

# Senate Calendar

THURSDAY, MAY 3, 2012

**SENATE CONVENES AT: 10:00 A.M.**

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**ACTION CALENDAR  
UNFINISHED BUSINESS**

**Second Reading**

**Favorable with Proposal of Amendment**

**H. 552.**

An act relating to payment of workers' compensation benefits by electronic payroll card.

**Reported favorably with recommendation of proposal of amendment by Senator Illuzzi for the Committee on Economic Development, Housing and General Affairs.**

The Committee recommends that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

\* \* \* Vermont internship program \* \* \*

Sec. 1. 3 V.S.A. § 330 is amended to read:

§ 330. VERMONT INTERNSHIP PROGRAM

(a) A Vermont internship program is created for permanent or limited employees in state government:

(1) to attract persons to train for and then serve state government in occupations where the state anticipates difficulty attracting or retaining qualified employees;

(2) to provide an enriched experience designed to bring trainees to full class performance levels in a logical and systematic manner;

(3) to support equal employment opportunity; and

(4) to provide upward mobility, lateral movement or other opportunities for current employees who have demonstrated high potential.

(b) Position authorization.

\* \* \*

(3) Each position authorized by the commissioner shall be established for a specific period of time not to exceed ~~five years~~ two years without the specific authorization of the commissioner of human resources. In accordance with the approved plan, or where the commissioner deems it appropriate,

Vermont internship program positions shall revert to the commissioner for reallocation.

\* \* \*

(5) Requests for positions under the Vermont internship program shall be in a form and following procedures prescribed by the commissioner. ~~All requests shall certify that all reasonable efforts shall be made to insure a vacant position will be available to each Vermont internship program participant upon completion of the program.~~

\* \* \*

(e)(1) Development of candidates. All Vermont internship program members shall have individual development plans approved by the commissioner of human resources.

\* \* \*

(3) The department or agency making use of a Vermont internship program for state government shall conduct regular reviews of performance and progression of capabilities and shall submit written documentation of this on a form and using procedures provided for by the commissioner of human resources.

(f)(1) Rights of Vermont internship program members. Vermont internship program participants ~~shall be deemed to be classified state employees in their initial probationary period~~ who are otherwise classified state employees shall continue their status for the entire period of their participation, and continuation of one's training in Vermont internship programs shall be in the discretion of the appointing authority. They shall be paid the minimum rate for comparable positions in the classified service, unless otherwise authorized by the commissioner of human resources.

(2) Vermont internship program participants shall agree, if a condition of the submitted training plan of the department, to work in a state position consistent with the approved plan after completion of the planned Vermont internship for a period of time equal to the length of Vermont internship program participation. Any Vermont internship program member who does not satisfy this requirement shall reimburse the state for all tuition, fees and/or expenses paid by the state in connection with Vermont internship program participation, including salary paid during periods of paid educational leave, unless waived by the commissioner of human resources.

\* \* \*

Sec. 1a. 3 V.S.A. § 330a is added to read:

§ 330a. STUDENT INTERN PROGRAM

The commissioner of human resources shall coordinate requests from agency secretaries and department commissioners for the hiring of student interns for short-term assignments and training that will inform and enhance their educational choices and career opportunities. In order to receive approval, the secretary or commissioner shall submit a written request to the department of human resources and to the applicable collective bargaining representative identifying the work to be performed, length of service, and the candidate's information, and shall identify the available funding and proposed rate of pay. The commissioner of human resources shall ensure that the intern is not performing work normally assigned to any employee who has been displaced or laid off from classified service. Interns may be in high schools if they have completed at least their junior year, may be college students, or have graduated from college or graduate school within two years of this placement.

\* \* \* Commissioner of labor \* \* \*

Sec. 2. 21 V.S.A. § 7 is added to read:

§ 7. POWERS OF COMMISSIONER

In addition to all other powers granted the commissioner by this title, the commissioner or his or her designee may, upon presenting appropriate credentials, at reasonable times, enter and inspect any place of business or employment, question any employees, and investigate any facts, conditions, or matters necessary and material to the administration of chapters 9 and 17 of this title. If entry is refused the commissioner may apply, without notice to the employer, to the civil division of the superior court of Washington County for an order to enforce the rights given the commissioner under this section.

\* \* \* Wage claims \* \* \*

Sec. 3. 14 V.S.A. § 1205 is amended to read:

§ 1205. CLASSIFICATION OF CLAIMS

(a) If the applicable assets of the estate are insufficient to pay all claims in full, the executor or administrator shall make payment in the following order:

(1) costs and expenses of administration;

(2) reasonable funeral, burial, and headstone expenses, and perpetual care, not to exceed \$3,800.00 exclusive of governmental payments, and reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him or her;

(3) ~~all outstanding wages due employees of the decedent which have been earned within three months prior to the death of the decedent, not to exceed \$300.00 to each claimant;~~

(4) all other claims; ~~including the balance of wages due but unpaid under subdivision (3) of this subsection.~~

\* \* \*

Sec. 3a. 33 V.S.A. § 2301 is amended to read:

§ 2301. BURIAL RESPONSIBILITY

\* \* \*

(c) When a person other than one described in subsection (a) or (b) of this section dies in the town of domicile without sufficient known assets to pay for burial, the burial shall be arranged and paid for by the town. The department shall reimburse the town up to ~~\$250.00~~ \$1,100.00 for expenses incurred.

\* \* \*

\* \* \* Employment practices \* \* \*

Sec. 4. 21 V.S.A. § 342 is amended to read:

§ 342. WEEKLY BIWEEKLY AND SEMIMONTHLY PAYMENT OF WAGES

(a)(1) Any person having employees doing and transacting business within the state shall pay each week, in lawful money or checks, the wages earned by each employee to a day not more than six days prior to the date of such payment.

(2) After giving written notice to the employees, any person having employees doing and transacting business within the state may, notwithstanding subdivision (1) of this subsection, pay ~~bi-weekly~~ biweekly or ~~semi-monthly~~ semimonthly in lawful money or checks, each employee the wages earned by the employee to a day not more than six days prior to the date of the payment. If a collective bargaining agreement so provides, the payment may be made to a day not more than 13 days prior to the date of payment.

(3) Any person having employees within the state who fails to make timely payment upon separation from employment in accordance with this section may be assessed an administrative penalty of up to \$100.00 for each day that wages remain unpaid, not to exceed \$500.00 per employee.

\* \* \*

Sec. 5. 21 V.S.A. § 348 is added to read:

§ 348. RETALIATION PROHIBITED

(a) An employer shall not discharge or in any other manner retaliate against an employee because:

(1) The employee lodged a complaint of a violation of this subchapter.

(2) The employee has cooperated with the commissioner or commissioner's designee in an investigation of a violation of this subchapter.

(3) The employer believes that the employee may lodge a complaint or cooperate in an investigation of a violation of this subchapter.

(b) Any person aggrieved by a violation of this section may bring an action in the civil division of the superior court seeking compensatory and punitive damages or equitable relief, including restraint of prohibited acts, restitution of wages or benefits, reinstatement, costs, reasonable attorney's fees, and other appropriate relief.

Sec. 6. 21 V.S.A. § 397 is added to read:

§ 397. RETALIATION PROHIBITED

(a) An employer shall not discharge or in any other manner retaliate against an employee because:

(1) The employee lodged a complaint of a violation of this subchapter.

(2) The employee has cooperated with the commissioner or commissioner's designee in an investigation of a violation of this subchapter.

(3) The employer believes that the employee may lodge a complaint or cooperate in an investigation of a violation of this subchapter.

(b) Any person aggrieved by a violation of this section may bring an action in the civil division of the superior court seeking compensatory and punitive damages or equitable relief, including restraint of prohibited acts, restitution of wages or benefits, reinstatement, costs, reasonable attorney's fees, and other appropriate relief.

Sec. 7. 21 V.S.A. § 385a is added to read:

§ 385a. REQUIRED APPAREL

(a) An employer that is a common carrier engaged in interstate commerce that requires an employee to wear uniform apparel which displays the employer's trademark, logo, or other clearly identifying characteristic shall furnish to employees based in this state the uniform apparel. The amount provided shall be reasonable for the needs of the position.

(b) An employer that requires an employee to wear clothing sold or produced by the employer shall furnish the clothing free of charge to the employee.

(c) An employer may require an employee to return any uniform or clothing upon separation from employment.

\* \* \* Workers' compensation \* \* \*

Sec. 8. 21 V.S.A. § 624 is amended to read:

§ 624. DUAL LIABILITY; CLAIMS, SETTLEMENT PROCEDURE

\* \* \*

(e)(1) In an action to enforce the liability of a third party, the injured employee may recover any amount which the employee or the employee's personal representative would be entitled to recover in a civil action. Any recovery against the third party for damages resulting from personal injuries or death only, after deducting ~~expenses of recovery~~ attorney's fees, and litigation expenses and costs, shall first reimburse the employer or its workers' compensation insurance carrier for any amounts paid or payable under this chapter to date of recovery, and the balance shall forthwith be paid to the employee or the employee's dependents or personal representative and shall be treated as an advance payment by the employer on account of any future payment of compensation benefits. Reimbursement required under this subsection, except to prevent double recovery, shall not reduce the employee's recovery of any benefit or payment provided by a plan or policy that was privately purchased by the injured employee, including uninsured-underinsured motorist coverage, or any other first party insurance payments or benefits.

(2) In addition to the limitations on recovery set forth in subdivision (1) of this subsection, if a lien or subrogation claim that arose out of the payment of medical expenses or benefits under this chapter exists in respect to a claim of personal injury or death and the injured employee's recovery is diminished by comparative fault or the inability to collect the full value of the claim due to limited liability insurance or other cause, the lien or subrogation claim shall be diminished in the same proportion as the injured employee's recovery is diminished. The settlement agreement may include reference to the amount by which the employee's recovery is diminished by comparative fault or the inability to collect the full value of the claim due to limited liability insurance or other cause. In the event the agreement or release does not contain such information, the amount by which the recovery is compromised or diminished shall be established by affidavit of the employee.

\* \* \*

Sec. 8a. 12 V.S.A. § 5653 is amended to read:

§ 5653. LIMITATIONS

(a) This chapter applies to all arbitration agreements to the extent not inconsistent with the laws of the United States. However, this chapter does not apply to labor interest arbitration, ~~nor to arbitration agreements contained in a~~



~~contract of insurance, nor to grievance arbitration under 3 V.S.A. chapter 28 of Title 3.~~ “Labor interest arbitration” means the method of concluding labor negotiations by having a disinterested person determine what will be the terms of an agreement.

\* \* \*

Sec. 9. 21 V.S.A. § 643a is amended to read:

§ 643a. DISCONTINUANCE OF BENEFITS

Unless an injured worker has successfully returned to work, an employer shall notify both the commissioner and the employee prior to terminating benefits under either section 642 or 646 of this title. The notice of intention to discontinue payments shall be filed on forms prescribed by the commissioner and shall include the date of the proposed discontinuance, the reasons for it, and, if the employee has been out of work for 90 days, a verification that the employer offered vocational rehabilitation screening and services as required under this chapter. All relevant evidence, including evidence that does not support discontinuance in the possession of the employer not already filed, shall be filed with the notice. The liability for the payments shall continue for ~~seven days after the notice is received by the commissioner and the employee~~ at least 14 days after the notice is received by the commissioner and the employee, during which time the claimant may file with the commissioner an objection to discontinuance. The notice shall include a provision that the injured worker may object to the discontinuance with the commissioner with supporting evidence or arguments. If the employee files an objection with an explanation, the liability for the payments shall continue until a decision is issued by the commissioner. ~~Those payments~~ Payments made after the notice of discontinuance is received by the commissioner shall be made without prejudice to the employer and may be deducted from any amounts due pursuant to section 648 of this title if the commissioner determines that the discontinuance is warranted or if otherwise ordered by the commissioner. Every notice shall be reviewed by the commissioner to determine the sufficiency of the basis for the proposed discontinuance. If, after review of all the evidence in the file, the commissioner finds that a preponderance of all the evidence in the file does not reasonably support the proposed discontinuance, the commissioner shall order that payments continue until a formal hearing is held and a decision is rendered. Prior to a formal hearing, an injured worker may request reinstatement of benefits by providing additional new evidence to the department that establishes that a preponderance of all evidence now supports the claim. If the commissioner’s decision, after a hearing, is that the employee was not entitled to any or all benefits paid between the discontinuance and the final decision, upon request of the employer, the commissioner may order that the employee repay all benefits to which the

employee was not entitled. The employer may enforce a repayment order in any court of law having jurisdiction.

Sec. 10. 21 V.S.A. § 692 is amended to read:

§ 692. PENALTIES; FAILURE TO INSURE; STOP WORK ORDERS

\* \* \*

(b) Stop-work orders. If an employer fails to comply with the provisions of section 687 of this title after investigation by the commissioner, the commissioner shall issue an emergency order to that employer to stop work until the employer has secured workers' compensation insurance. If the commissioner determines that issuing a stop-work order would immediately threaten the safety or health of the public, the commissioner may permit work to continue until the immediate threat to public safety or health is removed. The commissioner shall document the reasons for permitting work to continue, and the document shall be available to the public. In addition, the employer shall be assessed an administrative penalty of not more than \$250.00 for every day that the employer fails to secure workers' compensation coverage after the commissioner issues an order to obtain insurance and may also be assessed an administrative penalty of not more than \$250.00 for each employee for every day that the employer fails to secure workers' compensation coverage as required in section 687 of this title. When a stop-work order is issued, the commissioner shall post a notice at a conspicuous place on the work site of the employer informing the employees that their employer failed to comply with the provisions of section 687 of this title and that work at the work site has been ordered to cease until workers' compensation insurance is secured. If an employer fails to comply with a stop-work order, the commissioner may seek injunctive relief in the civil division of the superior court by filing a complaint and supporting affidavit. The court shall issue without notice and hearing an ex parte order temporarily or permanently enjoining the employer from employing workers. The ex parte order shall be provided to the employer. Thereafter, the court may modify or vacate the order at the request of the commissioner or employer. The stop-work order shall be rescinded as soon as the commissioner determines that the employer is in compliance with section 687 of this title. An employer against whom a stop-work order has been issued, or who has not been in compliance with section 687 of this title, unless the failure to comply was inadvertent or excusable, is prohibited from contracting, directly or indirectly, with the state or any of its subdivisions for a period of up to three years following the date of the issuance of the stop-work order, as determined by the commissioner in consultation with the commissioner of buildings and general services or the secretary of transportation, as appropriate. Either the secretary or the commissioner, as

appropriate, shall be consulted in any contest of the prohibition of the employer from contracting with the state or its subdivisions.

\* \* \*

\* \* \* Unemployment compensation \* \* \*

Sec. 11. 21 V.S.A. § 1101 is amended to read:

§ 1101. APPRENTICESHIP DIVISION AND COUNCIL

The apprenticeship division and state apprenticeship council, hereinafter referred to as the "council," shall be located within the department of labor. The commissioner of labor shall supervise the work of the division, and shall be the chair of the council. The council shall consist of ~~10~~ 12 members, four ex officio members and ~~six~~ eight members who shall be appointed by the governor. Of the ex officio members, one shall be the commissioner of labor, one shall be the commissioner of public safety, or designee, one shall be the commissioner of education or designee, and one shall be the director of the apprenticeship division who shall act as secretary of the council without vote. The council shall be composed of persons familiar with apprenticeable occupations. Of the ~~appointive~~ appointed members, three shall be individuals who ~~on account of previous vocation, employment, occupation, or affiliation can be classed as~~ represent employers ~~and~~, three shall be individuals who ~~on account of previous vocation, employment, occupation, or affiliation can be classed as employees~~ represent employees or employee organizations, and two shall be members of the public. Appointment of the employer and the employee members shall be made for the term of three years except the employer and employee members first appointed shall be appointed for the term of one, two, and three years respectively. The governor shall annually designate one member of the council as chair. Each member of the council who is not a salaried official or employee of the state shall be entitled to compensation and expenses as provided in 32 V.S.A. § 1010.

Sec. 12. 21 V.S.A. § 1301 is amended to read:

§ 1301. DEFINITIONS

The following words and phrases, as used in this chapter, shall have the following meanings unless the context clearly requires otherwise:

\* \* \*

(6)(A)(i) "Employment," subject to the other provisions of this subdivision (6), means service within the jurisdiction of this state, performed prior to January 1, 1978, which was employment as defined in this subdivision prior to such date and, subject to the other provisions of this subdivision, service performed after December 31, 1977, by an employee, as defined in subsections 3306(i) and (o) of the Federal Unemployment Tax Act, including

service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied. Services partly within and partly without this state may by election as hereinbefore provided be treated as if wholly within the jurisdiction of this state. And whenever an employing unit shall have elected to come under the provisions of a similar act of a state where a part of the services of an employee are performed, the commissioner, upon his or her approval of said election as to any such employee, may treat the services covered by said approved election as having been performed wholly without the jurisdiction of this state.

\* \* \*

(C) The term “employment” shall not include:

\* \* \*

(xxi) Service performed by a direct seller if the individual is in compliance with all the following:

(I) The individual is engaged in:

(aa) the trade or business of selling or soliciting the sale of consumer products, including services or other intangibles, in the home or a location other than in a permanent retail establishment, including whether the sale or solicitation of a sale is to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis for resale by the buyer or any other person.

(bb) the trade or business of the delivery or distribution of newspapers or shopping news that are delivered on a weekly or less frequent basis, including any services directly related to such trade or business.

(II) Substantially all the remuneration, whether or not received in cash, for the performance of the services described in subdivision (I) of this subdivision (C)(xxi) is directly related to sales or other output, including the performance of services, rather than to the number of hours worked.

(III) The services performed by the individual are performed pursuant to a written contract between the individual and the person for whom the services are performed, and the contract provides that the individual will not be treated as an employee for federal and state tax purposes.

Sec. 13. 21 V.S.A. § 1301a is amended to read:

§ 1301a. DEPARTMENT OF LABOR; COMPOSITION

The department of labor, created by ~~section 3 V.S.A. § 212 of Title 3~~, shall consist of a commissioner of labor, the Vermont employment security board, the Vermont workforce development division, the unemployment insurance and wages division, the economic and labor market information division, the

workforce development council which serves as the statewide workforce investment board, and the workers' compensation and safety division. The chair of the employment security board shall be the commissioner of labor ex officio. The deputy commissioner of labor or a designee chosen by the commissioner may serve as chair in the absence of the commissioner as the commissioner's designee.

Sec. 14. [Deleted.]

Sec. 15. [Deleted.]

Sec. 15a. 21 V.S.A. § 349 is added to read:

§ 349. PAYMENT OF PREVAILING WAGE

(a) This section applies to all electric generation plants approved under 30 V.S.A. § 248 that have a plant capacity greater than 2.2 megawatts. For the purposes of this section, "plant" and "plant capacity" are as defined in 30 V.S.A. § 8002, except that "plant" shall not be limited to renewable energy.

(b) The holder of a certificate issued for a plant identified in subsection (a) of this section shall require that all wages paid to contractors or subcontractors for construction of the plant shall be no less than the rates established by the U.S. Department of Labor under the federal Davis-Bacon Act, 40 U.S.C. § 3141 et seq., for projects in Vermont.

(c) The purpose of this section is to ensure that fair and adequate compensation is paid to individuals engaged in the construction of electric generation plants located in the state.

Sec. 15b. IMPLEMENTATION

The provisions of 21 V.S.A. § 349 (payment of prevailing wages) shall apply to wages paid on and after passage of this act.

Sec. 16. 21 V.S.A. § 1347 is amended to read:

§ 1347. NONDISCLOSURE OR MISREPRESENTATION

\* \* \*

(c) The person liable under this section shall repay such amount to the commissioner for the fund. In addition to the repayment, if the commissioner finds that a person intentionally misrepresented or failed to disclose a material fact with respect to his or her claim for benefits, the person shall pay an additional penalty of 15 percent of the amount of the overpaid benefits. Such amount may be collectible by civil action in a Vermont district or superior court, in the name of the commissioner. ~~No action shall be commenced for the collection of such amount more than five years after the date of such~~

~~determination under this section or the final decision confirming the liability of such person on an appeal from such determination.~~

(d) In any case in which under this section a person is liable to repay any amount to the commissioner for the fund, the commissioner may withhold, in whole or in part, any future benefits payable to such person, and credit such withheld benefits against the amount due from such person until it is repaid in full, less any penalties assessed under subsection (c) of this section. ~~No benefits shall be withheld after five years from the date of such determination or the date of the final decision confirming the liability of such person on an appeal from such determination.~~

(e) In addition to the foregoing, when it is found by the commissioner that a person intentionally misrepresented or failed to disclose a material fact with respect to his or her claim for benefits and in the event the person is not prosecuted under section 1368 of this title and penalty provided in section 1373 of this title is not imposed, the person shall be disqualified and shall not be entitled to receive benefits to which he or she would otherwise be entitled after the determination for such number of weeks not exceeding 26 as the commissioner shall deem just, ~~provided, however, that no benefits shall be denied to a claimant because of such determination after three years from the date thereof or the date of final decision on an appeal from such determination.~~ The notice of determination shall also specify the period of disqualification imposed hereunder.

\* \* \*

\* \* \* Short-time compensation \* \* \*

Sec. 17. 21 V.S.A. § 1451 is amended to read:

#### § 1451. DEFINITIONS

For the purpose of this subchapter:

(1) “Affected unit” means a specific plan, department, shift, or other definable unit consisting of not less than five employees to which an approved short-time compensation plan applies.

(2) “Short-time compensation” or “STC” means the unemployment benefits payable to employees in an affected unit under an approved short-time compensation plan as distinguished from the unemployment benefits otherwise payable under the conventional unemployment compensation provisions of this chapter.

(3) “Short-time compensation plan” means a plan of an employer under which there is a reduction in the number of hours worked by employees of an affected unit rather than temporary layoffs. The term “temporary layoffs” for this purpose means the total separation of one or more workers in the affected

unit for an indefinite period expected to last for more than two months but not more than six months.

(4) “Short-time compensation employer” means an employer who has one or more employees covered by an approved “Short-Time Compensation Plan.” ~~Both employers with experience-rating records and employers who make payments in lieu of tax contributions to the UI Trust Fund may become short-time compensation employers.~~ “Short-time compensation employer” includes employers with experience-rating records and employers who make payments in lieu of tax contributions to the unemployment compensation trust fund and that meet the following:

(A) Has five or more employees covered by an approved short-time compensation plan.

(B) Is not delinquent in the payment of contributions or reimbursement, or in the reporting of wages.

(C) Is not a negative balance employer. For the purposes of this section, a negative balance employer is an employer who has for three or more consecutive calendar years paid more in unemployment benefits to its employees than it has contributed to its unemployment insurance account.

(5) “Usual weekly hours of work” means the normal hours of work for full-time and regular part-time employees in the affected unit when that unit is operating on its normally full-time basis but not less than 30 hours and not to exceed 40 hours and not including overtime.

(6) “Unemployment compensation” means the unemployment benefits payable under this chapter other than short-time compensation and includes any amounts payable pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(7) “Fringe benefits” means benefits including health insurance, retirement benefits, paid vacations and holidays, sick leave, and similar benefits that are incidents of employment.

(8) “Intermittent employment” means employment that is not continuous but may consist of intervals of weekly work and intervals of no weekly work.

(9) “Seasonal employment” means employment with an employer who experiences at least a 20-percent difference between its highest level of employment during a particular season and its lowest level of employment during the off-season in each of the previous three years as reported to the department, or employment with an employer on a temporary basis during a particular season.

Sec. 18. 21 V.S.A. § 1452 is amended to read:

§ 1452. CRITERIA FOR APPROVAL

An employer wishing to participate in an STC program shall submit a department of labor electronic application or a signed written short-time compensation plan to the commissioner for approval. The commissioner may approve an STC plan only if the following criteria are met:

- (1) the plan identifies the specified affected units to which it applies;
- (2) the employees in the affected unit or units are identified by name, Social Security number, and by any other information required by the commissioner;
- (3) the plan ~~specifies any impact on~~ certifies that fringe benefits, including health insurance, of employees participating in the plan will not be reduced;
- (4) the usual total weekly hours of work for employees in the affected unit or units are reduced by not less than 20 percent and not more than 50 percent;
- (5) the plan certifies that the aggregate reduction in work hours is in lieu of temporary total layoffs of one or more workers which would have resulted in an equivalent reduction in work hours and which the commissioner finds would have caused an equivalent dollar amount to be payable in unemployment compensation;
- (6) the plan certifies that the STC employer will submit a request for a STC plan termination to the department within 24 hours of a layoff that occurs during an active STC plan;
- (7) the identified work week reduction is applied consistently throughout the duration of the plan;
- (8) the plan applies to at least 10 percent of the employees in the affected unit, and when applicable applies to all affected employees of the unit equally;
- ~~(7)~~(9) the plan will not subsidize seasonal employees during the off-season, nor subsidize employers who have traditionally used part-time employees or intermittent employment;
- ~~(8)~~(10) the employer agrees to maintain records relative to the plan for a period of three years and furnish reports relating to the proper conduct of the plan and agrees to allow the commissioner or his or her authorized representatives access to all records necessary to verify the plan prior to approval and, after approval, to monitor and evaluate application of the plan;



~~(9)~~(11) the plan certifies that the collective bargaining agent or agents for the employees, if any, have agreed to participate in the program. If there is no bargaining unit, the employer specifies how he or she will notify the employees in the affected group and work with them to implement the program once the plan is approved; and

~~(10)~~(12) in addition to subdivisions (1) through ~~(9)~~(11) of this section, the commissioner shall take into account any other factors which may be pertinent to proper implementation of the plan.

Sec. 19. 21 V.S.A. § 1453 is amended to read:

§ 1453. APPROVAL OR REJECTION; RESUBMISSION

The commissioner shall approve or reject a plan in writing within 30 days of its receipt, and in the case of rejection shall state the reasons therefor. The reasons for rejection shall be final and nonappealable, but the employer shall be allowed to submit another plan for approval, that addresses the reasons that led to the rejection of the original plan.

Sec. 20. 21 V.S.A. § 1454 is amended to read:

§ 1454. EFFECTIVE DATE; DURATION

A plan shall be effective on the date specified in the plan or on a date mutually agreed upon by the employer and the commissioner. It shall expire at the end of the sixth full calendar month after its effective date or on the date specified in the plan if such date is earlier; provided, that the plan is not previously revoked by the commissioner; or on the effective date of any transfer of ownership of the legal business entity. If a plan is revoked by the commissioner, it shall terminate on the date specified in the commissioner's written order of revocation. No employer shall be eligible for a short-time compensation plan for more than 26 weeks in any 12-month period.

Sec. 21. 21 V.S.A. § 1458 is amended to read:

§ 1458. SHORT-TIME COMPENSATION BENEFITS

\* \* \*

(f)(1) If an individual works in the same week for both the short-time employer and another employer and his or her combined hours of work for both employers are equal to or greater than 81 percent of the usual hours of work with the short-time employer, he or she shall not be entitled to benefits under these short-time provisions or the unemployment compensation provisions.

(2) If an individual works in the same week for both the short-time employer and another employer and his or her combined hours of work for both employers are equal to or less than 80 percent of the usual hours of work

for the short-time employer, the benefit amount payable for that week shall be the weekly unemployment compensation amount reduced by the same percentage that the combined hours are of the usual hours of work. A week for which benefits are paid under this provision shall count as a week of short-time compensation.

(3) An individual who does not work during a week for the short-time employer, and is otherwise eligible, shall be paid his or her full weekly unemployment compensation benefit amount under the provisions of the regular unemployment compensation program. Such a week shall not be counted as a week for which short-time compensation benefits were received.

(4) An individual that does not work the short-time employer's identified workweek reduction hours as certified by the application due to the use of paid vacation or personal time shall be paid benefits for the week under the partial unemployment compensation provisions of the regular unemployment compensation program.

~~(4)~~(5) An individual who does not work for the short-time employer during a week but works for another employer and is otherwise eligible, shall be paid benefits for that week under the partial unemployment compensation provisions of the regular UI program. Such a week shall not be counted as a week with respect to which STC benefits were received.

\* \* \* Directory of new hires \* \* \*

Sec. 22. 33 V.S.A. § 4110 is amended to read:

§ 4110. EMPLOYER OBLIGATIONS

\* \* \*

(c) As used in this section:

(1) "Employee" means

(A) an individual who is an employee within the meaning of chapter 24 of the Internal Revenue Code of 1986; and

(B) does not include an employee of a federal or state agency performing intelligence or counterintelligence functions, if the head of such agency has determined that reporting pursuant to this section with respect to the employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(2) "Employer" has the meaning given such term in Section 3401(d) of the Internal Revenue Code of 1986 and includes any governmental entity and any labor organization.

(3) "First date of employment" is the first day services are performed for compensation as a new hire.

(4) "~~New hire~~" ~~means an employee for whom a W 4 filing is required and whose wages have not been reported by the filing employer to the department of labor during the last reporting quarter~~ means an employee who:

(A) has not previously been employed by the employer; or

(B) was previously employed by the employer but has been separated from that employment for at least 60 consecutive days.

\* \* \* Independent contractors \* \* \*

Sec. 23. 21 V.S.A. § 398 is added to read:

§ 398. NOTICE TO PERSONS RECEIVING REMUNERATION AS AN INDEPENDENT CONTRACTOR

(a) Every employer shall post in a prominent and accessible place on the site where work is performed a legible statement, provided by the commissioner, that describes the responsibility of independent contractors to pay taxes required by state and federal law, the rights of employees to workers' compensation, unemployment benefits, minimum wage, overtime, and other federal and state workplace protections, and the protections against retaliation and the penalties in this title if the independent contractor fails to classify properly an individual as an employee. This notice shall also contain contact information for individuals to file complaints or inquire with the commissioner about employment classification status. This information shall be provided in English or other languages required by the commissioner. The posted statement shall be constructed of materials capable of withstanding adverse weather conditions.

(b) Within 30 days of the effective date of this section, the commissioner shall create the notice described in subsection (a) of this section and post the notice on the department's website for downloading by hiring entities.

(c) Employers who violate this section shall be subject to an administrative penalty of up to \$100.00 per violation.

Sec. 24. 21 V.S.A. § 8 is added to read:

§ 8. INDEPENDENT CONTRACTOR DEFINITION

The commissioner is directed to formulate a single definition of independent contractor for the purposes of chapters 9 (workers' compensation) and 17 (unemployment compensation) of this title. The definition shall be simple to understand and provide clarity to employers and employees as to an individual's status as an employee or an independent contractor. The commissioner shall also formulate a test based upon the definition of

independent contractor that will allow employers and employees to quickly and easily determine independent contractor status. It is not the intent of this section to substantively change the benefits and protections of employment under this title.

\* \* \* Fair-share representation fees \* \* \*

#### Sec. 25. POLICY

It is the policy of the state of Vermont that employees in bargaining units organized under state law who exercise their rights not to join a labor organization required to provide them certain services shall pay to that labor organization a fair-share agency fee, representing that portion of the labor organization's membership fees which are attributable to those services.

#### Sec. 26. FINDINGS

The general assembly finds:

(1) The right of employees to organize and form a labor organization to engage in collective bargaining is fundamental to both a free society and the generation and maintenance of a strong middle class.

(2) The state has long favored the right of employees to organize for the purpose of bargaining collectively with their employer.

(3) Vermont law recognizes that a labor organization democratically selected by bargaining unit employees is the exclusive representative of all the employees within the bargaining unit.

(4) A labor organization engages in both "chargeable" and "nonchargeable" activities on behalf of bargaining unit members. "Chargeable" activities are generally those related to negotiating and ensuring the enforcement of collective bargaining agreements on behalf of the bargaining unit as a whole and for every employee within it. "Nonchargeable" activities are generally those related to political activities and lobbying.

(5) With respect to "chargeable activities," a labor organization must represent all the employees within its bargaining unit. It may not discriminate between members of the labor organization who pay membership fees and those who exercise their rights not to become members. This is called "the duty of fair representation." This duty does not extend to "nonchargeable" activities.

(6) The "chargeable" activities undertaken by labor organizations on behalf of all bargaining unit employees are in the interest of the public good.

(7) It is the policy of the state to require employees in bargaining units organized under state law who do not become members of the labor

organization representing the unit to pay a “fair-share agency fee” for the chargeable activities undertaken on their behalf.

(8) Current labor law in Vermont leaves the question of a fair-share agency fee to the collective bargaining process itself.

(9) It is inconsistent with state policy to continue to permit employers, merely by not agreeing to fair-share fee provisions in collective bargaining agreements, to enable their bargaining unit employees who are not members of the labor organization to avoid paying their fair share of the organization’s representation.

(10) The result of allowing employers to withhold consent to fair-share fees has resulted in a patchwork of collective bargaining agreements, some of which include fair-share provisions and some of which do not.

(11) By enacting a fair-share agency fee law, the state will allow employees not to join the labor organizations representing them, but will ensure equitable treatment across bargaining units organized under state law.

(12) The duty of fair representation should be balanced by the duty to pay a fair-share agency fee.

\* \* \* State employees \* \* \*

Sec. 27. 3 V.S.A. § 903 is amended to read:

§ 903. EMPLOYEES’ RIGHTS AND DUTIES; PROHIBITED ACTS

(a) Employees shall have the right to self-organization; to form, join, or assist employee organizations; to bargain collectively through representatives of their own choice, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities, except as provided in ~~subsection~~ subsections (b) and (c) of this section, and to appeal grievances as provided in this chapter.

(b) No state employee may strike or recognize a picket line of an employee or labor organization while in the performance of his or her official duties.

(c) An employee who exercises the right not to join the employee organization representing the employee’s certified unit pursuant to section 941 of this title shall pay a collective bargaining fee to the representative of the bargaining unit in the same manner as employees who pay membership fees to the representative.

(d) All employers, their officers, agents, and employees or representatives shall exert every reasonable effort to make and maintain agreements concerning matters allowable under section 904 of this title and to settle all

disputes, whether arising out of the application of those agreements, or growing out of any dispute between the employer and the employees thereof.

Sec. 28. 3 V.S.A. § 904 is amended to read:

§ 904. SUBJECTS FOR BARGAINING

(a) All matters relating to the relationship between the employer and employees shall be the subject of collective bargaining except those matters which are prescribed or controlled by statute. Such matters appropriate for collective bargaining to the extent they are not prescribed or controlled by statute include ~~but are not limited to:~~

\* \* \*

(9) Rules and regulations for personnel administration, except the following: rules and regulations relating to persons exempt from the classified service under section 311 of this title and rules and regulations relating to applicants for employment in state service and employees in an initial probationary status including any extension or extensions thereof provided such rules and regulations are not discriminatory by reason of an applicant's race, color, creed, sex, or national origin; ~~and~~

~~(10) A collective bargaining service fee.~~

\* \* \*

Sec. 29. 3 V.S.A. § 941 is amended to read:

§ 941. UNIT DETERMINATION, CERTIFICATION, AND REPRESENTATION

\* \* \*

(k) Nothing in this chapter requires an individual to seek the assistance of his or her collective bargaining unit or its representative(s) in any grievance proceeding. He or she may represent himself or herself or be represented by counsel of his or her own choice. Employees who are eligible for membership in a collective bargaining unit who exercise their right not to join such unit may upon agreement with the unit representative avail themselves of the services of the unit representative(s) in grievance proceedings upon payment to the unit of a fee established by the unit representative, provided that in the event a collective bargaining service fee is negotiated or imposed, the unit representative shall represent nonmember employees in grievance proceedings without charge.

Sec. 30. 3 V.S.A. § 962 is amended to read:

§ 962. EMPLOYEES

It shall be an unfair labor practice for an employee organization or its agents:

\* \* \*

(10) To charge a collective bargaining fee ~~negotiated pursuant to section 904 of this title~~ unless such employee organization has established and maintained a procedure to provide nonmembers with:

(A) an audited financial statement that identifies the major categories of expenses, and divides them into chargeable and nonchargeable expenses;

(B) an opportunity to object to the amount of the agency fee sought, any amount reasonably in dispute to be placed in escrow;

(C) prompt arbitration by the board to resolve any objection over the amount of the collective bargaining fee.

\* \* \* Judiciary employees \* \* \*

Sec. 31. 3 V.S.A. § 1012 is amended to read:

§ 1012. EMPLOYEES' RIGHTS AND DUTIES; PROHIBITED ACTS

(a) Employees shall have the right to self-organization; to form, join, or assist employee organizations; to bargain collectively through their chosen representatives; to engage in concerted activities of collective bargaining or other mutual aid or protection; to refrain from any or all those activities, except as provided in ~~subsection (b)~~ subsections (b) and (c) of this section; and to appeal grievances as provided in this chapter.

(b) No employee may strike or recognize a picket line of an employee organization while performing the employee's official duties.

(c) An employee who exercises the right not to join the employee organization representing the employee's certified unit pursuant to section 1021 of this title shall pay a collective bargaining fee to the representative of the bargaining unit in the same manner as employees who pay membership fees to the representative.

~~(e)~~(d) The employer and employees and the employee's representative shall exert every reasonable effort to make and maintain agreements concerning matters allowable under section 1013 of this title and to settle all disputes, whether arising out of the application of those agreements or growing out of any dispute between the employer and the employees.

Sec. 32. 3 V.S.A. § 1013 is amended to read:

§ 1013. SUBJECTS FOR BARGAINING

All matters relating to the relationship between the employer and employees are subject to collective bargaining, to the extent those matters are not prescribed or controlled by law, including:

\* \* \*

~~(10) A collective bargaining service fee.~~

Sec. 33. 3 V.S.A. § 1027 is amended to read:

§ 1027. EMPLOYEES

It shall be an unfair labor practice for an employee organization or its agents:

\* \* \*

(10) To charge a ~~negotiated~~ collective bargaining fee unless the employee organization has established and maintained a procedure to provide nonmembers with all the following:

(A) An audited financial statement that identifies the major categories of expenses and divides them into chargeable and nonchargeable expenses.

(B) An opportunity to object to the amount of the fee requested and to place in escrow any amount reasonably in dispute.

(C) Prompt arbitration by the board to resolve any objection over the amount of the collective bargaining fee.

\* \* \* Teachers \* \* \*

Sec. 34. 16 V.S.A. § 1982 is amended to read:

§ 1982. RIGHTS

(a) Teachers shall have the right to or not to join, assist, or participate in any teachers' organization of their choosing. However, teachers ~~may be required to pay an agency fee~~ who choose not to join the teachers' organization, recognized pursuant to an agreement negotiated under section 1992 of this chapter as the exclusive representative, shall pay an agency fee in the same manner as teachers who choose to join the teachers' organization pay membership fees.

(b) Principals, assistant principals, and administrators other than superintendent and assistant superintendent shall have the right to or not to join, assist, or participate in any administrators' organization or as a separate unit of any teachers' organization of their choosing. However, administrators other than the superintendent and assistant superintendent ~~may be required to pay an agency fee~~ who choose not to join the administrators' organization,



recognized pursuant to an agreement negotiated under section 1992 of this chapter as the exclusive representative, shall pay an agency fee in the same manner as administrators who choose to join the administrators' organization pay membership fees.

(c) Neither the school board nor any employee of the school board serving in any capacity, nor any other person or organization shall interfere with, restrain, coerce, or discriminate in any way against or for any teacher or administrator engaged in activities protected by this legislation.

\* \* \* Certain private sector employees \* \* \*

Sec. 35. 21 V.S.A. § 1502 is amended to read:

§ 1502. DEFINITIONS

In this chapter, the following words shall have the following meaning:

\* \* \*

(14) "Agency service fee" means a fee for representation in collective bargaining not exceeding labor organization dues, payable to a labor organization which is the exclusive representative for employees in a bargaining unit from individuals who are not members of the labor organization.

Sec. 36. 21 V.S.A. § 1621 is amended to read:

§ 1621. UNFAIR LABOR PRACTICES

(a) It shall be an unfair labor practice for an employer:

\* \* \*

(6) Nothing in this chapter or any other statute of this state shall preclude an employer from making an agreement with a labor organization (not established, maintained or assisted by any action defined in this subsection (a) as an unfair labor practice) to require as a condition of employment membership in such labor organization on or after the 30th day following the beginning of such employment or the effective date of such agreement, whichever is the later (i) if such labor organization is the representative of the employees as provided in section 1583 of this chapter, in the appropriate collective bargaining unit covered by such agreement when made and (ii) unless following an election held as provided in section 1584 of this chapter within one year preceding the effective date of such agreement, the board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement. Absent such an agreement, an employee who does not become a member of the labor organization shall, in the same manner as employees who choose to join the labor organization pay membership fees,

pay an agency service fee to that organization. No employer shall justify any discrimination against an employee for nonmembership in a labor organization:

(A) If the employer has reasonable grounds for believing that membership was not available to the employee on the same terms and conditions generally applicable to other members; or

(B) If the employer has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

\* \* \*

(b) It shall be an unfair labor practice for a labor organization or its agents:

\* \* \*

(9) To charge an agency service fee unless the employee organization has established and maintained a procedure to provide nonmembers with all the following:

(A) An audited financial statement that identifies the major categories of expenses and divides them into chargeable and nonchargeable expenses.

(B) An opportunity to object to the amount of the fee requested and to place in escrow any amount reasonably in dispute.

(C) Prompt arbitration by an arbitrator selected jointly by the objecting fee payer and the labor organization or pursuant to the rules of the American Arbitration Association to resolve any objection over the amount of the agency service fee.

\* \* \*

\* \* \* Municipal employees \* \* \*

Sec. 37. 21 V.S.A. § 1726 is amended to read:

§ 1726. UNFAIR LABOR PRACTICES

(a) It shall be an unfair labor practice for an employer:

\* \* \*

(8) Nothing in this chapter or any other statute of this state shall preclude a municipal employer from making an agreement with the exclusive bargaining agent ~~to require an agency service fee to be paid as a condition of employment, or to require as a condition of employment membership in such employee organization on or after the 30th day following the beginning of such employment or the effective date of such agreement, whichever is the later.~~

Absent such an agreement, an employee who does not become a member of the employee organization shall, in the same manner as employees who choose to join the employee organization pay membership fees, pay an agency service fee to that organization. No municipal employer shall discharge or discriminate against any employee for nonpayment of an agency service fee or for nonmembership in an employee organization:

(A) If the employer has reasonable grounds for believing that membership was not available to the employee on the same terms and conditions generally applicable to other members; or

(B) If the employer has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

(b) It shall be an unfair labor practice for an employee organization or its agents:

\* \* \*

(6) To require employees covered by an agency service fee ~~agreement~~ requirement or other union security agreement authorized under subsection (a) of this section to pay an initiation fee which the board finds excessive or discriminatory under all the circumstances, including the practices and customs of employee organizations representing municipal employees, and the wages paid to the employees affected.

\* \* \*

(12) To charge an agency service fee unless the employee organization has established and maintained a procedure to provide nonmembers with all the following:

(A) An audited financial statement that identifies the major categories of expenses and divides them into chargeable and nonchargeable expenses.

(B) An opportunity to object to the amount of the fee requested and to place in escrow any amount reasonably in dispute.

(C) Prompt arbitration by an arbitrator selected jointly by the objecting fee payer and the labor organization or pursuant to the rules of the American Arbitration Association to resolve any objection over the amount of the agency service fee.

\* \* \* Miscellaneous provisions \* \* \*

Sec. 38. WORKERS' COMPENSATION RATING ADVISORY ORGANIZATIONS

(a) The department of financial regulation is directed to reconsider its reliance on the data provided by the National Council on Compensation Insurance, Inc. (NCCI) and whether it needs a workers' compensation insurance rating advisory organization in order to assist in the calculation of insurance rates. If the department determines that it needs a workers' compensation advisory organization to assist in calculating insurance rates, it is to consider using alternatives to NCCI. The department is further directed to evaluate whether proposed insurance rates made by NCCI were in line with the actual resulting insurance rates.

(b) The department shall report its findings to the senate committee on economic development, housing and general affairs and the house committee on commerce and economic development by January 15, 2013.

#### Sec. 39. STUDY OF UNEMPLOYMENT COMPENSATION TRAINING PROGRAMS

The commissioner of labor shall study the benefits and feasibility of developing and implementing a job training program for persons collecting unemployment benefits in Vermont, allowing the department to place persons collecting unemployment into job sites for job training and skill development to enhance the individual's job prospects and career development. The study shall examine conformity issues with federal and state unemployment and wage and hour laws. The commissioner shall solicit public input and engage interested parties from the business and labor communities in determining the benefits of any such program. The commissioner shall report his or her findings to the chairs of the senate committees on appropriations and on economic development, housing and general affairs, and the house committees on appropriations and on commerce and economic development.

#### Sec. 40. FINDINGS

The general assembly finds that:

(1) Some studies have concluded that over one-third of American workers have been the targets of malicious or abusive treatment by supervisors or coworkers which is wholly unrelated to legitimate workplace goals or acceptable business practices.

(2) Those studies have concluded that 45 percent of bullied employees suffer stress-related health problems, including debilitating anxiety, panic attacks, clinical depression, and post-traumatic stress.

(3) Abusive behavior occurs even in the absence of any motive to discriminate on the basis of race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, or age or against a qualified

disabled individual. Such nondiscriminatory abuse is often referred to as “workplace bullying.”

(4) The Vermont office of attorney general’s civil rights unit reports that of the 1,200 to 1,300 requests for assistance it receives each year, a substantial number involve allegations of severe workplace bullying that cannot be addressed by current state or federal law or common law tort claims. Similarly, the Vermont human rights commission, which has jurisdiction in employment discrimination claims against the state, reports that it must refuse complaints of workplace bullying because the inappropriate behaviors are not motivated by the targeted employee’s membership in a category protected by antidiscrimination laws. The Vermont department of labor reports that the wage and hour division receives up to 100 telephone calls each day, many of which involve complaints relating to workplace incivility, bullying, and retaliatory actions against employees who bring complaints.

(5) Sweden enacted the first workplace bullying law in 1993, and since then several countries have taken a variety of approaches to the problem, including the creation of private legal remedies and the prohibition of workplace bullying through occupational safety and health laws.

(6) The general assembly recognizes that there is a need to strike a balance between affording Vermont workers relief from bullying and unduly interfering with the operation of workplaces.

(7) However, given the limited duration of the legislative session, the potential impact on existing labor contracts and personnel policies, and the various options available to address this issue, a considered approach should be presented for consideration by the 2012 session of the general assembly.

#### Sec. 41. STUDY OF WORKPLACE BULLYING

(a) A committee is established to study the issue of workplace bullying in Vermont and to make recommendations to address the manner in which workplace bullying should be addressed by the state, by employers, and by affected employees. The committee shall examine and report on the following:

(1) Existing programs and best practice models for workplace civility, anti-bullying, prevention of workplace violence, reporting and nonretaliation provisions that have been adopted by employers and, if available, survey results and data from those employers.

(2) A definition of “workplace bullying” or “abusive conduct” in the workplace not addressed by existing law.

(3) Whether there is a need for additional laws regarding workplace bullying.

(4) Different models for remedying workplace bullying, including:

(A) Creating a private right of action that would include the recovery of damages.

(B) Creating a mechanism for injunctive relief similar to those relating to stalking, hate crimes, or relief-from-abuse orders.

(C) State enforcement similar to the employment discrimination law.

(D) State enforcement by the Vermont occupational safety and health administration.

(E) Any other issues relevant to workplace bullying.

(b) The committee established by subsection (a) of this section shall also recommend any measures, including proposed legislation, to address bullying in the workplace.

(c) The committee established by subsection (a) of this section shall consist of the following members:

(1) The attorney general or designee.

(2) The executive director of the human rights commission or designee.

(3) The commissioner of labor or designee.

(4) The commissioner of human resources or designee.

(5) The state coordinator of the Vermont healthy workplace advocates.

(6) Two representatives from the business community, one to be appointed by the speaker of the house and one to be appointed by the committee on committees.

(7) Two representatives from labor organizations, one to be appointed by the speaker of the house and one to be appointed by the committee on committees.

(8) The executive director of the American Civil Liberties Union of Vermont or designee.

(9) The executive director of the Vermont Bar Association or designee.

(d) The committee shall convene its first meeting no later than July 15, 2012. The commissioner of labor shall be designated as the chair of the commission, and shall convene the first and subsequent meetings.

(e) The committee shall report its findings and any recommendations to the senate committee on economic development, housing and general affairs, and the house committee on commerce and economic development on or before January 15, 2013. The report shall include any recommended legislation to address the issue of workplace bullying.

(f) The committee shall cease to function upon transmitting its report.

Sec. 41a. 23 V.S.A. § 944 is added to read:

§ 944. DISPUTE RESOLUTION

All motor vehicle liability insurance policies issued in the state shall contain a requirement that claims for damages involving underinsured motor vehicles be submitted to arbitration pursuant to 12 V.S.A. chapter 192.

Sec. 42. EFFECTIVE DATES

(a) Sec. 16 (relating to nondisclosure or misrepresentation in order to receive unemployment benefits) of this act shall take effect on July 1, 2013.

(b) Secs. 27, 28, 29, 30, 31, 32, and 33 (relating to state employees) of this act shall take effect on July 2, 2012 and apply to new successor collective bargaining agreements subject to the provisions of 3 V.S.A. chapters 27 and 28.

(c) Secs. 34, 35, 36, and 37 (relating to teachers, municipal employees, and certain private employers) of this act shall take effect on June 30, 2012 and apply to employees subject to 16 V.S.A. chapter 57 and 21 V.S.A. chapters 19 and 22 on the date following the expiration date stated in the collective bargaining agreement, if any, then in effect, but in no event shall an employee be required to pay an agency fee, agency service fee, or collective bargaining service fee under this act for any period prior to July 1, 2012. In the event that no collective bargaining agreement is in effect on June 30, 2012, Secs. 34, 35, 36, and 37 of this act shall take effect on June 30, 2012 and apply to employees subject to 16 V.S.A. chapter 57 and 21 V.S.A. chapters 19 and 22 on July 1, 2012.

(d) This section shall take effect on passage.

and that after passage the title of the bill be amended to read: “An act relating to workforce development, workers’ compensation, unemployment compensation, and workplace rights and responsibilities”

(Committee vote: 5-0-0)

(No House amendments.)

**PROPOSAL OF AMENDMENT TO H. 552 TO BE OFFERED BY  
SENATOR SEARS**

Senator Sears moves to amend the bill in Sec. 27, 3 V.S.A. § 903, by adding at the end of subsection (c) a new sentence to read as follows:

This subsection shall not apply to employees who were not members of the employee organization and were not required to pay a collective bargaining service fee prior to July 1, 1998, and since that date have not joined the

employee organization or paid a collective bargaining service fee.

**AMENDMENT TO H. 552 TO BE OFFERED BY SENATOR SEARS**

Senator Sears moves to amend the bill as follows

First: By adding Secs. 41b, 41c, and 41d to read:

Sec. 41b. 21 V.S.A. § 495i is added to read:

§ 495i. PRIVACY PROTECTION

(a) For purposes of this section:

(1) “Electronic communications device” means any device that uses electronic signals to create, transmit, and receive information, and includes computers, telephones, personal digital assistants, and other similar devices.

(2) “Retaliatory action” means discharge, threat, suspension, demotion, denial of promotion, discrimination, or other adverse employment action regarding the employee’s compensation, terms, conditions, location, or privileges of employment.

(3) “Social networking service” means an online service, platform, or website that enables an individual to establish a profile within a bounded system created by the service for the purpose of sharing information with other users of the service.

(b) An employer shall not:

(1) Request or require that an employee or applicant disclose any user name, password, or other means for accessing a personal account or service through an electronic communications device.

(2) Request or require that an employee or applicant take an action that permits the employer to gain access to the employee’s or applicant’s account or profile on a social networking service if that information is not available to the general public.

(3) Take retaliatory action against an employee for an employee’s refusal to disclose any information specified in subdivision (1) or (2) of this subsection.

(4) Fail or refuse to hire any applicant as a result of the applicant’s refusal to disclose any information specified in subdivision (1) or (2) of this subsection.

(c) An employer may require an employee to disclose any user name, password, or other means for accessing nonpersonal accounts or services that provide access to the employer’s internal computer or information systems.

Sec. 41c. STATE OF VERMONT AS EMPLOYER



Upon passage of this act, the state of Vermont and its subdivisions shall immediately suspend any employment practices prohibited by Sec. 41b of this act.

Sec. 41d. VERMONT DEPARTMENT OF LABOR

The Vermont department of labor shall take appropriate steps to inform employers of Sec. 41b of this act.

Second: In Sec. 42, EFFECTIVE DATES by adding subsections (e) and (f) to read:

(e) Sec. 41b shall take effect on July 1, 2012.

(f) Secs. 41c and 41d shall take effect on passage.

**PROPOSAL OF AMENDMENT TO H. 552 TO BE OFFERED BY  
SENATOR MCCORMACK**

Senator McCormack moves that the Senate propose to the House to amend the bill by adding Sec. 41b to read:

Sec. 41b. 33 V.S.A. § 3515 is added to read:

§ 3515. EXTENSION OF LIMITED COLLECTIVE BARGAINING RIGHTS TO CHILD CARE PROVIDERS

(a) Registered family day care home providers, licensed family child care home providers, and legally exempt child care providers shall have the right to organize, form, join, or assist a union, and once an exclusive representative is selected, to negotiate a legally binding agreement with the state related to:

(1) child care subsidy payments, including rates and reimbursement practices and rate variations reflecting different provider classifications and quality incentives;

(2) professional development and training, including financial assistance for child care providers and their staff;

(3) procedures for resolving grievances against the state; and

(4) a mechanism for collection of dues from child care providers who choose to be members of the union, which shall be the financial responsibility of each individual provider and shall in no way result in a decrease in the amount of subsidy funds available to eligible families.

(b) The activities of child-care providers and their exclusive representatives that are necessary for the exercise of their rights under this section shall be afforded state-action immunity under applicable state and federal antitrust laws. The state intends that the “State action” exemption to federal antitrust laws be available only to the state, to child-care providers, and

to their exclusive representative in connection with these necessary activities. Such exempt activities shall be actively regulated by the state.

(c) The provisions of 21 V.S.A. chapter 19 related to election process shall apply to this section.

(d) Child care providers shall not strike.

(e)(1) There is established a child care working group, chaired by the commissioner for children and families or designee, to make recommendations to the commissioner as to whether program directors and staff working at licensed child care facilities shall have the right to choose a representative organization for purposes of negotiating with the state about the subjects set forth in subsection (a) of this section.

(2) The working group shall be established no later than July 1, 2012 and shall consist of 11 persons appointed by the governor, one of which will be the commissioner for children and families or designee, one of which shall be the executive director of the Vermont labor relations board or designee, one of which shall be the executive director of Building Bright Futures or designee, two of which shall be center-based program directors, three of which shall be center-based teachers, one of which shall be a representative of a parent organization, one of which shall be a representative of Voices for Vermont's Children, and one of which shall be a representative of kids are priority one coalition.

(3) The commissioner for children and families shall report the working group's findings and recommendations to the governor and the general assembly on or before November 1, 2012.

#### **H. 691.**

An act relating to prohibiting collusion as an antitrust violation.

#### **Reported favorably with recommendation of proposal of amendment by Senator Sears for the Committee on Judiciary.**

The Committee recommends that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 9 V.S.A. § 2451 is amended to read:

#### **§ 2451. PURPOSE**

The purpose of this chapter is to complement the enforcement of federal statutes and decisions governing unfair methods of competition, ~~and~~ unfair or deceptive acts or practices, and anti-competitive practices in order to protect the public; and to encourage fair and honest competition.

Sec. 2. 9 V.S.A. § 2451a is amended to read:

§ 2451a. DEFINITIONS

For the purposes of this chapter:

(a) “Consumer” means any person who purchases, leases, contracts for, or otherwise agrees to pay consideration for goods or services not for resale in the ordinary course of his or her trade or business but for his or her use or benefit or the use or benefit of a member of his or her household, or in connection with the operation of his or her household or a farm whether or not the farm is conducted as a trade or business, or a person who purchases, leases, contracts for, or otherwise agrees to pay consideration for goods or services not for resale in the ordinary course of his or her trade or business but for the use or benefit of his or her business or in connection with the operation of his or her business.

(b) “Goods” or “services” shall include any objects, wares, goods, commodities, work, labor, intangibles, courses of instruction or training, securities, bonds, debentures, stocks, real estate, or other property or services of any kind. The term also includes bottled liquified petroleum (LP or propane) gas.

\* \* \*

(h) “Collusion” means an agreement, contract, combination in the form of trusts or otherwise, or conspiracy to engage in price fixing, bid rigging, or market division or allocation of goods or services between or among persons.

Sec. 3. 9 V.S.A. § 2453a is added to read:

§ 2453a. PRACTICES PROHIBITED; CRIMINAL ANTITRUST VIOLATIONS

(a) Collusion is hereby declared to be a crime.

(b) Subsection (a) of this section shall not be construed to apply to activities of or arrangements between or among persons which are permitted, authorized, approved, or required by federal or state statutes or regulations.

(c) It is the intent of the general assembly that in construing this section and subsection 2451a(h) of this title, the courts of this state shall be guided by the construction of federal antitrust law and the Sherman Act, as amended, as interpreted by the courts of the United States.

(d) Nothing in this section limits the power of the attorney general or a state’s attorney to bring civil actions for antitrust violations under section 2453 of this title.

(e) A violation of this section shall be punished by a fine of not more than \$100,000.00 for an individual or \$1,000,000.00 for any other person or by imprisonment not to exceed five years or both.

Sec. 4. 9 V.S.A. § 2453b is added to read:

§ 2453b. RETALIATION PROHIBITED

No person shall retaliate against, coerce, intimidate, threaten, or interfere with any other person who:

(1) has opposed any act or practice of the person which is collusive or in restraint of trade;

(2) has lodged a complaint or has testified, assisted, or participated in any manner with the attorney general or a state's attorney in an investigation of acts or practices which are collusive or in restraint of trade;

(3) is known by the person to be about to lodge a complaint or testify, assist, or participate in any manner in an investigation of acts or practices which are collusive or in restraint of trade; or

(4) is believed by the person to have acted as described in subdivision (1), (2), or (3) of this subsection.

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 4-0-1)

(For House amendments, see House Journal for March 20, 2012, page 738.)

**AMENDMENT TO H. 691 TO BE OFFERED BY  
SENATOR MCCORMACK**

Senator McCormack moves that the Senate propose to the House to amend the bill by adding a new Sec. 6 to read:

Sec. 6. 33 V.S.A. § 3515 is added to read:

§ 3515. EXTENSION OF LIMITED COLLECTIVE BARGAINING RIGHTS TO CHILD CARE PROVIDERS

(a) Registered family day care home providers, licensed family child care home providers, and legally exempt child care providers shall have the right to organize, form, join, or assist a union, and once an exclusive representative is selected, to negotiate a legally binding agreement with the state related to:

(1) child care subsidy payments, including rates and reimbursement practices and rate variations reflecting different provider classifications and quality incentives;

(2) professional development and training, including financial assistance for child care providers and their staff;

(3) procedures for resolving grievances against the state; and

(4) a mechanism for collection of dues and representation fees from the child care providers, which shall be the financial responsibility of each individual provider and shall in no way result in a decrease in the amount of subsidy funds available to eligible families.

(b) Such negotiations shall not constitute an antitrust violation.

(c) The provisions of 21 V.S.A. chapter 19 related to election process shall apply to this section.

(d) Child care providers shall not strike.

(e)(1) There is established a child care working group, chaired by the commissioner for children and families or designee, to make recommendations to the commissioner as to whether program directors and staff working at licensed child care facilities shall have the right to choose a representative organization for purposes of negotiating with the state about the subjects set forth in subsection (a) of this section.

(2) The working group shall be established no later than July 1, 2012 and shall consist of 11 persons appointed by the governor, one of which will be the commissioner for children and families or designee, one of which shall be the executive director of the Vermont labor relations board or designee, one of which shall be the executive director of Building Bright Futures or designee, two of which shall be center-based program directors, three of which shall be center-based teachers, one of which shall be a representative of a parent organization, one of which shall be a representative of Voices for Vermont's Children, and one of which shall be a representative of kids are priority one coalition.

(3) The commissioner for children and families shall report the working group's findings and recommendations to the governor and the general assembly on or before November 1, 2012.

#### **H. 766.**

An act relating to the national guard.

**Reported favorably with recommendation of proposal of amendment by Senator Illuzzi for the Committee on Economic Development, Housing and General Affairs.**

The Committee recommends that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 20 V.S.A. § 946 is added to read:

§ 946. COMMANDING OFFICER'S NONJUDICIAL DISCIPLINE

(a) It is the purpose of this section to rehabilitate a service member who may have violated certain provisions of the Uniform Code of Military Justice that, in the discretion of the commanding officer, are deemed to be de minimus. Any action taken pursuant to this section shall be taken to rehabilitate the member and deter the underlying conduct.

(b) Any field grade or above commander in the national guard not in the service of the United States may, in addition to or in lieu of admonition or reprimand, impose nonjudicial discipline in like manner and to the extent prescribed by Article 15 of the Uniform Code of Military Justice, Manual for Courts-Martial, United States, as shall be currently in use by the armed forces of the United States, except that there shall be no right to demand trial by courts-martial when the commander notifies the accused prior to using the nonjudicial discipline option that the maximum punishment to be considered in the event that the accused is found guilty beyond a reasonable doubt will be the loss of one rank, restriction, loss of pay, or extra duty. The member shall be entitled to the same federal protections and rights in any proceeding under this section as he or she would be under the Uniform Code of Military Justice.

Sec. 2. 20 V.S.A. § 369 is added to read:

§ 369. AWARDS AND MEDALS

Upon the approval of the governor, the adjutant general may, from time to time, create and design such awards and medals to recognize meritorious service or outstanding achievement for members of the Vermont National Guard. The adjutant general will cause to be published a roster of these awards and medals, the criteria and process for awarding them, and a description or specification of the award and medals. All awards and medals will be presented in the name of the state of Vermont and be awarded to a member or retired member of the Vermont National Guard or if the member is deceased to the member's spouse, child, parent, sibling, or grandchild or, if none, to a person designated by the executor of the estate.

Sec. 3. 20 V.S.A. § 603 is amended to read:

§ 603. ARMS AND EQUIPMENT; PAY AND RATIONS

When the national guard, or part thereof, is ordered out under the provisions of section 366, 601, or 602 of this title, the state shall furnish arms and equipment necessary for each officer, warrant officer, and enlisted person; and they shall be entitled to ~~pay and rations~~ pay, subsistence, and quarters allowance equivalent to that paid to members of the armed forces of the United

States for officers, warrant officers, and enlisted persons of corresponding grade and time in service as designated in the U.S. pay tables.

Sec. 4. 20 V.S.A. § 608 is added to read:

§ 608. CIVILIAN LEAVE OPTION

If any member of the Vermont national guard is ordered to state active duty by the governor, the service member shall have the right to take leave without pay from his or her civilian employment. No member of the national guard shall be required to use or exhaust his or her vacation or other accrued leave from his or her civilian employment for a period of active service.

Sec. 5. 20 V.S.A. § 609 is added to read:

§ 609. STAY OF LEGAL PROCEEDINGS BECAUSE OF SERVICE IN NATIONAL GUARD

(a)(1) If a service member of the Vermont National Guard who is ordered to state active duty by the governor is a party to a civil or administrative proceeding in any Vermont court, the proceeding:

(A) may be stayed by the court on its own motion; or

(B) shall be stayed by application of the member or person acting on behalf of the member, unless the court finds that the proceeding would not be materially affected by reason of the member's absence or that the member can participate by telephone or other electronic means.

(2) A motion for a stay under this subsection may be filed or the court may issue such a stay at any time during the period of active service. Any stay issued shall not remain in effect for more than 30 days after the completion of state active duty.

(b) An application for a stay pursuant to subdivision (a)(1)(B) of this section shall include a letter or other communication from the member or a person on his or her behalf setting forth facts stating the manner in which the member's duty requirements materially affect the member's ability to appear and stating a date when the member is expected to be available to appear, together with any information from the member's commanding officer.

(c)(1) This section shall not apply to:

(A) proceedings involving relief from abuse orders under 15 V.S.A. chapter 21, subchapter 1;

(B) proceedings involving orders against stalking or sexual assault under 12 V.S.A. chapter 178;

(C) proceedings involving abuse prevention orders for vulnerable adults under 33 V.S.A. chapter 69, subchapter 1; or

(D) civil operator's license suspension proceedings under 23 V.S.A. § 1205.

(2) If a service member is unable to appear at a hearing due to responsibilities related to state active duty service, the court may issue interim or ex parte orders in proceedings identified in subdivision (A), (B), or (C) of this subsection, and the department of motor vehicles may suspend a civil operator's license. If the court issued any order while the member was on state active duty, upon the member's return, he or she shall, upon request, be entitled to a hearing and the opportunity to move to strike or modify the order or suspension issued in his or her absence. If the civil operator's license is reinstated, there shall be no reinstatement fee.

Sec. 5a. 12 V.S.A. § 553 is amended to read:

§ 553. MEMBER OF ARMED SERVICES; TOLLING STATUTE OF LIMITATIONS

When an inhabitant of this state is in the military or naval service of the United States, or is a member of the Vermont National Guard and has been ordered to state active duty and, at the time of entering such service or duty, had a cause of action against another person, or another person had a cause of action against him or her, the time spent in such military or naval service out of this state or the time spent in state active duty shall not be taken as part of the time limited for the bringing of an action by or against him or her founded on such causes. The limitation period for a cause of action shall be tolled during the duration of the person's out of state military or naval service, or state active duty service, plus an additional 60 days.

Sec. 6. 21 V.S.A. § 492 is amended to read:

§ 492. RIGHTS AND BENEFITS

\* \* \*

(c)(1) If any member of the Vermont National Guard with civilian employer-sponsored insurance coverage is ordered to state active duty by the governor for up to 30 days, the service member may, at the member's option, continue his or her civilian health insurance under the same terms and conditions as were in effect for the month preceding the member's call to state active duty, including a continuation of the same levels of employer and employee contributions toward premiums and cost-sharing.

(2) If a member of the Vermont National Guard is called to state active duty for more than 30 days, the member may continue his or her civilian health insurance. For a member whose employer chooses not to continue regular contributions toward premiums and cost-sharing during the period of the



member's state active duty in excess of 30 days, the state of Vermont shall be responsible for paying the employer's share of the premium and cost-sharing.

(3) The office of the adjutant general shall administer this subsection and may adopt policies, procedures, and guidelines to carry out the purposes of this subsection, including developing employee notice requirements, enforcement provisions, and a process for the state to remit the employer's share of premiums and cost-sharing to the appropriate entities pursuant to subdivision (2) of this subsection.

Sec. 7. 16 V.S.A. § 2537 is amended to read:

§ 2537. ARMED SERVICES SCHOLARSHIPS

\* \* \*

(b) Definitions:

(1) "Vermont National ~~guard~~ Guard" as used in this section will be deemed to include Vermont army national guard and Vermont air national guard.

(2) "Active duty for ~~national guard~~ Vermont National Guard and for active reserve forces" means full-time duty in the active military service of the United States and includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned.

(3) "Inactive duty" means training performed by members of a reserve component while not on active duty and includes unit training assemblies, training periods, military flight periods and other equivalent duty and while on state duty on order of the governor or the governor's representative.

(4) "Armed forces of the United States" means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(5) "Child" means a natural or adoptive child of a member of the Vermont National Guard or armed forces, and includes a stepchild.

Sec. 8. 16 V.S.A. § 2856 is amended to read:

§ 2856. EDUCATIONAL ASSISTANCE; ~~INTEREST FREE LOANS~~

(a) An active member of the Vermont ~~army national guard or the air national guard~~ National Guard may be eligible for an interest-free loan in an academic year for financial assistance to pay for tuition and fees for courses taken at a Vermont college, university, regional technical center, or other programs approved pursuant to policies adopted in accordance with subsection (f) of this section. ~~Academic year awards may be up to the in-state tuition rate at the University of Vermont for that year.~~

(b) To be eligible for an educational loan under this section, a person shall:

(1) be an active member in good standing of a ~~federally recognized~~ federally recognized unit of the Vermont ~~army national guard or air national guard~~ National Guard;

(2) have successfully completed basic training or commissioning; and

(3) ~~not hold a baccalaureate degree or higher; and~~

(4) be enrolled in a program that leads to a postsecondary degree, diploma or be studying for relevant continuing education purposes.

(c) A loan made under this section shall be interest free and may be partially or completely cancelled and forgiven for a person who:

(1) submits certification that the person has successfully completed the course; and

(2) submits certification that the person has completed two years of national guard service for each full academic year award. Service requirements for less than a full academic year award shall be proportionate to the amount of the award. The board shall determine the amount of loan to be cancelled for each completed year of service. The amount cancelled for each year of service shall not exceed 50 percent of the loan.

(d) The adjutant general shall provide ~~a certificate~~ documentation of eligibility ~~to each person who has been found to be eligible~~ for educational assistance under this section for each academic period. ~~The certificate shall be valid for one academic year.~~

(e) ~~A person shall not be eligible for educational assistance under this section for any courses taken after he or she has been awarded a baccalaureate degree or is no longer an active member in good standing of the Vermont army national guard or the air national guard~~ The loan of a person who loses eligibility under this section while enrolled in a course shall go into repayment pursuant to the terms of the loan, and the person shall be ineligible for further assistance under this section until the loan is repaid in full.

(f) The board, in consultation with the office of the adjutant general, shall adopt ~~rules~~ policies, procedures, and guidelines necessary to implement the provisions of this section, which shall include application requirements, annual loan requirements, loan forgiveness requirements, and annual loan amounts based on available funds. ~~Rules~~ The policies, procedures, and guidelines shall include definitions of “successful completion of a course,” “relevant continuing education courses” and what constitutes an “academic year.” Rules adopted by the Vermont ~~state colleges~~ State Colleges under section 2183 of this title, prior to its repeal, shall remain valid under this section and shall be administered by the corporation.

(g) [Repealed.]

(h) The availability of loans made under this subchapter is subject to funds appropriated to the Vermont ~~army or air national guard~~ National Guard for that purpose.

and that after passage the title of the bill be amended to read: “An act relating to the rehabilitation of Vermont National Guard members and certain rights and responsibilities of guard members and their employers”

(Committee vote: 3-0-2)

**Reported favorably by Senator Starr for the Committee on Appropriations.**

(Committee vote: 5-0-2)

(No House amendments.)

#### **H. 774.**

An act relating to meat inspection, delivery of liquid fuels, dairy operations, and animal foot baths.

**Reported favorably with recommendation of proposal of amendment by Senator Kittell for the Committee on Agriculture.**

The Committee recommends that the Senate propose to the House to amend the bill as follows:

First: In Sec. 4, subsection (b) in the first sentence after the word “fuels”, by inserting the following:  sold at retail, as defined by 32 V.S.A. § 9701(5),

Second: In Sec. 9, subsection (b)(1) in the first sentence after the word “the” and before the word “commissioner”, by inserting the following: commissioner of the department of environmental conservation and the

**Reported favorably by Senator Carris for the Committee on Finance.**

(Committee vote: 7-0-0)

#### **PROPOSAL OF AMENDMENT TO H. 774 TO BE OFFERED BY SENATOR KITTELL**

Senator Kittell moves that the report of the Committee on Agriculture be amended as follows:

First: By adding Sec. 3a to read:

Sec. 3a. AGENCY OF AGRICULTURE, FOOD AND MARKETS;  
EDUCATION AND OUTREACH REGARDING HUMANE HANDLING  
AND SLAUGHTER

(a) On or before October 15, 2012, the secretary of agriculture, food and markets, after consultation with representatives of organizations with an interest in itinerant or custom slaughter, shall:

(1) conduct regional outreach regarding humane treatment of livestock, humane slaughter of livestock, and sanitary slaughtering and processing methods; and

(2) make available to the public informational materials regarding humane treatment of livestock, humane slaughter of livestock, and sanitary slaughtering and processing methods.

(b) On or before January 15, 2013, the secretary of agriculture, food and markets shall report back to the senate and house committees on agriculture regarding how the secretary of agriculture, food and markets complied with the requirements of subsection (a) of this section.

Second: In Sec. 9, in 6 V.S.A. § 796, by striking out subsection (b) in its entirety and inserting in lieu thereof the following:

(b)(1) The secretary shall adopt rules to implement regulation of animal foot baths for livestock, including:

(A) if appropriate, a ban on the use of certain chemicals, such as formaldehyde, as foot baths; and

(B) requirements for the administration of foot baths, the type of chemicals used, disposal of the chemicals found in used foot baths, and additional requirements deemed necessary by the secretary.

(2) The secretary shall work with the commissioner of health and the secretary of natural resources in drafting the rules to be adopted under this subsection.

(3) In adopting the rules required by this subsection, the secretary shall utilize information regarding the use of formaldehyde from the federal Department of Health and Human Services Agency for Toxic Substances and Disease Registry and from the ongoing investigation of the use of formaldehyde for agricultural practices conducted by the commissioner of health in collaboration with the secretary of agriculture, farms and markets and the secretary of natural resources.

(4) The secretary may adopt emergency rules for the use of foot baths on Vermont farms if the secretary determines such rules are necessary to protect the public health, safety, and welfare.

Third: By adding Secs. 10a and 10b to read as follows:

Sec. 10a. STATEMENT OF PURPOSE; HUMANE TREATMENT;  
GESTATION

It shall be the purpose of this part of the act related to humane treatment of animals to prohibit the cruel confinement of sows during gestation in a manner that does not allow them to turn around freely, lie down, stand up, or fully extend their limbs.

Sec. 10b. 6 V.S.A. chapter 201 is amended to read:

CHAPTER 201. HUMANE SLAUGHTER OF LIVESTOCK

\* \* \*

§ 3134. PENALTY

A person who violates section 3132 or 3135 of this title shall be guilty of a misdemeanor and shall be fined upon conviction not more than \$ \$1,000.00 for the first violation, not more than \$5,000.00 for the second violation, and not more than \$10,000.00 per violation for the third and any subsequent violations, or imprisoned not more than two years, or both. In addition to the penalties provided in this subsection, the secretary may seek an injunction against a slaughterer, packer, or stockyard operator who engages in practices which are prohibited by section 3132 or 3135 of this title, by application to the superior court for the county in which such slaughterer, packer, or stockyard operator resides, or where such violations occur. The secretary may refer a violation of section 3132 or 3135 of this title to the attorney general or the state's attorney for criminal prosecution. The secretary may also take any action authorized under chapter 1 of this title.

§ 3135. DEFINITIONS

(a) In this section:

(1) “Enclosure” means a cage, crate, or other structure used to confine an animal, including what is commonly described as a “gestation crate” for sows.

(2) “Farm” means the land, building, support facilities, and other equipment that are wholly or partially used for the commercial production of animals or animal products used for food or fiber and does not include live animal markets.

(3) “Farm owner or operator” means any person who owns or controls the operations of a farm and does not include any nonmanagement employee, contractor, or consultant.

(4) “Fully extending the animal’s limbs” means fully extending all limbs without touching the side of an enclosure.

(5) “Sow in gestation” means a pregnant animal of the porcine species kept for the primary purpose of breeding.

(6) “Turning around freely” means turning in a complete circle without any impediment, including a tether, and without touching the side of an enclosure.

(b) Prohibition. Notwithstanding any other provision of law, a person is guilty of unlawful confinement of a sow during gestation if the person is a farm owner or operator who knowingly tethers or confines the sow in an enclosure in a manner that prevents the sow from turning around freely, lying down, standing up, and fully extending its limbs.

(c) Exceptions. The prohibition in subsection (b) of this section shall not apply:

(1) During examination or testing or individual treatment of or operation on an animal for veterinary purposes;

(2) During transportation;

(3) During rodeo exhibitions, state or county fair exhibitions, 4-H programs, and similar exhibitions or educational programs;

(4) To the humane slaughter of an animal in accordance with this chapter and the rules adopted pursuant to section 3133 of this title pertaining to the slaughter of animals; and

(5) To a sow during the seven-day period prior to the sow’s expected date of giving birth.

(d) Relation to other laws.

(1) The provisions of this section are in addition to and not in lieu of any other laws protecting animal welfare.

(2) It is not an affirmative defense to alleged violations of this section that the sow was kept as part of an agricultural operation and in accordance with customary animal husbandry or farming practices.

### **House Proposal of Amendment**

#### **S. 93**

An act relating to labeling maple products.

The House proposes to the Senate to amend the bill by striking all after the enacting clause and inserting in lieu thereof the following:

\* \* \* Labeling of Maple Products \* \* \*

Sec. 1. FINDINGS

The general assembly finds and declares that for the purposes of the maple products labeling part of this act:

(1) Maple syrup production capacity has increased significantly in recent years.

(2) There is increased interest in maple syrup that is certified for food safety.

(3) The Vermont sugaring industry has requested the creation of a voluntary certification program.

Sec. 2. 6 V.S.A. § 488a is added to read:

§ 488a. VOLUNTARY CERTIFICATION

The secretary may establish by rule a voluntary program for maple syrup production certification which shall be made available upon the request of a person engaged in producing maple syrup or maple products, a dealer, or a processor. The secretary may obtain from the person engaged in producing maple syrup or maple products, the dealer, or the processor reimbursement for the cost of the inspection certification incurred by the agency. The reimbursement fee charged for certification shall be reasonably proportionate to the cost of performing the inspection.

\* \* \* Vermont's Working Landscape \* \* \*

Sec. 3. 6 V.S.A. chapter 207 is amended to read:

CHAPTER 207. PROMOTION AND MARKETING OF VERMONT  
FOODS AND PRODUCTS

Subchapter 1. Agricultural Practices and Production

\* \* \*

Subchapter 2. The Vermont Working Lands Enterprise Program

§ 4603. LEGISLATIVE FINDINGS

The general assembly finds:

(1) The report issued by the Council on the Future of Vermont indicates that over 97 percent of Vermonters polled endorsed the value of the “working landscape” as key to our future.

(2) Vermont's unique agricultural and forest assets—its working landscape—are crucial to the state's economy, communities, character, and culture. These assets provide jobs, food and fiber, energy, security, tourism

and recreational opportunities, and a sense of well-being. They contribute to Vermont's reputation for quality, resilience, and self-reliance.

(3) Human activity involving Vermont's agricultural and forestland has been integral to the development of Vermont's economy, culture, and image. Sustainable land use will need to balance economic development demands with the other services the land provides, many of which have economic benefits beyond the agriculture and forest product sectors. Some of these benefits include clean air and water, recreational opportunities, ecosystem restoration, scenic vistas, and wildlife habitat.

(4) The agriculture and forest product sectors are similar and share many of the same challenges. There are potential benefits to be realized by the joining of these sectors in development planning and coordination, making policy decisions, and leveraging economic opportunities.

(5) The agriculture and forest product sectors provide renewable and harvestable products that form the basis of Vermont's land-based economy. The conversion of these raw commodities into value-added products within our borders represents further economic and employment opportunities.

(6) Vermont is in the midst of an agricultural renaissance and is at the forefront of the local foods movement. The success has been due to the efforts of skilled and dedicated farmers, creative entrepreneurs, and the strategic investment of private and public funds.

(7) State investment in a given industry or economic sector is often essential to stimulate and attract additional private and philanthropic investment. The combination of public, private, and foundation support can create enterprise opportunities that any one of them alone cannot. Grants issued as a result of No. 52 of the Acts of 2011 helped create jobs and economic activity in the agricultural sector. They also leveraged private and foundation investments.

(8) Vermont's land-based economy has proven to be a driver for Vermont's ongoing economic recovery.

(9) Value-added and specialty Vermont products are a growing source of revenue for Vermont's agricultural producers, many of whom have benefited from the existing infrastructure requirements of commodity producers. Both export and instate markets are necessary options for the agriculture and forest product sectors' economic development.

(10) The Vermont brand is highly regarded both nationally and internationally. Forest management is seen as crop management by those active in the forest product industry. An actively managed forest is a healthy and productive one.



(11) Vermont's agriculture and forest product sectors have not been perceived or treated as businesses by the traditional business and lending communities. They often lack available capital and financial package options that match their stage of development.

(12) Financial service and workforce development programs need to be customized to meet the unique needs of Vermont's agriculture and forest product sectors. Landowner education and labor skills training are also important for future productive management of forestlands.

(13) Scale is an important determining factor for the successful development of businesses that utilize Vermont's agriculture and forest products. Other limiting factors include labor and transportation costs, support services, resource base, and the regulatory environment.

(14) Workers' compensation, health care, energy costs, and regulatory requirements are a major concern to the agriculture and forest product sectors. For example, workers' compensation premiums for loggers may run as high as 48 percent of each dollar of wages.

(15) The amount of land in Vermont is finite, and part of its community and economic value is tied to the way it is used. Farmland and forestland that are developed for other uses affect the future viability of remaining farms and forest enterprises.

(16) A forestland owner is often not the person actively engaged in the business of land management, such as planning, harvesting, or marketing the raw product, whereas in agricultural operations, the farmer often owns both the land and the business. Many farm operations have woodlots that have traditionally been used for syrup, timber, and firewood production.

(17) Vermonters' perception of and support for local wood and forest products is not at the same level as it is for local food. Public outreach and education efforts need to be created to address the public's perception of actively managed working lands and the people who perpetuate them. Over the last decade, consumers of wood products have become more interested in production and management methods, certification programs, and the source of the raw materials.

(18) Vermont's forest products industry has been in decline for many years, in part due to rising costs, a poor housing market, and a lack of manufacturing. The total value of the forest product industry has dropped from \$1.8 billion to \$1.3 billion since 2007. If wood chips were priced at the equivalent BTU replacement value of oil, they would command a higher price. The number of active sawmills has also declined to fewer than 20 today.

(19) The average age of Vermont's farmers and loggers is over 55 years and the average age of forestland owners is over 65. Attention needs to be brought to efforts that will ensure intergenerational succession and lower those averages. Economically viable farm and forest-based operations are critical to that goal. "Legacy" skills such as farming and logging are disappearing, as the children of those making a living from those skills often aspire to different employment opportunities.

(20) Access to land is a challenge for many, especially younger, people who want the opportunity to make a living from productive use of the land. Farm and forestland ownership is often out of reach for young people who do not have some sort of assistance.

(21) The Vermont forest product sector contains approximately 7,000 jobs, and approximately 57,000 jobs are in Vermont's food system.

(22) Regulations for forest product enterprises need to reflect a balance between economic development and responsible land use practices. There is a need to assess regulations involving the primary processing and transportation elements of the forest product sector.

(23) Seventy-six percent of Vermont's 4.5 million acres is forested, 84 percent of which is privately owned. Sustainable management of state-owned forestlands represents an opportunity for private sector forest businesses.

(24) Forest product sector representatives have identified needs for their industry including market development, additional secondary processing facilities, lower energy and transportation costs, and capital for growth enterprises as well as research and development for new and improved value-added products that make use of Vermont's forest resources. Factors such as health care, labor, and energy policies in Canada contribute to the northward flow of Vermont logs. Research is needed in order to develop strategies that will help keep Vermont's forest product sector competitive.

(25) Vermont's use value appraisal (current use) program is critically important to every component of Vermont's agriculture and forest product sectors. It also helps keep Vermont forestland productive and healthy through the requirement of active forest management plans.

(26) Dairy enterprises remain Vermont's leading source of agricultural revenues, with an estimated annual economic impact of over \$2 billion or approximately 75 percent of total gross agricultural output.

(27) Recent grants and educational programs have started to address the lack of slaughter and meat-processing facilities in the state; however, there continues to be a strong need to further these efforts.

§ 4604. LEGISLATIVE INTENT

It is the intent of the general assembly in adopting this subchapter to:

(1) stimulate a concerted economic development effort on behalf of Vermont's agriculture and forest product sectors by systematically advancing entrepreneurship, business development, and job creation;

(2) recognize and build on the similarities and unique qualities of Vermont's agriculture and forest product sectors;

(3) increase the value of Vermont's raw and value-added products through the development of in-state and export markets;

(4) attract a new generation of entrepreneurs to Vermont's farm, food system, forest, and value-added chain by facilitating more affordable access to the working landscape;

(5) provide assistance to agricultural and forest product businesses in navigating the regulatory process;

(6) use Vermont's brand recognition and reputation as a national leader in food systems development, innovative entrepreneurship, and as a "green" state to leverage economic development and opportunity in the agriculture and forest product sectors;

(7) promote the benefits of Vermont's working lands, from the economic value of raw and value-added products to the public value of ecological stability, land stewardship, recreational opportunities, and quality of life;

(8) increase the amount of state investment in working lands enterprises, particularly when it leverages private and philanthropic funds; and

(9) support the people and businesses that depend on Vermont's renewable land-based resources and the sustainable and productive use of the land by coordinating and integrating financial products and programs.

#### § 4605. VERMONT WORKING LANDS ENTERPRISE FUND

There is created a special fund in the state treasury to be known as the "Vermont working lands enterprise fund." Notwithstanding any contrary provisions of 32 V.S.A. chapter 7, subchapter 5:

(1) the fund shall be administered and the monies of the funds shall be expended by the Vermont working lands enterprise board created in section 4606 of this title;

(2) the fund shall be composed of moneys from time to time appropriated to the fund by the general assembly or received from any other source, private or public, approved by the board, and unexpended balances and any earnings shall remain in the fund from year to year; and

(3) the board shall make expenditures from the fund consistent with the duties and authority of the board established by section 4607 of this title.

§ 4606. VERMONT WORKING LANDS ENTERPRISE BOARD

(a) Creation and purpose. There is created a Vermont working lands enterprise board, which for administrative purposes shall be attached to the agency of agriculture, food and markets. The board shall:

(1) serve as a driving force for working lands enterprise development in Vermont;

(2) systematically advance entrepreneurship, business development, and job creation in the agricultural and forest product sectors by:

(A) supporting development of new land-based and value-added businesses;

(B) supporting the expansion of existing businesses and potentially high-growth enterprises;

(C) providing infrastructure investments that will support cluster development and spur business success and rural prosperity;

(D) acting as a clearinghouse of support for innovation and growth in the food, farm, forest product and biomass energy sectors including:

(i) regulatory issues;

(ii) financial and investment opportunities; and

(iii) technical assistance services;

(E) supporting outreach and communication of enterprise opportunities;

(3) evaluate quality and breadth of workforce development, technical assistance, and investment service programs to the agriculture and forest product service sectors;

(4) target financial products that are in line with infrastructure investment priorities;

(5) establish and evaluate criteria and benchmarks of investments and actions; and

(6) solicit appropriate perspectives and information from experts.

(b) Organization of board. The board shall be composed of the following members:

(1) the secretary of agriculture, food and markets or designee, who shall serve as chair;

(2) the secretary of commerce and community development or designee;

(3) the commissioner of forests, parks and recreation or designee;

(4) eleven members appointed by the Vermont agriculture and forest products development board as follows:

(A) four members each representing one of the four highest-grossing agricultural commodities produced in Vermont as determined on the basis of annual gross cash sales;

(B) three members representing the forest products industry; and

(C) four members each representing one of the following four sectors:

(i) energy;

(ii) workforce development;

(iii) private capital; and

(iv) distribution and marketing;

(5) two members, one appointed by each of the two largest membership-based agricultural organizations in Vermont;

(6) the following three members, who shall serve as ex officio, non-voting members:

(A) the manager of the Vermont economic development authority or designee;

(B) the executive director of the Vermont sustainable jobs fund or designee; and

(C) the executive director of the Vermont housing conservation board or designee.

(c) Members appointed pursuant to subdivisions (b)(4) and (b)(5) of this section shall serve a term of three years or until his or her earlier resignation or removal for cause by a two-thirds vote of the sitting members of the board. A vacancy shall be filled by the appointing authority for the remainder of the unexpired term. A member shall not serve more than three consecutive three-year terms.

(d) The board may elect officers, establish one or more committees or subcommittees, and adopt such procedural rules as it shall determine necessary and appropriate to perform its work.

(e) A majority of the sitting members shall constitute a quorum, and action taken by the board may be authorized by a majority of the members present and voting at any regular or special meeting at which a quorum is present.

(f) Private-sector members shall be entitled to per diem compensation authorized under 32 V.S.A. § 1010 for each day spent in the performance of their duties, and each member shall be reimbursed from the fund for his or her actual and necessary expenses incurred in carrying out his or her duties.

#### § 4607. POWERS AND DUTIES OF THE VERMONT WORKING LANDS ENTERPRISE BOARD

The Vermont working lands enterprise board shall have the authority:

(1) to establish an application process and eligibility criteria for awarding grants, loans, incentives, and other investment in agricultural and forestry enterprises and in food and forest systems;

(2) to award grants and loans and to recommend incentives that support the purposes of the board under subsection 4606(a) of this title;

(3) to develop application criteria that will encourage individuals and enterprises that have not availed themselves of these opportunities in the past to apply for such grants, loans, and incentives;

(4) to give priority for awarding grants, loans, and incentives to applicants who have not recently received the same from the state or a state-funded entity;

(5) to establish formal public-private partnerships, coordinate the joint provision of investment and services with public or private entities, and enter into performance contracts with one or more persons in order to provide investment and services to agricultural and forestry enterprises, including:

(A) technical assistance and product research services;

(B) marketing assistance, market development, and business and financial planning;

(C) organizational, regulatory, and development assistance; and

(D) feasibility studies of facilities or capital investments to optimize construction and other cost efficiencies;

(6) to identify workforce needs and programs in order to develop training and incentive opportunities for the agriculture and forest product sectors;

(7) to identify strategic statewide infrastructure and investment priorities considering:

(A) leveraging opportunities;

(B) economic clusters;

(C) return-on-investment analysis; and

(D) other considerations the board determines appropriate;

(8) to pursue and accept grants or other funding from any public or private source and to administer such grants or funding consistent with their terms;

(9) to promote the products and services it provides to as many people and land-based enterprises as possible;

(10) to use the services and staff of the agency of agriculture, food and markets to assist in the performance of the board's duties, with the concurrence of the secretary of agriculture, food and markets; and

(11) to contract for support, technical, or other professional services necessary to perform its duties pursuant to this section.

#### Sec. 4. INITIAL APPOINTMENTS TO VERMONT WORKING LANDS ENTERPRISE BOARD

Notwithstanding any provision of law to the contrary:

(1) the initial members of the Vermont working lands enterprise board to be appointed pursuant to 6 V.S.A. § 4606(b)(4)–(5) shall be appointed as follows:

(A) of the eleven members of the board appointed by the Vermont agriculture and forest products development board:

(i) four members shall be appointed to an initial term of one year;

(ii) four members shall be appointed to an initial term of two years; and

(iii) three members shall be appointed to an initial term of three years; and

(B) of the two members appointed by the two largest membership-based agricultural organizations in Vermont:

(i) the member representing the organization with the largest membership shall be appointed for an initial term of two years; and

(ii) the member representing the organization with the second largest membership shall be appointed for an initial term of three years; and

(2) the initial one-year and two-year member terms authorized in subdivisions (1)(A) and (1)(B) of this section shall not qualify as a full-term for purposes of the three-term limit established in 6 V.S.A. § 4606(c).

Sec. 5. REPEAL

6 V.S.A. chapter 162, subchapter 1 (Vermont agricultural innovation center) is repealed.

Sec. 6. 6 V.S.A. § 2966 is amended to read:

§ 2966. AGRICULTURAL AND FOREST PRODUCTS DEVELOPMENT BOARD; ORGANIZATION; DUTIES AND AUTHORITY

(a) Purpose. The purpose of this section is to create a permanent Vermont agricultural and forest products development board that is authorized and empowered as the state's primary agricultural and forest products development entity.

(1) The board is charged with:

(A) optimizing the agricultural and forestry use of Vermont lands and other agricultural resources;

\* \* \*

(2) The board shall:

(A) review existing strategies and plans and ~~develop, implement,~~ and continually update a comprehensive statewide plan to guide and encourage agricultural and forest products development and new and expanded markets for agricultural and forest products;

(B) advise and make recommendations to the secretaries of relevant state agencies, the governor, the director of the state experiment station, the University of Vermont extension service, and the general assembly on the adoption and amendment of laws, regulations, and governmental policies that affect agricultural development, land use, access to capital, the economic opportunities provided by Vermont agriculture and forest products, and the well-being of the people of Vermont;

(C) monitor and report on Vermont's progress in achieving the agricultural economic development goals identified by the board; ~~and~~

(D) balance the needs of production methods with the opportunities to market products that enhance Vermont agriculture and forest products; and

(E) prepare a comprehensive report, in consultation with the agency of agriculture, food and markets, indicating the progress made by the working lands enterprise board with regard to all activities authorized by this section. The report shall be presented to the senate and house committees on



agriculture, the senate committee on economic development, housing and general affairs, and the house committee on commerce and economic development on or before January 15, 2013.

(b) Board created. The Vermont agricultural and forest products development board is hereby created. The exercise by the board of the powers conferred upon it in this section constitutes the performance of essential governmental functions.

(c) Powers and duties. The board shall have the authority and duty to:

\* \* \*

(5) obtain information from other planning entities, including the ~~farm-to-plate~~ farm to plate investment program;

\* \* \*

(d) Comprehensive agricultural and forest products economic development plan.

(1) Using information available from previous and ongoing agricultural and forest products development planning efforts, such as the ~~farm-to-plate~~ farm to plate investment program's strategic plan, and the board's own data and assumptions, the board shall develop and implement a comprehensive agricultural and forest products economic development plan for the state of Vermont. The plan shall include, at minimum, the following:

(A) an assessment of the current status of agriculture and forestry in Vermont;

(B) current and projected workforce composition and needs;

(C) a profile of emerging business and industry sectors projected to present future agricultural and forest products economic development opportunities, and a cost-benefit analysis of strategies and resources necessary to capitalize on these opportunities;

(D) a profile of current components of physical and social infrastructure affecting agricultural and forest products economic development;

(E) a profile of government-sponsored programs, agricultural and forest products economic development resources, and financial incentives designed to promote and support agricultural and forest products economic development, and a cost-benefit analysis of continued support, expansion, or abandonment of these programs, resources, and incentives;

(F) the use of the Vermont brand to further agricultural and forest products economic development;

\* \* \*

(2) Based on its research and analysis, the board shall establish in the plan a set of clear strategies with defined and measurable outcomes for agricultural and forest products economic development, the purpose of which shall be to guide long-term agricultural and forest products economic development policymaking and planning.

\* \* \*

(4) The board shall conduct a periodic review and revision of the comprehensive agricultural and forest products economic development plan as often as is necessary in its discretion, but at minimum every five years, to ensure the plan remains current, relevant, and effective for guiding and evaluating agricultural and forest products economic development policy.

\* \* \*

(e) Annual report. The board shall make available a report, at least annually, to the administration, the house committee on agriculture, the senate committee on agriculture, the house committee on commerce and economic development, the senate committee on economic development, housing and general affairs, and the people of Vermont on the state's progress toward attaining the goals and outcomes identified in the comprehensive agricultural and forest products economic development plan.

(f) Composition of board.

(1) The board shall be composed of ~~42~~ 16 members. In making appointments to the board pursuant to this section, the governor, the speaker of the house, and the president pro tempore of the senate shall coordinate their selections to ensure, to the greatest extent possible, that the board members selected by them reflect the following qualities:

(A) proven leadership in a broad range of efforts and activities to promote and improve the Vermont agricultural and forest products economy and the quality of life of Vermonters;

(B) demonstrated innovation, creativity, collaboration, pragmatism, and willingness to make long-term commitments of time, energy, and effort;

(C) geographic, gender, ethnic, social, political, and economic diversity;

(D) diversity of agricultural and forest products enterprise location, size, and sector of the for-profit agricultural and forest products business community members; and

(E) diversity of interest of the nonprofit or nongovernmental organization community members.

(2) Members of the board shall include the following:

(A) ~~four~~ five members appointed by the governor:

- (i) a person with expertise in rural economic development issues;
- (ii) an employee of a Vermont postsecondary institution experienced in researching issues related to agriculture;
- (iii) a person familiar with the agricultural tourism industry; ~~and~~
- (iv) an agricultural lender; and
- (v) a person with expertise and professional experience in forest products manufacturing.

(B) ~~four~~ six members appointed by the speaker of the house of representatives:

- (i) a person who produces an agricultural commodity other than dairy products;
- (ii) a person who creates a value-added product using ingredients substantially produced on Vermont farms;
- (iii) a person with expertise in sales and marketing; ~~and~~
- (iv) a person representing the feed, seed, fertilizer, or equipment enterprises;
- (v) a forester; and
- (vi) a sawmill operator.

(C) ~~four~~ five members appointed by the committee on committees of the senate:

- (i) a representative of Vermont's dairy industry who is also a dairy farmer;
- (ii) a person with expertise in land planning and conservation efforts that support Vermont's working landscape;
- (iii) a representative from a Vermont agricultural advocacy organization; ~~and~~
- (iv) a person with experience in providing youth with educational opportunities enhancing understanding of agriculture; and
- (v) a logger.

(3) The secretary of agriculture, food and markets or his or her designee shall be a nonvoting, ex officio member. The secretary may provide staff support from the agency of agriculture, food and markets as resources permit.

(4) The secretary of commerce and community development or his or her designee shall be a nonvoting, ex officio member.

\* \* \*

#### Sec. 7. APPROPRIATIONS

(a) The amount of \$1,700,000.00 is appropriated from the general fund to the Vermont working lands enterprise fund established in 6 V.S.A. § 4605 in the amounts and for the purposes as follow:

(1) \$550,000.00 for enterprise grants to entrepreneurs, including grants to leverage private capital, jump-start new businesses, help beginning farmers access land, and support diversification projects that add value to farm and forest commodities. This initial sum is intended to fund an enterprise grant pilot program, and it is the intent of the general assembly to commit additional investment in subsequent years upon demonstration of success of the program.

(2) \$350,000.00 for wraparound services to growth companies, including technical assistance, business planning, financial packaging, and other services required by companies ready to transition to the next stage of growth. This initial sum is intended to fund a growth company services pilot program, and it is the intent of the general assembly to commit additional investment in subsequent years upon demonstration of success of the program.

(3) \$800,000.00 for state infrastructure investments, including investment in private and nonprofit sectors for creative diversification projects, value-added manufacturing, processing, storage, distribution, and collaborative ventures. This initial sum is intended to fund an infrastructure investment pilot program, and it is the intent of the general assembly to commit additional investment in subsequent years upon demonstration of success of the program.

(b) The amount of \$382,400.00 is appropriated from the general fund to the agency of agriculture, food and markets to provide funding for support staff, including a wraparound services advisor and regulatory ombudsman, and for fiscal management and operations costs. The agency shall utilize the funds appropriated to perform its full duties to the Vermont working lands enterprise board.

#### Sec. 8. EFFECTIVE DATE

This act shall take effect on passage, except that Sec. 5 (repeal of agriculture innovation center) shall take effect on March 31, 2013.

and that after passage, the title of the bill be amended to read: “An act relating to miscellaneous agricultural subjects”

## House Proposal of Amendment

### S. 95

An act relating to exemptions for newspaper deliverers from the unemployment statutes; relieving an employer's experience rating record of charges; studying the receipt of unemployment compensation between academic terms; allowing school employees to be paid wages over the course of a year; and requiring employers to furnish required work apparel.

The House proposes to the Senate to amend the bill by striking all after the enacting clause and inserting in lieu thereof the following:

#### Sec. 1. FINDINGS

The general assembly finds that:

(1) Studies on middle and low income households have found that most indebted families go into debt to pay for basic expenses, such as groceries, utilities, child care, and health care. A study has shown that families with medical debt had 43 percent more credit card debt than those without medical debt.

(2) Employer surveys conducted by the Society of Human Resources Management suggest that over the last 15 years, employers' use of credit reports in the hiring process has increased from a practice used by fewer than one in five employers in 1996 to six of every 10 employers in 2010.

(3) Social science research thus far has shown that information contained in a credit report has no correlation to job performance. The Palmer-Koppes study conducted in 2004 found that those employees who were late on payments were more likely to be associated with a positive job performance.

(4) Further, there is no common standard among employers as to how to interpret credit reports, which reinforces the fact that credit reports do not provide meaningful insight into a candidate's character, responsibility, or prospective job performance.

(5) The Equal Employment Opportunity Commission has stated that: "Inquiry into an applicant's current or past assets, liabilities, or credit rating . . . generally should be avoided because they tend to impact more adversely on minorities and females."

Sec. 2. 21 V.S.A. § 495i is added to read:

§ 495i. EMPLOYMENT BASED ON CREDIT INFORMATION; PROHIBITIONS

(a) For purposes of this section:

(1) “Confidential financial information” means sensitive financial information of commercial value that a customer or client of the employer gives explicit authorization for the employer to obtain, process, and store and that the employer entrusts only to managers or employees as a necessary function of their job duties.

(2) “Credit history” means information obtained from a third party, whether or not contained in a credit report, that reflects or pertains to an individual’s prior or current:

(A) borrowing or repaying behavior, including the accumulation, payment, or discharge of financial obligations; or

(B) financial condition or ability to meet financial obligations, including debts owed, payment history, savings or checking account balances, or savings or checking account numbers.

(3) “Credit report” has the same meaning as in 9 V.S.A. § 2480(a).

(b) An employer shall not:

(1) Fail or refuse to hire or recruit; discharge; or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment because of the individual’s credit report or credit history.

(2) Inquire about an applicant or employee’s credit report or credit history.

(c)(1) An employer is exempt from the provisions of subsection (b) of this section if one or more of the following conditions are met:

(A) The information is required by state or federal law or regulation.

(B) The position of employment involves access to confidential financial information.

(C) The employer is a financial institution as defined in 8 V.S.A. § 11101(32) or a credit union as defined in 8 V.S.A. § 30101(5).

(D) The position of employment is that of a law enforcement officer as defined in 20 V.S.A. § 2358, emergency medical personnel as defined in 24 V.S.A. § 2651(6), or a firefighter as defined in 20 V.S.A. § 3151(3).

(E) The position of employment requires a financial fiduciary responsibility to the employer or a client of the employer, including the authority to issue payments, collect debts, transfer money, or enter into contracts.

(F) The employer can demonstrate that the information is a valid and reliable predictor of employee performance in the specific position of employment.

(G) The position of employment involves access to an employer's payroll information.

(2) An employer that is exempt from the provisions of subsection (b) of this section may not use an employee's or applicant's credit report or history as the sole factor in decisions regarding employment, compensation, or a term, condition, or privilege of employment.

(d) If an employer seeks to obtain or act upon an employee's or applicant's credit report or credit history pursuant to subsection (c) of this section that contains information about the employee's or applicant's credit score, credit account balances, payment history, savings or checking account balances, or savings or checking account numbers, the employer shall:

(1) Obtain the employee's or applicant's written consent each time the employer seeks to obtain the employee's or applicant's credit report.

(2) Disclose in writing to the employee or applicant the employer's reasons for accessing the credit report, and if an adverse employment action is taken based upon the credit report, disclose the reasons for the action in writing. The employee or applicant has the right to contest the accuracy of the credit report or credit history.

(3) Ensure that none of the costs associated with obtaining an employee's or an applicant's credit report or credit history are passed on to the employee or applicant.

(4) Ensure that the information in the employee's or applicant's credit report or credit history is kept confidential and, if the employment is terminated or the applicant is not hired by the employer, provide the employee or applicant with the credit report or have the credit report destroyed in a secure manner which ensures the confidentiality of the information in the report.

(e) An employer shall not discharge or in any other manner discriminate against an employee or applicant who has filed a complaint of unlawful employment practices in violation of this section or who has cooperated with the attorney general or a state's attorney in an investigation of such practices or who is about to lodge a complaint or cooperate in an investigation or because the employer believes that the employee or applicant may lodge a complaint or cooperate in an investigation.

(f) Notwithstanding subsection (c) of this section, an employer shall not seek or act upon credit reports or credit histories in a manner that results in

adverse employment discrimination prohibited by federal or state law, including section 495 of this title and Title VII of the Civil Rights Act of 1964.

(g) This section shall apply only to employers, employees, and applicants for employment and only to employment-related decisions based on a person's credit history or credit report. It shall not affect the rights of any person, including financial lenders or investors, to obtain credit reports pursuant to other law.

Sec. 3. 21 V.S.A. § 342 is amended to read:

§ 342. WEEKLY PAYMENT OF WAGES

(a)(1) Any person having employees doing and transacting business within the state shall pay each week, in lawful money or checks, the wages earned by each employee to a day not more than six days prior to the date of such payment.

(2) After giving written notice to the employees, any person having employees doing and transacting business within the state may, notwithstanding subdivision (1) of this subsection, pay ~~bi-weekly~~ biweekly or ~~semi-monthly~~ semimonthly in lawful money or checks, each employee the wages earned by the employee to a day not more than six days prior to the date of the payment. If a collective bargaining agreement so provides, the payment may be made to a day not more than 13 days prior to the date of payment.

(3) A school district employee may elect in writing to have a set amount or set percentage of his or her after-tax wages withheld by the school district in a district-held bank account each pay period. The percentage or amount withheld shall be determined by the employee. At the option of the employee, the school district shall disburse the funds to the employee in either a single payment at the time the employee receives his or her final paycheck of the school year, or in equal weekly or biweekly sums beginning at the end of the school year. The school district shall disburse funds from the account in any sum as requested by the employee and, at the end of the school year or at the employee's option over the course of the period between the current and next school year, or upon separation from employment, shall remit to the employee any remaining funds, including interest earnings, held in the account. For employees within a bargaining unit organized pursuant to either chapter 22 of this title or 16 V.S.A. chapter 57, the school district shall implement this election in a manner consistent with the provisions of this subdivision and as determined through negotiations under those chapters. For employees not within a bargaining unit, the school district shall, in a manner consistent with this subdivision, determine the manner in which to implement this subdivision.

\* \* \*



Sec. 4. 21 V.S.A. § 496a is added to read:

§ 496a. STATE FUNDS; UNION ORGANIZING

On an annual basis, an employer that is the recipient of a grant of state funds in a single grant of more than \$1,001.00 shall certify to the state that none of the funds will be used to interfere with or restrain the exercise of an employee's rights with respect to unionization and upon request shall provide records to the secretary of administration which attest to such certification.

and that after passage the title of the bill be amended to read: "An act relating to employment decisions based on credit information, allowing school employees to be paid wages over the course of a year, and union organizing"

**House Proposal of Amendment**

**S. 138**

An act relating to calculation of criminal sentences and record keeping for search warrants.

The House proposes to the Senate to amend the bill by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 7 V.S.A. § 61 is amended to read:

§ 61. RESTRICTIONS; EXCEPTIONS

A person, partnership, association, or corporation shall not furnish or sell, or expose or keep with intent to sell, any malt or vinous beverage, or spirits, or manufacture, sell, barter, transport, import, export, deliver, prescribe, furnish, or possess any alcohol, except as authorized by this title. However, this chapter shall not apply to the furnishing of such beverages or spirits by a person in his or her private dwelling, ~~unless to an habitual drunkard, or unless~~ such dwelling becomes a place of public resort, nor to the sale of fermented cider by the barrel or cask of not less than 32 liquid gallons capacity, provided the same is delivered and removed from the vendor's premises in such barrel or cask at the time of such sale, nor to the use of sacramental wine, nor to the furnishing, purchase, sale, barter, transportation, importation, exportation, delivery, prescription, or possession of alcohol for manufacturing, mechanical, medicinal, and scientific purposes, provided the same is done under and in accordance with rules and regulations made and permits issued by the liquor control board as hereinafter provided, nor to the furnishing of such beverages or spirits by the Vermont criminal justice training council to drinking subjects during DUI enforcement courses of instruction at the Vermont police academy.

Sec. 2. 13 V.S.A. § 7031 is amended to read:

§ 7031. FORM OF SENTENCES; MAXIMUM AND MINIMUM TERMS

(a) When a respondent is sentenced to any term of imprisonment, other than for life, the court imposing the sentence shall not fix the term of imprisonment, unless such term is definitely fixed by statute, but shall establish a maximum and may establish a minimum term for which such respondent may be held in imprisonment. The maximum term shall not be more than the longest term fixed by law for the offense of which the respondent is convicted and the minimum term shall be not less than the shortest term fixed by law for such offense. If the court suspends a portion of said sentence, the unsuspended portion of such sentence shall be the minimum term of sentence solely for the purpose of any reductions of term for good behavior as provided for in 28 V.S.A. § 811. A sentence shall not be considered fixed as long as the maximum and minimum terms are not identical.

(b) The sentence of imprisonment of any person convicted of an offense shall commence to run from the date on which the person is received at the correctional facility for service of the sentence. The court shall give the person credit toward service of his or her sentence for any days spent in custody ~~in connection with the offense for which sentence was imposed~~ as follows:

(1) The period of credit for concurrent and consecutive sentences shall include all days served from the date of arraignment or the date of the earliest detention for the offense, whichever occurs first, and end on the date of the sentencing. Only a single credit shall be awarded in cases of consecutive sentences, and no credit for one period of time shall be applied to a later period.

(2) In sentencing a violation of probation, the court shall give the person credit for any days spent in custody from the time the violation is filed or the person is detained on the violation, whichever occurs first, until the violation is sentenced. In a case in which probation is revoked and the person is ordered to serve the underlying sentence, the person shall receive credit for all time previously served in connection with the offense.

(c) If any such person is committed to a jail or other place of detention to await transportation to the place at which his or her sentence is to be served, his or her sentence shall commence to run from the date on which he or she is received at such jail or such place of detention.

(d) A person who receives a zero minimum sentence for a conviction of a nonviolent misdemeanor or nonviolent felony as defined in 28 V.S.A. § 301 shall report to probation and parole as directed by the court and begin to serve the sentence in the community immediately, unless the person is serving a prior sentence at such time.

Sec. 3. 13 V.S.A. § 7032(c) is amended to read:

(c) In all cases where multiple or additional sentences have been or are imposed, the term or terms of imprisonment under those sentences shall be determined in accordance with the following definitions.

(1) When terms run concurrently, the shorter minimum terms merge in and are satisfied by serving the longest minimum and the shorter maximum terms merge in and are satisfied by discharge of the longest maximum term.

(2) When terms run consecutively, the minimum terms are added to arrive at an aggregate minimum to be served equal to the sum of all minimum terms and the maximum terms are added to arrive at an aggregate maximum equal to the sum of all maximum terms. No person shall serve more time on consecutive minimum sentences than the sum of the minimum terms, regardless of whether the sentences are imposed on the same or different dates. If a person has served a minimum term and subsequently incurs another criminal charge, the time the person spends in custody awaiting disposition of the new charge shall count toward the minimum term of the new sentence, if one is imposed. This subdivision shall not require the department of corrections to release a person from incarceration to community supervision at the person's minimum term.

Sec. 4. 18 V.S.A. § 4216 is amended to read:

§ 4216. AUTHORIZED POSSESSION BY INDIVIDUALS

(a) A person to whom or for whose use any regulated drug has been prescribed, sold or dispensed, and the owner of any animal for which any such drug has been prescribed, sold or dispensed, may lawfully possess the same on the condition that such drug was prescribed, sold or dispensed by a physician, dentist, pharmacist, or veterinarian licensed under this chapter or under the laws of another state or country wherein such person has his or her practice, ~~and further that all,~~

(b)(1) Except as otherwise provided in subdivision (2) of this subsection, all amounts of the drug are shall be retained in the lawful container in which it was delivered to him the patient by the person selling or dispensing the same, provided however, that for the purposes of this section an amount of regulated drugs of not more than two days' individual prescribed dosage may be possessed by a patient for his personal use.

(2) A patient may possess an amount of regulated drugs of not more than seven days' individual prescribed dosage, for personal use, which shall not be required to be retained in its lawful container. A patient may possess an amount of regulated drugs of more than seven days' individual prescribed dosage, for personal use, which shall not be required to be retained in its lawful container, provided the patient personally possesses proof of a lawful, written prescription.

Sec. 5. 28 V.S.A. § 808a(a) is amended to read:

(a) ~~An~~ When recommended by the department and ordered by the court, an offender may be sentenced to serve a term of imprisonment, but placed by a court on treatment furlough to participate in such programs administered by the department in the community that reduce the offender's risk to reoffend or that provide reparation to the community in the form of supervised work activities.

Sec. 6. FEASIBILITY STUDY FOR A STATEWIDE ONLINE SENTENCING TOOL

(a) The general assembly established the Nonviolent Misdemeanor Sentence Review Committee (committee) in No. 41 of the Acts of 2011, an act relating to effective strategies to reduce criminal recidivism, to propose alternatives to incarceration for nonviolent, low-risk misdemeanor offenses. In its report, the committee expressed concern regarding "the varying degrees of justice meted out by the different counties in Vermont" and concluded that "any efforts to reduce recidivism and increase alternatives to incarceration must foster statewide equity in treatment of those charged or convicted with a criminal offense."

(b) The committee believes that judicial discretion is the cornerstone of sentencing in Vermont courts and that sentencing is at its best when the decision-makers have accurate and timely information about the offender, the offenses, and the options available for sentencing.

(c) Evidence-based practice research suggests that sentencing of criminal defendants should be based on the seriousness of the offense, risk, and probability of recidivism. Criminal sentencing that is based on these three principles is more likely to protect the public, reduce recidivism, and reduce costs than sentencing practices that are based on anecdotal experience.

(d) The committee took testimony on a new sentencing tool developed by the Missouri Sentencing Advisory Commission which employs these principles and which is available electronically to judges, attorneys, and other people involved in Missouri's criminal justice system. According to the commission, the "goal of the system is to ensure sentencing that is fair, protects the public, uses corrections resources wisely, and reduces sentence disparity."

(e) There is created a sentencing task force for the purpose of conducting a feasibility study to determine whether a set of sentencing data based on the seriousness of the offense, risk, and probability of recidivism can be developed and implemented in Vermont. The task force shall comprise the following members:

(1) A member of the senate committee on judiciary appointed by the committee on committees.

(2) A member of the house committee on judiciary appointed by the speaker of the house.

(3) A judge appointed by the chief justice of the Vermont supreme court.

(4) The commissioner of corrections.

(5) A state's attorney appointed by the executive committee of the department of state's attorneys.

(6) The defender general.

(f) The Vermont Center for Justice Research, the state's criminal justice statistical analysis center, has been involved with the analysis of criminal sentencing data in Vermont for the past 20 years. At the direction of the task force, the center shall undertake the statistical analysis necessary to develop the policy decisions required for the sentencing matrices which are the foundation of the project. The pilot analysis shall focus on five to ten felony or misdemeanor crimes prosecuted in Vermont during a two-year period. The center shall evaluate the availability and quality of data which would be required to generate sentencing information similar to those used in the Missouri model.

(g) The task force shall report the sentencing information for the crimes selected for the feasibility study along with a report with recommendations regarding the feasibility of a Vermont online sentencing tool to the senate and house committees on judiciary by March 15, 2013.

(h) The secretary of administration shall seek sources of grants and funding in fiscal year 2013 for the purpose of aiding the sentencing task force with a feasibility study to determine whether a set of sentencing data based on the seriousness of the offense, risk, and probability of recidivism can be developed and implemented in Vermont. The cost is currently estimated to be \$33,600.00.

Sec. 7. Sec. 4 of No. 41 of the Acts of 2011 is amended to read:

Sec. 4. NONVIOLENT MISDEMEANOR SENTENCE REVIEW COMMITTEE

(a) Creation of committee. There is created a nonviolent misdemeanor sentence review committee to propose alternatives to incarceration for nonviolent, low-risk misdemeanor offenses and to study whether records produced by public agencies in the course of the detection and investigation of crime should be open to public inspection or confidential.

(b) Membership. The committee shall be composed of the following members:

(1) a former member of either the house committee on judiciary or the senate committee on judiciary appointed jointly by the speaker of the house and the senate ~~committee on committees~~ president pro tempore;

(2) the chair of the senate committee on judiciary;

(3) the chair of the house committee on judiciary;

(4) a member of the senate appointed by the senate committee on committees;

(5) a member of the house appointed by the speaker of the house;

(6) the governor's special assistant on corrections; and

(7) the administrative judge.

(c) Powers and duties.

\* \* \*

(2) The committee shall study whether records produced by public agencies in the course of the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal investigation by law enforcement, should be open to public inspection or confidential. The committee's study shall include:

(A) A determination of which records dealing with the detection and investigation of a crime should be public records and which records should be confidential.

(B) Consideration of the need to balance public safety and privacy when determining which criminal investigation records should be public and which records should be confidential and the societal benefit and promotion of due process and the rule of law which are served by permitting public inspection of criminal investigation records.

(C) Legislation to implement the policy recommended by the committee.

~~(2)~~(3) The committee shall consult with stakeholders while engaging in its mission, including the following:

(A) The secretary of human services or designee.

(B) The secretary of state or designee.

(C) The executive director of the American Civil Liberties Union of Vermont or designee.

(D) A representative of the Vermont Press Association.

(E) The defender general or designee.

(F) The attorney general or designee.

(G) The executive director of the Vermont association of chiefs of police or designee.

(H) The executive director of the Vermont Bar Association or designee.

(I) A representative from the department of public safety.

(J) The executive director of the state's attorneys and sheriffs' association or designee.

(K) A member of the supreme court public access to court records advisory rules committee appointed by the chief justice.

(L) The executive director of the Vermont Center for Crime Victims Services or designee.

~~(3)~~(4) For purposes of its study of these issues, the committee shall have the legal and administrative assistance of the office of legislative council and the department of corrections.

(d) Report. ~~By December 1, 2011, the~~ The committee shall report annually to the general assembly on its findings and any recommendations for legislative action.

(e) Number of meetings; term of committee; reimbursement. The committee may meet no more than ~~five~~ seven times annually and shall cease to exist on January 1, ~~2012~~ 2014.

\* \* \*

and that after passage the title of the bill be amended to read: "An act relating to calculation of criminal sentences and expansion of the Misdemeanor Sentence Review Committee"

### **House Proposal of Amendment**

#### **S. 230**

An act relating to property and casualty insurers and electronic notices.

The House proposes to the Senate to amend the bill by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 8 V.S.A. § 3666 is added to read:

§ 3666. DELIVERY OF NOTICES BY ELECTRONIC MEANS

(a) As used in this section:

(1) "Delivered by electronic means" includes:

(A) delivery to an electronic mail address at which a party has consented to receive notice; and

(B) posting on an electronic network, together with separate notice to a party sent to the electronic mail address at which the party has consented to receive notice of the posting.

(2) "Party" means an applicant, an insured, or a policyholder.

(b) Subject to subsection (d) of this section, any notice to a party required under section 3880, 3881, 4224, 4225, 4712, or 4713 of this title may be, but is not required to be delivered by electronic means provided the process used to obtain consent of the party to have notice delivered by electronic means meets the requirements of 9 V.S.A. chapter 20, the Uniform Electronic Transactions Act.

(c) Delivery of a notice pursuant to subsection (b) of this section shall be considered equivalent to any delivery method required under section 3883, 4226, or 4714 of this title, including delivery by first-class mail, certified mail, or certificate of mailing.

(d) A notice may be delivered by electronic means by an insurer to a party under this section if:

(1) The party has affirmatively consented to such method of delivery and not subsequently withdrawn consent.

(2) The party, before giving consent, is provided with a clear and conspicuous statement informing the party of:

(A) the right of the party to have the notice provided or made available in paper or another nonelectronic form at no additional cost;

(B) the right of the party to withdraw consent to have notice delivered by electronic means;

(C) whether the party's consent applies:

(i) only to the particular transaction as to which the notice must be given; or

(ii) to identified categories of notices that may be delivered by electronic means during the course of the party's relationship with the insurer;

(D) how, after consent is given, the party may obtain a paper copy of a notice delivered by electronic means at no additional cost; and



(E) the procedures the party must use to withdraw consent to have notice delivered by electronic means and to update information needed to contact the party electronically.

(3) The party:

(A) before giving consent, is provided with a statement of the hardware and software requirements for access to and retention of a notice delivered by electronic means; and

(B) consents electronically and confirms consent electronically, in a manner that reasonably demonstrates that the party can access information in the electronic form that will be used for notices delivered by electronic means as to which the party has given consent.

(4) After consent of the party is given, the insurer, in the event a change in the hardware or software requirements needed to access or retain a notice delivered by electronic means creates a material risk that the party will not be able to access or retain a subsequent notice to which the consent applies:

(A) provides the party with a statement of:

(i) the revised hardware and software requirements for access to and retention of a notice delivered by electronic means; and

(ii) a revised statement required by subdivision (2) of this subsection; and

(B) the party affirmatively consents to continued delivery of notices by electronic means.

(e) Every notice delivered pursuant to subsection (b) of this section shall include the statement required by subdivision (d)(2) of this section. This section does not otherwise affect the content or timing of any notice required under chapter 105, 113, or 128 of this title.

(f) If a provision of chapter 105, 113, or 128 of this title requiring notice to be provided to a party expressly requires verification or acknowledgment of receipt of the notice, the notice may be delivered by electronic means only if the method used provides for verification or acknowledgment of receipt. Absent verification or acknowledgement of receipt of the initial notice on the part of the party, the insurer shall send two subsequent notices at intervals of five business days.

(g) The legal effectiveness, validity, or enforceability of any contract or policy of insurance may not be made contingent upon obtaining electronic consent or confirmation of consent of a party in accordance with subdivision (d)(3)(B) of this section.

(h)(1) A withdrawal of consent by a party does not affect the legal effectiveness, validity, or enforceability of a notice delivered by electronic means to the party before the withdrawal of consent is effective.

(2) A withdrawal of consent by a party is effective within 30 days after receipt of the withdrawal by the insurer.

(3) Failure to comply with subdivision (d)(4) of this section shall be treated as a withdrawal of consent for purposes of this section.

(i) A party who does not consent to delivery of notices by electronic means under subsection (b) of this section, or who withdraws his or her consent, shall not be subjected to any additional fees or costs for having notices provided or made available in paper or another nonelectronic form.

(j) This section shall not be construed to modify, limit, or supersede the provisions of the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. chapter 96, relating to the use of an electronic record to provide or make available information that is required to be provided or made available in writing to a party.

## Sec. 2. INTERPRETATION

The delivery of notice in accordance with Sec. 1 of this act is intended and shall be construed to meet the requirements of state insurance regulation 78-01, section 1, as revised.

## Sec. 3. STATEMENT OF CONSUMER RIGHTS; ELECTRONIC NOTICES

The commissioner of financial regulation shall issue a bulletin regarding the statement to be provided to a party under 8 V.S.A. § 3666(d)(2). The bulletin shall require insurance companies to clearly and conspicuously inform the party of the types of notices (cancellation and nonrenewal) permitted to be delivered by electronic means; the risks associated with electronic notifications and the party's assumption of those risks if he or she consents to receive electronic notifications; the party's right to receive notices by mail at no additional cost; and any other provisions the commissioner deems necessary to protect the interests of Vermonters and otherwise carry out the purposes of this act. In addition, the bulletin shall provide guidance to insurers on the appropriate form of the electronic notices and their provisions as well as on the specific withdrawal of consent procedures required under 8 V.S.A. § 3666(d)(2)(D).

Sec. 4. 21 V.S.A. § 618 is amended to read:

## § 618. COMPENSATION FOR PERSONAL INJURY

\* \* \*

(f) If an injured worker voluntarily consents in writing, the worker may be paid compensation benefits by means of direct deposit or an electronic payroll card account in accord with the requirements of section 342 of this title, and any rules adopted by the commissioner to implement this section. An electronic payroll card account may be used only for weekly payment of benefits and not for the payment of a lump sum award.

#### Sec. 5. EFFECTIVE DATES

This section and Sec. 4 of this act shall be effective on July 1, 2012 and Secs. 1, 2, and 3 of this act shall take effect on January 1, 2013 and apply to all policies and certificates delivered, issued for delivery, or renewed in this state on or after that date.

### NOTICE CALENDAR

#### House Proposal of Amendment to Senate Proposal of Amendment

#### H. 524

An act relating to the regulation of professions and occupations

The House concurs in the Senate proposal of amendment with further amendment thereto as follows:

First: By striking Sec. 70 (director of the office of professional regulation; preliminary assessments) in its entirety and inserting in lieu thereof the following:

#### Sec. 70. DIRECTOR OF THE OFFICE OF PROFESSIONAL REGULATION; PRELIMINARY ASSESSMENT

Pursuant to 26 V.S.A. § 3105, the director of the office of professional regulation shall make a preliminary assessment of whether the profession of home inspection should be regulated.

Second: By striking Sec. 66 (effective dates) in its entirety and inserting in lieu thereof the following:

#### Sec. 71. EFFECTIVE DATES

This act shall take effect on July 1, 2012 except that:

(1) this section and Sec. 64(d) (transitional provisions; formulary review) of this act shall take effect on passage; and

(2) Sec. 48, 26 V.S.A. § 2821b(b) (practice in postprimary modalities), of this act shall take effect on May 31, 2015.

## House Proposal of Amendment to Senate Proposal of Amendment

### H. 600

An act relating to mandatory mediation in foreclosure proceedings

The House concurs in the Senate proposal of amendment with further amendment thereto as follows:

First: In Sec. 2, 12 V.S.A. § 4631, in subsection (c), by striking the words “a randomized” and inserting in lieu thereof the words “an objective and neutral”

Second: By striking Sec. 4a in its entirety

### Report of Committee of Conference

#### S. 189.

An act relating to expanding confidentiality of cases accepted by the court diversion project.

To the Senate and House of Representatives:

The Committee of Conference to which were referred the disagreeing votes of the two Houses upon House Bill entitled:

**S. 189. An act relating to expanding confidentiality of cases accepted by the court diversion project.**

Respectfully reports that it has met and considered the same and recommends that the House recede from its proposal of amendment and that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 3 V.S.A. § 164(c)(1) is amended to read:

(c) All adult court diversion projects receiving financial assistance from the attorney general shall adhere to the following provisions:

(1) The diversion project shall accept only persons against whom charges have been filed and the court has found probable cause, but are not yet adjudicated. The prosecuting attorney shall notify in writing the diversion program and the court of his or her intention to refer the person to diversion. If the prosecuting attorney refers a case to diversion, the ~~information and affidavit~~ prosecuting attorney may release information to the victim upon a showing of legitimate need and subject to an appropriate protective agreement defining the purpose for which the information is being released and in all other respects maintaining the confidentiality of the information; otherwise files held by the court, the prosecuting attorney, and the law enforcement

agency related to the charges shall be confidential and shall remain confidential unless:

- (A) the board declines to accept the case;
- (B) the person declines to participate in diversion; ~~or~~
- (C) the board accepts the case, but the person does not successfully complete diversion;
- (D) the prosecuting attorney recalls the referral to diversion.

Sec. 2. 3 V.S.A. § 164a is added to read:

§ 164a. RESTITUTION

(a) A diversion program may refer an individual who has suffered a pecuniary loss as a direct result of a delinquent act or crime alleged to have been committed by a juvenile or adult accepted to its program to the restitution unit established by 13 V.S.A. § 5362 for the purpose of application for an advance payment pursuant to 13 V.S.A. § 5363(d)(1). The restitution unit may enter into a repayment contract with a juvenile or adult accepted into diversion and shall have the authority to bring a civil action to enforce the repayment contract in the event that the juvenile or adult defaults in performing the terms of the contract.

(b) The restitution unit and the diversion program shall develop a process for documenting victim loss, information sharing between the unit and diversion programs regarding the amount of restitution paid by the unit and diversion participants' contractual agreements to reimburse the unit, transmittal of payments from participants to the unit, and maintenance of the confidentiality of diversion information.

Sec. 3. 13 V.S.A. § 5362 is amended to read:

§ 5362. RESTITUTION UNIT

\* \* \*

(c) The restitution unit shall have the authority to:

\* \* \*

(7) Enter into a repayment contract with a juvenile or adult accepted into a diversion program and to bring a civil action to enforce the contract when a diversion program has referred an individual pursuant to 3 V.S.A. § 164a.

Sec. 4. 13 V.S.A. § 5363 is amended to read:

§ 5363. CRIME VICTIMS' RESTITUTION SPECIAL FUND

(a) There is hereby established in the state treasury a fund to be known as the crime victims' restitution special fund, to be administered by the restitution unit established by section 5362 of this title, and from which payments may be made to provide restitution to crime victims.

(b)(1) There shall be deposited into the fund:

(A) All monies collected by the restitution unit pursuant to section 7043 and subdivision 5362(c)(7) of this title.

(B) All fees imposed by the clerk of court and designated for deposit into the fund pursuant to section 7282 of this title.

(C) All monies donated to the restitution unit or the crime victims' restitution special fund.

(D) Such sums as may be appropriated to the fund by the general assembly.

\* \* \*

(d)(1) The restitution unit is authorized to advance up to \$10,000.00 to a victim or to a deceased victim's heir or legal representative if the victim:

(A) was first ordered by the court to receive restitution on or after July 1, 2004;

(B) is a natural person or the natural person's legal representative; and

(C) has not been reimbursed under subdivision (2) of this subsection;

(D) is a natural person and has been referred to the restitution unit by a diversion program pursuant to 3 V.S.A. § 164a.

\* \* \*

Sec. 5. 13 V.S.A. § 7043(n) is amended to read:

(n) After restitution is ordered and prior to sentencing, the court shall order the offender to provide the court with full financial disclosure on a form approved by the court administrator. The disclosure of an offender aged 18 or older shall include copies of the offender's most recent state and federal tax returns. The court shall provide copies of the form and the tax returns to the restitution unit.

Sec. 6. 13 V.S.A. § 5360 is added to read:

§ 5360. APPLICATION INFORMATION; CONFIDENTIALITY

(a) All documents reviewed by the victims' compensation board for purposes of approving an application for compensation shall be confidential

and shall not be disclosed without the consent of the victim except as provided in this section and subsection 7043(c) of this title.

(b) For the purpose of requesting restitution, the amount of assistance provided by the victim's compensation board shall be established by copies of bills submitted to the victim's compensation board reflecting the amount paid by the board and stating that the services for which payment was made were for uninsured pecuniary losses.

(c) The following shall be confidential and shall be redacted by the victim's compensation board for any purpose including restitution: the victim's residential address, telephone number, and other contact information and the victim's social security number. In cases involving stalking, sexual offenses, and domestic violence, the following information shall also be confidential and shall not be disclosed by the victim's compensation board for any purpose, including restitution, absent a court order:

(1) the victim's employer's name, telephone number, address, or any other contact information; and

(2) the victim's medical or mental health provider's name, telephone number, address, or any other contact information.

Sec. 7. 13 V.S.A. § 7043 is amended to read:

§ 7043. RESTITUTION

\* \* \*

(b)(1) When ordered, restitution may include:

(A) return of property wrongfully taken from the victim;

(B) cash, credit card, or installment payments paid to the restitution unit; or

(C) payments in kind, if acceptable to the victim.

(2) In the event of a victim's crime-related death, the court may, at the request of the restitution unit, direct the unit to pay up to \$10,000.00 from the restitution fund to the victim's estate to cover future uninsured material losses caused by the death.

(c) Restitution hearing.

(1) Unless the amount of restitution is agreed to by the parties at the time of sentencing, the court shall set the matter for a restitution hearing.

(2) Prior to the date of the hearing, the prosecuting attorney shall provide the defendant with a statement of the amount of restitution claimed together with copies of bills that support the claim for restitution. If any

amount of the restitution claim has been paid by the victim's compensation fund, the prosecuting attorney shall provide the defendant with copies of bills submitted by the victim's compensation board pursuant to section 5360 of this title.

(3) Absent consent of the victim, medical and mental health records submitted to the victim's compensation board shall not be discoverable for the purposes of restitution except by order of the court. If the defendant files a motion to view copies of such records, the prosecuting attorney shall file the records with the court under seal. The court shall conduct an in camera review of the records to determine what records, if any, are relevant to the parties' dispute with respect to restitution. If the court orders disclosure of the documents, the court shall issue a protective order defining the extent of dissemination of the documents to any person other than the defendant, the defendant's attorney, and the prosecuting attorney.

~~(e)~~(d) In awarding restitution, the court shall make findings with respect to:

(1) The total amount of the material loss incurred by the victim. If sufficient documentation of the material loss is not available at the time of sentencing, the court shall set a hearing on the issue, and notice thereof shall be provided to the offender.

(2) The offender's current ability to pay restitution, based on all financial information available to the court, including information provided by the offender.

~~(d)~~(e)(1) An order of restitution shall establish the amount of the material loss incurred by the victim, which shall be the restitution judgment order. In the event the offender is unable to pay the restitution judgment order at the time of sentencing, the court shall establish a restitution payment schedule for the offender based upon the offender's current and reasonably foreseeable ability to pay, subject to modification under subsection (k) of this section. Notwithstanding 12 V.S.A. chapter 113 ~~of Title 12~~ or any other provision of law, interest shall not accrue on a restitution judgment.

\* \* \*

~~(e)~~(f)(1) If not paid at the time of sentencing, restitution may be ordered as a condition of probation, supervised community sentence, furlough, preapproved furlough, or parole if the convicted person is sentenced to preapproved furlough, probation, or supervised community sentence, or is sentenced to imprisonment and later placed on parole. A person shall not be placed on probation solely for purposes of paying restitution. An offender may not be charged with a violation of probation, furlough, or parole for nonpayment of a restitution obligation incurred after July 1, 2004.



\* \* \*

~~(f)~~(g)(1) When restitution is requested but not ordered, the court shall set forth on the record its reasons for not ordering restitution.

\* \* \*

~~(g)~~(h) Restitution ordered under this section shall not preclude a person from pursuing an independent civil action for all claims not covered by the restitution order.

~~(h)~~(i)(1) The court shall transmit a copy of a restitution order to the restitution unit, which shall make payment to the victim in accordance with section 5363 of this title.

\* \* \*

~~(i)~~(j) The restitution unit may bring an action, including a small claims procedure, to enforce a restitution order against an offender in the civil division of the superior court of the unit where the offender resides or in the unit where the order was issued. In an action under this subsection, a restitution order issued by the criminal division of the superior court shall be enforceable in the civil division of the superior court or in a small claims procedure in the same manner as a civil judgment. Superior and small claims filing fees shall be waived for an action under this subsection, and for an action to renew a restitution judgment.

~~(j)~~(k) All restitution payments shall be made to the restitution unit, with the exception of restitution relating to a conviction for welfare fraud ordered under this section and recouped by the economic services division. The economic services division shall provide the restitution unit with a monthly report of all restitution collected through recoupment. This subsection shall have no effect upon the collection or recoupment of restitution ordered under Title 33.

~~(k)~~(l) The sentencing court may modify the payment schedule of a restitution order if, upon motion by the restitution unit or the offender, the court finds that modification is warranted by a substantial change in circumstances.

~~(l)~~(m) If the offender fails to pay restitution as ordered by the court, the restitution unit may file an action to enforce the restitution order in superior or small claims court. After an enforcement action is filed, any further proceedings related to the action shall be heard in the court where it was filed. The court shall set the matter for hearing and shall provide notice to the restitution unit, the victim, and the offender. If the court determines the offender has failed to comply with the restitution order, the court may take any action the court deems necessary to ensure the offender will make the required restitution payment, including:

\* \* \*

~~(m)~~(n)(1) Any monies owed by the state to an offender who is under a restitution order, including lottery winnings and tax refunds, shall be used to discharge the restitution order to the full extent of the unpaid total financial losses, regardless of the payment schedule established by the courts.

\* \* \*

~~(n)~~(o) After restitution is ordered and prior to sentencing, the court shall order the offender to provide the court with full financial disclosure on a form approved by the court administrator. The disclosure shall include copies of the offender's most recent state and federal tax returns. The court shall provide copies of the form and the tax returns to the restitution unit.

~~(o)~~(p) An obligation to pay restitution is part of a criminal sentence and is:

\* \* \*

~~(p)~~(q) A transfer of property made with the intent to avoid a restitution obligation shall be deemed a fraudulent conveyance for purposes of 9 V.S.A. chapter 57 of Title 9, and the restitution unit shall be entitled to the remedies of creditors provided under 9 V.S.A. § 2291.

Sec. 8. 1 V.S.A. § 317 is amended to read:

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

\* \* \*

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

\* \* \*

(40) ~~Records~~ records of genealogy provided in support of an application for tribal recognition pursuant to chapter 23 of this title;

(41) documents reviewed by the victim's compensation board for purposes of approving an application for compensation pursuant to 13 V.S.A. chapter 167, except as provided by 13 V.S.A. §§ 5360 and 7043(c).

Sec. 9. EFFECTIVE DATE

(a) Sections 1, 2, 3, 4, and 5 shall take effect on July 1, 2012.

(b) Sections 6, 7, 8, and this section shall take effect on passage.

*ALICE W. NITKA  
RICHARD W. SEARS  
DIANE B. SNELLING*

*Committee on the part of the Senate*

*MAXINE JO GRAD  
LINDA J. WAITE-SIMPSON  
GERALD W. REIS*

*Committee on the part of the House*

**H. 769.**

An act relating to department of environmental conservation fees.

To the Senate and House of Representatives:

The Committee of Conference to which were referred the disagreeing votes of the two Houses upon House Bill entitled:

**H. 769. An act relating to department of environmental conservation fees.**

Respectfully reports that it has met and considered the same and recommends that the Senate recede from its proposal of amendment and that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

\* \* \* Department of environmental conservation \* \* \*

\* \* \* Environmental permits \* \* \*

Sec. 1. 3 V.S.A. § 2822 is amended to read:

§ 2822. BUDGET AND REPORT; POWERS

\* \* \*

(j) In accordance with subsection (i) of this section, the following fees are established for permits, licenses, certifications, approvals, registrations, orders, and other actions taken by the agency of natural resources.

(1) For air pollution control permits or registrations issued under 10 V.S.A. chapter 23 of Title 10:

(A) Any persons subject to the provisions of 10 V.S.A. § 556 shall submit with each permit application or with each request for a permit amendment, a base service fee in accordance with the base fee schedule in subdivision (i) of this subdivision (1)(A). Prior to taking final action under 10 V.S.A. § 556 on any application for a permit for a nonmajor stationary source or on any request for an amendment of a permit for such a source, the secretary shall assess each applicant for any additional fees due to the agency, assessed in accordance with the base fee schedule and the supplementary fee schedule in subdivision (ii) of this subdivision (1)(A). The applicant shall submit any fees so assessed to the secretary prior to issuance of the final

permit, notwithstanding the provisions of subsection (i) of this section. The base fee schedule and the supplementary fee schedule are applicable to all applications on which the secretary makes a final decision on or after the date on which this section is operative.

(i) Base fee schedule

(I) Application for permit to construct

or modify source

(aa) Major stationary source      ~~\$ 12,500.00~~ \$ 15,000.00

(bb) Nonmajor stationary source   ~~\$ 1,000.00~~ \$ 2,000.00

(II) Amendments

Change in business name, division name

or plant name; mailing address; or

company stack designation; or other

administrative amendments              ~~\$ 100.00~~ \$ 150.00

(ii) Supplementary fee schedule for nonmajor

stationary sources

(I) Engineering review                      ~~\$ 1,750.00~~ \$ 2,000.00

(II) Air quality impact analysis

Review refined modeling                  ~~\$ 1,250.00~~ \$ 2,000.00

(III) Observe and review source emission

testing    ~~\$ 1,750.00~~ \$ 2,000.00

(IV) Audit performance of continuous

emissions monitors                          ~~\$ 1,750.00~~ \$ 2,000.00

(V) Audit performance of ambient air

monitoring                                        ~~\$ 1,750.00~~ \$ 2,000.00

(VI) Implement public comment requirement      \$ 500.00.

(B) Any person required to register an air contaminant source under 10 V.S.A. § 555(c) shall submit an annual registration fee in accordance with the following registration fee schedule, where the sum of a source's emissions of the following air contaminants is greater than five tons per year: sulfur dioxide, particulate matter, carbon monoxide, nitrogen oxides, and hydrocarbons:

Registration: ~~\$0.024~~ \$0.0335 per pound of emissions of any of these contaminants. Where the sum of a source's emission of these contaminants is greater than ten tons per year, provided that a plant producing renewable energy as defined in 30 V.S.A. § 8002 shall pay an annual fee not exceeding \$64,000.00:

Base registration fee ~~\$1,000.00~~ \$1,500.00; and ~~\$0.024~~ \$0.0335 per pound of emissions of any of these contaminants.

(2) For discharge permits issued under 10 V.S.A. chapter 47 ~~of Title 10~~ and orders issued under 10 V.S.A. § 1272, an administrative processing fee of ~~\$100.00~~ \$120.00 shall be paid at the time of application for a discharge permit in addition to any application review fee and any annual operating fee, except for permit applications under subdivisions (2)(A)(iii)(III), ~~(IV)~~, and (V) of this subsection:

(A) Application review fee.

\* \* \*

(iii) Stormwater discharges.

- |                                  |  |
|----------------------------------|--|
| (I) Individual operating permit  | <del>\$360.00</del> <u>\$430.00</u> per acre |
| or application to operate        | impervious area;                             |
| under general operating          | minimum <del>\$180.00</del> <u>\$220.00</u>  |
| permit for collected             | per application.                             |
| stormwater runoff                |  |
| which is discharged to           |  |
| Class B waters: original         |  |
| application; amendment           |  |
| for increased flows;             |  |
| amendment for change             |  |
| in treatment process.            |  |
| (II) Individual operating permit | <del>\$1,170.00</del> <u>\$1,400.00</u> per  |
| or application to operate        | acre impervious area;                        |
| under general operating          | minimum <del>\$1,170.00</del>                |
| permit for collected             | <u>\$1,400.00</u> per                        |
| stormwater runoff which is       | application.                                 |
| discharged to Class A            |  |

waters; original application; amendment for increased flows; amendment for change in treatment process.

(III) Individual permit or application to operate under general permit for construction activities; original application; amendment for increased acreage.

(aa) Projects with low risk to waters of the state. ~~\$36.00~~ \$50.00 per project; original application.

(bb) Projects with moderate risk to waters of the state. ~~\$300.00~~ \$360.00 per project original application.

(cc) Projects that require an individual permit. ~~\$600.00~~ \$720.00 per project original application.

(IV) Individual permit or application to operate under general permit for stormwater runoff associated with industrial activities with specified SIC codes; original application; amendment for change in activities. ~~\$180.00~~ \$220.00 per facility.

(V) Individual permit or application to operate ~~\$1,000.00~~ \$1,200.00 per system.

under general permit  
for stormwater runoff  
associated with municipal  
separate storm sewer systems;  
original application;  
amendment for change  
in activities.

(VI) Individual operating permit or application to operate under a general permit for a residually designated stormwater discharge original application; amendment; for increased flows amendment; for change in treatment process.

(aa) For discharges to Class B water; \$430.00 per acre of impervious area, minimum \$220.00.

(bb) For discharges to Class A water; \$1,400.00 per acre of impervious area, minimum \$1,400.00.

(VII) Renewal, transfer, or \$0.00  
minor amendment of  
individual permit or  
approval under general permit.

(iv) Indirect discharge or  
underground injection control,  
excluding stormwater discharges.

\* \* \*

(II) Nonsewage.

(aa) Individual permit: \$0.06 per gallon design  
original application; capacity; minimum ~~\$235.00~~  
amendment for increased \$400.00 per application.  
flows; amendment for  
modification or  
replacement of system.

(bb) Renewal, transfer or \$0.00  
minor amendment of

	individual permit.	
(cc)	General permit	\$0.00.
(B)	Annual operating fee.	
(i)	Industrial, noncontact cooling water and thermal discharges.	\$0.001 per gallon design capacity. \$150.00 minimum; maximum <u>\$105,000.00. \$210,000.00</u>
		* * *
(iv)	Stormwater	
		* * *
(II)	Individual operating permit or approval under general operating permit for collected stormwater runoff which is discharged to Class B waters.	<del>\$66.00</del> <u>\$80.00</u> per acre impervious area; <del>\$60.00</del> <u>\$80.00</u> minimum.
(III)	Individual permit or approval under general permit for stormwater runoff from industrial facilities with specified SIC codes.	<del>\$66.00</del> <u>\$80.00</u> per facility.
(IV)	Individual permit or application to operate under general permit for stormwater runoff associated with municipal separate storm sewer systems.	<del>\$66.00</del> <u>\$80.00</u> per system.
	<u>(V) Individual permit or approval under general permit for residually designated stormwater discharges.</u>	



(aa) For discharges to Class A water; \$255.00 per acre of impervious area, minimum \$255.00.

(bb) For discharges to Class B water; \$80.00 per acre of impervious area, minimum \$80.00.

(v) Indirect discharge or underground injection control, excluding stormwater discharges:

\* \* \*

(II) Nonsewage

(aa) Individual permit \$0.013 per gallon of design capacity. ~~\$100.00~~ \$250.00 minimum; maximum \$5,500.00.

\* \* \*

(4) For potable water supply and wastewater permits issued under 10 V.S.A. chapter 64. Projects under this subdivision include: a wastewater system, including a sewerage connection; and a potable water supply, including a connection to a public water supply:

(A) ~~Subdivision of land~~

~~(i) Original application; major amendments.~~

~~(I) Municipal or private sewerage system and public water supply. \$0.25 per gallon per lot of design flow of potable water or wastewater, whichever is greater. Minimum per lot \$105.00.~~

~~(II) All other projects. \$0.50 per gallon per lot of design flow of potable water or wastewater, whichever is greater. Minimum per lot \$210.00.~~

~~(ii) Minor amendments. \$50.00~~

Original applications, or major amendments for a project with the following

proposed design flows. In calculating the fee, the highest proposed design flow whether wastewater or water shall be used:

(i) design flows 560 gpd or less: \$245.00 per application.

(ii) design flows greater than 560 and less than or equal to 2,000 gpd: \$580.00 per application.

(iii) design flows greater than 2,000 and less than or equal to 6,500 gpd: \$2,000.00 per application.

(iv) design flows greater than 6,500 and less than or equal to 10,000 gpd: \$5,000.00 per application.

(v) design flows greater than 10,000 gpd: \$9,500.00 per application.

~~(B) Potable water supply or wastewater system~~

~~(i) Original application or major amendment when both potable water and wastewater are being constructed.~~

~~New or replacement systems.~~

~~(I) Municipal or private sewerage system and public water supply. \$0.25 per gallon of design flow of potable water or wastewater, whichever is greater. Minimum per application \$105.00. Maximum per application \$15,000.00.~~

~~(II) All other projects. \$0.50 per gallon of design flow of potable water or wastewater, whichever is greater. Minimum per application \$210.00. Maximum per application \$15,000.00.~~

~~(ii) Original application or major amendment when either potable water or wastewater, but not both, is being constructed.~~

~~New or replacement systems.~~

~~(I) Municipal or private sewerage system and public water supply. \$0.15 per gallon per application of design flow. Minimum per application \$105.00. Maximum per application \$15,000.00.~~

~~(II) All other projects. \$0.30 per gallon of design flow. Minimum per application \$210.00. Maximum per application \$15,000.00.~~

~~(iii) Original application or major amendment when design flow of potable water or wastewater is increased but no construction is required.~~

~~(I) Municipal or private sewerage system and public water supply. \$0.25 per gallon of increased design flow of potable water or wastewater, whichever is greater. Minimum per application \$67.50. Maximum per application \$15,000.00.~~

~~(II) All other projects. \$0.50 per gallon of~~

~~increased design flow of  
potable water or  
wastewater, whichever is  
greater. Minimum per  
application \$135.00.  
Maximum per application  
\$15,000.00.~~

~~(iv) Minor amendments. \$50.00 \$100.00.~~

(C) Special fees

\* \* \*

~~(iv) Original application or \$35.00 per lot.  
amendment for subdivision of  
land where the lot or lots  
subject to the fee are owned or  
will be owned by the applicant or  
a person related to the applicant by  
blood, civil marriage, or civil union.  
If the lot or lots are subsequently  
transferred within a period of two years to  
an individual who is not related by  
blood, civil marriage, or civil union  
to the owner of the lot or lots, the full  
fee for the lots that were created shall  
be paid. (I) Minor projects: \$180.00.~~

(II) As used in this subdivision (j)(4)(C)(iv), "minor project" means a project that meets the following: there is an increase in design flow but no construction is required; there is no increase in design flow, but construction is required, excluding replacement potable water supplies and wastewater systems; or there is no increase in design flow and no construction is required, excluding applications that contain designs that require technical review.

(D) Notwithstanding the other provisions of this subdivision:

~~(i) when a wastewater system is subject to the fee provisions of this subdivision and subdivision (j)(2)(A)(iv)(I) of this section, only the higher of the two fees shall be assessed;~~

~~(ii) when a potable water supply is subject to the fee provisions of this subdivision and subdivision (j)(7)(A) of this section, only the fee required by subdivision (j)(7)(A) shall be assessed;~~

~~(iii) when a project is subject to the fee provision for the subdivision of land and the fee provision for potable water supplies and wastewater systems of this subdivision, only the higher of the two fees shall be assessed; and~~

~~(iv) when a project is located in a Vermont neighborhood, as designated under 24 V.S.A. chapter 76A, the fee shall be no more than \$50.00 in situations in which the application has received an allocation for sewer capacity from an approved municipal system. This limitation shall not apply in the case of fees charged as part of a duly delegated municipal program.~~

(5) For well drillers licenses issued under 10 V.S.A. chapter 48:

~~\$105.00~~ \$140.00 per year.

Fees shall be paid on an annual basis over the term of the license.

(6) For solid waste treatment, storage, transfer or disposal facility certifications issued under 10 V.S.A. chapter 159:

\* \* \*

(D) original and renewal ~~\$0.00~~ \$100.00.  
applications for  
categorical disposal facilities

\* \* \*

(G) insignificant waste management \$100.00 per event.  
event approvals

(7) For public water supply and bottled water permits and approvals issued under 10 V.S.A. chapter 56 ~~of Title 10~~ and interim groundwater withdrawal permits and approvals issued under 10 V.S.A. chapter 48 ~~of Title 10~~:

(A) For public water supply construction permit applications:  
~~\$275.00~~ \$375.00 per application plus \$0.0055 per gallon of design capacity.  
Amendments ~~\$110.00~~ \$150.00 per application.

(B) For water treatment plant applications, except those applications

submitted by a municipality as defined in 1 V.S.A. § 126 or a consolidated water district established under 24 V.S.A. § 3342: \$0.003 per gallon of design capacity. Amendments ~~\$110.00~~ \$150.00 per application.

(C) For source permit applications:

- (i) Community water systems: ~~\$615.00~~ \$945.00 per source.
- (ii) Transient noncommunity: ~~\$250.00~~ \$385.00 per source.
- (iii) Nontransient, noncommunity: ~~\$500.00~~ \$770.00 per source.
- (iv) Amendments. ~~\$110.00~~ \$150.00 per application.

(D) For public water supplies and bottled water facilities, annually:

- (i) Transient noncommunity: ~~\$45.00~~ \$50.00
- (ii) Nontransient, noncommunity: ~~\$0.0294~~ \$0.0355 per 1,000 gallons of water produced annually or \$70.00, whichever is greater.
- (iii) Community: ~~\$0.0295 per 1,000 gallons of water produced annually for fiscal year 2005; \$0.0325 per 1,000 gallons of water produced annually for fiscal year 2006; and \$0.0359~~ \$0.0439 per 1,000 gallons of water produced annually for fiscal year ~~2007 and thereafter.~~
- (iv) Bottled water: ~~\$900.00~~ \$1,390.00 per permitted facility.

(E) Amendment to bottled water facility permit, ~~\$110.00~~ \$150.00 per application.

(F) For facilities permitted to withdraw groundwater pursuant to 10 V.S.A. § 1418: ~~\$1,500.00~~ \$2,300.00 annually per facility.

\* \* \*

(8) For public water system operator certifications issued under 10 V.S.A. § 1674:

Class IA and IB                      ~~\$40.00 per initial certificate or renewal.~~  
~~Fee is waived for operators who are—~~  
~~permittees under~~  
~~the transient noncommunity water system~~  
~~general permit.~~

All Other Classes                      ~~\$70.00 per initial certificate or renewal~~

(A) For class IA and IB operators: \$45.00 per initial certificate or renewal. Operators who are also permittees under the transient noncommunity water system general permit are not subject to this fee.

(B) For all other classes: \$80.00 per initial certificate or renewal.

~~(9)(A) For a solid waste hauler permits issued under 10 V.S.A. § 6607a \$35.00: an annual operating fee of \$50.00 per vehicle used, by the commercial hauler that is permitted, for transporting waste. This fee shall be submitted with the permit application and each year thereafter for the duration of the permit, at the time of the filing of the annual statement required by 10 V.S.A. § 6605f(m).~~

~~(B) For a hazardous waste hauler permits issued under 10 V.S.A. § 6607a: \$100.00: an annual operating fee of \$125.00 per vehicle used, by the commercial hauler that is permitted, for transporting waste. This fee shall be submitted with the permit application and each year thereafter for the duration of the permit, at the time of the filing of the annual statement required by 10 V.S.A. § 6605f(m).~~

\* \* \*

(16) For underground storage tank permits issued under 10 V.S.A. chapter 59:

~~\$100.00~~ \$125.00 per  
tank per year.

\* \* \*

~~(21) For site technician certifications issued under 3 V.S.A. § 2827(f)~~  
For class A and B designer licenses issued under 10 V.S.A. § 1975:

(A) ~~Type A site technicians~~ Class A:

- (i) original application                      ~~\$100.00~~ \$150.00
- (ii) renewal application                      ~~\$40.00~~ \$50.00 per year.

(iii) provisional license \$50.00.

(B) ~~Type B site technicians~~ Class B:

(i) original application ~~\$40.00~~ \$75.00

(ii) renewal application ~~\$40.00~~ \$50.00 per year.

(iii) provisional license \$50.00.

(C) Renewal late fee. The following fees shall be charged in addition to the renewal fees established in subdivisions (A) and (B) of this subdivision (21):

(i) application received within 30 days after expiration of license: \$25.00.

(ii) application received 31 days or later after expiration of license: \$50.00.

(iii) application received two years or more after expiration of license shall be considered a new application for the designer license.

(D) Potable water supply exam fee: \$50.00.

\* \* \*

(25) For hazardous waste generator registrations required by 10 V.S.A. § 6608(f).

(A) small quantity generators ~~\$100.00 per year~~ \$125.00 per year.

(B) large quantity generators ~~\$500.00 per year~~ \$600.00 per year.

(C) conditionally exempt generators \$75.00 per year.

(26) For individual conditional use determinations, for individual wetland permits, for general conditional use determinations issued under 10 V.S.A. § 1272, or for wetland authorizations issued under a general permit, an administrative processing fee assessed under subdivision (2) of this subsection (j) and an application fee of:

(A) ~~\$0.12~~ \$0.75 per square foot of proposed impact to Class I or II wetlands;

(B) ~~\$0.09~~ \$0.25 per square foot of proposed impact to Class I or II wetland buffers;

(C) maximum fee, for the conversion of Class II wetlands or wetland buffers to cropland use, \$200.00 per application. For purposes of this subdivision, "cropland" means land that is used for the production of



agricultural crops, including row crops, fibrous plants, pasture, fruit-bearing bushes, trees, or vines and the production of Christmas trees;

(D) \$0.25 per square foot of proposed impact to Class I or II wetlands or Class I or II wetland buffer for utility line, pipeline, and ski trail projects when the proposed impact is limited to clearing forested wetlands in a corridor and maintaining a cleared condition in that corridor for the project life;

(E) minimum fee, \$50.00 per application.

\* \* \*

(30) For review of a project requiring water quality certification under Section 401 of the Clean Water Act: one percent of project costs; minimum fee \$200.00; maximum fee \$20,000.00. For an application seeking review of multiple projects under this subdivision, the fee shall apply to each project.

(k) Commencing with registration year 1993 and for each year thereafter, any person required to pay a fee to register an air contaminant source under 10 V.S.A. § 555(c) in addition shall pay fees for any emissions of the following types of hazardous air contaminants. The following fees shall not be assessed for emissions resulting from the combustion of any fuels, except solid waste, in fuel burning or manufacturing process equipment.

(1) Contaminants which cause short-term irritant effects — ~~\$0.008~~ \$0.012 per pound of emissions;

(2) Contaminants which cause chronic systemic toxicity (low potency) — ~~\$0.015~~ \$0.0225 per pound of emissions;

(3) Contaminants which cause chronic systemic toxicity (high potency) — ~~\$0.02~~ \$0.03 per pound of emissions;

(4) Contaminants known or suspected to cause cancer (low potency) — ~~\$0.55~~ \$0.825 per pound of emissions;

(5) Contaminants known or suspected to cause cancer (high potency) — ~~\$10.00~~ \$15.00 per pound of emissions.

(l) Commencing with registration year 1993 and for each year thereafter, any person required to pay a fee to register an air contaminant source under 10 V.S.A. § 555(c) in addition shall pay the following fees for emissions of hazardous air contaminants resulting from the combustion of any of the following fuels in fuel burning or manufacturing process equipment.

(1) Coal — ~~\$0.43~~ \$0.645 per ton burned;

(2)(A) Wood — ~~\$0.103~~ \$0.155 per ton burned; or

(B) Wood burned with an operational electrostatic precipitator and

NOx reduction technologies — ~~\$0.025~~ \$0.0375 per ton burned;

(3) No. 6 grade fuel oil — ~~\$0.0005~~ \$0.00075 per gallon burned;

(4) No. 4 grade fuel oil — ~~\$0.0004~~ \$0.0006 per gallon burned;

(5) No. 2 grade fuel oil — ~~\$0.0002~~ \$0.0003 per gallon burned;

(6) Liquid propane gas — ~~\$0.0002~~ \$0.0003 per gallon burned;

(7) Natural gas — ~~0.87~~ \$1.305 per million cubic feet burned.

\* \* \*

Sec. 2. 10 V.S.A. § 1922 is amended to read:

§ 1922. DEFINITIONS

For purposes of this chapter:

\* \* \*

(16) “Acceptable piping” means:

(A) double-wall pressurized piping; or

(B) single-wall piping that operates under suction, is pitched evenly uphill from the tank top, and has only one check valve which is located at the dispenser, fuel burner, generator, or other piping termination point.

(17) “Double-wall tank system” means an underground storage tank system consisting of a double-wall tank and acceptable piping.

(18) “Combination tank system” means an underground storage tank system consisting of a single-wall tank and acceptable piping.

(19) “Single-wall tank system” means an underground storage tank system consisting of a single-wall tank and single-wall pressurized piping.

Sec. 3. 10 V.S.A. § 1943 is amended to read:

§ 1943. PETROLEUM TANK ASSESSMENT

(a) Each owner of a category one tank used for storage of petroleum products shall remit to the secretary on October 1 of each year ~~beginning October 1, 1988,~~ \$100.00 per double-wall tank system; \$150.00 per combination tank system; and \$200.00 per single-wall tank system, which shall be deposited to the petroleum cleanup fund established by section 1941 of this title, except that:

(1) ~~The fee shall be \$50.00 per tank for~~ For retail gasoline outlets that sell less than 40,000 gallons of motor fuel per month, the fee shall be:

(A) \$75.00 per double-wall tank system;

(B) \$125.00 per combination tank system; and

(C) \$175.00 per single-wall tank system.

(2) The fee shall be reduced by 50 percent if the owner or permittee provides to the satisfaction of the secretary evidence of financial responsibility to allow the taking of corrective action in the amount of \$100,000.00 per occurrence and the compensation of third parties for bodily injury and property damage in the amount of \$300,000.00 per occurrence.

(3) The fee shall be relieved if the owner provides to the satisfaction of the secretary, evidence of financial responsibility to allow the taking of corrective action and the compensation of third parties for bodily injury and property damage each in the amount of \$1,000,000.00 per occurrence.

(4) The fee for retail motor fuel outlets selling 20,000 gallons or less per month shall not exceed \$100.00 per year for all double-wall tanks at a single location and shall not exceed \$300.00 for all combination tank systems at a single location. This cap shall not apply to a retail motor fuel outlet utilizing a single-wall tank system.

(5) ~~The fee shall be \$50.00 per tank for~~ For any municipality that uses an annual average of less than an annual average of 40,000 gallons of motor fuel per month, provided that all of the tanks of that municipality meet the requirements of this chapter, the fee shall be:

(A) \$50.00 per double-wall tank system;

(B) \$100.00 per combination tank system; and

(C) \$150.00 per single-wall tank system.

(b) For purposes of this section, an occurrence is an accident, including continuous or repeated exposure to conditions, which results in the release of petroleum from one or more underground storage tanks at the same site.

(c) This tank assessment shall terminate on July 1, 2014.

(d) The secretary shall establish forms and procedures for the payment of the petroleum tank assessment, including a notice of the obligation 30 days prior to being due. Failure to receive notice shall not waive the payment obligation.

#### Sec. 4. PETROLEUM ADVISORY COMMITTEE REPORT

In the 2013 report of the petroleum cleanup advisory committee, the committee shall make recommendations on how to reduce risks to the fund posed by an aboveground or underground storage tank. In making its recommendation, the committee shall consider:

(1) Appropriate tank assessment fees for single-wall and combination

underground storage tanks.

(2) Appropriate deductibles when there is a release from a single-wall or combination underground storage tank.

(3) A time line laying out a process to remove single-wall and combination underground storage tanks from service.

(4) For tank system owners that have low throughputs or limited income from their underground storage tank system, the use of grants or negative interest loans for the upgrade of those systems.

(5) Current tank technology and its impact on safety and the rate of current tank fees.

Sec. 5. 10 V.S.A. § 6628 is amended to read:

§ 6628. PLAN, PLAN SUMMARY AND PERFORMANCE REPORT REVIEW

\* \* \*

(j) Fees shall be submitted annually on March 31st. Fees shall be submitted to the secretary and deposited into the hazardous waste management account of the waste management assistance fund established under section 6618 of this title. Fees shall be computed according to the following:

(1) ~~\$300.00~~ \$350.00 per toxic chemical identified pursuant to subdivision 6629(c)(4) of this title.

(2) ~~\$300.00~~ \$350.00 per hazardous waste stream identified pursuant to subdivision 6629(c)(3) of this title.

(3) Up to a maximum amount of:

(A) ~~\$1,500.00~~ \$1,750.00 per plan, for Class A generators.

(B) ~~\$300.00~~ \$350.00 per plan for Class B generators.

(C) ~~\$1,500.00~~ \$1,750.00 per plan for large users.

(D) ~~\$3,000.00~~ \$3,500.00 per plan for Class A generators that are large users.

(E) ~~\$900.00~~ \$1,050.00 per plan for Class B generators that are large users.

Sec. 6. 10 V.S.A. § 7553 is amended to read:

§ 7553. SALE OF COVERED ELECTRONIC DEVICES; MANUFACTURER REGISTRATION

\* \* \*

(h) Implementation fee.

(1) ~~For the program year of Beginning July 1, 2011, through June 30, 2012,~~ each manufacturer that seeks coverage under the standard plan shall pay to the secretary an implementation fee that shall be assessed on a quarterly basis and that shall be determined by multiplying the manufacturer's market share by the prior quarter's cost of implementing the electronic waste collection and recycling program adopted under the standard plan. For purposes of this section, the electronic waste and recycling program includes collection, transportation, recycling, and the reasonable cost of contract administration.

~~(2) Beginning with the program year starting July 1, 2012, a proposed methodology for calculating the implementation fee for manufacturers seeking coverage under the standard plan shall be included in the executive branch fee report and approved by the general assembly according to the requirements of subchapter 6 of chapter 7 of Title 32.~~

~~(3)~~ The fee collected under this subsection shall be deposited into the electronic waste collection and recycling account of the waste management assistance fund.

~~(4)~~(3) At the end of each program year, the secretary shall review the total costs of collection and recycling for the program year and shall reapportion the implementation fee assessed under this subsection to accurately reflect the actual cost of the program and the manufacturer's market share of covered electronic devices sold in the state during the program year.

\* \* \*

#### Sec. 7. FORMAT CHANGES AND ADJUSTMENTS TO THE AGENCY OF NATURAL RESOURCES FEES

The legislative council may, in consultation with the agency of natural resources, modify the format of the fees established by 3 V.S.A. § 2822. In making the modifications, the legislative council may make changes to the sections that do not affect the amount or scope of a fee. The legislative council may make changes to improve the readability of the proposed fees. Prior to codification of the reformatted fees, copies shall be presented to the house committee on ways and means and the senate committee on finance.

\* \* \* Natural resources board \* \* \*

\* \* \* Act 250 fees \* \* \*

Sec. 8. 10 V.S.A. § 6083a is amended to read:

§ 6083a. ACT 250 FEES

(a) All applicants for a land use permit under section 6086 of this title shall be directly responsible for the costs involved in the publication of notice in a newspaper of general circulation in the area of the proposed development or subdivision and the costs incurred in recording any permit or permit amendment in the land records. In addition, applicants shall be subject to the following fees for the purpose of compensating the state of Vermont for the direct and indirect costs incurred with respect to the administration of the Act 250 program:

\* \* \*

(4) For projects involving the extraction of earth resources, including but not limited to sand, gravel, peat, topsoil, crushed stone, or quarried material, the greater of: a fee as determined under subdivision (1) of this subsection; or a fee equivalent to the rate of ~~\$0.20~~ \$0.02 per cubic yard of maximum estimated annual extraction whichever is greater the first million cubic yards of the total volume of earth resources to be extracted over the life of the permit, and \$0.01 per cubic yard of any such earth resource extraction above one million cubic yards. Extracted material that is not sold or does not otherwise enter the commercial marketplace shall not be subject to the fee. The fee assessed under this subdivision for an amendment to a permit shall be based solely upon any additional volume of earth resources to be extracted under the amendment.

\* \* \*

\* \* \* Vermont web portal \* \* \*

Sec. 9. 22 V.S.A. § 953 is amended to read:

§ 953. VERMONT WEB PORTAL BOARD; DUTIES

\* \* \*

(c) Any charges created or changed by the board shall be approved as follows:

(1) All such charges shall be submitted to the governor who shall send a copy of the approval or rejection to the joint fiscal committee through the joint fiscal office together with the following information with respect to those items:

(A) the costs, direct and indirect, for the present and future years related to the charge;

(B) the department or program which will utilize the charge;

(C) a brief statement of purpose;

(D) the impact on existing programs if the charge is not accepted.

(2) The governor's approval shall be final unless within 30 days of receipt of the information a member of the joint fiscal committee requests the charge be placed on the agenda of the joint fiscal committee or, when the general assembly is in session, be held for legislative approval. In the event of such request, the charge shall not be accepted until approved by the joint fiscal committee or the legislature. During the legislative session, the joint fiscal committee shall file a notice with the house clerk and senate secretary for publication in the respective calendars of any charge approval requests that are submitted by the administration. Beginning on July 1, 2012, and every three years thereafter, all web portal fees shall be included in the annual consolidated executive branch fee report pursuant to 32 V.S.A. § 605.

Sec. 10. DEPARTMENT OF INFORMATION AND INNOVATION REPORT

The department of information and innovation shall report to the house committee on ways and means and the senate committee on finance by January 15, 2013 regarding the Vermont web portal. The report shall include an analysis of whether the Vermont web portal fee structure is appropriate and whether there are more cost-effective ways for the state to contract for web portal services. The report shall include any recommended changes to the web portal business model.

\* \* \* Wastewater supply and potable water supply  
loan program \* \* \*

Sec. 11. TRANSFER OF FUNDS TO WASTEWATER SUPPLY AND POTABLE WATER SUPPLY LOAN PROGRAM

The amount of \$275,000.00 from the fees collected pursuant to 3 V.S.A. § 2822(j)(4) shall be deposited annually in the fund established in 24 V.S.A. § 4753a(c) to provide loans for the repair of failed wastewater supply systems and potable water supply systems.

Sec. 12. 3 V.S.A. § 2809 is amended to read:

§ 2809. REIMBURSEMENT OF AGENCY COSTS

(a)(1) The secretary may require an applicant for a permit, license, certification, or order issued under a program that the secretary enforces under 10 V.S.A. § 8003(a) to pay for the cost of research, scientific, programmatic, or engineering expertise ~~or services that the provided by the~~ agency of natural resources, provided:

(A) the secretary does not have when such expertise or services and such expertise are is required for the processing of the application for the permit, license, certification, or order; or

(B) the secretary does have such expertise but has made a determination that it is beyond the agency's internal capacity to effectively utilize that expertise to process the application for the permit, license, certification, or order. In addition, the secretary shall determine that such expertise is required for the processing of the application for the permit, license, certification, or order.

(2) The secretary may require an applicant under chapter 151 of Title 10 to pay for the time of agency of natural resources personnel providing research, scientific, or engineering services or for the cost of expert witnesses when agency personnel or expert witnesses are required for the processing of the permit application.

(3) ~~Except as~~ In addition to the authority set forth under chapters 59 and 159 of Title 10 and 10 V.S.A. § 1283, the secretary may require a person who caused the agency to incur expenditures or a person in violation of a permit, license, certification, or order issued by the secretary to pay for the time of agency personnel or the cost of other research, scientific, or engineering services incurred by the agency in response to a threat to public health or the environment presented by an emergency or exigent circumstance.

(b) Prior to commencing or contracting for research, scientific, or engineering expertise or services or contracting for expert witnesses for which the secretary intends to seek cost reimbursement under subdivisions (a)(1) and (2) of this section, the secretary shall notify the applicant for a permit, license, certification, or order of the secretary's authority to assess costs under this section.

(c)(1) Within 15 days of issuance of notice under subsection (b) of this section, an applicant for a permit, license, certification, or order may request a meeting with the secretary to identify and review the proposed agency services or contracting services that may be assessed to the applicant.

(2) The secretary may enter into agreements with an applicant for a permit, license, certification, or order under which either the applicant or the agency of natural resources shall provide or pay for the necessary research, scientific, or engineering expertise or services or expert witnesses.

(3) When the secretary meets with an applicant under this subsection, the secretary shall provide the applicant in writing a preliminary estimate of the costs to be assessed and the purpose of the funds. In the case of requests to pay costs under subdivision (a)(1)(B) of this section, the secretary shall be limited to a reimbursement of not more than \$50,000.00.

(d) The following apply to the authority established under subsection (a) of this section:



~~(1)(A) The secretary may assess costs under subdivisions (a)(1) and (2) of this section to the applicant or applicants for the permit only with the approval of the governor. Costs assessed under subdivision (a)(3) shall not require approval of the governor.~~

~~(2) The secretary may require reimbursement only of costs in excess of \$3,000.00 except as provided in subdivision (B) of this subdivision(1).~~

(B) Where the secretary has requested reimbursement of programmatic expertise pursuant to subdivision (a)(1)(B) of this section. The secretary may require reimbursement only of costs in excess of \$3,000.00 or one-half of the permit application fee assessed under section 2822 of this title, whichever is greater.

~~(3)(2) The secretary may revise estimates previously noticed as necessary from time to time during the progress of the work and shall notify the applicant in writing of any revision.~~

~~(4)(3) The secretary shall provide the applicant with a detailed statement of a final assessment under this section showing the total amount of money expended or contracted for in the work and directing the manner and timing of payment by the applicant.~~

~~(5)(4) All funds collected from applicants shall be paid into the state treasury.~~

(e) The secretary may withhold a permit approval or suspend the processing of a permit application for failure to pay reasonable costs imposed under this subsection.

(f) An action or determination of the secretary under this section shall constitute an act or decision of the secretary that may be appealed in accordance with 10 V.S.A. § 8504.

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#### Sec. 12a. COST REIMBURSEMENT REPORT

On or before January 15, 2013 the secretary of natural resources shall report to the house committee on ways and means and the senate committee on finance on the utilization of the cost reimbursement authority under 3 V.S.A. § 2809. The report shall include the name of the project, the town in which the project was located, the amount requested for reimbursement, and the purpose for which the funds were used. The secretary shall make recommendations for any changes to the cost reimbursement authority as part of the executive branch fee bill.

Sec. 13. 24 V.S.A. § 4753(a)(9) is added to read:

(9) The Vermont wastewater and potable water revolving loan fund which shall be used to provide loans to individuals, in accordance with section 4763a of this title, for the design and construction of repairs to or replacement of wastewater systems and potable water supplies when the wastewater system or potable water supply is a failed system or supply as defined in 10 V.S.A. § 1972. The amount of \$275,000.00 from the fees collected pursuant to 3 V.S.A. § 2822(j)(4) shall be deposited on an annual basis into this fund.

Sec. 14. 24 V.S.A. § 4763a is added to read:

§ 4763a. LOANS TO INDIVIDUALS FOR FAILED WASTEWATER SYSTEMS AND FAILED POTABLE WATER SUPPLIES

(a) Notwithstanding any other provision of law, when the wastewater system or potable water supply serving only one single-family residence on its own lot meets the definition of a failed supply or system, the secretary of natural resources may lend monies to the owner of the residence from the Vermont wastewater and potable water revolving loan fund established in section 4753 of this title. In such cases, the following conditions shall apply:

(1) loans may only be made to households with an income equal to or less than 200 percent of the state average median household income;

(2) loans may only be made to households where the recipient of the loan resides in the residence on a year-round basis;

(3) loans may only be made if the owner of the residence has been denied financing for the repair, replacement, or construction due to involuntary disconnection by at least two other financing entities;

(4) no construction loan shall be made to an individual under this subsection, nor shall any part of any revolving loan made under this subsection be expended, until all of the following take place:

(A) the secretary of natural resources determines that if a wastewater system and potable water supply permit is necessary for the design and construction of the project to be financed by the loan, the permit has been issued to the owner of the failed system or supply; and

(B) the individual applying for the loan certifies to the secretary of natural resources that the proposed project has secured all state and federal permits, licenses, and approvals necessary to construct and operate the project to be financed by the loan.

(5) all funds from the repayment of loans made under this section shall be deposited into the Vermont wastewater and potable water revolving loan fund.

(b) The secretary of natural resources shall establish standards, policies, and procedures as necessary for the implementation of this section. The secretary may establish criteria to extend the payment period of a loan or to waive all or a portion of the loan amount.

Sec. 15. 24 V.S.A. § 4753a is amended to read:

§ 4753a. AWARDS FROM REVOLVING LOAN FUNDS

(a) Pollution control. The general assembly shall approve all categories of awards made from the special funds established by section 4753 of this title for water pollution control facility construction, in order to assure that such awards conform with state policy on water quality and pollution abatement, and with the state policy that, ~~except as provided in subsection (c) of this section,~~ municipal entities shall receive first priority in the award of public monies for such construction, including monies returned to the revolving funds from previous awards. To facilitate this legislative oversight, the secretary of natural resources shall annually no later than January 15 report to the house and senate committees on institutions and on natural resources and energy on all awards made from the relevant special funds during the prior and current fiscal years, and shall report on and seek legislative approval of all the types of projects for which awards are proposed to be made from the relevant special funds during the current or any subsequent fiscal year. Where feasible, the specific projects shall be listed.

(b) Water supply. The secretary of natural resources shall no later than January 15, 2000 recommend to the house ~~and senate committees on institutions and~~ committee on corrections and institutions, the senate committee on institutions, and the house and senate committees on natural resources and energy a procedure for reporting to and seeking the concurrence of the legislature with regard to the special funds established by section 4753 of this title for water supply facility construction.

(c) ~~Notwithstanding other priorities established in law, the secretary may award up to \$500,000.00 of the funds from the Vermont environmental protection agency control fund and the Vermont pollution control revolving fund, combined, to a state agency, the Vermont housing finance agency, or a municipality for the administration of loans to households with income equal to or less than 200 percent of the state average median household income for the repair or replacement of failed wastewater systems and failed potable water supplies, as those terms are defined in section 1972 of Title 10. Upon award of funds under this section, the state agency, Vermont housing finance agency, or municipality shall agree, pursuant to a memorandum of understanding with the secretary of natural resources, to repay the funds awarded to the special fund from which they were drawn.~~

Sec. 15a. REPORT; POTABLE WATER SUPPLY AND WASTEWATER SYSTEMS

By January 15, 2013, the agency of natural resources and the agency of commerce and community development shall report to the house committees on ways and means and on fish, wildlife and water resources, and the senate committees on finance and on natural resources and energy regarding programs which address the replacement of failed potable water supply and wastewater systems. The report shall include a list of all programs regarding failed potable water supply and wastewater systems in existence for low and moderate income residents, the effectiveness of those programs in replacing failed potable water supply and wastewater systems and in serving residents of different income levels, and the extent gaps exist in existing programs. The agencies shall make recommendations, if any, for statutory changes regarding programs which deal with replacement of failed potable water supply and wastewater systems

Sec. 16. ANR REPORT ON ENVIRONMENTAL IMPACT OF GROUNDWATER WITHDRAWALS FOR BOTTLING WATER

(a) On or before January 15, 2013, the secretary of natural resources shall report to the senate and house committees on natural resources and energy, the senate committee on finance, and the house committee on ways and means and on fish, wildlife and water resources regarding the impact of bulk groundwater withdrawals in the state. The report shall include:

(1) An analysis of the environmental effect of withdrawing and transferring out of the state large volumes of groundwater for the purposes of bottling, including the impact of such withdrawals on drinking water supplies, agricultural use, groundwater tables, and surface water recharge.

(2) A summary of the fees charged by other states for the withdrawal of groundwater for bottling or bulk water transfer and a comparison of the fees of other states to the groundwater withdrawal fees charged in Vermont.

(b) In preparing the report required under subsection (a) of this section, the secretary of natural resources shall consult with interested parties, including owners of property in the proximity of public water systems withdrawing groundwater for the purposes of bottling water, public water systems, bottled water companies, environmental groups, and representatives of agriculture.

Sec. 17. STUDY; DEPARTMENT OF PUBLIC SAFETY

(a) The department of public safety shall study how it assesses fees or charges for services provided by the department to municipalities, fire departments, and other entities. The study shall also examine how fees or

charges can be equitably assessed and what mechanism can be employed to collect fees or charges.

(b) The department shall report its findings and any recommendations to the house committee on ways and means and the senate committee on finance by January 15, 2013.

Sec. 18. REPORT; AGENCY OF NATURAL RESOURCES; AGENCY OF TRANSPORTATION

On or before January 15, 2013, the secretary of natural resources (ANR) and the secretary of transportation (AOT) shall jointly report to the house committee on ways and means and the senate committee on finance with a recommendation as to whether or not agency of natural resources fees and agency of transportation fees should be adjusted so that air pollution fees paid to ANR proportionally reflect the contribution of ANR permittees to state air pollution and so that air-pollution-related fees paid to AOT proportionally reflect the contribution of AOT licensees and permittees to state air pollution. If making adjustments to ANR and AOT fees is recommended for this purpose, the report shall recommend which fees should be adjusted and by what amount.

*TIMOTHY R. ASHE  
RICHARD J. MCCORMACK  
RANDOLPH D. BROCK*

*Committee on the part of the Senate*

*DAVID D. SHARPE  
ALISON H. CLARKSON  
JAMES W. MASLAND*

*Committee on the part of the House*

### **ORDERED TO LIE**

#### **S. 204.**

An act relating to creating an expert panel on the creation of a state bank.

**PENDING QUESTION:** Shall the bill be amended as recommended by the Committee on Finance?

### **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. (2/24/12)

Bonnie Johnson-Aten of Montpelier – Member of the State Board of Education – By Sen. Doyle for the Committee on Education. (4/20/12)

Mary Ashcroft of North Clarendon – Member of the Natural Gas and Oil Conservation Board – By Sen. McCormack for the Committee on Natural Resources and Energy. (5/4/12)

Mary Just Skinner of Middlesex – Member of the Natural Gas and Oil Conservation Board – By Sen. MacDonald for the Committee on Natural Resources and Energy. (5/4/12)

William Bartlett of Hyde Park – Alternate Member of the Vermont Natural Resources Board – By Sen. McCormack for the Committee on Natural Resources and Energy. (5/4/12)

Martha Illick of Charlotte – Alternate Member of the Vermont Natural Resources Board – By Sen. Lyons for the Committee on Natural Resources and Energy. (5/4/12)

Don Sargent of Colchester – Land Use Panel Member of the Natural Resources Board – By Sen. Benning for the Committee on Natural Resources and Energy. (5/4/12)

Elizabeth Wilkel of Walden – Land Use Panel Member of the Natural Resources Board – By Sen. Benning for the Committee on Natural Resources and Energy. (5/4/12)

William Davies of Barton – Water Resources Panel of the Natural Resources Board – By Sen. Benning for the Committee on Natural Resources and Energy. (5/4/12)

James Ehlers of Colchester – Member of the Citizen’s Advisory Committee on Lake Champlain’s Future – By Sen. Lyons for the Committee on Natural Resources and Energy. (5/4/12)

Craig Greene of Alburgh – Member of the Fish and Wildlife Board – By Sen. Benning for the Committee on Natural Resources and Energy. (5/4/12)

Craig Nolan of Averill – Member of the Fish and Wildlife Board – By Sen. Lyons for the Committee on Natural Resources and Energy. (5/4/12)

Grant Spates of Derby Line – Member of the Vermont Fish and Wildlife Board – By Sen. McCormack for the Committee on Natural Resources and Energy. (5/4/12)

Robert Hoerr of Colchester – Member of the Citizen’s Advisory Committee on Lake Champlain’s Future – By Sen. Lyons for the Committee on Natural Resources and Energy. (5/4/12)

Mark Naud of South Hero – Member of the Citizen’s Advisory Committee on Lake Champlain’s Future – By Sen. Lyons for the Committee on Natural Resources and Energy. (5/4/12)

Kate Neubauer of Burlington – Member of the Citizen’s Advisory Committee on Lake Champlain’s Future – By Sen. Lyons for the Committee on Natural Resources and Energy. (5/4/12)

Pixley Tyler Hill of Swanton – Member of the Citizen’s Advisory Committee on Lake Champlain’s Future – By Sen. Lyons for the Committee on Natural Resources and Energy. (5/4/12)