(2) when a record designating a new agent for service of process is delivered to the secretary of state for filing on behalf of the enterprise or foreign enterprise and becomes effective.

§ 120. SERVICE OF PROCESS

(a) An agent for service of process appointed by a mutual benefit enterprise or foreign enterprise is an agent of the enterprise or foreign enterprise for service of process, notice, or a demand required or permitted by law to be served upon the enterprise or foreign enterprise.

(b) If a mutual benefit enterprise or foreign enterprise does not appoint or maintain an agent for service of process in this state or the agent for service of process cannot with reasonable diligence be found at the address of the designated office on file with the secretary of state, the secretary of state is an agent of the enterprise or foreign enterprise upon which process, notice, or a demand may be served.

(c) Service of process, notice, or a demand on the secretary of state as agent of a mutual benefit enterprise or foreign enterprise may be made by delivering to the secretary of state two copies of the process, notice, or demand. The

secretary of state shall forward one copy by registered or certified mail, return receipt requested, to the enterprise or foreign enterprise at its principal office.

(d) Service is effected under subsection (c) of this section on the earliest of:

(1) the date the mutual benefit enterprise or foreign enterprise receives the process, notice, or demand;

(2) the date shown on the return receipt, if signed on behalf of the enterprise or foreign enterprise; or

(3) five days after the process, notice, or demand is deposited by the secretary of state for delivery by the United States Postal Service, if postage is prepaid to the address of the principal office on file with the secretary of state.

(e) The secretary of state shall keep a record of each process, notice, and demand served pursuant to this section and record the time of and the action taken regarding the service.

(f) This section does not affect the right to serve process, notice, or a demand in any other manner provided by law.

Article 2. Filing and Annual Reports

§ 201. SIGNING OF RECORDS DELIVERED FOR FILING TO SECRETARY OF STATE

(a) A record delivered to the secretary of state for filing pursuant to this title shall be signed as follows:

(1) The initial articles of organization shall be signed by at least one organizer.

(2) A statement of cancellation under subsection 302(d) of this title shall be signed by at least one organizer.

(3) Except as otherwise provided in subdivision (4) of this subsection, a record signed on behalf of an existing mutual benefit enterprise shall be signed by an officer.

(4) A record filed on behalf of a dissolved enterprise shall be signed by a person winding up activities under section 1206 of this title or a person appointed under section 1206 to wind up those activities.

(5) Any other record shall be signed by the person on whose behalf the record is delivered to the secretary of state.

(b) Any record to be signed under this title may be signed by an authorized agent.

§ 202. SIGNING AND FILING OF RECORDS PURSUANT TO JUDICIAL ORDER

(a) If a person required by this title to sign or deliver a record to the secretary of state for filing does not do so, the superior court of the county of the mutual benefit enterprise's principal office or the foreign enterprise's registered office, upon petition of an aggrieved person, may order:

(1) the person to sign the record and deliver it to the secretary of state for filing; or

(2) delivery of the unsigned record to the secretary of state for filing.

(b) An aggrieved person under subsection (a) of this section, other than the mutual benefit enterprise or foreign enterprise to which the record pertains, shall make the enterprise or foreign enterprise a party to the action brought to obtain the order.

(c) An unsigned record filed pursuant to this section is effective.

§ 203. DELIVERY TO AND FILING OF RECORDS BY SECRETARY OF STATE; EFFECTIVE TIME AND DATE

(a) A record authorized or required by this title to be delivered to the secretary of state for filing shall be captioned to describe the record's purpose, be in a medium and format permitted by the secretary of state, and be delivered to the secretary of state. If the filing fees have been paid and unless the secretary of state determines that the record does not comply with the filing requirements, the secretary of state shall file the record and send a copy of the filed record and a receipt for the fees to the person on whose behalf the record was filed.

(b) The secretary of state, upon request and payment of the required fee, shall furnish a certified copy of any record filed by the secretary of state under this title to the person making the request.

(c) Except as otherwise provided in sections 118 and 204 of this title, a record delivered to the secretary of state for filing under this title may specify an effective time and a delayed effective date that may include an effective time on that date. Except as otherwise provided in sections 118 and 204 of this title, a record filed by the secretary of state under this title is effective:

(1) if the record does not specify an effective time and does not specify a delayed effective date, on the date and at the time the record is filed as evidenced by the secretary of state's endorsement of the date and time on the record;

(2) if the record specifies an effective time but not a delayed effective date, on the date the record is filed at the time specified in the record;

(3) if the record specifies a delayed effective date but not an effective time, at 12:01 a.m. on the earlier of:

(A) the specified date; or

(B) the 90th day after the record is filed; or

(4) if the record specifies an effective time and a delayed effective date, at the specified time on the earlier of:

(A) the specified date; or

(B) the 90th day after the record is filed.

§ 204. CORRECTING FILED RECORD

(a) A mutual benefit enterprise or foreign enterprise may deliver to the secretary of state for filing a statement of correction to correct a record previously delivered by the enterprise or foreign enterprise to the secretary of state and filed by the secretary of state if, at the time of filing, the record contained inaccurate information or was defectively signed.

(b) A statement of correction may not state a delayed effective date and shall:

(1) describe the record to be corrected, including its filing date, or have attached a copy of the record as filed;

(2) specify the inaccurate information and the reason it is inaccurate or the manner in which the signing was defective; and

(3) correct the inaccurate information or defective signature.

(c) When filed by the secretary of state, a statement of correction is effective:

(1) when filed as to persons relying on the inaccurate information or defective signature before its correction and adversely affected by the correction; and

(2) as to all other persons, retroactively as of the effective date and time of the record the statement corrects.

§ 205. LIABILITY FOR INACCURATE INFORMATION IN FILED RECORD

If a record delivered to the secretary of state for filing under this title and filed by the secretary of state contains inaccurate information, a person that

suffers a loss by reliance on the information may recover damages for the loss from a person that signed the record or caused another to sign it on the person's behalf and knew at the time the record was signed that the information was inaccurate.

§ 206. CERTIFICATE OF GOOD STANDING OR AUTHORIZATION

(a) The secretary of state, upon request and payment of the required fee, shall furnish any person that requests it a certificate of good standing for a mutual benefit enterprise if the records filed in the office of the secretary of state show that the secretary of state has filed the enterprise's articles of organization, that the enterprise is in good standing, and that the secretary of state has not filed a statement of termination.

(b) The secretary of state, upon request and payment of the required fee, shall furnish to any person that requests it a certificate of authority for a foreign enterprise if the records filed in the office of the secretary of state show that the secretary of state has filed the foreign enterprise's certificate of authority, has not revoked nor has reason to revoke the certificate of authority, and has not filed a notice of cancellation.

(c) Subject to any exceptions stated in the certificate, a certificate of good standing or authority issued by the secretary of state establishes conclusively that the mutual benefit enterprise or foreign enterprise is in good standing or is authorized to transact business in this state.

§ 207. ANNUAL REPORT FOR SECRETARY OF STATE

(a) A mutual benefit enterprise or foreign enterprise authorized to transact business in this state shall deliver to the secretary of state for filing an annual report that states:

(1) the name of the enterprise or foreign enterprise;

(2) the street address and, if different, mailing address of the enterprise's or foreign enterprise's designated office and the name of its agent for service of process at the designated office;

(3) the street address and, if different, mailing address of the enterprise's or foreign enterprise's principal office; and

(4) in the case of a foreign enterprise, the state or other jurisdiction under whose law the foreign enterprise is formed and any alternative name adopted under section 1405 of this title.

(b) Information in an annual report shall be current as of the date the report is delivered to the secretary of state.

(c) The first annual report shall be delivered to the secretary of state between January 1 and April 1 of the year following the calendar year in which the mutual benefit enterprise is formed or the foreign enterprise is authorized to transact business in this state. An annual report shall be delivered to the secretary of state within two and one-half months after the expiration of the mutual benefit enterprise's fiscal year.

(d) If an annual report does not contain the information required by subsection (a) of this section, the secretary of state shall promptly notify the reporting mutual benefit enterprise or foreign enterprise and return the report for correction. If the report is corrected to contain the information required by subsection (a) of this section and delivered to the secretary of state not later than 30 days after the date of the notice from the secretary of state, it is timely delivered.

(e) If a filed annual report contains an address of the designated office, the name of the agent for service of process, or address of the principal office which differs from the information shown in the records of the secretary of state immediately before the filing, the differing information in the annual report is considered a statement of change.

(f) If a mutual benefit enterprise fails to deliver an annual report under this section, the secretary of state may proceed under section 1211 of this title to dissolve the enterprise administratively.

(g) If a foreign enterprise fails to deliver an annual report under this section, the secretary of state may revoke the certificate of authority of the enterprise.

§ 208. FILING FEES

The filing fees for records filed under this article by the secretary of state are the same as those set forth for a limited liability company under 11 V.S.A. § 3013.

Article 3. Formation and Initial Articles of Organization of Mutual Benefit Enterprise

§ 301. ORGANIZERS

A mutual benefit enterprise shall be organized by one or more organizers.

§ 302. FORMATION OF MUTUAL BENEFIT ENTERPRISE; ARTICLES OF ORGANIZATION

(a) To form a mutual benefit enterprise, an organizer of the enterprise shall deliver articles of organization to the secretary of state for filing. The articles shall state:

(1) the name of the enterprise;

(2) the purposes for which the enterprise is formed;

(3) the street address and, if different, mailing address of the enterprise's initial designated office and the name of the enterprise's initial agent for service of process at the designated office;

(4) the street address and, if different, mailing address of the initial principal office;

(5) the name and street address and, if different, mailing address of each organizer; and

(6) the term for which the enterprise is to exist if other than perpetual.

(b) Subject to subsection 113(a) of this title, articles of organization may contain any other provisions in addition to those required by subsection (a) of this section.

(c) A mutual benefit enterprise is formed after articles of organization that substantially comply with subsection (a) of this section are delivered to the secretary of state, are filed, and become effective under subsection 203(c) of this title.

(d) If articles of organization filed by the secretary of state provide for a delayed effective date, a mutual benefit enterprise is not formed if, before the articles take effect, an organizer signs and delivers to the secretary of state for filing a statement of cancellation.

§ 303. ORGANIZATION OF MUTUAL BENEFIT ENTERPRISE

(a) After a mutual benefit enterprise is formed:

(1) if initial directors are named in the articles of organization, the initial directors shall hold an organizational meeting to adopt initial bylaws and carry on any other business necessary or proper to complete the organization of the enterprise; or

(2) if initial directors are not named in the articles of organization, the organizers shall designate the initial directors and call a meeting of the initial directors to adopt initial bylaws and carry on any other business necessary or proper to complete the organization of the enterprise.

(b) Unless the articles of organization otherwise provide, the initial directors may cause the mutual benefit enterprise to accept members, including those necessary for the enterprise to begin business.

(c) Initial directors need not be members.

(d) An initial director serves until a successor is elected and qualified at a members' meeting or the director is removed, resigns, is adjudged incompetent, or dies.

§ 304. BYLAWS

(a) Bylaws shall be in a record and, if not stated in the articles of organization, shall include:

(1) a statement of the capital structure of the mutual benefit enterprise, including:

(A) the classes or other types of members' interests and relative rights, preferences, and restrictions granted to or imposed upon each class or other type of member's interest; and

(B) the rights to share in profits or distributions of the enterprise;

(2) a statement of the method for admission of members;

(3) a statement designating voting and other governance rights, including which members have voting power and any restriction on voting power;

(4) a statement that a member's interest is transferable if it is to be transferable and a statement of the conditions upon which it may be transferred;

(5) a statement concerning the manner in which profits and losses are allocated and distributions are made among patron members and, if investor members are authorized, the manner in which profits and losses are allocated and how distributions are made among investor members and between patron members and investor members;

(6) a statement concerning:

(A) whether persons who are not members but who conduct business with the enterprise may be permitted to share in allocations of profits and losses and receive distributions; and

(B) the manner in which profits and losses are allocated and distributions are made with respect to those persons; and

(7) a statement of the number and terms of directors or the method by which the number and terms are determined.

(b) Subject to subsection 113(c) of this title and the articles of organization, bylaws may contain any other provision for managing and regulating the affairs of the enterprise.

(c) In addition to amendments permitted under Article 4 of this title, the initial board of directors may amend the bylaws by a majority vote of the directors at any time before the admission of members.

Article 4. Amendment of Organic Rules of Mutual Benefit Enterprise

§ 401. AUTHORITY TO AMEND ORGANIC RULES

(a) A mutual benefit enterprise may amend its organic rules under this article for any lawful purpose. In addition, the initial board of directors may amend the bylaws of an enterprise under section 304 of this title.

(b) Unless the organic rules otherwise provide, a member does not have a vested property right resulting from any provision in the organic rules, including a provision relating to the management, control, capital structure, distribution, entitlement, purpose, or duration of the mutual benefit enterprise.

§ 402. NOTICE AND ACTION ON AMENDMENT OF ORGANIC RULES

(a) Except as provided in subsections 401(a) and 405(f) of this title, the organic rules of a mutual benefit enterprise may be amended only at a members' meeting. An amendment may be proposed by either:

(1) a majority of the board of directors or a greater percentage if required by the organic rules; or

(2) one or more petitions signed by at least 10 percent of the patron members or at least 10 percent of the investor members.

(b) The board of directors shall call a members' meeting to consider an amendment proposed pursuant to subsection (a) of this section. The meeting shall be held not later than 90 days following the proposal of the amendment by the board or receipt of a petition. The board shall mail or otherwise transmit or deliver in a record to each member:

(1) the proposed amendment or a summary of the proposed amendment and a statement of the manner in which a copy of the amendment in a record may be reasonably obtained by a member;

(2) a recommendation that the members approve the amendment or, if the board determines that because of conflict of interest or other special circumstances it should not make a favorable recommendation, the basis for that determination;

(3) a statement of any condition of the board's submission of the amendment to the members; and

(4) notice of the meeting at which the proposed amendment will be considered, which shall be given in the same manner as notice for a special meeting of members.

§ 403. METHOD OF VOTING ON AMENDMENT OF ORGANIC RULES

(a) A substantive change to a proposed amendment of the organic rules may not be made at the members' meeting at which a vote on the amendment occurs.

(b) A nonsubstantive change to a proposed amendment of the organic rules may be made at the members' meeting at which the vote on the amendment occurs and need not be separately voted upon by the board of directors.

(c) A vote to adopt a nonsubstantive change to a proposed amendment to the organic rules shall be by the same percentage of votes as is required to pass a proposed amendment.

§ 404. VOTING BY DISTRICT, CLASS, OR VOTING GROUP

(a) This section applies if the organic rules provide for voting by district or class or if there is one or more identifiable voting groups that a proposed amendment to the organic rules would affect differently from other members with respect to matters identified in subdivisions 405(e)(1) through (5) of this title. Approval of the amendment requires the same percentage of votes of the members of that district, class, or voting group required in sections 405 and 514 of this title.

(b) If a proposed amendment to the organic rules would affect members in two or more districts or classes entitled to vote separately under subsection (a) of this section in the same or a substantially similar way, the districts or classes affected shall vote as a single voting group unless the organic rules otherwise provide for separate voting.

§ 405. APPROVAL OF AMENDMENT

(a) Subject to section 404 of this title and subsections (c) and (d) of this section, an amendment to the articles of organization shall be approved by:

(1) at least two-thirds of the voting power of members present at a members' meeting called under section 402 of this title; and

(2) if the mutual benefit enterprise has investor members, at least a majority of the votes cast by patron members, unless the organic rules require a greater percentage vote by patron members.

(b) Subject to section 404 of this title and subsections (c), (d), (e), and (f) of this section, an amendment to the bylaws shall be approved by:

(1) at least a majority vote of the voting power of all members present at a members' meeting called under section 402 of this title, unless the organic rules require a greater percentage; and

(2) if a mutual benefit enterprise has investor members, a majority of the votes cast by patron members, unless the organic rules require a larger affirmative vote by patron members.

(c) The organic rules may require that the percentage of votes under subdivision (a)(1) or (b)(1) of this section be:

(1) a different percentage that is not less than a majority of members voting at the meeting;

(2) measured against the voting power of all members; or

(3) a combination of subdivisions (1) and (2) of this subsection.

(d) Consent in a record by a member shall be delivered to a mutual benefit enterprise before delivery of an amendment to the articles of organization or restated articles of organization for filing pursuant to section 407 of this title if as a result of the amendment the member will have:

(1) personal liability for an obligation of the enterprise; or

(2) an obligation or liability for an additional contribution.

(e) The vote required to amend bylaws shall satisfy the requirements of subsection (a) of this section if the proposed amendment modifies:

(1) the equity capital structure of the mutual benefit enterprise, including the rights of the enterprise's members to share in profits or distributions or the relative rights, preferences, and restrictions granted to or imposed upon one or more districts, classes, or voting groups of similarly situated members;

(2) the transferability of a member's interest;

(3) the manner or method of allocation of profits or losses among members;

(4) the quorum for a meeting and the rights of voting and governance; or

(5) unless otherwise provided in the organic rules, the terms for admission of new members.

(f) Except for the matters described in subsection (e) of this section, the articles of organization may delegate amendment of all or a part of the bylaws to the board of directors without requiring member approval.

(g) If the articles of organization delegate amendment of bylaws to the board of directors, the board shall provide a description of any amendment of

the bylaws made by the board to the members in a record not later than 30 days after the amendment, but the description may be provided at the next annual members' meeting if the meeting is held within the 30-day period.

§ 406. RESTATED ARTICLES OF ORGANIZATION

A mutual benefit enterprise, by the affirmative vote of a majority of the board of directors taken at a meeting for which the purpose is stated in the notice of the meeting, may adopt restated articles of organization that contain the original articles as previously amended. Restated articles may contain amendments if the restated articles are adopted in the same manner and with the same vote as required for amendments to the articles under subsection 405(a) of this title. Upon filing, restated articles supersede the existing articles and all amendments.

§ 407. AMENDMENT OR RESTATEMENT OF ARTICLES OF ORGANIZATION; FILING

(a) To amend its articles of organization, a mutual benefit enterprise shall deliver to the secretary of state for filing an amendment of the articles or restated articles of organization or articles of conversion or merger pursuant to Article 16 of this title which contain one or more amendments of the articles of organization stating:

(1) the name of the enterprise;

(2) the date of filing of the enterprise's initial articles; and

(3) the changes the amendment makes to the articles as most recently amended or restated.

(b) Before the beginning of the initial meeting of the board of directors, an organizer who knows that information in the filed articles of organization was inaccurate when the articles were filed or has become inaccurate due to changed circumstances shall promptly:

(1) cause the articles to be amended; or

(2) if appropriate, deliver an amendment to the secretary of state for filing pursuant to section 203 of this title.

(c) If restated articles of organization are adopted, the restated articles may be delivered to the secretary of state for filing in the same manner as an amendment.

(d) Upon filing, an amendment of the articles of organization or other record containing an amendment of the articles which has been properly adopted by the members is effective as provided in subsection 203(c) of this title.

Article 5. Members

§ 501. MEMBERS

To begin business, a mutual benefit enterprise shall have at least two patron members unless the sole member is a cooperative.

§ 502. BECOMING A MEMBER

A person becomes a member:

(1) as provided in the organic rules;

(2) as the result of a merger or conversion under Article 16 of this title; or

(3) with the consent of all the members.

§ 503. NO POWER AS MEMBER TO BIND ENTERPRISE

A member solely by reason of being a member may not act for or bind the mutual benefit enterprise.

§ 504. NO LIABILITY AS MEMBER FOR ENTERPRISE'S OBLIGATIONS

Unless the articles of organization otherwise provide, a debt, obligation, or other liability of a mutual benefit enterprise is solely that of the enterprise and is not the debt, obligation, or liability of a member solely by reason of being a member.

§ 505. RIGHT OF MEMBER AND FORMER MEMBER TO INFORMATION

(a) Not later than 10 business days after receipt of a demand made in a record, a mutual benefit enterprise shall permit a member to obtain, inspect, and copy in the enterprise's principal office required information listed in subdivisions 114(a)(1) through (8) of this title during regular business hours. A member need not have any particular purpose for seeking the information. The enterprise is not required to provide the same information listed in subdivisions 114(a)(2) through (8) of this title to the same member more than once during a six-month period.

(b) On demand made in a record received by the mutual benefit enterprise, a member may obtain, inspect, and copy in the enterprise's principal office required information listed in subdivisions 114(a)(9), (10), (12), (13), (16), and (18) of this title during regular business hours if:

(1) the member seeks the information in good faith and for a proper purpose reasonably related to the member's interest;

(2) the demand includes a description with reasonable particularity of the information sought and the purpose for seeking the information;

(3) the information sought is directly connected to the member's purpose; and

(4) the demand is reasonable.

(c) Not later than 10 business days after receipt of a demand pursuant to subsection (b) of this section, a mutual benefit enterprise shall provide, in a record, the following information to the member that made the demand:

(1) if the enterprise agrees to provide the demanded information:

(A) what information the enterprise will provide in response to the demand; and

(B) a reasonable time and place at which the enterprise will provide the information; or

(2) if the enterprise declines to provide some or all of the demanded information, the enterprise's reasons for declining.

(d) A person dissociated as a member may obtain, inspect, and copy information available to a member under subsection (a) or (b) of this section by delivering a demand in a record to the mutual benefit enterprise in the same manner and subject to the same conditions applicable to a member under subsection (b) of this section if:

(1) the information pertains to the period during which the person was a member in the enterprise; and

(2) the person seeks the information in good faith.

(e) A mutual benefit enterprise shall respond to a demand made pursuant to subsection (d) of this section in the manner provided in subsection (c) of this section.

(f) Not later than 10 business days after receipt by a mutual benefit enterprise of a demand made by a member in a record but not more often than once in a six-month period, the enterprise shall deliver to the member a record stating the information with respect to the member required by subdivision 114(a)(17) of this title.

(g) A mutual benefit enterprise may impose reasonable restrictions, including nondisclosure restrictions, on the use of information obtained under

this section. In a dispute concerning the reasonableness of a restriction under this subsection, the enterprise has the burden of proving reasonableness.

(h) A mutual benefit enterprise may charge a person that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

(i) A person who may obtain information under this section may obtain the information through an attorney or other agent. A restriction imposed on the person under subsection (g) of this section or by the organic rules applies to the attorney or other agent.

(j) The rights stated in this section do not extend to a person as transferee.

(k) The organic rules may require a mutual benefit enterprise to provide more information than required by this section and may establish conditions and procedures for providing the information.

§ 506. ANNUAL MEETING OF MEMBERS

(a) Members shall meet annually at a time provided in the organic rules or set by the board of directors not inconsistent with the organic rules.

(b) An annual members' meeting may be held inside or outside this state at the place stated in the organic rules or selected by the board of directors not inconsistent with the organic rules.

(c) Unless the organic rules otherwise provide, members may attend or conduct an annual members' meeting through any means of communication if all members attending the meeting can communicate with each other during the meeting.

(d) The board of directors shall report or cause to be reported at the enterprise's annual members' meeting the enterprise's business and financial condition as of the close of the most recent fiscal year.

(e) Unless the organic rules otherwise provide, the board of directors shall designate the presiding officer of the enterprise's annual members' meeting.

(f) Failure to hold an annual members' meeting does not affect the validity of any action by the mutual benefit enterprise.

§ 507. SPECIAL MEETING OF MEMBERS

(a) A special meeting of members may be called only:

(1) as provided in the organic rules;

(2) by a majority vote of the board of directors on a proposal stating the purpose of the meeting;

(3) by demand in a record signed by members holding at least 20 percent of the voting power of the persons in any district or class entitled to vote on the matter that is the purpose of the meeting stated in the demand; or

(4) by demand in a record signed by members holding at least 10 percent of the total voting power of all the persons entitled to vote on the matter that is the purpose of the meeting stated in the demand.

(b) A demand under subdivision (a)(3) or (4) of this section shall be submitted to the officer of the mutual benefit enterprise charged with keeping its records.

(c) Any voting member may withdraw its demand under subdivision (a)(3) or (4) of this section before receipt by the mutual benefit enterprise of demands sufficient to require a special meeting of members.

(d) A special meeting of members may be held inside or outside this state at the place stated in the organic rules or selected by the board of directors not inconsistent with the organic rules.

(e) Unless the organic rules otherwise provide, members may attend or conduct a special meeting of members through the use of any means of communication if all members attending the meeting can communicate with each other during the meeting.

(f) Only business within the purpose or purposes stated in the notice of a special meeting of members may be conducted at the meeting.

(g) Unless the organic rules otherwise provide, the presiding officer of a special meeting of members shall be designated by the board of directors.

§ 508. NOTICE OF MEMBERS' MEETING

(a) A mutual benefit enterprise shall notify each member of the time, date, and place of a members' meeting at least 15 and not more than 60 days before the meeting.

(b) Unless the articles of organization otherwise provide, notice of an annual members' meeting need not include any purpose of the meeting.

(c) Notice of a special meeting of members shall include each purpose of the meeting as contained in the demand under subdivision 507(a)(3) or (4) of this title or as voted upon by the board of directors under subdivision 507(a)(2) of this title.

(d) Notice of a members' meeting shall be given in a record unless oral notice is reasonable under the circumstances.

§ 509. WAIVER OF MEMBERS' MEETING NOTICE

(a) A member may waive notice of a members' meeting before, during, or after the meeting.

(b) A member's participation in a members' meeting is a waiver of notice of that meeting unless the member objects to the meeting at the beginning of the meeting or promptly upon the member's arrival at the meeting and does not thereafter vote for or assent to action taken at the meeting.

§ 510. QUORUM OF MEMBERS

Unless the organic rules otherwise require a greater number of members or percentage of the voting power, the voting member or members present at a members' meeting constitute a quorum.

§ 511. VOTING BY PATRON MEMBERS

Except as provided by subsection 512(a) of this title, each patron member has one vote. The organic rules may allocate voting power among patron members as provided in subsection 512(a) of this title.

§ 512. DETERMINATION OF VOTING POWER OF PATRON MEMBER

(a) The organic rules may allocate voting power among patron members on the basis of one or a combination of the following:

(1) one member, one vote;

(2) use or patronage;

(3) equity; or

(4) if a patron member is a cooperative, the number of its patron members.

(b) The organic rules may provide for the allocation of patron member voting power by districts or class or any combination thereof.

§ 513. VOTING BY INVESTOR MEMBERS

If the organic rules provide for investor members, each investor member has one vote unless the organic rules otherwise provide. The organic rules may provide for the allocation of investor member voting power by class, classes, or any combination of classes.

§ 514. VOTING REQUIREMENTS FOR MEMBERS

If a mutual benefit enterprise has both patron and investor members, the following rules apply:

(1) the total voting power of all patron members may not be less than a majority of the entire voting power entitled to vote.

(2) action on any matter is approved only upon the affirmative vote of at least a majority of:

(A) all members voting at the meeting unless more than a majority is required by Articles 4, 12, 15, and 16 of this title or the organic rules; and

(B) votes cast by patron members unless the organic rules require a larger affirmative vote by patron members.

(3) The organic rules may provide for the percentage of the affirmative votes that shall be cast by investor members to approve the matter.

§ 515. MANNER OF VOTING

(a) Unless the organic rules otherwise provide, voting by a proxy at a members' meeting is prohibited. This subsection does not prohibit delegate voting based on district or class.

(b) If voting by a proxy is permitted, a patron member may appoint only another patron member as a proxy and, if investor members are permitted, an investor member may appoint only another investor member as a proxy.

(c) The organic rules may provide for the manner of and provisions governing the appointment of a proxy.

(d) The organic rules may provide for voting on any question by ballot delivered by mail or voting by other means on questions that are subject to vote by members.

§ 516. ACTION WITHOUT A MEETING

(a) Unless the organic rules require that action be taken only at a members' meeting, any action that may be taken by the members may be taken without a meeting if each member entitled to vote on the action consents in a record to the action.

(b) Consent under subsection (a) of this section may be withdrawn by a member in a record at any time before the mutual benefit enterprise receives a consent from each member entitled to vote.

(c) Consent to any action may specify the effective date or time of the action.

§ 517. DISTRICTS AND DELEGATES; CLASSES OF MEMBERS

(a) The organic rules may provide for the formation of geographic districts of patron members and:

(1) for the conduct of patron member meetings by district and the election of directors at the meetings; or

(2) that districts may elect district delegates to represent and vote for the districts at members' meetings.

(b) A delegate elected under subdivision (a)(2) of this section has one vote unless voting power is otherwise allocated by the organic rules.

(c) The organic rules may provide for the establishment of classes of members, for the preferences, rights, and limitations of the classes, and:

(1) for the conduct of members' meetings by classes and the election of directors at the meetings; or

(2) that classes may elect class delegates to represent and vote for the classes in members' meetings.

(d) A delegate elected under subdivision (c)(2) of this section has one vote unless voting power is otherwise allocated by the organic rules.

Article 6. Member's Interest in Mutual benefit enterprise

§ 601. MEMBER'S INTEREST

A member's interest:

(1) is personal property;

(2) consists of:

(A) governance rights;

(B) financial rights; and

(C) the right or obligation, if any, to do business with the mutual benefit enterprise; and

(3) may be in certificated or uncertificated form.

§ 602. PATRON AND INVESTOR MEMBERS' INTERESTS

(a) Unless the organic rules establish investor members' interests, a member's interest is a patron member's interest.

(b) Unless the organic rules otherwise provide, if a mutual benefit enterprise has investor members, while a person is a member of the enterprise, the person:

(1) if admitted as a patron member, remains a patron member;

(2) if admitted as an investor member, remains an investor member; and

(3) if admitted as a patron member and an investor member remains a patron and an investor member if not dissociated in one of the capacities.

§ 603. TRANSFERABILITY OF MEMBER'S INTEREST

(a) The provisions relating to the transferability of a member's interest are subject to Title 9A.

(b) Unless the organic rules otherwise provide, a member's interest other than financial rights is not transferable.

(c) Unless a transfer is restricted or prohibited by the organic rules, a member may transfer its financial rights in the mutual benefit enterprise.

(d) The terms of any restriction on transferability of financial rights shall be:

(1) set forth in the organic rules and the member records of the enterprise; and

(2) conspicuously noted on any certificates evidencing a member's interest.

(e) A transferee of a member's financial rights, to the extent the rights are transferred, has the right to share in the allocation of profits or losses and to receive the distributions to the member transferring the interest to the same extent as the transferring member.

(f) A transferee of a member's financial rights does not become a member upon transfer of the rights unless the transferee is admitted as a member by the mutual benefit enterprise.

(g) A mutual benefit enterprise need not give effect to a transfer under this section until the enterprise has notice of the transfer.

(h) A transfer of a member's financial rights in violation of a restriction on transfer contained in the organic rules is ineffective as to a person having notice of the restriction at the time of transfer.

§ 604. SECURITY INTEREST AND SET-OFF

(a) A member or transferee may create an enforceable security interest in its financial rights in a mutual benefit enterprise.

(b) Unless the organic rules otherwise provide, a member may not create an enforceable security interest in the member's governance rights in a mutual benefit enterprise.

(c) The organic rules may provide that a mutual benefit enterprise has a security interest in the financial rights of a member to secure payment of any

indebtedness or other obligation of the member to the enterprise. A security interest provided for in the organic rules is enforceable under and governed by Article 9 of Title 9A.

(d) Unless the organic rules otherwise provide, a member may not compel the mutual benefit enterprise to offset financial rights against any indebtedness or obligation owed to the enterprise.

§ 605. CHARGING ORDERS FOR JUDGMENT CREDITOR OF MEMBER OR TRANSFEREE

(a) On application by a judgment creditor of a member or transferee, a court may enter a charging order against the financial rights of the judgment debtor for the unsatisfied amount of the judgment. A charging order issued under this subsection constitutes a lien on the judgment debtor's financial rights and requires the mutual benefit enterprise to pay over to the creditor or receiver to the extent necessary to satisfy the judgment any distribution that would otherwise be paid to the judgment debtor.

(b) To the extent necessary to effectuate the collection of distributions pursuant to a charging order under subsection (a) of this section, the court may:

(1) appoint a receiver of the share of the distributions due or to become due to the judgment debtor under the judgment debtor's financial rights, with the power to make all inquiries the judgment debtor might have made; and

(2) make all other orders that the circumstances of the case may require to give effect to the charging order.

(c) Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the financial rights. The purchaser at the foreclosure sale obtains only the financial rights that are subject to the charging order, does not thereby become a member, and is subject to section 603 of this title.

(d) At any time before a sale pursuant to a foreclosure, a member or transferee whose financial rights are subject to a charging order under subsection (a) of this section may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

(e) At any time before sale pursuant to a foreclosure, the mutual benefit enterprise or one or more members whose financial rights are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and succeed to the rights of the judgment creditor, including the charging order. Unless the organic rules otherwise provide, the enterprise may act under this subsection only with the consent of all members whose financial

rights are not subject to the charging order.

(f) This title does not deprive any member or transferee of the benefit of any exemption laws applicable to the member's or transferee's financial rights.

(g) This section provides the exclusive remedy by which a judgment creditor of a member or transferee may satisfy the judgment from the member's or transferee's financial rights.

Article 7. Marketing Contracts

§ 701. AUTHORITY

In this article, "marketing contract" means a contract between a mutual benefit enterprise and another person who need not be a patron member:

(1) requiring the other person to sell or to deliver for sale or marketing on the person's behalf a specified part of the person's products, commodities, or goods exclusively to or through the enterprise or any facilities furnished by the enterprise; or

(2) authorizing the enterprise to act for the person in any manner with respect to the products, commodities, or goods.

§ 702. MARKETING CONTRACTS

(a) If a marketing contract provides for the sale of products, commodities, or goods to a mutual benefit enterprise, the sale transfers title to the enterprise upon delivery or at any other specific time expressly provided by the contract.

(b) A marketing contract may:

(1) authorize a mutual benefit enterprise to create an enforceable security interest in the products, commodities, or goods delivered; and

(2) allow the enterprise to sell the products, commodities, or goods delivered and pay the sales price on a pooled or other basis after deducting selling costs, processing costs, overhead, expenses, and other charges.

(c) Some or all of the provisions of a marketing contract between a patron member and a mutual benefit enterprise may be contained in the organic rules.

§ 703. DURATION OF MARKETING CONTRACT

The initial duration of a marketing contract may not exceed 10 years, but the contract may be self-renewing for additional periods not exceeding five years each. Unless the contract provides for another manner or time for termination, either party may terminate the contract by giving notice in a record at least 90 days before the end of the current term.

§ 704. REMEDIES FOR BREACH OF CONTRACT

(a) Damages to be paid to a mutual benefit enterprise for breach or anticipatory repudiation of a marketing contract may be liquidated, but only at an amount or under a formula that is reasonable in light of the actual or anticipated harm caused by the breach or repudiation. A provision that so provides is not a penalty.

(b) Upon a breach of a marketing contract, whether by anticipatory repudiation or otherwise, a mutual benefit enterprise may seek:

(1) an injunction to prevent further breach; and

(2) specific performance.

(c) The remedies in this section are in addition to any other remedies available to an enterprise under law other than this title.

Article 8. Directors and Officers

§ 801. BOARD OF DIRECTORS

(a) A mutual benefit enterprise shall have a board of directors of at least three individuals unless the enterprise has fewer than three members. If the enterprise has fewer than three members, the number of directors may not be fewer than the number of members.

(b) The affairs of a mutual benefit enterprise shall be managed by or under the direction of the board of directors. The board may adopt policies and procedures that do not conflict with the organic rules or this title.

(c) An individual is not an agent for a mutual benefit enterprise solely by being a director.

§ 802. NO LIABILITY AS DIRECTOR FOR MUTUAL BENEFIT ENTERPRISE'S OBLIGATIONS

A debt, obligation, or other liability of a mutual benefit enterprise is solely that of the enterprise and is not a debt, obligation, or liability of a director solely by reason of being a director. An individual is not personally liable, directly or indirectly, for an obligation of an enterprise solely by reason of being a director.

§ 803. QUALIFICATIONS OF DIRECTORS

(a) Unless the organic rules otherwise provide, and subject to subsection (c) of this section, each director of a mutual benefit enterprise shall be an individual who is a member of the enterprise or an individual who is designated by a member that is not an individual for purposes of qualifying and serving as a director. Initial directors need not be members.

(b) Unless the organic rules otherwise provide, a director may be an officer or employee of the mutual benefit enterprise.

(c) If the organic rules provide for nonmember directors, the number of nonmember directors may not exceed:

(1) one if there are two through four directors;

(2) two if there are five through eight directors; or

(3) one-third of the total number of directors if there are at least nine directors.

(d) The organic rules may provide qualifications for directors in addition to those in this section.

§ 804. ELECTION OF DIRECTORS AND COMPOSITION OF BOARD

(a) Unless the organic rules require a greater number:

(1) the number of directors that shall be patron members may not be fewer than:

(A) one if there are two or three directors;

(B) two if there are four or five directors;

(C) three if there are six through eight directors; or

(D) one-third of the directors if there are at least nine directors; and

(2) a majority of the board of directors shall be elected exclusively by patron members.

(b) Unless the organic rules otherwise provide, if a mutual benefit enterprise has investor members, the directors who are not elected exclusively by patron members are elected by the investor members.

(c) Subject to subsection (a) of this section, the organic rules may provide for the election of all or a specified number of directors by one or more districts or classes of members.

(d) Subject to subsection (a) of this section, the organic rules may provide for the nomination or election of directors by districts or classes, directly or by district delegates.

(e) If a class of members consists of a single member, the organic rules may provide for the member to appoint a director or directors.

(f) Unless the organic rules otherwise provide, cumulative voting for directors is prohibited.

(g) Except as otherwise provided by the organic rules, subsection (e) of this section, or sections 303, 516, 517, and 809 of this title, member directors shall be elected at an annual members' meeting.

§ 805. TERM OF DIRECTOR

(a) Unless the organic rules otherwise provide and subject to subsections (c) and (d) of this section and subsection 303(c) of this title, the term of a director expires at the annual members' meeting following the director's election or appointment. The term of a director may not exceed three years.

(b) Unless the organic rules otherwise provide, a director may be reelected.

(c) Except as otherwise provided in subsection (d) of this section, a director continues to serve until a successor director is elected or appointed and qualifies or the director is removed, resigns, is adjudged incompetent, or dies.

(d) Unless the organic rules otherwise provide, a director does not serve the remainder of the director's term if the director ceases to qualify to be a director.

§ 806. RESIGNATION OF DIRECTOR

A director may resign at any time by giving notice in a record to the mutual benefit enterprise. Unless the notice states a later effective date, a resignation is effective when the notice is received by the enterprise.

§ 807. REMOVAL OF DIRECTOR

Unless the organic rules otherwise provide, the following rules apply:

(1) Members may remove a director with or without cause.

(2) A member or members holding at least 10 percent of the total voting power entitled to be voted in the election of a director may demand removal of the director by one or more signed petitions submitted to the officer of the mutual benefit enterprise charged with keeping its records.

(3) Upon receipt of a petition for removal of a director, an officer of the enterprise or the board of directors shall:

(A) call a special meeting of members to be held not later than 90 days after receipt of the petition by the enterprise; and

(B) mail or otherwise transmit or deliver in a record to the members entitled to vote on the removal and to the director to be removed notice of the meeting which complies with section 508 of this title.

(4) A director is removed if the votes in favor of removal are equal to or greater than the votes required to elect the director at the time of the vote.

§ 808. SUSPENSION OF DIRECTOR BY BOARD

(a) A board of directors may suspend a director if, considering the director's course of conduct and the inadequacy of other available remedies, immediate suspension is necessary for the best interests of the enterprise and if the director is engaging or has engaged in:

(1) fraudulent conduct with respect to the enterprise or its members;

(2) gross abuse of the position of director;

(3) intentional or reckless infliction of harm on the enterprise; or

(4) any other behavior, act, or omission as provided by the organic rules.

(b)(1) A suspension under subsection (a) of this section is effective for 30 days unless the board of directors calls a special meeting of members for removal of the director before the end of the 30-day period, in which case the suspension is effective until adjournment of the meeting or the director is removed.

(2) Upon call of a special meeting of members for removal of the director, an officer of the enterprise or the board of directors shall mail or otherwise transmit or deliver in a record to the members entitled to vote on the removal and to the director to be removed notice of the meeting that complies with section 508 of this title.

(3) A director is removed if the votes in favor of removal are equal to or greater than the votes required to elect the director at the time of the vote.

§ 809. VACANCY ON BOARD

(a) Unless the organic rules otherwise provide, a vacancy on the board of directors shall be filled:

(1) notwithstanding subdivision 804(a)(2) and subsection 804(b) of this title, within a reasonable time by majority vote of the remaining directors until the next annual members' meeting or a special meeting of members called to fill the vacancy; and

(2) for the unexpired term by members at the next annual members' meeting or a special meeting of members called to fill the vacancy.

(b) Unless the organic rules otherwise provide, if a vacating director was elected or appointed by a class of members or a district:

(1) the new director shall be of that class or district; and

(2) the selection of the director for the unexpired term shall be conducted in the same manner as would the selection for that position without a vacancy.

(c) If a member appointed a vacating director, the organic rules may provide for that member to appoint a director to fill the vacancy.

§ 810. REMUNERATION OF DIRECTORS

Unless the organic rules otherwise provide, the board of directors may set the remuneration of directors and of nondirector committee members appointed under subsection 817(a) of this title.

§ 811. MEETINGS

(a) A board of directors shall meet at least annually and may hold meetings inside or outside this state.

(b) Unless the organic rules otherwise provide, a board of directors may permit directors to attend or conduct board meetings through the use of any means of communication if all directors attending the meeting can communicate with each other during the meeting.

§ 812. ACTION WITHOUT MEETING

(a) Unless prohibited by the organic rules, any action that may be taken by a board of directors may be taken without a meeting if each director consents in a record to the action.

(b) Consent under subsection (a) of this section may be withdrawn by a director in a record at any time before the mutual benefit enterprise receives consent from all directors.

(c) A record of consent for any action under subsection (a) of this section may specify the effective date or time of the action.

§ 813. MEETINGS AND NOTICE

(a) Unless the organic rules otherwise provide, a board of directors may establish a time, date, and place for regular board meetings, and notice of the time, date, place, or purpose of those meetings is not required.

(b) Unless the organic rules otherwise provide, notice of the time, date, and place of a special meeting of a board of directors shall be given to all directors at least three days before the meeting, the notice shall contain a statement of the purpose of the meeting, and the meeting is limited to the matters contained in the statement.

§ 814. WAIVER OF NOTICE OF MEETING

(a) Unless the organic rules otherwise provide, a director may waive any required notice of a meeting of the board of directors in a record before, during, or after the meeting.

(b) Unless the organic rules otherwise provide, a director's participation in a meeting is a waiver of notice of that meeting unless:

(1) the director objects to the meeting at the beginning of the meeting or promptly upon the director's arrival at the meeting and does not thereafter vote in favor of or otherwise assent to the action taken at the meeting; or

(2) the director promptly objects upon the introduction of any matter for which notice under section 813 of this title has not been given and does not thereafter vote in favor of or otherwise assent to the action taken on the matter.

§ 815. QUORUM

(a) Unless the articles of organization provide for a greater number, a majority of the total number of directors specified by the organic rules constitutes a quorum for a meeting of the directors.

(b) If a quorum of the board of directors is present at the beginning of a meeting, any action taken by the directors present is valid even if withdrawal of directors originally present results in the number of directors being fewer than the number required for a quorum.

(c) A director present at a meeting but objecting to notice under subdivision 814(b)(1) or (2) of this title does not count toward a quorum.

§ 816. VOTING

(a) Each director shall have one vote for purposes of decisions made by the board of directors.

(b) Unless the organic rules otherwise provide, the affirmative vote of a majority of directors present at a meeting is required for action by the board of directors.

§ 817. COMMITTEES

(a) Unless the organic rules otherwise provide, a board of directors may create one or more committees and appoint one or more individuals to serve on a committee.

(b) Unless the organic rules otherwise provide, an individual appointed to serve on a committee of a mutual benefit enterprise need not be a director or member.

(c) An individual who is not a director and is serving on a committee has the same rights, duties, and obligations as a director serving on the committee.

(d) Unless the organic rules otherwise provide, each committee of a mutual benefit enterprise may exercise the powers delegated to it by the board of directors, but a committee may not:

(1) approve allocations or distributions except according to a formula or method prescribed by the board of directors;

(2) approve or propose to members action requiring approval of members; or

(3) fill vacancies on the board of directors or any of its committees.

§ 818. STANDARDS OF CONDUCT AND LIABILITY

(a) A director shall discharge his or her duties as a director, including the director's duties as a member of a committee:

(1) in good faith;

(2) with the care that an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) in a manner the director reasonably believes to be in the best interests of the enterprise.

(b) In discharging his or her duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) one or more officers or employees of the enterprise whom the director reasonably believes to be reliable and competent in the matters presented;

(2) legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(3) a committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

(c) A director is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance permitted by subsection (b) of this section unwarranted.

(d) A director is not liable for any action taken as a director or any failure to take any action if the director performed the duties of his or her office in compliance with this section.

§ 819. DEFINITIONS

For purposes of this section and sections 819a through 819c:

(1) "Control," including the term "controlled by," means:

(A) having the power, directly or indirectly, to elect or remove a majority of the members of the board of directors or other governing body of an entity whether through the ownership of voting shares or interests, by contract, or otherwise; or

(B) being subject to a majority of the risk of loss from the entity's activities or entitled to receive a majority of the entity's residual returns.

(2) "Director's conflicting interest transaction" means a transaction effected or proposed to be effected by the enterprise or by an entity controlled by the enterprise that at the relevant time the director:

(A) was a party to; or

(B) had knowledge of and a material financial interest known to the director; or

(C) knew that a related person was a party or had a material financial interest.

(3) "Fair to the enterprise" means, for purposes of subdivision 819a(b)(3) of this title, that the transaction as a whole was beneficial to the enterprise, taking into appropriate account whether it was:

(A) fair in terms of the director's dealings with the enterprise; and

(B) comparable to what might have been obtainable in an arm's length transaction, given the consideration paid or received by the enterprise.

(4) "Material financial interest" means a financial interest in a transaction that would reasonably be expected to impair the objectivity of the director's judgment when participating in action on the authorization of the transaction.

(5) "Related person" means:

(A) the director's spouse;

(B) a child, stepchild, grandchild, parent, stepparent, grandparent, sibling, step-sibling, half-sibling, aunt, uncle, niece, or nephew (or spouse of any thereof) of the director or of the director's spouse;

(C) an individual living in the same home as the director;

(D) an entity, other than the enterprise or an entity controlled by the enterprise, controlled by the director or any person specified in this subdivision (5);

(E) a domestic or foreign:

(i) business corporation, nonprofit corporation, or mutual benefit enterprise (other than the enterprise or an entity controlled by the enterprise) of which the director is a director;

(ii) unincorporated entity of which the director is a general partner or a member of the governing body; or

(iii) individual, trust, or estate for whom or of which the director is a trustee, guardian, personal representative, or like fiduciary; or

(F) a person who is or an entity that is controlled by an employer of the director.

(6) "Relevant time" means:

(A) the time at which the directors' action respecting the transaction is taken in compliance with section 819b of this title; or

(B) if the transaction is not brought before the board of directors of the enterprise or its committee for action under section 819b of this title, at the time the enterprise or an entity controlled by the enterprise becomes legally obligated to consummate the transaction.

(7) "Required disclosure" means disclosure of:

(A) the existence and nature of the director's conflicting interest; and

(B) all facts known to the director respecting the subject matter of the transaction that a director free of such conflicting interest would reasonably believe to be material in deciding whether to proceed with the transaction.

§ 819a. JUDICIAL ACTION

(a) A transaction effected or proposed to be effected by the enterprise, or by an entity controlled by the enterprise may not be the subject of equitable relief or give rise to an award of damages or other sanctions against a director of the enterprise in a proceeding by a member or by or in the right of the enterprise on the ground that the director has an interest respecting the transaction, if it is not a director's conflicting interest transaction.

(b) A director's conflicting interest transaction may not be the subject of equitable relief or give rise to an award of damages or other sanctions against a director of the enterprise in a proceeding by a member or by or in the right of

the enterprise on the ground that the director has an interest respecting the transaction if:

(1) the directors' action respecting the transaction was taken in compliance with section 819b of this title at any time; or

(2) the members' action respecting the transaction was taken in compliance with section 819c of this title at any time; or

(3) the transaction, judged according to the circumstances at the relevant time, is established to have been fair to the enterprise.

§ 819b. DIRECTORS' ACTION

(a) Directors' action respecting a director's conflicting interest transaction is effective for purposes of subdivision 819a(b)(1) of this title if the transaction has been authorized by the affirmative vote of a majority but no fewer than two of the qualified directors who voted on the transaction after required disclosure by the conflicted director of information not already known by such qualified directors or after modified disclosure in compliance with subsection (b) of this section, provided that:

(1) the qualified directors have deliberated and voted outside the presence of and without the participation of any other director; and

(2) where the action has been taken by a committee, all members of the committee were qualified directors and either:

(A) the committee was composed of all the qualified directors on the board of directors; or

(B) the members of the committee were appointed by the affirmative vote of a majority of the qualified directors on the board.

(b) Notwithstanding subsection (a) of this section, when a transaction is a director's conflicting interest transaction only because a related person described in subdivisions 819(5)(E) and (F) of this title is a party to or has a material financial interest in the transaction, the conflicted director is not obligated to make required disclosure to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule, provided that the conflicted director discloses to the qualified directors voting on the transaction:

(1) all information required to be disclosed that is not so violative;

(2) the existence and nature of the director's conflicting interest; and

(3) the nature of the conflicted director's duty not to disclose the confidential information.

(c) A majority but no fewer than two of all the qualified directors on the board of directors or on the committee constitutes a quorum for purposes of action that complies with this section.

(d) Where directors' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of organization, the bylaws, or a provision of law, independent action to satisfy those authorization requirements shall be taken by the board of directors or a committee, in which action directors who are not qualified directors may participate.

§ 819c. MEMBERS' ACTION

(a) Members' action respecting a director's conflicting interest transaction is effective for purposes of subdivision 819a(b)(2) of this title if a majority of the votes cast by the holders of all of the voting power of the members is in favor of the transaction after:

(1) notice to members describing the action to be taken respecting the transaction;

(2) provision to the enterprise of the information referred to in subsection (b) of this section; and

(3) communication of the information that is the subject of required disclosure to the members entitled to vote on the transaction, to the extent the information is not known by them.

(b) A director who has a conflicting interest respecting the transaction shall, before the members' vote, inform the secretary or other officer or agent of the enterprise authorized to tabulate votes, in writing, of the voting power that the director knows is not qualified voting power under subsection (c) of this section and the identity of the holders of that power.

(c) For purposes of this section, "qualified voting power" means the power entitled to be voted with respect to the transaction except for the voting power that the secretary or other officer or agent of the enterprise authorized to tabulate votes either knows, or under subsection (b) of this section is notified, is held by:

(1) a director who has a conflicting interest respecting the transaction; or

(2) a person related to the director, excluding a person described in subdivision 819(5)(F) of this title.

(d) A majority of the votes entitled to be cast by the holders of all qualified voting power constitutes a quorum for purposes of compliance with this section. Subject to the provisions of subsection (e) of this section, members' action that otherwise complies with this section is not affected by the presence of holders of voting power that is not qualified voting power.

(e) If a members' vote does not comply with subsection (a) of this section solely because of a director's failure to comply with subsection (b) of this section and if the director establishes that the failure was not intended to influence and did not in fact determine the outcome of the vote, the court may take such action respecting the transaction and the director and may give such effect, if any, to the members' vote as the court considers appropriate in the circumstances.

(f) Where members' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of organization, the bylaws, or a provision of law, independent action to satisfy those authorization requirements shall be taken by the members, in which action voting power that is not qualified voting power may participate.

§ 820. OTHER CONSIDERATIONS OF DIRECTORS

In determining what the director reasonably believes to be in the best interests of the enterprise, a director may consider:

(1) the interests of the enterprise's employees, suppliers, creditors and customers;

(2) the economy of the state, region, and nation and community and societal considerations, including those of any community in which any offices or facilities of the enterprise are located; and

(3) any other factors the director in his or her discretion reasonably considers appropriate in determining what he or she reasonably believes to be in the best interests of the enterprise and the long-term and short-term interests of the enterprise and its members, including the possibility that these interests may be best served by the continued independence of the enterprise.

§ 821. RIGHT OF DIRECTOR OR COMMITTEE MEMBER TO INFORMATION

A director or a member of a committee appointed under section 817 of this title may obtain, inspect, and copy all information regarding the state of activities and financial condition of the mutual benefit enterprise and other information regarding the activities of the enterprise if the information is reasonably related to the performance of the director's duties as director or the

committee member's duties as a member of the committee. Information obtained in accordance with this section may not be used in any manner that would violate any duty of or to the enterprise.

§ 822. APPOINTMENT AND AUTHORITY OF OFFICERS

(a) A mutual benefit enterprise has the officers:

(1) provided in the organic rules; or

(2) established by the board of directors in a manner not inconsistent with the organic rules.

(b) The organic rules may designate or, if the rules do not designate, the board of directors shall designate one of the enterprise's officers for preparing all records required by section 114 of this title and for the authentication of records.

(c) Unless the organic rules otherwise provide, the board of directors shall appoint the officers of the mutual benefit enterprise.

(d) Officers of a mutual benefit enterprise shall perform the duties the organic rules prescribe or as authorized by the board of directors not in a manner inconsistent with the organic rules.

(e) The election or appointment of an officer of a mutual benefit enterprise does not of itself create a contract between the enterprise and the officer.

(f) Unless the organic rules otherwise provide, an individual may simultaneously hold more than one office in a mutual benefit enterprise.

§ 823. RESIGNATION AND REMOVAL OF OFFICERS

(a) The board of directors may remove an officer at any time with or without cause.

(b) An officer of a mutual benefit enterprise may resign at any time by giving notice in a record to the enterprise. Unless the notice specifies a later time, the resignation is effective when the notice is given.

Article 9. Indemnification

§ 901. ARTICLE DEFINITIONS

In this article:

(1) "Enterprise" includes any enterprise or foreign predecessor entity of an enterprise in a merger or other transaction in which the predecessor's existence ceased upon the consummation of the transaction.

(2) "Director" means an individual who is or was a director of an enterprise or an individual who, while a director of an enterprise, is or was serving at the enterprise's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic enterprise, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the enterprise's request if the director's duties to the enterprise also impose duties on or otherwise involve services by the director to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context requires otherwise, the estate or personal representative of a director.

(3) "Expenses" means the reasonable costs incurred in connection with a proceeding, including reasonable attorney's fees.

(4) "Liability" means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with respect to a proceeding.

(5) "Official capacity" means:

(A) when used with respect to a director, the office of director in an enterprise; and

(B) when used with respect to an individual other than a director, as contemplated in section 907 of this title, the office in an enterprise held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the enterprise. "Official capacity" does not include service for any other foreign or domestic corporation or any enterprise or any partnership, joint venture, trust employee benefit plan, or other enterprise.

(6) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

(8) "Special legal counsel" means counsel that has never been an employee of the enterprise and who has not and whose firm has not performed legal services for the enterprise pertaining to the matter for which indemnification is sought for a period of at least two years before retention as special counsel.

§ 902. AUTHORITY TO INDEMNIFY

(a) Except as provided in subsection (d) of this section, an enterprise may indemnify an individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if:

(1) the director conducted himself or herself in good faith; and

(2) the director reasonably believed:

(A) in the case of conduct in the director's official capacity with the enterprise, that the director's conduct was in its best interests; and

(B) in all other cases, that the director's conduct was at least not opposed to its best interests; and

(3) in the case of any proceeding brought by a governmental entity, the director had no reasonable cause to believe his or her conduct was unlawful, and the director is not finally found to have engaged in a reckless or intentional unlawful act.

(b) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subdivision (a)(2)(B) of this section.

(c) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

(d) An enterprise may not indemnify a director under this section:

(1) in connection with a proceeding by or in the right of the enterprise in which the director was adjudged liable to the enterprise; or

(2) in connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in the director's official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

(e) Indemnification permitted under this section in connection with a proceeding by or in the right of the enterprise is limited to reasonable expenses incurred in connection with the proceeding.

§ 903. MANDATORY INDEMNIFICATION

Unless limited by its articles of organization, an enterprise shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director is or was a director of the enterprise against reasonable expenses incurred by the director in connection with the proceeding.

§ 904. ADVANCE FOR EXPENSES

(a) An enterprise may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(1) the director furnishes the enterprise a written affirmation of his or her good faith belief that the director has met the standard of conduct described in section 902 of this title;

(2) the director furnishes the enterprise a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct; and

(3) a determination is made that the facts then known to those making the determination would not preclude indemnification under this article.

(b) The undertaking required by subdivision (a)(2) of this section shall be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(c) Determinations and authorizations of payments under this section shall be made in the manner specified in section 906 of this title.

§ 905. COURT-ORDERED INDEMNIFICATION

A director of the enterprise who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice the court considers necessary may order indemnification if it determines:

(1) the director is entitled to mandatory indemnification under section 903 of this title, in which case the court shall also order the enterprise to pay the director's reasonable expenses incurred to obtain court-ordered indemnification; or

(2) the director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in section 902 of this title or was adjudged liable as described in subsection 902(d), but if the director was adjudged so liable the director's indemnification is limited to reasonable expenses incurred.

§ 906. DETERMINATION AND AUTHORIZATION OF INDEMNIFICATION

(a) Except as provided in section 904 of this title, an enterprise may not indemnify a director under section 902 of this title prior to the final resolution of a proceeding, whether by judgment, order, settlement, conviction, plea, or otherwise and unless authorized in the specific case after a determination has

been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in section 902.

(b) The determination required by subsection (a) of this section, in accordance with the terms of section 902 of this title, shall be made:

(1) by the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(2) if a quorum cannot be obtained under subdivision (1) of this subsection, by majority vote of a committee duly designated by the board of directors (in which designation directors who are parties may participate), consisting solely of two or more directors not at the time parties to the proceeding;

(3) by written opinion of special legal counsel:

(A) selected by the board of directors or its committee in the manner prescribed in subdivision (1) or (2) of this subsection; or

(B) if a quorum of the board of directors cannot be obtained under subdivision (1) and a committee cannot be designated under subdivision (2) of this subsection, selected by majority vote of the full board of directors (in which selection directors who are parties may participate); or

(4) by the members, but voting power exercised by or under the control of directors who are at the time parties to the proceeding may not be voted on the determination.

(c) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subdivision (b)(3) of this section to select counsel.

§ 907. INDEMNIFICATION OF OFFICERS, EMPLOYEES, AND AGENTS

Unless an enterprise's articles of organization limit indemnification of an officer, employee, or agent of the enterprise:

(1) an officer of the enterprise who is not a director is entitled to mandatory indemnification under section 903 of this title and is entitled to apply for court-ordered indemnification under section 905 of this title, in each case to the same extent as a director;

(2) the enterprise may indemnify and advance expenses under this article to an officer, employee, or agent of the enterprise who is not a director to the same extent as a director.

§ 908. INSURANCE

An enterprise may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the enterprise or who, while a director, officer, employee, or agent of the enterprise, is or was serving at the request of the enterprise as a director, officer, partner, trustee, employee, or agent of another foreign or domestic enterprise, partnership, joint venture, trust, employee benefit plan, or other enterprise against liability asserted against or incurred by him or her in that capacity or arising from his or her status as a director, officer, employee, or agent, whether or not the enterprise would have power to indemnify him or her against the same liability under section 902 or 903 of this title.

§ 909. APPLICATION OF ARTICLE

(a) A provision treating an enterprise's indemnification of or advance for expenses to directors that is contained in its articles of organization, bylaws, a resolution of its members or board of directors, or in a contract or otherwise is valid only if and to the extent the provision is consistent with this article. If articles of organization limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles.

(b) This article does not limit an enterprise's power to pay or reimburse expenses incurred by a director in connection with the director's appearance as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to the proceeding.

Article 10. Contributions, Allocations, and Distributions

§ 1001. MEMBERS' CONTRIBUTIONS

The organic rules shall establish the amount, manner, or method of determining any contribution requirements for members or shall authorize the board of directors to establish the amount, manner, or other method of determining any contribution requirements for members.

§ 1002. CONTRIBUTION AND VALUATION

(a) Unless the organic rules otherwise provide, the contributions of a member to a mutual benefit enterprise may consist of tangible or intangible property or other benefit to the enterprise, including money, labor, or other services performed or to be performed, promissory notes, other agreements to contribute money or property, and contracts to be performed.

(b) The receipt and acceptance of contributions and the valuation of contributions shall be reflected in a mutual benefit enterprise's records.

(c) Unless the organic rules otherwise provide, the board of directors shall determine the value of a member's contributions received or to be received, and the determination by the board of directors of valuation is conclusive for purposes of determining whether the member's contribution obligation has been met.

§ 1003. CONTRIBUTION AGREEMENTS

(a) Except as otherwise provided in the agreement, the following rules apply to an agreement made by a person before formation of a mutual benefit enterprise to make a contribution to the enterprise:

(1) The agreement is irrevocable for six months after the agreement is signed by the person unless all parties to the agreement consent to the revocation.

(2) If a person does not make a required contribution:

(A) the person is obligated, at the option of the enterprise, once formed, to contribute money equal to the value of that part of the contribution that has not been made, and the obligation may be enforced as a debt to the enterprise; or

(B) the enterprise, once formed, may rescind the agreement if the debt remains unpaid more than 20 days after the enterprise demands payment from the person and, upon rescission, the person has no further rights or obligations with respect to the enterprise.

(b) Unless the organic rules or an agreement to make a contribution to a mutual benefit enterprise otherwise provide, if a person does not make a required contribution to an enterprise, the person or the person's estate is obligated, at the option of the enterprise, to contribute money equal to the value of the part of the contribution which has not been made.

§ 1004. ALLOCATIONS OF PROFITS AND LOSSES

(a) The organic rules may provide for allocating profits of a mutual benefit enterprise among members, among persons that are not members but conduct business with the enterprise, to an unallocated account, or to any combination thereof. Unless the organic rules otherwise provide, losses of the enterprise shall be allocated in the same proportion as profits.

(b) Unless the organic rules otherwise provide, all profits and losses of a mutual benefit enterprise shall be allocated to patron members.

(c) If a mutual benefit enterprise has investor members, the organic rules may not reduce the allocation to patron members to less than 50 percent of profits. For purposes of this subsection, the following rules apply:

(1) amounts paid or due on contracts for the delivery to the enterprise by patron members of products, goods, or services are not considered amounts allocated to patron members.

(2) amounts paid, due, or allocated to investor members as a stated fixed return on equity are not considered amounts allocated to investor members.

(d) Unless prohibited by the organic rules, in determining the profits for allocation under subsections (a), (b), and (c) of this section, the board of directors may first deduct and set aside a part of the profits to create or accumulate:

(1) an unallocated capital reserve; and

(2) reasonable unallocated reserves for specific purposes, including expansion and replacement of capital assets; education, training, cooperative development; creation and distribution of information concerning principles of cooperation; and community responsibility.

(e) Subject to subsections (b) and (f) of this section and the organic rules, the board of directors shall allocate the amount remaining after any deduction or setting aside of profits for unallocated reserves under subsection (d) of this section:

(1) to patron members in the ratio of each member's patronage to the total patronage of all patron members during the period for which allocations are to be made; and

(2) to investor members, if any, in the ratio of each investor member's contributions to the total contributions of all investor members.

(f) For purposes of allocation of profits and losses or specific items of profits or losses of a mutual benefit enterprise to members, the organic rules may establish allocation units or methods based on separate classes of members or, for patron members, on class, function, division, district, department, allocation units, pooling arrangements, members' contributions, or other equitable methods.

§ 1005. DISTRIBUTIONS

(a) Unless the organic rules otherwise provide and subject to section 1007 of this title, the board of directors may authorize, and the mutual benefit enterprise may make, distributions to members.

(b) Unless the organic rules otherwise provide, distributions to members may be made in any form, including money, capital credits, allocated patronage equities, revolving fund certificates, and the mutual benefit enterprise's own or other securities.

§ 1006. REDEMPTION OR REPURCHASE

Property distributed to a member by a mutual benefit enterprise, other than money, may be redeemed or repurchased as provided in the organic rules but a redemption or repurchase may not be made without authorization by the board of directors. The board may withhold authorization for any reason in its sole discretion. A redemption or repurchase is treated as a distribution for purposes of section 1007 of this title.

§ 1007. LIMITATIONS ON DISTRIBUTIONS

(a) A mutual benefit enterprise may not make a distribution if, after the distribution:

(1) the enterprise would not be able to pay its debts as they become due in the ordinary course of the enterprise's activities; or

(2) the enterprise's assets would be less than the sum of its total liabilities.

(b) A mutual benefit enterprise may base a determination that a distribution is not prohibited under subsection (a) of this section on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(c) Except as otherwise provided in subsection (d) of this section, the effect of a distribution allowed under subsection (b) of this section is measured:

(1) in the case of distribution by purchase, redemption, or other acquisition of financial rights in the mutual benefit enterprise, as of the date money or other property is transferred or debt is incurred by the enterprise; and

(2) in all other cases, as of the date:

(A) the distribution is authorized, if the payment occurs not later than 120 days after that date; or

(B) the payment is made, if payment occurs more than 120 days after the distribution is authorized.

(d) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

(e) For purposes of this section, "distribution" does not include reasonable amounts paid to a member in the ordinary course of business as payment or compensation for commodities, goods, past or present services, or reasonable payments made in the ordinary course of business under a bona fide retirement or other benefits program.

§ 1008. LIABILITY FOR IMPROPER DISTRIBUTIONS; LIMITATION OF ACTION

(a) A director who consents to a distribution that violates section 1007 of this title is personally liable to the mutual benefit enterprise for the amount of the distribution which exceeds the amount that could have been distributed without the violation if it is established that in consenting to the distribution the director failed to comply with sections 818-819c of this title.

(b) A member or transferee of financial rights which received a distribution knowing that the distribution was made in violation of section 1007 of this title is personally liable to the mutual benefit enterprise to the extent the distribution exceeded the amount that should have been properly paid.

(c) A director against whom an action is commenced under subsection (a) of this section may:

(1) implead in the action any other director who is liable under subsection (a) of this section and compel contribution from the person; and

(2) implead in the action any person that is liable under subsection (b) of this section and compel contribution from the person in the amount the person received as described in subsection (b) of this section.

(d) An action under this section is barred if it is commenced later than two years after the distribution.

Article 11. Dissociation

§ 1101. MEMBER'S DISSOCIATION

(a) A person has the power to dissociate as a member at any time, rightfully or wrongfully, by express will.

(b) Unless the organic rules otherwise provide, a member's dissociation from a mutual benefit enterprise is wrongful only if the dissociation:

(1) breaches an express provision of the organic rules; or

(2) occurs before the termination of the mutual benefit enterprise and:

(A) the person is expelled as a member under subdivision (d)(3) or (4) of this section; or

(B) in the case of a person that is not an individual, trust other than a business trust, or estate, the person is expelled or otherwise dissociated as a member because it dissolved or terminated in bad faith.

(c) Unless the organic rules otherwise provide, a person that wrongfully dissociates as a member is liable to the mutual benefit enterprise for damages caused by the dissociation. The liability is in addition to any other debt, obligation, or liability of the person to the enterprise.

(d) A member is dissociated from the mutual benefit enterprise as a member when:

(1) the enterprise receives notice in a record of the member's express will to dissociate as a member or, if the member specifies in the notice an effective date later than the date the enterprise received notice, on that later date;

(2) an event stated in the organic rules as causing the member's dissociation as a member occurs;

(3) the member is expelled as a member under the organic rules;

(4) the member is expelled as a member by the board of directors because:

(A) it is unlawful to carry on the enterprise's activities with the member as a member;

(B) there has been a transfer of all the member's financial rights in the enterprise, other than:

(i) a creation or perfection of a security interest; or

(ii) a charging order in effect under section 605 of this title which has not been foreclosed;

(C) the member is a limited liability company, association, or partnership which has been dissolved, and its business is being wound up; or

(D) the member is a corporation, cooperative, or mutual benefit enterprise and:

(i) the member filed a certificate of dissolution or the equivalent, or the jurisdiction of formation revoked the enterprise's charter or right to conduct business;

(ii) the enterprise sends a notice to the member that it will be expelled as a member for a reason described in subdivision (i) of this subdivision (4)(D); and

(iii) not later than 90 days after the notice was sent under subdivision (ii) of this subdivision (4)(D), the member did not revoke its certificate of dissolution or the equivalent, or the jurisdiction of formation did not reinstate the enterprise's charter or right to conduct business; or

(E) the member is an individual and is adjudged incompetent;

(5) in the case of a member who is an individual, the individual dies;

(6) in the case of a member that is a trust or is acting as a member by virtue of being a trustee of a trust, all the trust's financial rights in the enterprise are distributed;

(7) in the case of a member that is an estate, the estate's entire financial interest in the enterprise is distributed;

(8) in the case of a member that is not an individual, partnership, limited liability company, cooperative, corporation, trust, or estate, the member is terminated; or

(9) the enterprise's participation in a merger if, under the plan of merger as approved under Article 16 of this title, the member ceases to be a member.

§ 1102. EFFECT OF DISSOCIATION AS MEMBER

(a) Upon a member's dissociation:

(1) subject to section 1103 of this title, the person has no further rights as a member; and

(2) subject to section 1103 of this title and Article 16 of this title, any financial rights owned by the person in the person's capacity as a member immediately before dissociation are owned by the person as a transferee.

(b) A person's dissociation as a member does not of itself discharge the person from any debt, obligation, or liability to the mutual benefit enterprise which the person incurred under the organic rules, by contract, or by other means while a member.

§ 1103. POWER OF ESTATE OF MEMBER

Unless the organic rules provide for greater rights, if a member is dissociated because of death or is expelled by reason of being adjudged incompetent, the member's personal representative or other legal representative may exercise the rights of a transferee of the member's financial rights and, for purposes of settling the estate of a deceased member, may exercise the informational rights of a current member to obtain information under section 505 of this title.

Article 12. Dissolution

§ 1201. DISSOLUTION AND WINDING UP

A mutual benefit enterprise is dissolved only as provided in this article and upon dissolution winds up in accordance with this article.

§ 1202. NONJUDICIAL DISSOLUTION

Except as otherwise provided in sections 1203 and 1211 of this title, a mutual benefit enterprise is dissolved and its activities shall be wound up:

(1) upon the occurrence of an event or at a time specified in the articles of organization;

(2) upon the action of the enterprise's organizers, board of directors, or members under section 1204 or 1205 of this title; or

(3) 90 days after the dissociation of a member, which results in the enterprise having one patron member and no other members, unless the enterprise:

(A) has a sole member that is a cooperative; or

(B) not later than the end of the 90-day period, admits at least one member in accordance with the organic rules and has at least two members, at least one of which is a patron member.

§ 1203. JUDICIAL DISSOLUTION

The superior court may dissolve a mutual benefit enterprise or order any action that under the circumstances is appropriate and equitable:

(1) in a proceeding initiated by the attorney general, if:

(A) the enterprise obtained its articles of organization through fraud; or

(B) the enterprise has continued to exceed or abuse the authority conferred upon it by law; or

(2) in a proceeding initiated by a member, if:

(A) the directors are deadlocked in the management of the enterprise's affairs, the members are unable to break the deadlock, and irreparable injury to the enterprise is occurring or is threatened because of the deadlock;

(B) the directors or those in control of the enterprise have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(C) the members are deadlocked in voting power and have failed to elect successors to directors whose terms have expired for two consecutive

periods during which annual members' meetings were held or were to be held; or

(D) the assets of the enterprise are being misapplied or wasted.

§ 1204. VOLUNTARY DISSOLUTION BEFORE COMMENCEMENT OF ACTIVITY

A majority of the organizers or initial directors of a mutual benefit enterprise that has not yet begun business activity or the conduct of its affairs may dissolve the enterprise.

§ 1205. VOLUNTARY DISSOLUTION BY THE BOARD AND MEMBERS

(a) Except as otherwise provided in section 1204 of this title, for a mutual benefit enterprise to voluntarily dissolve:

(1) a resolution to dissolve shall be approved by a majority vote of the board of directors unless a greater percentage is required by the organic rules;

(2) the board of directors shall call a members' meeting to consider the resolution, to be held not later than 90 days after adoption of the resolution; and

(3) the board of directors shall mail or otherwise transmit or deliver to each member in a record that complies with section 508 of this title:

(A) the resolution required by subdivision (1) of this subsection;

(B) a recommendation that the members vote in favor of the resolution or, if the board determines that because of conflict of interest or other special circumstances it should not make a favorable recommendation, the basis of that determination; and

(C) notice of the members' meeting, which shall be given in the same manner as notice of a special meeting of members.

(b) Subject to subsection (c) of this section, a resolution to dissolve shall be approved by:

(1) at least two-thirds of the voting power of members present at a members' meeting called under subdivision (a)(2) of this section; and

(2) if the mutual benefit enterprise has investor members, at least a majority of the votes cast by patron members, unless the organic rules require a greater percentage.

(c) The organic rules may require that the percentage of votes under subdivision (b)(1) of this section is:

(1) a different percentage that is not less than a majority of members voting at the meeting; or

(2) measured against the voting power of all members; or

(3) a combination of subdivisions (1) and (2) of this subsection.

§ 1206. WINDING UP

(a) A mutual benefit enterprise continues after dissolution only for purposes of winding up its activities.

(b) In winding up a mutual benefit enterprise's activities, the board of directors shall cause the enterprise to:

(1) discharge its liabilities, settle and close its activities, and marshal and distribute its assets;

(2) preserve the enterprise or its property as a going concern for no more than a reasonable time;

(3) prosecute and defend actions and proceedings;

(4) transfer enterprise property; and

(5) perform other necessary acts.

(c) After dissolution and upon application of a mutual benefit enterprise, a member, or a holder of financial rights, the superior court may order judicial supervision of the winding up of the enterprise, including the appointment of a person to wind up the enterprise's activities, if:

(1) after a reasonable time, the enterprise has not wound up its activities; or

(2) the applicant establishes other good cause.

(d) If a person is appointed pursuant to subsection (c) of this section to wind up the activities of a mutual benefit enterprise, the enterprise shall promptly deliver to the secretary of state for filing an amendment to the articles of organization to reflect the appointment.

§ 1207. DISTRIBUTION OF ASSETS IN WINDING UP MUTUAL BENEFIT ENTERPRISE

(a) In winding up a mutual benefit enterprise's business, the enterprise shall apply its assets to discharge its obligations to creditors, including members that are creditors. The enterprise shall apply any remaining assets to pay in money the net amount distributable to members in accordance with their right to distributions under subsection (b) of this section.

(b) Unless the organic rules otherwise provide, in this subsection, "financial interests" means the amounts recorded in the names of members in the records of a mutual benefit enterprise at the time a distribution is made, including amounts paid to become a member, amounts allocated but not distributed to members, and amounts of distributions authorized but not yet paid to members. Unless the organic rules otherwise provide, each member is entitled to a distribution from the enterprise of any remaining assets in the proportion of the member's financial interests to the total financial interests of the members after all other obligations are satisfied.

§ 1208. KNOWN CLAIMS AGAINST DISSOLVED MUTUAL BENEFIT ENTERPRISE

(a) Subject to subsection (d) of this section, a dissolved mutual benefit enterprise may dispose of the known claims against it by following the procedure in subsections (b) and (c) of this section.

(b) A dissolved mutual benefit enterprise may notify its known claimants of the dissolution in a record. The notice shall:

(1) specify that a claim be in a record;

(2) specify the information required to be included in the claim;

(3) provide an address to which the claim shall be sent;

(4) state the deadline for receipt of the claim, which may not be less than 120 days after the date the notice is received by the claimant; and

(5) state that the claim will be barred if not received by the deadline.

(c) A claim against a dissolved mutual benefit enterprise is barred if the requirements of subsection (b) of this section are met, and:

(1) the enterprise is not notified of the claimant's claim, in a record, by the deadline specified in the notice under subdivision (b)(4) of this section;

(2) in the case of a claim that is timely received but rejected by the enterprise, the claimant does not commence an action to enforce the claim against the enterprise within 90 days after receipt of the notice of the rejection; or

(3) if a claim is timely received but is neither accepted nor rejected by the enterprise within 120 days after the deadline for receipt of claims, the claimant does not commence an action to enforce the claim against the enterprise:

(A) after the 120-day period; and

(B) within 90 days after the 120-day period.

(d) This section does not apply to a claim based on an event occurring after the date of dissolution or a liability that is contingent on that date.

§ 1209. OTHER CLAIMS AGAINST DISSOLVED MUTUAL BENEFIT ENTERPRISE

(a) A dissolved mutual benefit enterprise may publish notice of its dissolution and request persons having claims against the enterprise to present them in accordance with the notice.

(b) A notice under subsection (a) of this section shall:

(1) be published at least once in a newspaper of general circulation in the county in which the dissolved mutual benefit enterprise's principal office is located or, if the enterprise does not have a principal office in this state, in the county in which the enterprise's designated office is or was last located;

(2) describe the information required to be contained in a claim and provide an address to which the claim is to be sent; and

(3) state that a claim against the enterprise is barred unless an action to enforce the claim is commenced not later than three years after publication of the notice.

(c) If a dissolved mutual benefit enterprise publishes a notice in accordance with subsection (b) of this section, the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim not later than three years after the first publication date of the notice:

(1) a claimant that is entitled to but did not receive notice in a record under section 1208 of this title; and

(2) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim not barred under this section may be enforced:

(1) against a dissolved mutual benefit enterprise, to the extent of its undistributed assets; or

(2) if the enterprise's assets have been distributed in connection with winding up the enterprise's activities against a member or holder of financial rights to the extent of that person's proportionate share of the claim or the enterprise's assets distributed to the person in connection with the winding up, whichever is less. The person's total liability for all claims under this subdivision shall not exceed the total amount of assets distributed to the person as part of the winding up of the enterprise.

§ 1210. COURT PROCEEDING

(a) Upon application by a dissolved mutual benefit enterprise that has published a notice under section 1209 of this title, the superior court in the county where the enterprise's principal office is located or, if the enterprise does not have a principal office in this state where its designated office in this state is located, may determine the amount and form of security to be provided for payment of claims against the enterprise that are contingent, have not been made known to the enterprise, or are based on an event occurring after the effective date of dissolution but that, based on the facts known to the enterprise, are reasonably anticipated to arise after the effective date of dissolution.

(b) Not later than 10 days after filing an application under subsection (a) of this section, a dissolved mutual benefit enterprise shall give notice of the proceeding to each known claimant holding a contingent claim.

(c) The court may appoint a representative in a proceeding brought under this section to represent all claimants whose identities are unknown. The dissolved mutual benefit enterprise shall pay reasonable fees and expenses of the representative, including all reasonable attorney's and expert witness fees.

(d) Provision by the dissolved mutual benefit enterprise for security in the amount and the form ordered by the court satisfies the enterprise's obligations with respect to claims that are contingent, have not been made known to the enterprise, or are based on an event occurring after the effective date of dissolution, and the claims may not be enforced against a member that received a distribution.

§ 1211. ADMINISTRATIVE DISSOLUTION

(a) The secretary of state may dissolve a mutual benefit enterprise administratively if the enterprise does not:

(1) pay, not later than 60 days after the due date, any fee, tax, or penalty due to the secretary of state under this title; or

(2) deliver not later than 60 days after the due date its annual report to the secretary of state.

(b) If the secretary of state determines that a ground exists for dissolving a mutual benefit enterprise administratively, the secretary of state shall file a record of the determination and serve the enterprise with a copy of the record.

(c) If, not later than 60 days after service of a copy of the secretary of state's determination under subsection (b) of this section, the enterprise does not correct each ground for dissolution or demonstrate to the satisfaction of the secretary of state that each uncorrected ground determined by the secretary of state does not exist, the secretary of state shall dissolve the enterprise

administratively by preparing and filing a declaration of dissolution which states the grounds for dissolution. The secretary of state shall serve the enterprise with a copy of the declaration.

(d) A mutual benefit enterprise that has been dissolved administratively continues its existence only for purposes of winding up its activities.

(e) The administrative dissolution of a mutual benefit enterprise does not terminate the authority of its agent for service of process.

§ 1212. REINSTATEMENT FOLLOWING ADMINISTRATIVE DISSOLUTION

(a) A mutual benefit enterprise that has been dissolved administratively may apply to the secretary of state for reinstatement not later than two years after the effective date of dissolution. The application shall be delivered to the secretary of state for filing and state:

(1) the name of the enterprise and the effective date of its administrative dissolution;

(2) that the grounds for dissolution either did not exist or have been eliminated; and

(3) that the enterprise's name satisfies the requirements of section 111 of this title.

(b) If the secretary of state determines that an application contains the information required by subsection (a) of this section and that the information is correct, the secretary of state shall:

(1) prepare a declaration of reinstatement;

(2) file the original of the declaration; and

(3) serve a copy of the declaration on the enterprise.

(c) When reinstatement under this section becomes effective, it relates back to and takes effect as of the effective date of the administrative dissolution, and the mutual benefit enterprise may resume or continue its activities as if the administrative dissolution had not occurred.

§ 1213. DENIAL OF REINSTATEMENT; APPEAL

(a) If the secretary of state denies a mutual benefit enterprise's application for reinstatement following administrative dissolution, the secretary of state shall prepare and file a notice that explains the reason for denial and serve the enterprise with a copy of the notice.

(b) Not later than 30 days after service of a notice of denial of reinstatement by the secretary of state, a mutual benefit enterprise may appeal the denial by petitioning the superior court to set aside the dissolution. The petition shall be served on the secretary of state and contain a copy of the secretary of state's declaration of dissolution, the enterprise's application for reinstatement, and the secretary of state's notice of denial.

(c) The court may summarily order the secretary of state to reinstate the dissolved enterprise or may take other action the court considers appropriate.

§ 1214. STATEMENT OF DISSOLUTION

(a) A mutual benefit enterprise that has dissolved or is about to dissolve may deliver to the secretary of state for filing a statement of dissolution that states:

(1) the name of the enterprise;

(2) the date the enterprise dissolved or will dissolve; and

(3) any other information the enterprise considers relevant.

(b) A person has notice of a mutual benefit enterprise's dissolution on the later of:

(1) 90 days after a statement of dissolution is filed; or

(2) the effective date stated in the statement of dissolution.

§ 1215. STATEMENT OF TERMINATION

(a) A dissolved mutual benefit enterprise that has completed winding up may deliver to the secretary of state for filing a statement of termination that states:

(1) the name of the enterprise;

(2) the date of filing of its initial articles of organization; and

(3) that the enterprise is terminated.

(b) The filing of a statement of termination does not itself terminate the mutual benefit enterprise.

Article 13. Action By Member

§ 1301. DERIVATIVE ACTION

A member may maintain a derivative action to enforce a right of a mutual benefit enterprise if:

(1) the member demands that the enterprise bring an action to enforce the right; and

(2) any of the following occur:

(A) the enterprise does not, within 90 days after the member makes the demand, agree to bring the action;

(B) the enterprise notifies the member that it has rejected the demand;

(C) irreparable harm to the enterprise would result by waiting 90 days after the member makes the demand; or

(D) the enterprise agrees to bring an action demanded and fails to bring the action within a reasonable time.

§ 1302. PROPER PLAINTIFF

(a) A derivative action to enforce a right of a mutual benefit enterprise may be maintained only by a person that:

(1) is a member or a dissociated member at the time the action is commenced and:

(A) was a member when the conduct giving rise to the action occurred; or

(B) whose status as a member devolved upon the person by operation of law or the organic rules from a person that was a member at the time of the conduct; and

(2) adequately represents the interests of the enterprise.

(b) If the sole plaintiff in a derivative action dies while the action is pending, the court may permit another member who meets the requirements of subsection (a) of this section to be substituted as plaintiff.

§ 1303. PLEADING

In a derivative action to enforce a right of a mutual benefit enterprise, the complaint shall state:

(1) the date and content of the plaintiff's demand under subdivision 1301(1) of this title and the enterprise's response;

(2) if 90 days have not expired since the demand, how irreparable harm to the enterprise would result by waiting for the expiration of 90 days; and

(3) if the enterprise agreed to bring an action demanded, that the action has not been brought within a reasonable time.

§ 1304. APPROVAL FOR DISCONTINUANCE OR SETTLEMENT

A derivative action to enforce a right of a mutual benefit enterprise may not be discontinued or settled without the court's approval.

§ 1305. PROCEEDS AND EXPENSES

(a) Except as otherwise provided in subsection (b) of this section:

(1) any proceeds or other benefits of a derivative action to enforce a right of a mutual benefit enterprise, whether by judgment, compromise, or settlement, belong to the enterprise and not to the plaintiff; and

(2) if the plaintiff in the derivative action receives any proceeds, the plaintiff shall immediately remit them to the enterprise.

(b) If a derivative action to enforce a right of a mutual benefit enterprise is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees and costs, from the recovery of the enterprise.

Article 14. Foreign enterprises

§ 1401. GOVERNING LAW

(a) The law of the state or other jurisdiction under which a foreign enterprise is organized governs relations among the members of the foreign enterprise and between the members and the foreign enterprise.

(b) A foreign enterprise may not be denied a certificate of authority because of any difference between the law of the jurisdiction under which the foreign enterprise is organized and the law of this state.

(c) A certificate of authority does not authorize a foreign enterprise to engage in any activity or exercise any power that a mutual benefit enterprise may not engage in or exercise in this state.

§ 1402. APPLICATION FOR CERTIFICATE OF AUTHORITY

(a) A foreign enterprise may apply for a certificate of authority by delivering an application to the secretary of state for filing. The application shall state:

(1) the name of the foreign enterprise and, if the name does not comply with section 111 of this title, an alternative name adopted pursuant to section 1405 of this title;

(2) the name of the state or other jurisdiction under whose law the foreign enterprise is organized;

(3) the street address and, if different, mailing address of the principal office and, if the law of the jurisdiction under which the foreign enterprise is organized requires the foreign enterprise to maintain another office in that jurisdiction, the street address and, if different, mailing address of the required office;

(4) the street address and, if different, mailing address of the foreign enterprise's designated office in this state, and the name of the foreign enterprise's agent for service of process at the designated office; and

(5) the name, street address and, if different, mailing address of each of the foreign enterprise's current directors and officers.

(b) A foreign enterprise shall deliver with a completed application under subsection (a) of this section a certificate of good standing or existence or a similar record signed by the secretary of state or other official having custody of the foreign enterprise's publicly filed records in the state or other jurisdiction under whose law the foreign enterprise is organized.

§ 1403. ACTIVITIES NOT CONSTITUTING TRANSACTING BUSINESS

(a) Activities of a foreign enterprise which do not constitute transacting business in this state under this article include:

(1) maintaining, defending, and settling an action or proceeding;

(2) holding meetings of the foreign enterprise's members or directors or carrying on any other activity concerning the foreign enterprise's internal affairs;

(3) maintaining accounts in financial institutions;

(4) maintaining offices or agencies for the transfer, exchange, and registration of the foreign enterprise's own securities or maintaining trustees or depositories with respect to those securities;

(5) selling through independent contractors;

(6) soliciting or obtaining orders, whether by mail or electronic means, through employees, agents, or otherwise, if the orders require acceptance outside this state before they become contracts;

(7) creating or acquiring indebtedness, mortgages, or security interests in real or personal property;

(8) securing or collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;

(9) conducting an isolated transaction that is completed within 30 days and is not one in the course of similar transactions; and

(10) transacting business in interstate commerce.

(b) For purposes of this article, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under subsection (a) of this section, constitutes transacting business in this state.

(c) This section does not apply in determining the contacts or activities that may subject a foreign enterprise to service of process, taxation, or regulation under the laws of this state other than this title.

§ 1404. ISSUANCE OF CERTIFICATE OF AUTHORITY

Unless the secretary of state determines that an application for a certificate of authority does not comply with the filing requirements of this title, the secretary of state, upon payment by the foreign enterprise of all filing fees, shall file the application, issue a certificate of authority, and send a copy of the filed certificate, together with a receipt for the fees, to the foreign enterprise or its representative.

§ 1405. NONCOMPLYING NAME OF FOREIGN ENTERPRISE

(a) A foreign enterprise whose name does not comply with section 111 of this title may not obtain a certificate of authority until it adopts, for the purpose of transacting business in this state, an alternative name that complies with section 111. A foreign enterprise that adopts an alternative name under this subsection and then obtains a certificate of authority with that name need not also comply with chapter 15 of Title 11. After obtaining a certificate of authority with an alternative name, a foreign enterprise's business in this state shall be transacted under that name unless the foreign enterprise is authorized under chapter 15 of Title 11 to transact business in this state under another name.

(b) If a foreign enterprise authorized to transact business in this state changes its name to one that does not comply with section 111 of this title, it may not thereafter transact business in this state until it complies with subsection (a) of this section and obtains an amended certificate of authority.

§ 1406. REVOCATION OF CERTIFICATE OF AUTHORITY

(a) A certificate of authority may be revoked by the secretary of state in the manner provided in subsection (b) of this section if the foreign enterprise does not:

(1) pay, not later than 60 days after the due date, any fee, tax, or penalty due to the secretary of state under this title;

(2) deliver, not later than 60 days after the due date, its annual report;

(3) appoint and maintain an agent for service of process; or

(4) deliver for filing a statement of change not later than 30 days after a change has occurred in the name of the agent or the address of the foreign enterprise's designated office.

(b) To revoke a certificate of authority, the secretary of state shall file a notice of revocation and send a copy to the foreign enterprise's registered agent for service of process in this state or, if the foreign enterprise does not appoint and maintain an agent for service of process in this state, to the foreign enterprise's principal office. The notice shall state:

(1) the revocation's effective date, which shall be at least 60 days after the date the secretary of state sends the copy; and

(2) the foreign enterprise's noncompliance that is the reason for the revocation.

(c) The authority of a foreign enterprise to transact business in this state ceases on the effective date of the notice of revocation unless before that date the foreign enterprise cures each failure to comply stated in the notice. If the foreign enterprise cures the failures, the secretary of state shall so indicate on the filed notice.

§ 1407. CANCELLATION OF CERTIFICATE OF AUTHORITY; EFFECT OF FAILURE TO HAVE CERTIFICATE

(a) To cancel its certificate of authority, a foreign enterprise shall deliver to the secretary of state for filing a notice of cancellation. The certificate is canceled when the notice becomes effective under section 203 of this title.

(b) A foreign enterprise transacting business in this state may not maintain an action or proceeding in this state unless it has a certificate of authority.

(c) The failure of a foreign enterprise to have a certificate of authority does not impair the validity of a contract or act of the foreign enterprise or prevent the foreign enterprise from defending an action or proceeding in this state.

(d) A member of a foreign enterprise is not liable for the obligations of the foreign enterprise solely by reason of the foreign enterprise's having transacted business in this state without a certificate of authority.

(e) If a foreign enterprise transacts business in this state without a certificate of authority or cancels its certificate, it appoints the secretary of

state as its agent for service of process for an action arising out of the transaction of business in this state.

§ 1408. ACTION BY ATTORNEY GENERAL

The attorney general may maintain an action to restrain a foreign enterprise from transacting business in this state in violation of this article.

Article 15. Disposition of Assets

§ 1501. DISPOSITION OF ASSETS NOT REQUIRING MEMBER APPROVAL

Unless the articles of organization otherwise provide, member approval under section 1502 of this title is not required for a mutual benefit enterprise to:

(1) sell, lease, exchange, license, or otherwise dispose of all or any part of the assets of the enterprise in the usual and regular course of business; or

(2) mortgage, pledge, dedicate to the repayment of indebtedness, or encumber in any way all or any part of the assets of the enterprise whether or not in the usual and regular course of business.

§ 1502. MEMBER APPROVAL OF OTHER DISPOSITION OF ASSETS

A sale, lease, exchange, license, or other disposition of assets of a mutual benefit enterprise, other than a disposition described in section 1501 of this title, requires approval of the enterprise's members under sections 1503 and 1504 of this title if the disposition leaves the enterprise without significant continuing business activity.

§ 1503. NOTICE AND ACTION ON DISPOSITION OF ASSETS

For a mutual benefit enterprise to dispose of assets under section 1502 of this title:

(1) a majority of the board of directors, or a greater percentage if required by the organic rules, shall approve the proposed disposition; and

(2) the board of directors shall call a members' meeting to consider the proposed disposition, hold the meeting not later than 90 days after approval of the proposed disposition by the board, and mail or otherwise transmit or deliver in a record to each member:

(A) the terms of the proposed disposition;

(B) a recommendation that the members approve the disposition, or if the board determines that because of conflict of interest or other special

circumstances it should not make a favorable recommendation, the basis for that determination;

(C) a statement of any condition of the board's submission of the proposed disposition to the members; and

(D) notice of the meeting at which the proposed disposition will be considered, which shall be given in the same manner as notice of a special meeting of members.

§ 1504. DISPOSITION OF ASSETS

(a) Subject to subsection (b) of this section, a disposition of assets under section 1502 of this title shall be approved by:

(1) at least two-thirds of the voting power of members present at a members' meeting called under subdivision 1503(2) of this title; and

(2) if the mutual benefit enterprise has investor members, at least a majority of the votes cast by patron members, unless the organic rules require a greater percentage vote by patron members.

(b) The organic rules may require that the percentage of votes under subdivision (a)(1) of this title is:

(1) a different percentage that is not less than a majority of members voting at the meeting;

(2) measured against the voting power of all members; or

(3) a combination of subdivisions (1) and (2) of this subsection.

(c) Subject to any contractual obligations, after a disposition of assets is approved and at any time before the consummation of the disposition, a mutual benefit enterprise may approve an amendment to the contract for disposition or the resolution authorizing the disposition or approve abandonment of the disposition:

(1) as provided in the contract or the resolution; and

(2) except as prohibited by the resolution, with the same affirmative vote of the board of directors and of the members as was required to approve the disposition.

(d) The voting requirements for districts, classes, or voting groups under section 404 of this title apply to approval of a disposition of assets under this article.

Article 16. Conversion and Merger

§ 1601. DEFINITIONS

In this article:

(1) "Constituent entity" means an entity that is a party to a merger.

(2) "Constituent mutual benefit enterprise" means a mutual benefit enterprise that is a party to a merger.

(3) "Converted entity" means the organization into which a converting entity converts pursuant to sections 1602 through 1605 of this title.

(4) "Converting entity" means an entity that converts into another entity pursuant to sections 1602 through 1605 of this title.

(5) "Converting mutual benefit enterprise" means a converting entity that is a mutual benefit enterprise.

(6) "Organizational documents" means articles of incorporation, bylaws, articles of organization, operating agreements, partnership agreements, or other documents serving a similar function in the creation and governance of an entity.

(7) "Personal liability" means personal liability for a debt, liability, or other obligation of an entity imposed, by operation of law or otherwise, on a person that co-owns or has an interest in the entity:

(A) by the entity's organic law solely because of the person co-owning or having an interest in the entity; or

(B) by the entity's organizational documents under a provision of the entity's organic law authorizing those documents to make one or more specified persons liable for all or specified parts of the entity's debts, liabilities, and other obligations solely because the person co-owns or has an interest in the entity.

(8) "Surviving entity" means an entity into which one or more other entities are merged, whether the entity existed before the merger or is created by the merger.

§ 1602. CONVERSION

(a) An entity that is not a mutual benefit enterprise may convert to a mutual benefit enterprise and a mutual benefit enterprise may convert to an entity that is not a mutual benefit enterprise pursuant to this section, sections 1603 through 1605 of this title, and a plan of conversion, if:

(1) the other entity's organic law authorizes the conversion;

(2) the conversion is not prohibited by the law of the jurisdiction that enacted the other entity's organic law; and

(3) the other entity complies with its organic law in effecting the conversion.

(b) A plan of conversion shall be in a record and shall include:

(1) the name and form of the entity before conversion;

(2) the name and form of the entity after conversion;

(3) the terms and conditions of the conversion, including the manner and basis for converting interests in the converting entity into any combination of money, interests in the converted entity, and other consideration; and

(4) the organizational documents of the proposed converted entity.

§ 1603. ACTION ON PLAN OF CONVERSION BY CONVERTING MUTUAL BENEFIT ENTERPRISE

(a) For a mutual benefit enterprise to convert to another entity, a plan of conversion shall be approved by a majority of the board of directors, or a greater percentage if required by the organic rules, and the board of directors shall call a members' meeting to consider the plan of conversion, hold the meeting not later than 90 days after approval of the plan by the board, and mail or otherwise transmit or deliver in a record to each member:

(1) the plan, or a summary of the plan and a statement of the manner in which a copy of the plan in a record may be reasonably obtained by a member;

(2) a recommendation that the members approve the plan of conversion, or if the board determines that because of a conflict of interest or other circumstances it should not make a favorable recommendation, the basis for that determination;

(3) a statement of any condition of the board's submission of the plan of conversion to the members; and

(4) notice of the meeting at which the plan of conversion will be considered, which shall be given in the same manner as notice of a special meeting of members.

(b) Subject to subsections (c) and (d) of this section, a plan of conversion shall be approved by:

(1) at least two-thirds of the voting power of members present at a members' meeting called under subsection (a) of this section; and

(2) if the mutual benefit enterprise has investor members, at least a majority of the votes cast by patron members, unless the organic rules require a greater percentage vote by patron members.

(c) The organic rules may require that the percentage of votes under subdivision (b)(1) of this section is:

(1) a different percentage that is not less than a majority of members voting at the meeting;

(2) measured against the voting power of all members; or

(3) a combination of subdivisions (1) and (2) of this subsection.

(d) The vote required to approve a plan of conversion may not be less than the vote required for the members of the mutual benefit enterprise to amend the articles of organization.

(e) Consent in a record to a plan of conversion by a member shall be delivered to the mutual benefit enterprise before delivery of articles of conversion for filing if as a result of the conversion, the member will have:

(1) personal liability for an obligation of the enterprise; or

(2) an obligation or liability for an additional contribution.

(f) Subject to subsection (e) of this section and any contractual rights, after a conversion is approved and at any time before the effective date of the conversion, a converting mutual benefit enterprise may amend a plan of conversion or abandon the planned conversion:

(1) as provided in the plan; and

(2) except as prohibited by the plan, by the same affirmative vote of the board of directors and of the members as was required to approve the plan.

(g) The voting requirements for districts, classes, or voting groups under section 404 of this title apply to approval of a conversion under this article.

§ 1604. FILINGS REQUIRED FOR CONVERSION; EFFECTIVE DATE

(a) After a plan of conversion is approved:

(1) a converting mutual benefit enterprise shall deliver to the secretary of state for filing articles of conversion, which shall include:

(A) a statement that the mutual benefit enterprise has been converted into another entity;

(B) the name and form of the converted entity and the jurisdiction of its governing statute;

(C) the date the conversion is effective under the governing statute of the converted entity;

(D) a statement that the conversion was approved as required by this title;

(E) a statement that the conversion was approved as required by the governing statute of the converted entity; and

(F) if the converted entity is an entity organized in a jurisdiction other than this state and is not authorized to transact business in this state, the street address and, if different, mailing address of an office which the secretary of state may use for purposes of section 120 of this title; and

(2) if the converting entity is not a converting mutual benefit enterprise, the converting entity shall deliver to the secretary of state for filing articles of organization, which shall include, in addition to the information required by section 302 of this title:

(A) a statement that the enterprise was converted from another entity;

(B) the name and form of the converting entity and the jurisdiction of its governing statute; and

(C) a statement that the conversion was approved in a manner that complied with the converting entity's governing statute.

(b) A conversion becomes effective:

(1) if the converted entity is a mutual benefit enterprise, when the articles of conversion take effect pursuant to subsection 203(c) of this title; or

(2) if the converted entity is not a mutual benefit enterprise, as provided by the governing statute of the converted entity.

§ 1605. EFFECT OF CONVERSION

(a) An entity that has been converted pursuant to this article is for all purposes the same entity that existed before the conversion and is not a new entity but, after conversion, is organized under the organic law of the converted entity and is subject to that law and other law as it applies to the converted entity.

(b) When a conversion takes effect under this article:

(1) all property owned by the converting entity remains vested in the converted entity;

(2) all debts, liabilities, and other obligations of the converting entity continue as obligations of the converted entity;

(3) an action or proceeding pending by or against the converting entity may be continued as if the conversion had not occurred;

(4) except as prohibited by other law, all the rights, privileges, immunities, powers, and purposes of the converting entity remain vested in the converted entity;

(5) except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and

(6) except as otherwise provided in the plan of conversion, the conversion does not dissolve a converting mutual benefit enterprise for purposes of Article 12 of this title.

(c) A converted entity that is an entity organized under the laws of a jurisdiction other than this state consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting mutual benefit enterprise if, before the conversion, the converting mutual benefit enterprise was subject to suit in this state on the obligation. A converted entity that is an entity organized under the laws of a jurisdiction other than this state and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for purposes of enforcing an obligation under this subsection. Service on the secretary of state under this subsection is made in the same manner and with the same consequences as under subsections 120(c) and (d) of this title.

§ 1606. MERGER

(a) One or more mutual benefit enterprises may merge with one or more other entities pursuant to this article and a plan of merger if:

(1) the governing statute of each of the other entities authorizes the merger;

(2) the merger is not prohibited by the law of a jurisdiction that enacted any of those governing statutes; and

(3) each of the other entities complies with its governing statute in effecting the merger.

(b) A plan of merger shall be in a record and shall include:

(1) the name and form of each constituent entity;

(2) the name and form of the surviving entity and, if the surviving entity is to be created by the merger, a statement to that effect;

(3) the terms and conditions of the merger, including the manner and basis for converting the interests in each constituent entity into any combination of money, interests in the surviving entity, and other consideration;

(4) if the surviving entity is to be created by the merger, the surviving entity's organizational documents;

(5) if the surviving entity is not to be created by the merger, any amendments to be made by the merger to the surviving entity's organizational documents; and

(6) if a member of a constituent mutual benefit enterprise will have personal liability with respect to a surviving entity, the identity of the member by descriptive class or other reasonable manner.

§ 1607. NOTICE AND ACTION ON PLAN OF MERGER BY CONSTITUENT MUTUAL BENEFIT ENTERPRISE

(a) For a mutual benefit enterprise to merge with another entity, a plan of merger shall be approved by a majority vote of the board of directors or a greater percentage if required by the enterprise's organic rules.

(b) The board of directors shall call a members' meeting to consider a plan of merger approved by the board, hold the meeting not later than 90 days after approval of the plan by the board, and mail or otherwise transmit or deliver in a record to each member:

(1) the plan of merger, or a summary of the plan and a statement of the manner in which a copy of the plan in a record may be reasonably obtained by a member;

(2) a recommendation that the members approve the plan of merger, or if the board determines that because of conflict of interest or other special circumstances it should not make a favorable recommendation, the basis for that determination;

(3) a statement of any condition of the board's submission of the plan of merger to the members; and

(4) notice of the meeting at which the plan of merger will be considered, which shall be given in the same manner as notice of a special meeting of members.

§ 1608. APPROVAL OR ABANDONMENT OF MERGER BY MEMBERS

(a) Subject to subsections (b) and (c) of this section, a plan of merger shall be approved by:

(1) at least two-thirds of the voting power of members present at a members' meeting called under subsection 1607(b) of this title; and

(2) if the mutual benefit enterprise has investor members, at least a majority of the votes cast by patron members, unless the organic rules require a greater percentage vote by patron members.

(b) The organic rules may provide that the percentage of votes under subdivision (a)(1) of this section is:

(1) a different percentage that is not less than a majority of members voting at the meeting;

(2) measured against the voting power of all members; or

(3) a combination of subdivisions (1) and (2) of this subsection.

(c) The vote required to approve a plan of merger may not be less than the vote required for the members of the mutual benefit enterprise to amend the articles of organization.

(d) Consent in a record to a plan of merger by a member shall be delivered to the mutual benefit enterprise before delivery of articles of merger for filing pursuant to section 1609 of this title if as a result of the merger, the member will have:

(1) personal liability for an obligation of the enterprise; or

(2) an obligation or liability for an additional contribution.

(e) Subject to subsection (d) of this section and any contractual rights, after a merger is approved, and at any time before the effective date of the merger, a mutual benefit enterprise that is a party to the merger may approve an amendment to the plan of merger or approve abandonment of the planned merger:

(1) as provided in the plan; and

(2) except as prohibited by the plan, with the same affirmative vote of the board of directors and of the members as was required to approve the plan.

(f) The voting requirements for districts, classes, or voting groups under section 404 of this title apply to approval of a merger under this article.

§ 1609. FILINGS REQUIRED FOR MERGER; EFFECTIVE DATE

(a) After each constituent entity has approved a merger, articles of merger shall be signed on behalf of each constituent entity by an authorized representative.

(b) The articles of merger shall include:

(1) the name and form of each constituent entity and the jurisdiction of its governing statute;

(2) the name and form of the surviving entity, the jurisdiction of its governing statute, and, if the surviving entity is created by the merger, a statement to that effect;

(3) the date the merger is effective under the governing statute of the surviving entity;

(4) if the surviving entity is to be created by the merger and:

(A) will be a mutual benefit enterprise, the mutual benefit enterprise's articles of organization; or

(B) will be an entity other than a mutual benefit enterprise, the organizational document that creates the entity;

(5) if the surviving entity is not created by the merger, any amendments provided for in the plan of merger to the organizational document that created the entity;

(6) a statement as to each constituent entity that the merger was approved as required by the entity's governing statute;

(7) if the surviving entity is a foreign organization not authorized to transact business in this state, the street address and, if different, mailing address of an office which the secretary of state may use for the purposes of section 120 of this title; and

(8) any additional information required by the governing statute of any constituent entity.

(c) Each mutual benefit enterprise that is a party to a merger shall deliver the articles of merger to the secretary of state for filing.

(d) A merger becomes effective under this article:

(1) if the surviving entity is a mutual benefit enterprise, upon the latter of:

(A) compliance with subsection (c) of this section; or

(B) subject to subsection 203(c) of this title, as specified in the articles of merger; or

(2) if the surviving entity is not a mutual benefit enterprise, as provided by the governing statute of the surviving entity.

§ 1610. EFFECT OF MERGER

(a) When a merger becomes effective:

(1) the surviving entity continues or comes into existence;

(2) each constituent entity that merges into the surviving entity ceases to exist as a separate entity;

(3) all property owned by each constituent entity that ceases to exist vests in the surviving entity;

(4) all debts, liabilities, and other obligations of each constituent entity that ceases to exist continue as obligations of the surviving entity;

(5) an action or proceeding pending by or against any constituent entity that ceases to exist may be continued as if the merger had not occurred;

(6) except as prohibited by law other than this title, all rights, privileges, immunities, powers, and purposes of each constituent entity that ceases to exist vest in the surviving entity;

(7) except as otherwise provided in the plan of merger, the terms and conditions of the plan take effect;

(8) except as otherwise provided in the plan of merger, if a merging mutual benefit enterprise ceases to exist, the merger does not dissolve the enterprise for purposes of Article 12 of this title;

(9) if the surviving entity is created by the merger and:

(A) is a mutual benefit enterprise, the articles of organization become effective; or

(B) is an entity other than a mutual benefit enterprise, the organizational document that creates the entity becomes effective; and

(10) if the surviving entity is not created by the merger, any amendments made by the articles of merger for the organizational documents of the surviving entity become effective.

(b) A surviving entity that is an entity organized under the laws of a jurisdiction other than this state consents to the jurisdiction of the courts of this state to enforce any obligation owed by the constituent entity if, before the merger, the constituent entity was subject to suit in this state on the obligation. A surviving entity that is an entity organized under the laws of a jurisdiction other than this state and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for purposes of enforcing an obligation under this subsection. Service on the secretary of state under this subsection is made in the same manner and with the same consequences as in subsections 120(c) and (d) of this title.

§ 1611. CONSOLIDATION

(a) Constituent entities that are mutual benefit enterprises or foreign enterprises may agree to call a merger a consolidation under this article.

(b) All provisions governing mergers or using the term "merger" in this title apply equally to mergers that the constituent entities choose to call consolidations under subsection (a) of this section.

§ 1612. ARTICLE NOT EXCLUSIVE

This article does not prohibit a mutual benefit enterprise from being converted or merged under law other than this title.

Article 17. Miscellaneous Provisions

§ 1701. UNIFORMITY OF APPLICATION AND CONSTRUCTION

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 1702. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT

This title modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c) or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

§ 1703. SAVINGS CLAUSE

This title does not affect an action or proceeding commenced, or right accrued, before the effective date.

Sec. 2. 11 V.S.A. § 992 is amended to read:

§ 992. USE OF "COOPERATIVE."

The use of the word "cooperative" as a part of the name of any ~~individual, partnership, corporation, or association~~ person is hereby limited to such ~~associations~~ persons as are legally organized and chartered under the provisions of this ~~subchapter or chapters 1, 8, 14 or 17~~ chapter or chapters 8 or 14 of this title.

Sec. 3. 11 V.S.A. § 1621 is amended to read:

§ 1621. REGISTRATION OF BUSINESS NAME BY PERSONS, PARTNERSHIPS, AND ASSOCIATIONS

* * *

(c) The secretary of state shall decline to register any business name that is the same as, deceptively similar to, or likely to be confused with or mistaken for any other business name of any name registered or reserved under this chapter, or the name of any other entity, whether domestic or foreign, that is reserved, registered, or granted by or with the secretary of state, or any name that would lead a reasonable person to conclude that the business is a type of entity that it is not.

* * *

Sec. 4. 11 V.S.A. § 1623 is amended to read:

§ 1623. REGISTRATION BY CORPORATIONS AND LIMITED LIABILITY COMPANIES

(a) A corporation or limited liability company doing business in this state under any name other than that of the corporation or limited liability company shall be subject to all the provisions of this chapter; and shall file returns sworn to by some officer or member of such corporation or by some member or manager of such limited liability company, setting forth the name other than the corporate or limited liability company name under which such business is carried on, the name of the town wherein such business is to be carried on, a brief description of the kind of business transacted under such name, and the corporate or the limited liability company name and location of the principal office of such corporation or limited liability company.

(b) The secretary of state shall decline to register any business name that is the same as, deceptively similar to, or likely to be confused with or mistaken for any other business name of any name registered or reserved under this chapter or the name of any other entity, whether domestic or foreign, that is reserved, registered, or granted by or with the secretary of state or any name that would lead a reasonable person to conclude that the business is a type of entity that it is not.

Sec. 5. EFFECTIVE DATE

This title shall take effect on passage.

and that after passage the title of the bill be amended to read: "An act relating to the mutual benefit enterprise act"

(Committee Vote: 10-0-1)

Favorable

S. 12

An act relating to adding a member from the area agencies on aging to the governor's commission on Alzheimer's disease and related disorders

Rep. Batchelor of Derby, for the Committee on **Human Services**, recommends that the bill ought to pass in concurrence.

(Committee Vote: 9-0-2)

(No Senate Amendments)

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