Senate Calendar

FRIDAY, MARCH 16, 2012

SENATE CONVENES AT: 11:30 A.M.

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Second Reading

Favorable with Recommendation of Amendment

S. 115.

An act relating to malpractice claims against public defender contract attorneys.

Reported favorably with recommendation of amendment by Senator Snelling for the Committee on Judiciary.

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

Sec. 1. 13 V.S.A. § 5241 is added to read:

§ 5241. INEFFECTIVE ASSISTANCE CLAIM

No action shall be brought for professional negligence against a criminal defense attorney under contract with or providing ad hoc legal services for the office of the defender general unless the plaintiff has first successfully prevailed in a claim for post-conviction relief based upon ineffective assistance of counsel in the same or a substantially related matter. Failure to prevail in a claim for post-conviction relief based upon ineffective assistance of counsel under contract with or providing ad hoc legal services for the office of the defender general shall bar any claim against the attorney based upon the attorney's representation in the same or a substantially related matter.

and that after passage the title of the bill be amended to read: "An act relating to ineffective assistance claims against assigned counsel"

(Committee vote: 5-0-0)

S. 214.

An act relating to customer rights regarding smart meters.

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

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

Sec. 1. 30 V.S.A. § 2811 is added to read:

§ 2811. SMART METERS; CUSTOMER RIGHTS; REPORTS

(a) Definitions. As used in this section, the following terms shall have the following meanings:

(1) "Smart meter" means a wired smart meter or a wireless smart meter.

(2) "Wired smart meter" means an advanced metering infrastructure device using a fixed wire for two-way communication between the device and an electric company.

(3) "Wireless smart meter" means an advanced metering infrastructure device using radio or other wireless means for two-way communication between the device and an electric company.

(b) Customer rights. Notwithstanding any law, order, or agreement to the contrary, an electric company may install a wireless smart meter on a customer's premises, provided the company:

(1) provides prior written notice to the customer indicating that the meter will use radio or other wireless means for two-way communication between the meter and the company and informing the customer of his or her rights under subdivisions (2) and (3) of this subsection;

(2) allows a customer to choose not to have a wireless smart meter installed, at no additional monthly or other charge, unless such charge is approved by the public service board pursuant to subsection (c) of this section; and

(3) allows a customer to require removal of a previously installed wireless smart meter for any reason and at an agreed-upon time, without incurring any charge for such removal.

(c) Fees. Upon full deployment of its advanced metering infrastructure, an electric company may charge an opt-out fee to customers who choose not to have a wireless smart meter installed, or who have a wireless smart meter removed, provided the fee is cost based and approved by the board.

(d) Reports. On January 1, 2014 and again on January 1, 2016, the commissioner of public service shall publish a report on the energy savings realized through the use of smart meters, as well as on the occurrence of any breaches to a company's cyber security infrastructure. The reports shall be based on electric company data requested by and provided to the commissioner of public service and shall be in a form and in a manner the commissioner deems necessary to accomplish the purposes of this subsection. The reports shall be submitted to the senate committees on finance and on natural resources and energy and the house committees on commerce and economic development and on natural resources and energy.

(e) Health report. On or before January 15, 2013, the commissioner of health shall submit a report to the senate committee on finance and the house

committee on commerce and economic development which shall include: an update of the department of health's 2012 report entitled "Radio Frequency Radiation and Health: Smart Meters"; a summary of the department's activities monitoring the deployment of wireless smart meters in Vermont, including a representative sample of postdeployment radio frequency level testing; and recommendations relating to evidence-based surveillance on the potential health effects of wireless smart meters.

Sec. 2. INSTALLED WIRELESS SMART METERS

If an electric company has installed a wireless smart meter, as defined in 30 V.S.A. § 2811(a)(3), prior to the effective date of this act, the company shall provide notice of the installation to the applicable customers, and such notice shall include a statement of customer rights as described under 30 V.S.A. § 2811(b).

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 6-0-1)

NEW BUSINESS

Third Reading

S. 106.

An act relating to miscellaneous changes to municipal government law.

AMENDMENT TO S. 106 TO BE OFFERED BY SENATOR SEARS BEFORE THIRD READING

Senator Sears moves that the bill be amended as follows:

First: In Sec. 3, 24 V.S.A. § 4451, in subsection (a), after "~~$100.00~~", by striking out "$300.00" and inserting in lieu thereof $200.00

Second: In Sec. 3, 24 V.S.A. § 4451, in subsection (b), after "~~$100.00~~", by striking out "$300.00" and inserting in lieu thereof $200.00

S. 226.

An act relating to prohibiting synthetic stimulants.

S. 239.

An act relating to ensuring the humane treatment and slaughter of animals.

S. 244.

An act relating to referral to court diversion for driving with a suspended license.

Second Reading

Favorable with Recommendation of Amendment

S. 148.

An act relating to a pilot project on expediting development of small hydroelectric plants.

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

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

Sec. 1. FINDINGS

The general assembly finds:

(1) The existing policy of the state of Vermont is to promote development and use of renewable energy projects, including hydroelectric projects.

(2) The Comprehensive Energy Plan issued in December 2011 by the department of public service (DPS) states in Sec. 5.8.2.1.1:

> Opinions differ on the amount of available hydropower that is available in Vermont. Depending on assumptions used, reports vary from 25 MW at 44 sites (estimated by the ANR [agency of natural resources] in 2008) to 434 MW at 1,291 sites (estimated in a DOE [Department of Energy] study in 2006). A 2007 study for the DPS identified more than 90 MW developable at 300 of the existing 1,200 existing dams.

(3) Many hydroelectric projects require a license from the Federal Energy Regulatory Commission (FERC) unless FERC grants an exemption. The length and cost of the process of obtaining a FERC license or exemption do not vary significantly with the capacity of the hydroelectric project. However, the ability of a hydroelectric project to absorb this cost decreases as the capacity of the project grows smaller.

(4) There are two classes of hydroelectric license exemptions granted by FERC:

(A) Small hydropower projects, which are five megawatts or less, that will be built at an existing dam, or projects that utilize a natural water feature for head or an existing project that has a capacity of five megawatts or less and proposes to increase capacity.

(B) Conduit exemptions for generating capacities of 15 megawatts or less for nonmunicipal and 40 megawatts or less for a municipal project. The

conduit must have been constructed primarily for purposes other than power production and be located entirely on nonfederal lands. In this context, "conduit" refers to a human-made water conveyance (e.g., an irrigation canal).

(5) In August 2010, FERC and the state of Colorado, through its energy office, entered into a memorandum of understanding "to streamline and simplify the authorization of small-scale hydropower projects." Under this agreement, Colorado has undertaken a pilot project to test options for simplifying the procedures to authorize the exemptions described in subdivision (4) of this section for projects in Colorado while ensuring environmental safeguards. The state's prescreening will allow FERC to waive stages of its exemption authorization process. The pilot project will continue until 20 projects have gone through the program.

(6) In Vermont, the state energy office is the department of public service and the main agency engaged in environmental regulation is the agency of natural resources (ANR). When a FERC license is sought for a hydroelectric project in Vermont, ANR reviews the project and determines whether to issue a certification under the Clean Water Act, 33 U.S.C. § 1341, that the project will not violate water quality standards adopted under that act.

(7) In a report to the general assembly entitled "The Development of Small Hydroelectric Projects in Vermont" (Jan. 9, 2008) at p. 19, ANR states that most hydroelectric projects in Vermont are smaller than five MW in capacity.

Sec. 2. MEMORANDUM OF UNDERSTANDING; SMALL HYDROELECTRIC PROJECTS

(a) In consultation with the secretary of natural resources (the secretary), the commissioner of the department of public service (the commissioner) shall enter into a memorandum of understanding (MOU) with the Federal Energy Regulatory Commission (FERC) for a project to simplify the procedures for FERC's granting exemptions to its license requirements for projects in Vermont that constitute small conduit hydroelectric facilities and small hydroelectric power projects as defined in 18 C.F.R. § 4.30 (the MOU project). By July 15, 2012, the commissioner shall initiate with FERC the process of negotiating this MOU.

(b) In negotiating and entering into this MOU, the commissioner shall seek terms at least as favorable to the development of in-state hydroelectric projects as those contained in the August 2010 "Memorandum of Understanding between the Federal Energy Regulatory Commission and the State of Colorado through the Governor's Energy Office to Streamline and Simplify the Authorization of Small Scale Hydropower Projects."

(c) In negotiating and entering into an MOU under this section, the commissioner in consultation with the secretary shall offer and agree to prescreening by the state of Vermont of hydroelectric projects participating in the MOU project.

(d) A MOU between the commissioner of public service and FERC under this section shall bind the state of Vermont and its agencies, including the department of public service and the agency of natural resources.

(e) No later than January 15, 2013 and annually by each January 15 thereafter through the first January 15 after completion of the MOU project, the commissioner shall submit a written report to the general assembly detailing the progress of the project, including an identification of each hydroelectric project participating in the MOU project. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be submitted under this subsection.

(f) On entry into an MOU with FERC under this section, the commissioner shall submit a copy of the MOU to the general assembly.

(g) As necessary and appropriate, the commissioner and the secretary shall seek funding from available sources to support the MOU project under this section, including funding from a federal agency or funding that may be available because a participating hydroelectric project will provide benefits to the regional electric transmission or local electric transmission and distribution systems. Inception of the MOU project shall not be contingent on receipt of such funding.

Sec. 3. MICRO HYDROELECTRIC PROJECTS; STUDY; REPORT

By January 15, 2013, the secretary of natural resources (the secretary), in consultation with the commissioner of the department of public service, shall evaluate options to facilitate the development in Vermont of micro hydroelectric projects and shall submit a report to the general assembly stating the results of this evaluation and providing the secretary's recommendations on how to facilitate such development.

(1) For the purpose of this section, "micro hydroelectric project" shall mean a hydroelectric project having a nameplate capacity of 100 kilowatts or less.

(2) The evaluation and report under this section shall address the regulatory barriers to the development of in-state micro hydroelectric projects.

(3) The report shall include the secretary's recommendations on how these barriers may be appropriately addressed, while protecting environmental quality, in order to facilitate the development of micro hydroelectric projects,

including potential mechanisms to increase the transparency and reduce the cost and time of the process to obtain necessary government approvals.

(4) The report shall attach recommended legislation to facilitate the development in Vermont of micro hydroelectric projects.

(5) In preparing the report under this section, the secretary may build on work performed in preparing prior reports and studies that address the same subject matter.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

and that after passage the title of the bill be amended to read: "An act relating to expediting development of small and micro hydroelectric projects"

(Committee vote: 5-0-0)

S. 201.

An act relating to expanding public school choice for elementary and high school students.

Reported favorably with recommendation of amendment by Senator Mullin for the Committee on Education.

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

Sec. 1. 16 V.S.A. § 822 is amended to read:

§ 822. SCHOOL DISTRICT TO MAINTAIN PUBLIC HIGH SCHOOLS ~~OR PAY TUITION~~; TUITION

(a) Each school district shall ~~provide, furnish, and~~ maintain one or more approved ~~high~~ schools in which it provides high school education ~~is provided~~ for its resident pupils unless:

(1) ~~The~~ the electorate authorizes the school board to ~~close an existing high school and to~~ provide for the high school education of its resident pupils solely by paying tuition ~~in accordance with law. Tuition for its pupils shall be paid~~ pursuant to this chapter to a public high school, an approved independent high school, or an independent school meeting school quality standards, to be selected by the parents or guardians of the pupil, within or ~~without~~ outside the state; or

(2) ~~The~~ the school district is organized to provide only elementary education for its pupils.

(b) ~~For purposes of this section, a school district which provides, furnishes and maintains a program of education for the first eight years of compulsory~~

~~school attendance shall be obligated to pay tuition for its pupils for at least four additional years.~~ [Repealed.]

(c) ~~The school board may both maintain a high school and furnish high school education by paying~~ ~~tuition to a public school as in the judgment of the board may best serve the interests of the pupils, or~~ A district that maintains a high school may pay tuition pursuant to this chapter to an approved independent school or an independent school meeting school quality standards on behalf of one or more pupils if the school board judges that a pupil has unique educational needs that cannot be served within the district or at ~~a nearby~~ another public school. Its judgment shall be final in regard to the institution the pupils may attend at public cost.

Sec. 2. 16 V.S.A. § 822a is added to read:

§ 822a. PUBLIC HIGH SCHOOL CHOICE

(a) Definitions. In this section:

(1) "High school" means a public school or that portion of a public school that offers grades 7 through 12 or some subset of those grades.

(2) "Student" means a student's parent or guardian if the student is a minor or under guardianship and means a student himself or herself if the student is not a minor.

(b) Limits on transferring students. A sending high school board may limit the number of resident students who transfer to another high school under this section in each year; provided that in no case shall it limit the potential number of new transferring students to fewer than five percent of the resident students enrolled in the sending high school as of October 1 of the academic year in which the calculation is made or 10 students, whichever is fewer; and further provided that in no case shall the total number of transferring students in any year exceed 10 percent of all resident high school students or 40 students, whichever is fewer.

(c) Capacity. On or before February 1 each year, the board of a high school district shall define and announce its capacity to accept students under this section. The commissioner shall develop, review, and update guidelines to assist high school district boards to define capacity limits. Guidelines may include limits based on the capacity of the program, class, grade, school building, measurable adverse financial impact, or other factors, but shall not be based on the need to provide special education services.

(d) Lottery.

(1) Subject to the provisions of subsection (f) of this section, if more than the allowable number of students wish to transfer to a school under this

section, then the board of the receiving high school district shall devise a nondiscriminatory lottery system for determining which students may transfer.

(2) Subject to the provisions of subsection (f) of this section, if more than the allowable number of students wish to transfer from a school under this section, then the board of the sending high school district shall devise a nondiscriminatory lottery system for determining which students may transfer; provided, however:

(A) a board shall give preference to the transfer request of a student whose request to transfer from the school was denied in a prior year; and

(B) a board that has established limits under subsection (b) of this section may choose to waive those limits in any year.

(e) Application and notification.

(1) A high school district shall accept applications for enrollment until March 1 of the school year preceding the school year for which the student is applying.

(2) A high school district shall notify each student of acceptance or rejection of the application by April 1 of the school year preceding the school year for which the student is applying.

(3) An accepted student shall notify both the sending and the receiving high schools of his or her decision to enroll or not to enroll in the receiving high school by April 15 of the school year preceding the school year for which the student has applied.

(4) After sending notification of enrollment, a student may enroll in a school other than the receiving high school only if the student, the receiving high school, and the high school in which the student wishes to enroll agree. If the student becomes a resident of a different school district, the student may enroll in the high school maintained by the new district of residence.

(5) If a student who is enrolled in a high school other than in the school district of residence notifies the school district of residence by July 15 of the intent to return to that school for the following school year, the student shall be permitted to return to the high school in the school district of residence without requiring agreement of the receiving district or the sending district.

(f) Continued enrollment. An enrolled nonresident student shall be permitted to remain enrolled in the receiving high school without renewed applications in subsequent years unless:

(1) the student graduates;

(2) the student is no longer a Vermont resident; or

(3) the student is expelled from school in accordance with adopted school policy.

(g) Tuition and other costs.

(1) Unless the sending and receiving schools agree to a different arrangement, no tuition or other cost shall be charged by the receiving district or paid by the sending district for a student transferring to a different high school under this section; provided, however, a sending high school district shall pay special education and technical education costs for resident students pursuant to the provisions of this title.

(2) A student transferring to a different high school under this section shall pay no tuition, fee, or other cost that is not also paid by students residing in the receiving district.

(3) A district of residence shall include within its average daily membership any student who transfers to another high school under this section; a receiving school district shall not include any student who transfers to it under this section.

(h) Special education. If a student who is eligible for and receiving special education services chooses to enroll in a high school other than in the high school district of residence, then the receiving high school shall carry out the individualized education plan, including placement, developed by the sending high school district. If the receiving high school believes that a student not on an individualized education plan may be eligible for special education services or that an existing individualized education plan should be altered, it shall notify the sending high school district. When a sending high school district considers eligibility, development of an individualized education plan, or changes to a plan, it shall give notice of meetings to the receiving high school district and provide an opportunity for representatives of that district to attend the meetings and participate in making decisions.

(i) Suspension and expulsion. A sending high school district is not required to provide services to a resident student during a period of suspension or expulsion imposed by another high school district.

(j) Transportation. Jointly, the superintendent of each supervisory union shall establish and update a statewide clearinghouse providing information to students about transportation options among the high school districts.

(k) Nonapplicability of other laws. The provisions of subsections 824(b) and (c) (amount of tuition), 825(b) and (c) (maximum tuition rate), and 826(a) (notice of tuition change) and section 836 (tuition overcharge and undercharge) of this chapter shall not apply to enrollment in a high school pursuant to this section.

(l) Waiver. If a high school board determines that participation under this section would adversely affect students in its high school, then it may petition the commissioner for an exemption. The commissioner's decision shall be final.

(m) Report. Annually, on or before January 15, the commissioner shall report to the senate and house committees on education on the implementation of public high school choice as provided in this section, including a quantitative and qualitative evaluation of the program's impact on the quality of educational services available to students and the expansion of educational opportunities.

Sec. 3. 16 V.S.A. § 4001(1) is amended to read:

(1) "Average daily membership" of a school district, or if needed in order to calculate the appropriate homestead tax rate, of the municipality as defined in 32 V.S.A. § 5401(9), in any year means:

(A) The full-time equivalent enrollment of pupils, as defined by the state board by rule, who are legal residents of the district or municipality attending a school owned and operated by the district, attending a public school outside the district under ~~an interdistrict agreement~~ section 822a of this title, or for whom the district pays tuition to one or more approved independent schools or public schools outside the district during the annual census period. The census period consists of the 11th day through the 30th day of the school year in which school is actually in session.

* * *

Sec. 4. REPEAL

16 V.S.A. §§ 1621 and 1622 (public high school choice regions) are repealed.

Sec. 5. REPORT

On or before January 15, 2013, the department of education shall evaluate the funding system set forth in Sec. 2 of this act at 16 V.S.A. § 822a(g) and present to the senate and house committees on education its recommendations for changes, if any.

Sec. 6. EFFECTIVE DATE; IMPLEMENTATION

This act shall take effect on July 1, 2012; provided, however, that this act shall apply to enrollment in academic year 2013–2014 and after.

and that after passage the title of the bill be amended to read: "An act relating to creating full public school choice for high school students"

(Committee vote: 5-0-0)

S. 202.

An act relating to regulation of flood hazard areas.

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

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

Sec. 1. 10 V.S.A. chapter 32 is amended to read:

CHAPTER 32. FLOOD HAZARD AREAS

§ 751. PURPOSE

The purpose of this chapter is to minimize and prevent the loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditures and demands on public service that result from flooding; to ensure that the development of the flood hazard areas of this state is accomplished in a manner consistent with the health, safety and welfare of the public; ~~to provide state assistance to local government units in management of flood hazard areas;~~ to coordinate federal, state, and local management activities for flood hazard areas; to encourage local government units to manage flood hazard areas and other flood-prone lands; to provide state assistance to local government units in management of flood-prone lands; to authorize adoption of state rules for management in a flood hazard area of development that is exempt from municipal land use regulation under 24 V.S.A. chapter 117; to maintain the wise agricultural use of flood-prone lands; to carry out a comprehensive statewide flood hazard area management program for the state in order to ~~make the state and units of local government eligible~~ ensure eligibility for flood insurance under the requirements of the ~~federal department of housing and urban development in administering Title XIII of the Housing and Urban Development Act of 1968~~ National Flood Insurance Program.

§ 752. DEFINITIONS

For the purpose of this chapter:

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

(2) "Development," for the purposes of flood hazard area management and regulation, shall have the same meaning as "development" under 44 C.F.R. § 59.1.

(3) "Flood hazard area" ~~means an area which would be inundated in a flood of such severity that the flood would be statistically likely to occur once in every hundred years. In appropriate circumstances this might be the 1927 or the 1973 flood. In delineating any flood hazard area for the one hundred year~~

~~flood based upon prior floods, flood control devices such as, but not limited to dams, canals, and channel work should be considered in the delineation~~ shall have the same meaning as "area of special flood hazard" under 44 C.F.R. § 59.1.

~~(3)~~(4) "Flood proofing" shall have the same meaning as "flood proofing" under 44 C.F.R. § 59.1.

(5) "Floodway" ~~means the channel of a watercourse and adjacent land areas which are required to carry and discharge the one hundred year flood within a regulated flood hazard area without substantially increasing the flood heights delineation~~ shall have the same meaning as "regulatory floodway" under 44 C.F.R. § 59.1.

~~(4) "Flood proofing" means any combination of structural and nonstructural additions, changes, or adjustments to properties and structures, primarily for the reduction or elimination of flood damage to lands, water and sanitary facilities, structures and contents of buildings delineation.~~

~~(5)~~(6) "Legislative body" means the ~~board of selectmen~~ selectboard, trustees, mayor, city council, and ~~board of aldermen~~ alderboard of a municipality.

~~(6)~~(7) "Municipality" means any town, city, or incorporated village.

~~(7)~~(8) ~~"Obstruction" means any natural or artificial condition including but not limited to, real estate which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by the water, or so situated that the flow of the water might carry it downstream to the damage of life or property~~ "National Flood Insurance Program" means the National Flood Insurance Program under 42 U.S.C. chapter 50 and implementing federal regulations in 44 C.F.R. parts 59 and 60.

~~(8)~~(9) "Regional planning commission" means the regional planning commission of which a municipality is a member or would be a member based upon its location.

(10) "River corridor" means the land area adjacent to a river that is required to accommodate the dimensions, slope, planform, and buffer of the naturally stable channel and that is necessary to maintain or restore dynamic equilibrium condition, as that term is defined in section 1422 of this title, and minimize fluvial erosion hazards, as delineated by the agency of natural resources in accordance with river corridor protection procedures.

~~(9)~~(11) "Secretary" means the secretary of ~~the agency of~~ natural resources or the secretary's duly authorized representative.

§ 753. FLOOD HAZARD AREAS; COOPERATION; MAPPING

(a) Cooperation to secure flood insurance. ~~To meet the objective of this chapter and the requirements of 24 V.S.A. § 4412, the designation and management of flood hazard areas shall adhere to the following procedure and schedule. All~~ The secretary and all municipalities, regional planning commissions, and departments and agencies of state government shall mutually cooperate to ~~these ends~~ achieve the purposes of this chapter and to secure flood ~~plain~~ insurance for municipalities and the state of Vermont. All correspondence sent to a municipality pursuant to this chapter shall be sent to the municipal clerk, the legislative body, ~~and~~ the planning commission, and the conservation commission if one exists. Copies of this correspondence shall be sent to the regional planning commission~~,~~ and the agency of commerce and community development~~, and the state planning office~~.

(b) Notice of designation of flood hazard areas; maps. The secretary shall, as the information becomes available, provide each municipality with a designation of flood hazard areas. The designation shall include a map or maps.

(c) Permit application review by certified floodplain managers. The secretary may delegate to a certified flood plain manager for a regional planning commission or for a municipality with a flood hazard area bylaw or ordinance the secretary's authority under 24 V.S.A. § 4424(a)(2)(D) to review and provide technical comments on a proposed permit for new construction or substantial improvement in a flood hazard area. The secretary shall establish a procedure for authorizing a certified floodplain manager to conduct the review required under 24 V.S.A. § 4424(a)(2)(D), including eligibility requirements for authorization to conduct permit application review and an approved process or list of approved certifications that the secretary shall accept as proof of floodplain management certification. Comments provided by a certified floodplain manager delegated under this subsection shall not be binding on a municipality.

§ 754. FLOOD HAZARD AREA RULES; DEVELOPMENT EXEMPT FROM MUNICIPAL REGULATION

(a) Rulemaking authority. On or before July 1, 2013, the secretary shall adopt rules pursuant to 3 V.S.A. chapter 25 that establish requirements for the issuance and enforcement of permits applicable to development that is:

(1) exempt from municipal land use regulation under 24 V.S.A. chapter 117; and

(2) located within a flood hazard area of a municipality that has adopted a flood hazard bylaw or ordinance under 24 V.S.A. chapter 117.

(b) Required rulemaking content. The rules shall:

(1) set forth the requirements necessary to ensure that development that is exempt from municipal land use regulation under 24 V.S.A. chapter 117 is regulated by the state in order to comply with the regulatory obligations set forth under the National Flood Insurance Program.

(2) be designed to ensure that the state and municipalities meet community eligibility requirements for the National Flood Insurance Program.

(3) require that the secretary provide to a municipality in which the development will occur notice of an application received under this section and a copy of the permit issued.

(c) Discretionary rulemaking; general permit. The rules may:

(1) establish requirements that exceed the requirements of the National Flood Insurance Program for development that is exempt from municipal land use regulation under 24 V.S.A. chapter 117.

(2) establish requirements, allowances, or exemptions for the regulation of development in established "downtowns" and "village centers," as those terms are defined in 24 V.S.A. § 2791(3) and (10), provided that such requirements comply with the minimum regulatory obligations set forth under the National Flood Insurance Program.

(d) General permit. The rules authorized by this section may establish requirements for a general permit to implement the rules adopted under this section, including authorization under the general permit to conduct specified development without notifying or reporting to the secretary or to an agency delegated under subsection (i) of this section.

(e) Consultation with interested parties. Prior to adopting or amending rules under this section, the secretary shall solicit the recommendations of and consult with affected and interested persons and entities such as: the Federal Emergency Management Agency; the secretary of commerce and community development; the secretary of agriculture, food and markets; the secretary of transportation; the regional planning commissions; and the Vermont League of Cities and Towns.

(f) FEMA approval. On completing the rulemaking process under 3 V.S.A. chapter 25, the secretary shall promptly request the Federal Emergency Management Agency's approval of the rules adopted pursuant to this section.

(g) Effective date of rules. Notwithstanding 3 V.S.A. § 845(d), rules adopted under this section shall take effect 120 days after they are approved by the Federal Emergency Management Agency.

(h) Permit requirement. Upon the effective date of the rules required by this section, no person shall commence or conduct development that is exempt from municipal land use regulation under 24 V.S.A. chapter 117 in a flood

hazard area in a municipality that has adopted a flood hazard area bylaw or ordinance under 24 V.S.A. chapter 117 without a permit issued by the secretary under the rules required by this section.

(i) Delegation.

(1) The secretary may delegate to another state agency the authority to implement the rules adopted under this section, to issue a permit under subsection (h) of this section, and to enforce the rules and a permit.

(2) A memorandum of understanding shall be entered into between the secretary and a delegated state agency for the purpose of specifying implementation of requirements of this section and the rules adopted under this section, issuance of a permit or coverage under a general permit under this section, and enforcement of the rules and permit required by this section. Prior to entering a memorandum of understanding, the secretary shall post the proposed memorandum of understanding on its website for 30 days for notice and comment. When the memorandum of understanding is posted, it shall include a summary of the proposed memorandum; the name, telephone number, and address of a person able to answer questions and receive comments on the proposal; and the deadline for receiving comments. A final copy of a memorandum of understanding entered into under this section shall be sent to the chairs of the house and senate committees on natural resources and energy, the house committee on fish, wildlife and water resources, and any other committee that has jurisdiction over an agency that is a party to the memorandum of understanding.

(j) Municipal authority. This section and the rules adopted under it shall not prevent a municipality from adopting substantive requirements for development in a flood hazard area bylaw or ordinance under 24 V.S.A. chapter 117 that are more stringent than the rules required by this section, provided that the bylaw or ordinance only shall apply to development that is not exempt from municipal land use regulation under 24 V.S.A. chapter 117.

§ 755. MUNICIPAL EDUCATION; MODEL FLOOD HAZARD AREA BYLAW OR ORDINANCE

(a) Education and assistance. The secretary, in consultation with regional planning commissions, shall provide ongoing education, technical assistance, and guidance to municipalities regarding the requirements under 24 V.S.A. chapter 117 necessary for compliance with the National Flood Insurance Program.

(b) Model flood hazard area bylaw or ordinance. The secretary shall create and make available to municipalities a model flood hazard area bylaw or ordinance for potential adoption by municipalities pursuant to 24 V.S.A. chapter 117 or 24 V.S.A. § 2291. The model bylaw or ordinance may include

provisions that exceed the minimum requirements of the National Flood Insurance Program in order to encourage municipal land use regulation of nonexempt development in a manner that minimizes the risk of harm to life, property, and infrastructure from flooding.

(c) Assistance to municipalities with no flood hazard area bylaw or ordinance. The secretary, in consultation with municipalities, municipal organizations, and regional planning commissions, shall provide education and technical assistance to municipalities that lack a flood hazard area bylaw or ordinance in order to encourage adoption of a flood hazard area bylaw or ordinance that qualifies the municipality for the National Flood Insurance Program.

* * * Stream Alteration; Emergency Activities * * *

Sec. 2. 10 V.S.A. § 1002 is amended to read:

§ 1002. DEFINITIONS

Wherever used or referred to in this chapter, unless a different meaning clearly appears from the context:

(1) "Artificial regulation of stream flow" means the intermittent or periodic manipulation of water levels and the intermittent or periodic regulation of discharge of water into the stream below the dam.

(2) "Banks" means that land area immediately adjacent to the bed of the stream, which is essential in maintaining the integrity thereof.

(3) "Bed" means the maximum area covered by waters of the stream for not less than 15 consecutive days in one year.

(4) "Board" means the natural resources board.

(5) "Cross section" means the entire channel to the top of the banks.

(6) "Dam" applies to any artificial structure on a stream or at the outlet of a pond or lake, which is utilized for holding back water by ponding or storage together with any penstock, flume, piping or other facility for transmitting water downstream to a point of discharge, or for diverting water from the natural watercourse to another point for utilization or storage.

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

(8) ~~[Repealed.]~~ "Instream material" means gravel, soil, silt, or large woody debris in the bed of a watercourse or within the banks of a watercourse.

(9) "Person" means any individual; partnership; company; corporation; association; unincorporated association; joint venture; trust; municipality; the state of Vermont or any agency, department, or subdivision of the state, any federal agency, or any other legal or commercial entity.

(10) "Watercourse" means any perennial stream. "Watercourse" shall not include ditches or other constructed channels primarily associated with land drainage or water conveyance through or around private or public infrastructure.

(11) "Secretary" means the secretary of the agency of natural resources, or the secretary's duly authorized representative.

(12) "Berm" means a linear fill of earthen material on or adjacent to the bank of a watercourse constructed for the purpose of constraining waters from entering a flood hazard area or river corridor, as those terms are defined in subdivisions 752(3) and (10) of this title.

(13) "Large woody debris" means any piece of wood with a diameter of 10 or more inches and a length of 10 or more feet.

Sec. 3. 10 V.S.A. § 1021 is amended to read:

§ 1021. ALTERATION PROHIBITED; EXCEPTIONS

(a) A person shall not change, alter, or modify the course, current, or cross section of any watercourse or of designated outstanding resource waters, within or along the boundaries of this state either by movement, fill, or ~~by~~ excavation of ten cubic yards or more of instream material in any year, unless authorized by the secretary. A person shall not construct a berm in a flood hazard area or river corridor, as those terms are defined in subdivisions 752(3) and (10) of this title, unless authorized by the secretary or constructed as an emergency protective measure under subsection (b) of this section.

(b) This subchapter shall not apply to emergency protective measures necessary to preserve life or to prevent severe imminent damage to public or private property, or both. The protective measures shall:

(1) be limited to the minimum amount necessary to remove imminent threats to life or property~~, shall~~;

(2) have prior approval from a member of the municipal legislative body ~~and shall~~;

(3) be reported to the secretary by the legislative body within ~~72~~ 24 hours after the onset of the emergency; and

(4) be implemented in a manner consistent with the rules adopted under section 1027 of this title regarding stream alteration during a declared emergency.

(c)(1) No person shall remove ~~gravel~~ instream material from any watercourse primarily for construction or for sale.

(2) No person shall remove instream material from any watercourse for the purpose of constructing a berm in a river corridor or flood plain, as those terms are defined in subdivisions 752(3) and (10) of this title, unless the construction of the berm is permitted by the secretary under section 1023 of this title or construction of the berm is an emergency protective measure under subsection (b) of this section.

(d) Notwithstanding subsection (c) of this section, a riparian owner may remove up to 50 cubic yards of ~~gravel~~ instream material per year from that portion of a watercourse running through or bordering on the owner's property, provided:

(1) the material shall be removed only for the owner's use on the owner's property;

(2) the material removed shall be above the waterline of the watercourse at the time of removal; ~~and~~

(3) at least 72 hours prior to the removal of 10 cubic yards, or more, the landowner shall notify the secretary;

(4) ~~however,~~ if the portion of the watercourse in question has been designated as outstanding resource waters, then the riparian owner may ~~so~~ remove no more than 10 cubic yards of ~~gravel~~ instream material per year, and ~~must~~ shall notify the secretary at least 72 hours prior to the removal of any ~~gravel~~ instream material.

(e) This subchapter does not apply to dams subject to chapter 43 of this title nor to highways or bridges subject to 19 V.S.A. § 10(12).

(f) This subchapter shall not apply to accepted agricultural or silvicultural practices, as defined by the secretary of agriculture, food and markets, or the commissioner of forests, parks and recreation, respectively.

(g) Nothing in this chapter shall prohibit, in the normal use of land, the fording of or access to a watercourse by a person with the right or privilege to use the land.

* * *

Sec. 4. 10 V.S.A. § 1023 is amended to read:

§ 1023. INVESTIGATION, PERMIT

(a) Upon receipt of an application, the secretary shall cause an investigation of the proposed change to be made. Prior to making a decision, a written report shall be made by the secretary concerning the effect of the proposed change on the watercourse. The permit shall be granted, subject to such conditions determined to be warranted, if it appears that the change:

(1) will not adversely affect the public safety by increasing flood or fluvial erosion hazards;

(2) will not significantly damage fish life or wildlife;

(3) will not significantly damage the rights of riparian owners; and

(4) in case of any waters designated by the board as outstanding resource waters, will not adversely affect the values sought to be protected by designation.

(b) The reasons for the action taken under this section shall be set forth in writing to the applicant. Notice of the action of the secretary shall also be sent to the selectmen of the town in which the proposed change is located, and to each owner of property which abuts or is opposite the land where the alteration is to take place.

(c) If the local legislative body and planning commission determine in writing by majority vote of each that ~~gravel~~ instream material in a watercourse is threatening life or property, due to increased potential for flooding, and that the removal of ~~gravel~~ instream material is necessary to prevent the threat to life or property, and if a complete permit application has been submitted to the secretary, requesting authority to remove ~~gravel~~ instream material in the minimum amount necessary to remove threats to life or property, the local legislative body and the planning commission may request an expedited review of the complete permit application by notifying the secretary and providing copies of their respective decisions. If the secretary fails to approve or deny the application within 45 calendar days of receipt of notice of the decisions, the application shall be deemed approved and a permit shall be deemed to have been granted. ~~Gravel~~ Instream material removed shall be used only for public purposes, and cannot be sold, traded, or bartered. The fact that an application for a permit has been filed under this subsection shall not limit the ability to take emergency measures under subsection 1021(b) of this title. For the purposes of section 1024 of this title, if a permit has been deemed to have been granted under this subsection, that permit shall constitute a decision of the secretary.

(d) The secretary shall conduct training programs or seminars regarding how to conduct the stream alteration, water quality review, stormwater discharge, and wastewater discharge activities necessary during a state of emergency declared under 20 V.S.A. chapter 1. The secretary shall make the training programs or seminars available to agency employees in an agency division other than the watershed management division, employees of other state agencies, regional planning commission members and employees, and municipal officers and employees.

(e) The secretary is authorized to enter into reciprocal mutual aid agreements or compacts with other states in the region to assist the secretary and the state in addressing watershed, river management, and transportation system issues that arise when a state of emergency is declared under 20 V.S.A. § 9.

Sec. 5. 10 V.S.A. § 1027 is added to read:

§ 1027. RULEMAKING; EMERGENCY PERMIT

(a) The secretary may adopt rules to implement the requirements of this subchapter.

(b) The secretary shall adopt rules regarding the permitting of stream alteration activities under this subchapter when a state of emergency is declared under 20 V.S.A. chapter 1. A rule adopted under this subsection may include a requirement that an activity receive an individual stream alteration emergency permit or receive coverage under a general stream alteration emergency permit. A rule adopted under this subsection may establish:

(1) criteria for coverage under an individual or general emergency permit;

(2) criteria for different categories of activities covered under a general emergency permit; and

(3) reporting requirements for categories of activities, including authorizing activities that do not require reporting to the secretary or that require reporting to the secretary after initiation or completion of the activity.

(4) requirements for public notification of permitted activities, including notification after initiation or completion of a permitted activity;

(5) requirements for coordination with state and municipal authorities;

(6) requirements that the secretary document permitted activity, including, at a minimum, requirements for documenting permit terms, permit duration, and the nature of activity when such activity is authorized to notify the secretary after initiation or completion of stream alteration.

Sec. 6. 10 V.S.A. § 1264 is amended to read:

§ 1264. STORMWATER MANAGEMENT

* * *

(k) The secretary shall adopt rules regarding the permitting of stormwater discharges under this section when a state of emergency is declared under 20 V.S.A. chapter 1. A rule adopted under this subsection may include a requirement that an activity receive an individual stormwater discharge

emergency permit or receive coverage under a general stormwater discharge emergency permit. A rule adopted under this subsection may establish:

(1) criteria for coverage under an individual or general emergency permit;

(2) criteria for different categories of activities covered under a general emergency permit;

(3) reporting requirements for categories of activities, including authorizing activities that do not require reporting to the secretary or that require reporting to the secretary after initiation or completion of the activity;

(4) requirements for public notification of permitted activities, including notification after initiation or completion of a permitted activity;

(5) requirements for coordination with state and municipal authorities;

(6) requirements that the secretary document permitted activity, including, at a minimum, requirements for documenting permit terms, permit duration, and the nature of activity when such activity is authorized to notify the secretary after initiation or completion of stormwater discharge or other activity.

* * * River Corridor Assessment and Planning * * *

Sec. 7. 10 V.S.A. § 1421 is amended to read:

§ 1421. POLICY

To aid in the fulfillment of the state's role as trustee of its navigable waters and to promote public health, safety, convenience, and general welfare, it is declared to be in the public interest to make studies, establish policies, make plans, make rules, encourage and promote buffers adjacent to lakes, ponds, reservoirs, rivers, and streams of the state, encourage and promote protected river corridors adjacent to rivers and streams of the state, and authorize municipal shoreland and river corridor protection zoning bylaws for the efficient use, conservation, development, and protection of the state's water resources. The purposes of the rules shall be to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish, and aquatic life; control building sites, placement of structures, and land uses; reduce fluvial erosion hazards; reduce property loss and damage; preserve shore cover, natural beauty, and natural stability; and provide for multiple use of the waters in a manner to provide for the best interests of the citizens of the state.

Sec. 8. 10 V.S.A. § 1422 is amended to read:

§ 1422. DEFINITIONS

In this chapter, unless the context clearly requires otherwise:

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

* * *

(7) "Secretary" means the secretary of natural resources or the secretary's duly authorized representative.

* * *

(12) "River corridor" means the land area adjacent to a river that is required to accommodate the dimensions, slope, planform, and buffer of the naturally stable channel, and necessary to maintain or restore ~~fluvial~~ dynamic equilibrium conditions and minimize fluvial erosion hazards~~, as delineated by the agency of natural resources in accordance with river corridor protection procedures~~.

(13) "River" means the full length and width, including the bed and banks, of any watercourse, including rivers, streams, creeks, brooks, and branches, which experience perennial flow. "River" does not mean constructed drainageways, including water bars, swales, and roadside ditches.

(14) "Equilibrium condition" means the width, depth, meander pattern, and longitudinal slope of a stream channel that occurs when water flow, sediment, and woody debris are transported by the stream in such a manner that it generally maintains dimensions, pattern, and slope without unnaturally aggrading or degrading the channel bed elevation.

(15) "Flood hazard area" shall have the same meaning as "area of special flood hazard" under 44 C.F.R. § 59.1.

(16) "Fluvial erosion" means the erosion or scouring of riverbeds and banks during high flow conditions of a river.

(17) "Geomorphic condition" means the degree of departure from the dimensions, pattern, and profile associated with a naturally stable channel representing the unique dynamic equilibrium condition of a river segment.

(18) "River corridor protection area" means the area within a delineated river corridor subject to fluvial erosion that may occur as a river establishes and maintains the dimension, pattern, and profile associated with its dynamic equilibrium condition and that would represent a hazard to life, property, and infrastructure placed within the area.

(19) "Sensitivity" means the potential of a river, given its inherent characteristics and present geomorphic conditions, to be subject to a high rate of fluvial erosion and other river channel adjustments, including erosion, deposit of sediment, and flooding.

Sec. 9. 10 V.S.A. § 1427 is amended to read:

§ 1427. RIVER CORRIDORS AND BUFFERS

(a) River corridor and floodplain management program. The secretary of natural resources shall establish a river corridor and floodplain management program to aid and support the municipal adoption of river corridor, floodplain, and buffer bylaws. Under the river corridor and floodplain management program, the secretary shall:

(1) ~~upon request, provide municipalities with maps of designated river corridors within the municipality. A river corridor map provided to a municipality shall delineate a recommended buffer that is based on site-specific conditions. The secretary shall provide maps under this subdivision based on a priority schedule established by the secretary in procedure; and~~ assess the geomorphic condition and sensitivity of the rivers of the state and identify where the sensitivity of the river poses a probable risk of harm to life, property, or infrastructure. As used in this section, "infrastructure" means state and municipal highways and roads, public and private buildings, public and private utility construction, and cemeteries.

(2) delineate and map river corridors based on the river sensitivity assessments required under subdivision (1) of this subsection according to a priority schedule established by the secretary by procedure; and

(3) develop recommended best management practices for the management of river corridors, floodplains, and buffers.

(b) River sensitivity assessment. ~~No later than February 1, 2011, the secretary of administration, after consultation with the state agencies of relevant jurisdiction, shall offer financial incentives to municipalities through existing grants and pass-through funding programs which encourage municipal adoption and implementation of zoning bylaws that protect river corridors and buffers~~ Notwithstanding the schedule established by the secretary under subdivision (a)(2) of this section, the secretary may complete a sensitivity assessment for a river if, in the secretary's discretion, the sensitivity of a river and the risk it poses to life, property, and infrastructure require an expedited assessment.

(c) ~~No later than February 1, 2011, the agency of natural resources shall define minimum standards for municipal eligibility for any financial incentives established under subsection (b) of this section~~ Municipal consultation during river assessment. Prior to and during an assessment of river sensitivity required under subsection (a) of this section, the secretary shall consult with the legislative body or designee of municipalities in which a river is located.

Sec. 10. 10 V.S.A. §§ 1428 is added to read:

§ 1428. RIVER CORRIDOR PROTECTION

(a) River corridor maps. Upon completion of a sensitivity assessment for a river or river segment under section 1427 of this title, the secretary shall provide to each municipality and regional planning commission in which the river or river segment is located a copy of the sensitivity assessment and a river corridor map for the municipality and region. A river corridor map provided to a municipality and regional planning commission shall identify floodplains and river corridor protection areas and shall recommend best management practices, including vegetated buffers, based on site-specific conditions. The secretary shall post a copy of the sensitivity assessment and river corridor map to the agency of natural resources' website. A municipality shall post a copy of a sensitivity assessment or river corridor map received under this subsection in the municipal offices of the municipality or municipalities in which the river or river segment is located.

(b) Flood resilient communities program; incentives. No later than February 1, 2013, the secretary of administration, after consultation with the state agencies of relevant jurisdiction, shall establish a flood resilient communities program. The program shall list the existing financial incentives under state law for which municipalities may apply for financial assistance, when funds are available, for municipal adoption and implementation of bylaws under 24 V.S.A. chapter 117 that protect river corridors and floodplains. The secretary of natural resources shall summarize minimum standards for municipal eligibility for any financial incentives established under this subsection.

* * * Municipal Planning; Flood Hazard and River Corridor Protection Areas * * *

Sec. 11. 24 V.S.A. § 4303 is amended to read:

§ 4303. DEFINITIONS

The following definitions shall apply throughout this chapter unless the context otherwise requires:

* * *

(8) "Flood hazard area" for purposes of section 4424 of this title ~~means the land subject to flooding from the base flood. "Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year~~ shall have the same meaning as "area of special flood hazard" under 44 C.F.R. § 59.1. Further, with respect to flood, river corridor protection area, and other hazard area regulation pursuant to this chapter, the following terms shall have the following meanings:

(A) "Floodproofing" ~~means any combination of structural and nonstructural additions, changes, or adjustments to properties and structures that substantially reduce or eliminate flood damage to any combination of real estate, improved real property, water or sanitary facilities, structures, and the contents of structures~~ shall have the same meaning as "flood proofing" under 44 C.F.R. § 59.1.

(B) "Floodway" ~~means the channel of a river or other watercourse and the adjacent land area that must be reserved in order to discharge the base flood without accumulatively increasing the water surface elevation more than one foot~~ shall have the same meaning as "regulatory floodway" under 44 C.F.R. § 59.1.

(C) "Hazard area" means land subject to landslides, soil erosion, fluvial erosion, earthquakes, water supply contamination, or other natural or human-made hazards as identified within a "local mitigation plan" enacted under section 4424 of this title and in conformance with and approved pursuant to the provisions of 44 C.F.R. ~~section~~ § 201.6.

(D) "National Flood Insurance Program" means the National Flood Insurance Program under 42 U.S.C. chapter 50 and implementing federal regulations in 44 C.F.R. parts 59 and 60.

(E) "New construction" means construction of structures or filling commenced on or after the effective date of the adoption of a community's flood hazard bylaws.

~~(E)~~(F) "Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. However, the term does not include either of the following:

(i) Any project or improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications that are solely necessary to assure safe living conditions.

(ii) Any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places.

(G) "Equilibrium condition" means the width, depth, meander pattern, and longitudinal slope of a stream channel that occurs when water flow, sediment, and woody debris are transported by the stream in such a manner that it generally maintains dimensions, pattern, and slope without unnaturally aggrading or degrading the channel bed elevation.

(H) "Fluvial erosion" means the erosion or scouring of riverbeds and banks during high flow conditions of a river.

(I) "River" means the full length and width, including the bed and banks, of any watercourse, including rivers, streams, creeks, brooks, and branches which experience perennial flow. "River" does not mean constructed drainageways, including water bars, swales, and roadside ditches.

(J) "River corridor" means the land area adjacent to a river that is required to accommodate the dimensions, slope, planform, and buffer of the naturally stable channel and that is necessary to maintain or restore dynamic equilibrium conditions and minimize fluvial erosion hazards.

(K) "River corridor protection area" means the area within a delineated river corridor subject to fluvial erosion that may occur as a river establishes and maintains the dimension, pattern, and profile associated with its dynamic equilibrium condition and would represent a hazard to life, property, and infrastructure placed within the area.

* * *

Sec. 12. 24 V.S.A. § 4411(b) is amended to read:

(b) All zoning bylaws shall apply to all lands within the municipality other than as specifically limited or exempted in accordance with specific standards included within those bylaws and in accordance with the provisions of this chapter. The provisions of those bylaws may be classified so that different provisions may be applied to different classes of situations, uses, and structures and to different and separate districts of the municipality as may be described by a zoning map made part of the bylaws. The land use map required pursuant to subdivision 4382(a)(2) of this title of any municipality may be designated as the zoning map except in cases in which districts are not deemed by the planning commission to be described in sufficient accuracy or detail by the municipal plan land use map. All provisions shall be uniform for each class of use or structure within each district, except that additional classifications may be made within any district for any or all of the following:

(1) To make transitional provisions at and near the boundaries of districts.

(2) To regulate the expansion, reduction, or elimination of certain nonconforming uses, structures, lots, or parcels.

(3) To regulate, restrict, or prohibit uses or structures at or near any of the following:

* * *

(G) Flood, ~~fluvial erosion~~ river corridor protection area, or other hazard areas and other places having a special character or use affecting or affected by their surroundings.

(H) River corridors and buffers, as those terms are defined in 10 V.S.A. §§ 1422 and 1427.

* * *

Sec. 13. 24 V.S.A. § 4424 is amended to read:

§ 4424. SHORELANDS; RIVER CORRIDOR PROTECTION AREAS; FLOOD OR HAZARD AREA; SPECIAL OR FREESTANDING BYLAWS

(a) Any municipality may adopt freestanding bylaws under this chapter to address particular hazard areas in conformance with the municipal plan or a local hazard mitigation plan approved under 44 C.F.R. § 201.6, including the following, which may also be part of zoning or unified development bylaws:

(1) Bylaws to regulate development and use along shorelands.

(2) Bylaws to regulate development and use in flood, river corridor protection areas, or other hazard areas. The following shall apply if flood or other hazard area bylaws are enacted:

(A) Purposes.

(i) To minimize and prevent the loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditures and demands on public service that result from flooding, landslides, erosion hazards, earthquakes, and other natural or human-made hazards.

(ii) To ensure that the design and construction of development in flood, river corridor protection, and other hazard areas are accomplished in a manner that minimizes or eliminates the potential for flood, fluvial erosion, and loss or damage to life and property.

(iii) To manage all flood hazard areas designated pursuant to 10 V.S.A. § 753.

(iv) To make the state and municipalities eligible for federal flood insurance and other federal disaster recovery and hazard mitigation funds as may be available.

(B) Contents of bylaws. Flood, river corridor protection area, and other hazard area bylaws may:

(i) Contain standards and criteria that prohibit the placement of damaging obstructions or structures, the use and storage of hazardous or radioactive materials, and practices that are known to further exacerbate hazardous or unstable natural conditions.

(ii) Require flood, fluvial erosion, and hazard protection through elevation, floodproofing, disaster preparedness, hazard mitigation, relocation, or other techniques.

(iii) Require adequate provisions for flood drainage and other emergency measures.

(iv) Require provision of adequate and disaster-resistant water and wastewater facilities.

(v) Establish other restrictions to promote the sound management and use of designated flood, river corridor protection, and other hazard areas.

(vi) Regulate all land development in a flood hazard area, river corridor protection area, or other hazard area, except for development that is regulated under 10 V.S.A. § 754.

(C) Effect on zoning bylaws. Flood or other hazard area bylaws may alter the uses otherwise permitted, prohibited, or conditional in a flood or other hazard area under a bylaw, as well as the applicability of other provisions of that bylaw. Where a flood hazard bylaw, a hazard area bylaw, or both apply along with any other bylaw, compliance with the flood or other hazard area bylaw shall be prerequisite to the granting of a zoning permit. Where a flood hazard area bylaw or a hazard area bylaw but not a zoning bylaw applies, the flood hazard and other hazard area bylaw shall be administered in the same manner as are zoning bylaws, and a flood hazard area or hazard area permit shall be required for land development covered under the bylaw.

(D) Mandatory provisions. All flood and other hazard area bylaws shall provide that no permit for new construction or substantial improvement shall be granted for a flood or other hazard area until after both the following:

(i) A copy of the application is mailed or delivered by the administrative officer or by the appropriate municipal panel to the agency of natural resources.

(ii) Either 30 days have elapsed following the mailing or the agency delivers comments on the application.

~~(E) Special exceptions. The appropriate municipal panel, after public hearing, may approve the repair, relocation, replacement, or enlargement of a nonconforming structure within a regulated flood or other hazard area, subject to compliance with applicable federal and state laws and regulations, and provided that the following criteria are met:~~

~~(i) The appropriate municipal panel finds that the repair, relocation, or enlargement of the nonconforming structure is required for the continued economically feasible operation of a nonresidential enterprise.~~

~~(ii) The appropriate municipal panel finds that the repair, relocation, or enlargement of the nonconforming structure will not increase flood levels in the regulatory floodway, increase the risk of other hazard in the area, or threaten the health, safety, and welfare of the public or other property owners.~~

~~(iii) The permit so granted states that the repaired, relocated, or enlarged nonconforming structure is located in a regulated flood or other hazard area, does not conform to the bylaws pertaining to that area, and will be maintained at the risk of the owner.~~

(b) A municipality may adopt a flood hazard area, river corridor protection area, or other hazard area regulation that meets the requirements of this section by ordinance under subdivision 2291(25) of this title.

Sec. 14. 24 V.S.A. § 4469 is amended to read:

§ 4469. APPEAL; VARIANCES

(a) On an appeal under section 4465 or 4471 of this title in which a variance from the provisions of a bylaw or interim bylaw is requested for a structure that is not primarily a renewable energy resource structure, the board of adjustment or the development review board or the environmental division created under 4 V.S.A. chapter 27 shall grant variances and render a decision in favor of the appellant, if all the following facts are found, and the finding is specified in its decision:

(1) There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions, and not the circumstances or conditions generally created by the provisions of the bylaw in the neighborhood or district in which the property is located.

(2) Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the bylaw, and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

(3) Unnecessary hardship has not been created by the appellant.

(4) The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare.

(5) The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaw and from the plan.

(b) On an appeal under section 4465 or 4471 of this title in which a variance from the provisions of a bylaw or interim bylaw is requested for a structure that is primarily a renewable energy resource structure, the board of adjustment or development review board or the environmental division may grant that variance and render a decision in favor of the appellant if all the following facts are found, and the finding is specified in its decision:

(1) It is unusually difficult or unduly expensive for the appellant to build a suitable renewable energy resource structure in conformance with the bylaws.

(2) The hardship was not created by the appellant.

(3) The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare.

(4) The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaws and from the plan.

(c) In rendering a decision in favor of an appellant under this section, a board of adjustment or development review board or the environmental division may attach such conditions to variances as it may consider necessary and appropriate under the circumstances to implement the purposes of this chapter and the plan of the municipality then in effect.

(d) A variance authorized in a flood hazard area shall meet applicable federal and state rules for compliance with the National Flood Insurance Program, as that term is defined in 10 V.S.A. § 752(8).

Sec. 15. 24 V.S.A. § 2291 is amended to read:

§ 2291. ENUMERATION OF POWERS

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

* * *

(25) To regulate by means of an ordinance or bylaw development in a flood hazard area, river corridor protection area, or other hazard area consistent with the requirements of section 4424 of this title.

Sec. 16. 10 V.S.A. § 6086(c) is amended to read:

(c) A permit may contain such requirements and conditions as are allowable proper exercise of the police power and which are appropriate within the respect to subdivisions (1) through (10) of subsection (a), including but not limited to those set forth in 24 V.S.A. §§ 4414(4), 4424(a)(2), 4414(1)(D)(i), 4463(b), and 4464, the dedication of lands for public use, and the filing of bonds to insure compliance. The requirements and conditions incorporated from Title 24 may be applied whether or not a local plan has been adopted. General requirements and conditions may be established by rule of the land use panel.

* * * Enforcement, Appeals, Transition; Effective Dates * * *

Sec. 17. 10 V.S.A. § 8003 is amended to read:

§ 8003. APPLICABILITY

(a) The secretary may take action under this chapter to enforce the following statutes and rules, permits, assurances, or orders implementing the following statutes:

(1) ~~[Deleted.]~~ 10 V.S.A. chapter 23, relating to air quality;

(2) 10 V.S.A. chapter ~~23, relating to air quality~~ 32, relating to flood hazard areas;

* * *

(21) 10 V.S.A. chapter 166, relating to collection and recycling of electronic waste; ~~and~~

(22) 10 V.S.A. chapter 164A, collection and disposal of mercury-containing lamps.

Sec. 18. 10 V.S.A. § 8503(a) is amended to read:

(a) This chapter shall govern all appeals of an act or decision of the secretary, excluding enforcement actions under chapters 201 and 211 of this title and rulemaking, under the following authorities and under the rules adopted under those authorities:

(1) The following provisions of this title:

* * *

(R) chapter 32 (flood hazard areas).

Sec. 19. IMPLEMENTATION; TRANSITION

(a) By July 1, 2013, the secretary of natural resources shall conduct and complete the processes for adopting rules under Sec. 1 of this act, 10 V.S.A.

§ 754 (flood hazard area rules) and shall submit the adopted rules to the Federal Emergency Management Agency (FEMA) for approval.

(b) No later than 30 days after the approval of such rules by FEMA, the secretary shall notify municipalities of the effective date of the rules.

(c) The consolidated executive branch fee report and request to be submitted on or before the third Tuesday of January 2013 pursuant to 32 V.S.A. § 605 shall include the agency of natural resources' proposed fee or fees to support the agency's services provided under Sec. 1 of this act, 10 V.S.A. § 754 (flood hazard area rules). The proposed fee shall be sufficient to pay for at least 20 percent of the cost to the agency of natural resources of implementing, administering, and enforcing the rules adopted under 10 V.S.A. § 754.

Sec. 20. REPEAL

25 V.S.A. chapter 3 (general provisions relating to rivers and streams), except for 25 V.S.A. § 141 (public easement in stream), is repealed.

Sec. 21. EFFECTIVE DATES

(a) This section and Secs. 1 (flood hazard area regulation), 2 (stream alteration; definitions), 4 (stream alteration permit), 5 (stream alteration; rulemaking), 6 (stormwater; emergency permit), 7 (river corridor policy), 8 (river corridor definitions), 9 (river corridor mapping; sensitivity assessment), 10 (river corridor protection), 11 (municipal planning definitions), 12 (municipal planning; zoning bylaw districts), 13 (zoning bylaws; hazard areas), 14 (municipal planning; variances), 15 (municipal enumeration of powers), 16 (conforming amendment; municipal planning reference), 18 (ANR appeals), 19 (transition), and 20 (repeal of general municipal authority relating to rivers and streams) of this act shall take effect on passage.

(b) Sec. 3 (stream alteration; prohibitions and exceptions) of this act shall take effect on January 1, 2013.

(c) Sec. 17 (ANR enforcement) of this act shall take effect on July 1, 2013.

and, after passage, by amending the title of the bill to read "An act relating to regulation of flood hazard areas, river corridors, and stream alteration"

(Committee vote: 5-0-0)

NOTICE CALENDAR

Committee Bill for Second Reading

S. 252.

An act relating to the repeal or revision of reporting requirements.

By the Committee on Government Operations.

Second Reading

Favorable with Recommendation of Amendment

S. 179.

An act relating to amending perpetual conservation easements.

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

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

Sec. 1. 10 V.S.A. § 302 is amended to read:

§ 302. POLICY, FINDINGS, AND PURPOSE

(a) The dual goals of creating affordable housing for Vermonters, and conserving and protecting Vermont's agricultural land, forestland, historic properties, important natural areas, and recreational lands are of primary importance to the economic vitality and quality of life of the state.

(b) In the best interests of all of its citizens and in order to improve the quality of life for Vermonters and to maintain for the benefit of future generations the essential characteristics of the Vermont countryside, and to support farm, forest, and related enterprises, Vermont should encourage and assist in creating affordable housing and in preserving the state's agricultural land, forestland, historic properties, important natural areas and recreational lands, and in keeping conserved agricultural land in production and affordable for future generations of farmers.

(c) It is the purpose of this chapter to create the Vermont housing and conservation trust fund to be administered by the Vermont housing and conservation board to further the policies established by subsections (a) and (b) of this section.

Sec. 2. 10 V.S.A. § 6301 is amended to read:

§ 6301. PURPOSE

It is the purpose of this chapter to encourage and assist the maintenance of the present uses of Vermont's agricultural, forest, and other undeveloped land and to prevent the accelerated residential and commercial development thereof; to preserve and to enhance Vermont's scenic natural resources; to strengthen the base of the recreation industry and to increase employment, income, business, and investment; ~~and~~ to enable the citizens of Vermont to plan its orderly growth in the face of increasing development pressures in the interests of the public health, safety, and welfare; and to encourage the use of

conservation and preservation tools to support farm, forest, and related enterprises, thereby strengthening Vermont's economy to improve the quality of life for Vermonters, and to maintain the historic settlement pattern of compact village and urban centers separated by rural countryside.

Sec. 3. 10 V.S.A. § 6307 is amended to read:

§ 6307. ENFORCEMENT

(a) Injunction. In any case where rights and interests in real property are held by a municipality, state agency, or qualified organization under the authority of this chapter, the legislative body of the municipality, the state agency, or the qualified organization may institute injunction proceedings to enforce the rights of the municipality, state agency, or qualified organization, in accordance with the provisions of this chapter, and may take all other proceedings as are available to an owner of real property under the laws of this state to protect and conserve its right or interest.

(b) Liquidated damages. Any contract or deed establishing or relating to the sale or transfer of rights or interests in real property under the authority of this chapter may provide for specified liquidated damages, actual damages, costs, and reasonable attorney fees in the event of a violation of the rights of the municipality, state agency, or qualified organization thereunder.

(c) Conservation rights. The holder of conservation rights and interests may seek injunctive relief and damages against any person who damages the holder's rights and interests, irrespective of whether the owner of the land is a party to the proceeding.

Sec. 4. 10 V.S.A. § 6308 is amended to read:

§ 6308. ~~TERMINATION OF RIGHTS~~ RIGHTS IN PERPETUITY UNLESS LIMITED

(a) If the legislative body of a municipality in the case of municipal rights or interests, or a state agency, in the case of state-owned rights or interests, finds that the retention of the rights or interests is no longer needed to carry out the purposes of this chapter, the rights or interests may be released and conveyed to the co-owner, to another public agency, to another party holding other rights or interests in the land, or to a third party. Where the conveyance is to a party other than another public agency or qualified organization, the municipality or state agency shall receive adequate compensation from that party for the conveyance of the rights or interests.

~~(b) Wherever possible, in order to promote the interests of the state, municipalities, qualified organizations, or private landowners involved, agreements for the conveyance of rights or interests in real property less than fee simple, entered into under the authority of this chapter, shall contain a~~

~~provision limiting the agreement to a specified number of years except where both parties agree, such agreements may provide for the conveyance of rights and interests in perpetuity.~~

The conveyance of rights or interests in real property less than fee simple made under the authority of this chapter shall be perpetual, except if the conveyance is limited by its terms to a specific period.

Sec. 5. 10 V.S.A. § 823 is amended to read:

§ 823. INTERESTS IN REAL PROPERTY

Conservation and preservation rights and interests shall be deemed to be interests in real property and shall run with the land. A document creating such a right or interest shall be deemed to be a conveyance of real property and shall be recorded under 27 V.S.A. chapter 5 ~~of Title 27.~~ Such a right or interest shall be subject to the requirement of filing a notice of claim within the 40- year period as provided in 27 V.S.A. § 603. Such a right or interest shall be enforceable in law or in equity. Any subsequent transfer, mortgage, lease, or other conveyance of the real property or an interest in the real property shall reference the grant of conservation rights and interests in the real property, provided, however, that the failure to include a reference to the grant shall not affect the validity or enforceability of the conservation rights and interests.

Sec. 6. 27 V.S.A. § 604(a) is amended to read:

(a) This subchapter shall not bar or extinguish any of the following interests, by reason of failure to file the notice provided for in section 605 of this title:

* * *

(7) Any easement or interest in the nature of an easement, or any rights appurtenant thereto granted, excepted or reserved by a recorded instrument creating such easement or interest~~, including any rights for future use, except rights and interests created pursuant to chapter 34 of Title 10~~.

(8) Any conservation rights or interests created pursuant to 10 V.S.A. chapter 155.

Sec. 7. 10 V.S.A. § 6303(a) is amended to read:

(a) The rights and interests in real property which may be acquired, used, encumbered, and conveyed by a municipality, state agency, or qualified organization shall include, but not be limited to, the following:

* * *

(7) ~~Option~~ Preemptive rights and options to purchase. The acquisition of preemptive rights such as a right of first refusal or an option to purchase land or rights and interests therein.

Sec. 8. 32 V.S.A. § 9606 is amended to read:

§ 9606. PROPERTY TRANSFER RETURN

* * *

(e) The property transfer return required under this section shall also contain a certificate in such form as the secretary of the agency of natural resources shall prescribe and shall be signed under oath on affirmation by each of the parties or their legal representatives. The certificate shall indicate that each party has investigated and disclosed all of his or her knowledge relating to the flood regulations, if any, affecting the property.

(f) The property transfer return required under this section shall also contain a certificate in such form as the commissioner of taxes shall prescribe and shall be signed under oath on affirmation by each of the parties or their legal representatives. The certificate shall indicate that the transfer, mortgage, deed, lease, or other conveyance references all grants of conservation rights or interests in the real property, as required by 10 V.S.A. § 823.

(g) The property transfer tax return shall not be required of properties qualified for the exemption stated in subdivision 9603(17) of this title. A public utility shall notify the listers of a municipality of the grantors, grantees, consideration, date of execution, and location of the easement when it files for recording a deed transferring a utility line easement that does not require a transfer tax return.

~~(g)~~(h) The commissioner of taxes is authorized to disclose to any person any information appearing on a property transfer tax return, including statistical information derived therefrom, and such information derived from research into information appearing on property transfer tax returns as is necessary to determine if the property being transferred is subject to 10 V.S.A. chapter 151.

Sec. 9. WORKING GROUP ON CONSERVATION EASEMENTS

(a) Creation of working group. There is created a working group on perpetual conservation easements to study the issues relating to the creation of a formal and transparent public process for the amendment of perpetual conservation easements, the criteria for approving such amendments, and the entity most appropriate to review and approve such amendments.

(b) Membership. The conservation easements working group (the working group) shall be composed of the following members:

(1) The secretary of agriculture, food and markets or designee.

(2) A representative of the Vermont housing and conservation board, designated by the board.

(3) The commissioner of forests, parks and recreation or designee.

(4) One member of the legal staff in the Vermont office of the attorney general, designated by the attorney general.

(5) A representative of Vermont Land Trust, designated by its board.

(6) A representative of Upper Valley Land Trust, designated by its board.

(7) A representative of the Vermont Federation of Sportsmen's Clubs, designated by its board.

(8) A representative of the Vermont Green Mountain Club, designated by its board.

(9) A representative of the Vermont chapter of The Nature Conservancy, designated by its director.

(10) A representative of a regional land trust in Vermont, appointed by the governor.

(11) An attorney licensed in Vermont and practicing in or knowledgeable about both federal tax law and real estate law, including land conservation, appointed by the Vermont Bar Association.

(12) A representative from a farming organization who is knowledgeable about agricultural conservation, appointed by the governor.

(13) A representative of the Vermont Association of Snow Travelers, designated by its board.

(c) Structure; decision-making. The working group shall elect a chair from its membership. The provisions of 1 V.S.A. § 172 (joint authority to three or more) shall apply to the meetings and decision-making of the working group.

(d) Issues. The working group shall:

(1) Investigate the options for conservation easement amendment approval laid out in S.179 and H.553 of 2012 and during the course of consideration of those bills in the relevant standing committees of the general assembly, including the following options:

(A) creating an easement amendment panel within the natural resources board to provide administrative oversight and approval for the amendment of conservation easements;

(B) requiring the housing and conservation board, in conjunction with the agency of agriculture, food and markets, to provide administrative oversight and approval for the amendment of conservation easement amendments;

(C) requiring all qualified holders to individually run a transparent public process for the approval of conservation easement amendments and to issue a written decision. Under this option, the working group should consider whether the decision should be revocable or appealable, and if so, by whom;

(D) requiring all qualified holders to get court approval for amendments that may have a significant effect on the conservation values protected by the easement.

(2) Investigate any other options for conservation easement amendment approval that the working group believes are relevant.

(3) Consider any other issues it identifies as relevant to the amendment of perpetual conservation easements.

(4) develop a proposal setting out a transparent process or processes for the amendment of perpetual conservation easements held by land trusts, state agencies, and other entities qualified to hold perpetual conservation easements in Vermont.

(5) Develop proposed statutory provisions setting out criteria to be used by an administrative body, a court, or an easement holder in approving proposed amendments to perpetual conservation easements, which will ensure that conservation values protected by easement are protected in perpetuity, and that conservation easement holders in Vermont are in compliance with federal law.

(e) Report. On or before January 15, 2013, the working group shall submit to the general assembly its findings, recommendations, and proposed statutory revisions regarding the issues identified in subsection (d) of this section.

(f) Assistance. For the purpose of its study of the issues identified in subsection (d) of this section and the preparation of its recommendations pursuant to subsection (e) of this section, the working group shall have the administrative and technical assistance of the housing and conservation board.

(g) Meetings. The member from the housing and conservation board shall convene the first meeting of the working group no later than July 15, 2012.

(h) Appointments. Within 30 days of the effective date of this section, each entity required to submit a list of names to the governor pursuant to subsection (b) of this section shall make such submission. Within 60 days of this section's effective date, the appointing or designating authority shall appoint or designate each member of the working group under subsection (b)

of this section and shall report the member so appointed or designated to the housing and conservation board.

Sec. 10. EFFECTIVE DATES

(a) Sec. 9 of this act and this section shall take effect on passage.

(b) All remaining sections of this act shall take effect on July 1, 2012.

(Committee vote: 5-0-0)

S. 200.

An act relating to the reporting requirements of health insurers.

Reported favorably with recommendation of amendment by Senator Pollina for the Committee on Health and Welfare.

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

Sec. 1. 8 V.S.A. § 3561(a) is amended to read:

(a)(1) Each domestic, foreign, and alien insurance company doing business in this state shall annually submit to the commissioner a statement of its financial condition, verified by oath of two of its executive officers. The statement shall be prepared in accordance with the National Association of Insurance Commissioners' Instructions Handbook and Accounting Practices and Procedures Manual and shall be in such general form and context, as approved by, and shall contain any other information required by, the National Association of Insurance Commissioners with any useful or necessary modifications or adaptations thereof required or approved or accepted by the commissioner for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the commissioner.

(2)(A) In addition, a health insurance company with a minimum of 200 Vermont lives covered in the relevant reporting year or which offers a plan in the Vermont health benefit exchange pursuant to 33 V.S.A. § 1803 shall provide the following information:

(i) the total number of claims submitted to the health insurance company;

(ii) the total number of denials of service by the health insurance company at the preauthorization level, including:

(I) the total number of denials of service at the preauthorization level appealed to the health insurance company at the first level grievance;

(II) the total number of denials of service at the preauthorization level overturned at the first level grievance;

(III) the total number of denials of service at the preauthorization level appealed to the health insurance company at any second level grievance;

(IV) the total number of denials of service at the preauthorization level overturned at any second level grievance; and

(V) the total number of denials of service at the preauthorization level for which external review is sought and the number overturned by external review;

(iii) the total number of service claims denied by the health insurance company, including:

(I) the total number of denied service claims appealed to the health insurance company at the first level grievance;

(II) the total number of denied service claims overturned at the first level grievance;

(III) the total number of denied service claims appealed to the health insurance company at any second level grievance;

(IV) the total number of denied service claims overturned at any second level grievance; and

(V) the total number of denied service claims for which external review is sought and the number overturned by external review; and

(iv) the total number of claims denied by a health insurance company for reasons not related to network issue, medical necessity, or benefit coverage.

(B) The department of banking, insurance, securities, and health care administration shall create a standardized form for the purpose of collecting the information described in subdivision (2)(A) of this subsection (a), and a health insurance company shall use the standardized form for reporting the required information as an addendum to its annual report. Where possible, the standardized form shall require that reported information be divided into categories determined by the department, including categories for coding errors, services not covered, and out-of-network providers.

(C)(i) The department of banking, insurance, securities, and health care administration shall post on its website the standardized forms completed by each health insurance company pursuant to subdivision (2)(B) of this subsection (a).

(ii) The department of Vermont health access shall post on the Vermont health benefit exchange an electronic link to the standardized forms posted by the department of banking, insurance, securities, and health care administration pursuant to subdivision (i) of this subdivision (2)(C).

(3) The statement of an alien insurer shall relate only to the insurer's transactions and affairs in the United States unless the commissioner requires otherwise.

(4) A foreign or alien company, upon withdrawing from the state of Vermont shall pay to the commissioner $25.00 for the filing of its final financial statement.

Sec. 2. 8 V.S.A. § 4516 is amended to read:

§ 4516. ANNUAL REPORT TO COMMISSIONER

(a) Annually, on or before March 15, a hospital service corporation shall file with the commissioner of banking, insurance, securities, and health care administration a statement sworn to by the president and treasurer of the corporation showing its condition on December 31. The statement shall be in such form and contain such matters as the commissioner shall prescribe, including for hospital service corporations with a minimum of 200 Vermont lives covered in the relevant reporting year or which offer a plan in the Vermont health benefit exchange pursuant to 33 V.S.A. § 1803:

(1) the total number of claims submitted to the hospital service corporation;

(2) the total number of denials of service by the hospital service corporation at the preauthorization level, including:

(A) the total number of denials of service at the preauthorization level appealed to the hospital service corporation at the first level grievance;

(B) the total number of denials of service at the preauthorization level overturned at the first level grievance;

(C) the total number of denials of service at the preauthorization level appealed to the hospital service corporation at any second level grievance;

(D) the total number of denials of service at the preauthorization level overturned at any second level grievance; and

(E) the total number of denials of service at the preauthorization level for which external review is sought and the number overturned by external review;

(3) the total number of service claims denied by the hospital service corporation, including:

(A) the total number of denied service claims appealed to the hospital service corporation at the first level grievance;

(B) the total number of denied service claims overturned at the first level grievance;

(C) the total number of denied service claims appealed to the hospital service corporation at any second level grievance;

(D) the total number of denied service claims overturned at any second level grievance; and

(E) the total number of denied service claims for which external review is sought and the number overturned by external review; and

(4) the total number of claims denied by a hospital service corporation for reasons not related to network issue, medical necessity, or benefit coverage.

(b)(1) The department of banking, insurance, securities, and health care administration shall create a standardized form for the purpose of collecting the information described in subsection (a) of this section, and a hospital service corporation shall use the standardized form for reporting the required information as an addendum to its annual report. Where possible, the standardized form shall require that reported information be divided into categories determined by the department, including categories for coding errors, services not covered, and out-of-network providers.

(2)(A) The department of banking, insurance, securities, and health care administration shall post on its website the standardized forms completed by each hospital service corporation pursuant to subdivision (1) of this subsection (b).

(B) The department of Vermont health access shall post on the Vermont health benefit exchange an electronic link to the standardized forms posted by the department of banking, insurance, securities, and health care administration pursuant to subdivision (2)(A) of this subsection (b).

(c) To qualify for the tax exemption set forth in section 4518 of this title, the statement shall include a certification that the hospital service corporation operates on a nonprofit basis for the purpose of providing an adequate hospital service plan to individuals of the state, both groups and nongroups, without discrimination based on age, gender, geographic area, industry, and medical history, except as allowed by subdivisions 4080a(h)(2)(B) and 4080b(h)(2)(B) of this title.

Sec. 3. 8 V.S.A. § 4588 is amended to read:

§ 4588. ANNUAL REPORT TO COMMISSIONER

(a) Annually, on or before March 15, a medical service corporation shall file with the commissioner of banking, insurance, securities, and health care administration a statement sworn to by the president and treasurer of the corporation showing its condition on December 31, which shall be in such form and contain such matters as the commissioner shall prescribe, including for medical service corporations with a minimum of 200 Vermont lives covered in the relevant reporting year or which offer a plan in the Vermont health benefit exchange pursuant to 33 V.S.A. § 1803:

(1) the total number of claims submitted to the medical service corporation;

(2) the total number of denials of service by the medical service corporation at the preauthorization level, including:

(A) the total number of denials of service at the preauthorization level appealed to the medical service corporation at the first level grievance;

(B) the total number of denials of service at the preauthorization level overturned at the first level grievance;

(C) the total number of denials of service at the preauthorization level appealed to the medical service corporation at any second level grievance;

(D) the total number of denials of service at the preauthorization level overturned at any second level grievance; and

(E) the total number of denials of service at the preauthorization level for which external review is sought and the number overturned by external review;

(3) the total number of service claims denied by the medical service corporation, including:

(A) the total number of denied service claims appealed to the medical service corporation at the first level grievance;

(B) the total number of denied service claims overturned at the first level grievance;

(C) the total number of denied service claims appealed to the medical service corporation at any second level grievance;

(D) the total number of denied service claims overturned at any second level grievance; and

(E) the total number of denied service claims for which external review is sought and the number overturned by external review; and

(4) the total number of claims denied by a medical service corporation for reasons not related to network issue, medical necessity, or benefit coverage.

(b)(1) The department of banking, insurance, securities, and health care administration shall create a standardized form for the purpose of collecting the information described in subsection (a) of this section, and a medical service corporation shall use the standardized form for reporting the required information as an addendum to its annual report. Where possible, the standardized form shall require that reported information be divided into categories determined by the department, including categories for coding errors, services not covered, and out-of-network providers.

(2)(A) The department of banking, insurance, securities, and health care administration shall post on its website the standardized forms completed by each medical service corporation pursuant to subdivision (1) of this subsection (b).

(B) The department of Vermont health access shall post on the Vermont health benefit exchange an electronic link to the standardized forms posted by the department of banking, insurance, securities, and health care administration pursuant to subdivision (2)(A) of this subsection (b).

(c) To qualify for the tax exemption set forth in section 4590 of this title, the statement shall include a certification that the medical service corporation operates on a nonprofit basis for the purpose of providing an adequate medical service plan to individuals of the state, both groups and nongroups, without discrimination based on age, gender, geographic area, industry, and medical history, except as allowed by subdivisions 4080a(h)(2)(B) and 4080b(h)(2)(B) of this title.

Sec. 4. 8 V.S.A. § 5106(a) is amended to read:

(a)(1) Every organization subject to this chapter, annually, within 120 days of the close of its fiscal year, shall file a report with the commissioner, said report verified by an appropriate official of the organization, showing its financial condition on the last day of the preceding fiscal year. The report shall be prepared in accordance with the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual for health maintenance organizations and shall be in such general form and context, as approved by, and shall contain any other information required by the National Association of Insurance Commissioners together with any useful or necessary modifications or adaptations thereof required, approved or accepted by the commissioner for the type of organization to be reported upon, and as supplemented by additional information required by the commissioner, including for organizations with a minimum of 200 Vermont lives covered in the relevant reporting year or which offer a plan in the Vermont health benefit exchange pursuant to 33 V.S.A. § 1803:

(A) the total number of claims submitted to the organization;

(B) the total number of denials of service by the organization at the preauthorization level, including:

(i) the total number of denials of service at the preauthorization level appealed to the organization at the first level grievance;

(ii) the total number of denials of service at the preauthorization level overturned at the first level grievance;

(iii) the total number of denials of service at the preauthorization level appealed to the organization at any second level grievance;

(iv) the total number of denials of service at the preauthorization level overturned at any second level grievance; and

(v) the total number of denials of service at the preauthorization level for which external review is sought and the number overturned by external review;

(C) the total number of service claims denied by the organization, including:

(i) the total number of denied service claims appealed to the organization at the first level grievance;

(ii) the total number of denied service claims overturned at the first level grievance;

(iii) the total number of denied service claims appealed to the organization at any second level grievance;

(iv) the total number of denied service claims overturned at any second level grievance; and

(v) the total number of denied service claims for which external review is sought and the number overturned by external review; and

(D) the total number of claims denied by an organization for reasons not related to network issue, medical necessity, or benefit coverage.

(2)(A) The department of banking, insurance, securities, and health care administration shall create a standardized form for the purpose of collecting the information described in subdivision (1) of this subsection (a), and an organization shall use the standardized form for reporting the required information as an addendum to its annual report. Where possible, the standardized form shall require that reported information be divided into categories determined by the department, including categories for coding errors, services not covered, and out-of-network providers.

(B)(i) The department of banking, insurance, securities, and health care administration shall post on its website the standardized forms completed by each organization pursuant to subdivision (2)(A) of this subsection (a).

(ii) The department of Vermont health access shall post on the Vermont health benefit exchange an electronic link to the standardized forms posted by the department of banking, insurance, securities, and health care administration pursuant to subdivision (2)(B)(i) of this subsection (a).

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

(Committee vote: 5-0-0)

S. 211.

An act relating to securing propane tanks in natural disasters.

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

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

Sec. 1. 30 V.S.A. § 34 is added to read:

§ 34. PUBLIC EDUCATION ON PROPANE TANK SAFETY

The general assembly finds that there is a need for a coordinated public safety message on the storage, handling, and recovery of propane tanks that are displaced by natural disaster, such as flooding. The department of public service and the division of fire safety shall cooperate with the Vermont League of Cities and Towns and the Vermont Fuel Dealers Association, Inc. to develop a variety of educational materials for distribution to the public to provide information on any special treatment of propane tanks that might be required in the case of a natural disaster, such as flooding.

(Committee vote: 5-0-0)

CONCURRENT RESOLUTIONS FOR ACTION

H.C.R. 292-303 (For text of Resolutions, see Addendum to House Calendar for March 15, 2012)

CONFIRMATIONS

The following appointments will be considered by the Senate, as a group, under suspension of the Rules, as moved by the President *pro tempore*, for confirmation together and without debate, by consent thereby given by the Senate. However, upon request of any senator, any appointment may be singled out and acted upon separately by the Senate, with consideration given

to the report of the Committee to which the appointment was referred, and with full debate; and further, all appointments for the positions of Secretaries of Agencies, Commissioners of Departments, Judges, Magistrates, and members of the Public Service Board shall be fully and separately acted upon.

David Luce of Waterbury Center – Member of the Community High School of Vermont Board- By Sen. Kittell for the Committee on Education. (1/13/12)

Patrick Flood of East Calais – Commissioner of the Department of Mental Health – By Sen. Mullin for the Committee on Health and Welfare. (2/8/12)

John Snow of Charlotte – Member of the Vermont Economic Development Authority – By Sen. Fox for the Committee on Finance. (2/8/12)

Martin Maley of Colchester – Superior Court Judge – By Sen. Sears for the Committee on Judiciary. (2/9/12)

Alison Arms of South Burlington – Superior Court Judge – By Sen. Snelli8lng for the Committee on Judiciary. (2/16/12)

Robert Bishop of St. Johnsbury – Member of the State Infrastructure Bank Board – By Sen. MacDonald for the Committee on Finance. (2/21/12)

John Valente of Rutland – Member of the Vermont Municipal Bond Bank – By Sen. McCormack for the Committee on Finance. (2/21/12)

James Volz of Plainfield – Chair of the Public Service Board – By Sen. Cummings for the Committee on Finance. (2/21/12)

Ed Amidon of Charlotte – Member of the Valuation Appeals Board – By Sen. Ashe for the Committee on Finance. (2/21/12)

PUBLIC HEARING

Wednesday, **March 21, 2012** – Room 11 – 6:00-8:00 P.M. – Immunizations/Philosophical Exemption – (S. 199) – House Committee on Health Care.

FOR INFORMATION ONLY

CROSSOVER DEADLINES

The following bill reporting deadlines are established for the 2012 session:

(1) From the standing committee of last reference (excluding the Committees on Appropriations and Finance), all Senate bills must be reported out of committee on or before March 16, 2012 and filed with the Secretary of the Senate so that they may be placed on the Calendar for Notice the next legislative day.

(2) For bills referred pursuant to Senate Rule 31, all Senate bills must be reported out of the Committees on Appropriations and Finance on or before March 23, 2012 and filed with the Secretary of the Senate.

(3) All bills to be referenced from the House not meeting the respective applicable dates shall be referred to the Senate Rules Committee.

(4) These deadlines may be waived for any bill or committee **only** by consent given by the Committee on Rules.

Exceptions to the foregoing deadlines include the major money bills (Appropriations, Transportation, Capital, and Miscellaneous Taxes).