

# Journal of the Senate

FRIDAY, APRIL 27, 2012

The Senate was called to order by the President.

## Devotional Exercises

A moment of silence was observed in lieu of devotions.

## Bills Passed in Concurrence with Proposal of Amendment

House bills of the following titles were read the third time and passed in concurrence with proposal of amendment:

**H. 556.** An act relating to creating a private activity bond advisory committee.

**H. 771.** An act relating to making technical corrections and other miscellaneous changes to education law.

**H. 769.** An act relating to department of environmental conservation fees.

## Proposals of Amendment; Third Reading Ordered

### H. 780.

Senator White, for the Committee on Government Operations, to which was referred House bill entitled:

An act relating to compensation for certain state employees.

Reported recommending 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:

\* \* \* Exempt Employees in the Executive Branch \* \* \*

#### Sec. 1. RESTORATION OF SALARY

(a) The amount equal to the three-percent reduction in salaries taken on July 1, 2010 by exempt employees in the executive branch who earned less than \$60,000.00 annually may be restored to those salaries in fiscal year 2013.

(b) The amount equal to the five-percent reduction in salaries taken on January 1, 2009 by exempt employees in the executive branch who earned \$60,000.00 or more annually may be restored to those salaries in fiscal year 2013.

(c) If the secretary of administration determines that the salary of an exempt employee in the executive branch who earns less than \$60,000.00 annually and was hired or promoted after July 1, 2010 reflects a three-percent reduction in pay, the secretary may restore the amount equal to the three-percent reduction to that salary in fiscal year 2013.

(d) If the secretary of administration determines that the salary of an exempt employee in the executive branch who earns \$60,000.00 or more annually and was hired or promoted after January 1, 2009 reflects a five-percent reduction in pay, the secretary may restore the amount equal to the five-percent reduction to that salary in fiscal year 2013.

Sec. 2. COST-OF-LIVING ADJUSTMENTS

(a) Exempt employees in the executive branch earning less than \$60,000.00 annually may receive a cost-of-living adjustment in fiscal year 2013 of two percent.

(b) Exempt employees in the executive branch earning \$60,000.00 or more annually may or may not receive a cost-of-living adjustment in fiscal year 2013.

(c) Exempt employees in the executive branch may receive a cost-of-living adjustment in fiscal year 2014.

Sec. 3. RATE OF ADJUSTMENT

For purposes of determining annual salary adjustments, special salary increases, and bonuses under 32 V.S.A. §§ 1003(b) and 1020(b), the “total rate of adjustment available to classified employees under the collective bargaining agreement” shall be deemed to be 2.85 percent in fiscal year 2013 and 3.7 percent in fiscal year 2014.

\* \* \* Veterans’ Home \* \* \*

Sec. 4. 32 V.S.A. § 1003(b)(1) is amended to read:

(1) Heads of the following departments, ~~offices~~ and agencies:

	<del>Base</del> Salary as of July 8, 2007	<u>Base</u> Salary as of July 1, 2012
(A) Administration	<del>\$90,745</del>	<u>\$90,745</u>
(B) Agriculture, food and markets	<del>90,745</del>	<u>90,745</u>

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(C) <del>Banking, insurance, securities, and health care administration</del> <u>Financial regulation</u>	84,834	<u>84,834</u>
(D) Buildings and general services	84,834	<u>84,834</u>
(E) Children and families	84,834	<u>84,834</u>
(F) Commerce and community development	90,745	<u>90,745</u>
(G) Corrections	84,834	<u>84,834</u>
(H) Defender general	76,953	<u>76,953</u>
(I) Disabilities, aging, and independent living	84,834	<u>84,834</u>
(J) <u>Economic, housing, and community development</u>	76,953	<u>76,953</u>
(K) Education	84,834	<u>84,834</u>
(L) Environmental conservation	84,834	<u>84,834</u>
(M) Finance and management	84,834	<u>84,834</u>
(N) Fish and wildlife	76,953	<u>76,953</u>
(O) Forests, parks and recreation	76,953	<u>76,953</u>
(P) Health	84,834	<u>84,834</u>
(Q) <del>Housing and community affairs</del>	76,953	[Repealed.]
(R) Human resources	84,834	<u>84,834</u>
(S) Human services	90,745	<u>90,745</u>
(T) Information and innovation	84,834	<u>84,834</u>
(U) Labor	84,834	<u>84,834</u>
(V) Libraries	76,953	<u>76,953</u>
(W) Liquor control	76,953	<u>76,953</u>
(X) Lottery	76,953	<u>76,953</u>
(Y) Mental Health	84,834	<u>84,834</u>
(Z) Military	84,834	<u>84,834</u>
(AA) Motor vehicles	76,953	<u>76,953</u>
(BB) Natural resources	90,745	<u>90,745</u>
(CC) Natural resources board chairperson	76,953	<u>76,953</u>

(DD) Public Safety	84,834	84,834
(EE) Public service	84,834	84,834
(FF) Taxes	84,834	84,834
(GG) Tourism and marketing	76,953	76,953
(HH) Transportation	90,745	90,745
(II) Vermont health access	84,834	84,834
(JJ) <del>Veterans</del> <u>Veterans' home</u>	76,953	84,834

\* \* \* Judicial Branch \* \* \*

Sec. 5. 32 V.S.A. § 1003(c) is amended to read:

(c) The annual salaries of the officers of the judicial branch named below shall be as follows:

	<del>Annual</del> <del>Salary</del> <del>as of</del> <del>July 8,</del> <del>2007</del>	<u>Annual</u> <u>Salary</u> <u>as of</u> <u>July 1,</u> <u>2012</u>	<u>Annual</u> <u>Salary</u> <u>as of</u> <u>July 14,</u> <u>2013</u>
(1) Chief justice of supreme court	<del>\$135,421</del>	<u>\$139,280</u>	<u>\$144,434</u>
(2) Each associate justice	<del>129,245</del>	<u>132,928</u>	<u>137,847</u>
(3) Administrative judge	<del>129,245</del>	<u>132,928</u>	<u>137,847</u>
(4) Each superior judge	<del>122,867</del>	<u>126,369</u>	<u>131,045</u>
(5) <del>Each district judge</del>	<del>122,867</del>	[Repealed.]	
(6) Each magistrate	<del>92,641</del>	<u>95,281</u>	<u>98,807</u>
(7) Each judicial bureau hearing officer	<del>92,641</del>	<u>95,281</u>	<u>98,807</u>

Sec. 6. 32 V.S.A. § 1141 is amended to read:

§ 1141. ASSISTANT JUDGES

(a)(1) The compensation of each assistant judge of the superior court shall be ~~\$142.04~~ \$146.09 a day as of ~~July 8, 2007,~~ July 1, 2012 and \$151.49 a day as of July 14, 2013 for time spent in the performance of official duties and necessary expenses as allowed to classified state employees. Compensation under this section shall be based on a two-hour minimum and hourly thereafter.

\* \* \*

Sec. 7. 32 V.S.A. § 1142 is amended to read:

§ 1142. PROBATE JUDGES

(a) The annual salaries of the probate judges in the several probate districts, which shall be paid by the state in lieu of all fees or other compensation, shall be as follows:

		<u>Annual</u>	<u>Annual</u>
		<u>Salary</u>	<u>Salary</u>
		<u>as of</u>	<u>as of</u>
		<u>July 1,</u>	<u>July 14,</u>
		<u>2012</u>	<u>2013</u>
(1) Addison	\$48,439	<u>\$49,820</u>	<u>\$51,663</u>
(2) Bennington	61,235	<u>62,980</u>	<u>65,310</u>
(3) Caledonia	42,956	<u>44,180</u>	<u>45,815</u>
(4) Chittenden	91,395	<u>105,104</u>	<u>108,993</u>
(5) Essex	12,000	<u>12,342</u>	<u>12,799</u>
(6) Franklin	48,439	<u>49,820</u>	<u>51,663</u>
(7) Grand Isle	12,000	<u>12,342</u>	<u>12,799</u>
(8) Lamoille	33,816	<u>34,780</u>	<u>36,067</u>
(9) Orange	40,214	<u>41,360</u>	<u>42,890</u>
(10) Orleans	39,300	<u>40,420</u>	<u>41,916</u>
(11) Rutland	86,825	<u>89,300</u>	<u>92,604</u>
(12) Washington	66,718	<u>68,619</u>	<u>71,158</u>
(13) Windham	53,923	<u>55,460</u>	<u>57,512</u>
(14) Windsor	73,116	<u>75,200</u>	<u>77,982</u>

\* \* \*

(c) ~~A probate judge whose salary is less than 50 percent of the salary of the most highly paid probate judge shall be eligible only for the least expensive medical benefit plan option available to state employees or may apply the state share of the premium for which the judge is eligible toward the purchase of another state or private health insurance plan. A probate judge whose salary is less than 50 percent of the salary of the most highly paid probate judge may~~

~~participate in other state employee benefit plans~~ All probate judges, regardless of the number of hours worked annually, shall be eligible to participate in all employee benefits that are available to exempt employees of the judicial department.

Sec. 8. COURT ADMINISTRATOR; WEIGHTED CASELOAD STUDY

The court administrator shall conduct a weighted caseload study of the probate division and report its findings to the senate and house committees on government operations by January 31, 2013.

\* \* \* Sheriffs \* \* \*

Sec. 9. 32 V.S.A. § 1182 is amended to read:

§ 1182. SHERIFFS

(a) The annual salaries of the sheriffs of all counties except Chittenden shall be ~~\$65,812.00~~ \$67,688.00 as of ~~July 8, 2007~~ July 1, 2012 and ~~\$70,192.00~~ \$71,631.00 as of ~~July 14, 2013~~ July 1, 2012 and ~~\$74,281.00~~ \$74,281.00 as of ~~July 14, 2013~~ July 14, 2013.

(b) Compensation under subsection (a) of this section shall be reduced by 10 percent for any sheriff who has not completed the full-time training requirements under 20 V.S.A. § 2358.

\* \* \* State's Attorneys \* \* \*

Sec. 10. 32 V.S.A. § 1183 is amended to read:

§ 1183. STATE'S ATTORNEYS

(a) The annual salaries of state's attorneys shall be:

	<u>Annual</u> <u>Salary</u>	<u>Annual</u> <u>Salary</u>	<u>Annual</u> <u>Salary</u>
	<u>as of</u>	<u>as of</u>	<u>as of</u>
	<u>July 8,</u>	<u>July 1,</u>	<u>July 14,</u>
	<u>2007</u>	<u>2012</u>	<u>2013</u>
(1) Addison County	<del>\$89,020</del>	<u>\$91,557</u>	<u>\$94,945</u>
(2) Bennington County	<del>89,020</del>	<u>91,557</u>	<u>94,945</u>
(3) Caledonia County	<del>89,020</del>	<u>91,557</u>	<u>94,945</u>
(4) Chittenden County	<del>93,069</del>	<u>95,721</u>	<u>99,263</u>
(5) Essex County	<del>66,766</del>	<u>68,669</u>	<u>71,210</u>

(6) Franklin County	<del>89,020</del>	<u>91,557</u>	<u>94,945</u>
(7) Grand Isle County	<del>66,766</del>	<u>68,669</u>	<u>71,210</u>
(8) Lamoille County	<del>89,020</del>	<u>91,557</u>	<u>94,945</u>
(9) Orange County	<del>89,020</del>	<u>91,557</u>	<u>94,945</u>
(10) Orleans County	<del>89,020</del>	<u>91,557</u>	<u>94,945</u>
(11) Rutland County	<del>89,020</del>	<u>91,557</u>	<u>94,945</u>
(12) Washington County	<del>89,020</del>	<u>91,557</u>	<u>94,945</u>
(13) Windham County	<del>89,020</del>	<u>91,557</u>	<u>94,945</u>
(14) Windsor County	<del>89,020</del>	<u>91,557</u>	<u>94,945</u>

(b) In settlement of their accounts the commissioner of finance and management shall allow the state's attorneys the expense of printing briefs in cases in which the state's attorney has represented the state and their necessary and actual expenses under the rules and regulations pertaining to classified state employees.

\* \* \* Appropriations \* \* \*

#### Sec. 11. PAY ACT FUNDING

The compensation provided in this act shall be funded by appropriations made in H.781 of the 2011–2012 session of the general assembly in Sec. B.1200 for fiscal year 2013 and in Sec. BB.1200 for fiscal year 2014.

#### Sec. 12. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

And that the bill ought to pass in concurrence with such proposal of amendment.

Senator Illuzzi, for the Committee on Appropriations, to which the bill was referred, reported recommending that the Senate propose to the House that the bill be amended as recommended by the Committee on Government Operations with the following amendments thereto:

First: In Sec. 5, 32 V.S.A. § 1003(c), in subdivision (7) (each judicial bureau hearing officer), by striking out "95,281" and inserting in lieu thereof 92,641 and by striking out "98,807" and inserting in lieu thereof 92,641

Second: By striking out Sec. 12 (effective date) and inserting in lieu thereof the following:

\* \* \* Study \* \* \*

Sec. 12. COMMISSIONER OF HUMAN RESOURCES; JUSTICE SYSTEM; PAY PARITY REVIEW

(a) The commissioner of human resources, in consultation with the defender general, state's attorneys, and the court administrator, shall review and compare the annual salaries and professional duties of employees within the justice system, including the judicial bureau hearing officers and magistrates; the attorney general and assistant attorneys general; the defender general and public defenders; and the state's attorneys and deputy state's attorneys. Pursuant to the review and comparison, the commissioner shall specifically determine whether the salaries of the defender general, public defenders, and deputy state's attorneys should be increased relative to other employees within the justice system in light of the following factors: the complexity of their professional duties; the volume of their work, including, among other duties, court caseload; the quality of professional judgment and temperament expected by the public; and the rising cost of legal education and resulting loan debt.

(b) By March 15, 2013, the commissioner shall report his or her findings to the senate and house committees on appropriations and on government operations.

Sec. 13. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

And that the bill ought to pass in concurrence with such proposals of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43.

Senator White requested the recommendations of amendment of the Committee on Appropriation to the recommendation of proposal of amendment of the Committee on Government Operations be divided.

Thereupon the question, Shall the proposal of amendment of the Committee on Appropriations to the proposal of amendment of the Committee on Government Operations in the *first* instance?, was decided in the affirmative.

Thereupon the question, Shall the proposal of amendment of the Committee on Appropriations to the proposal of amendment of the Committee on Government Operations in the *second* instance?, was decided in the affirmative.



Thereupon, the proposal of amendment as proposed by the Committee on Government Operations, as amended, was agreed to and third reading of the bill was ordered.

**Proposal of Amendment; Third Reading Ordered**

**H. 782.**

Senator Cummings, for the Committee on Finance, to which was referred House bill entitled:

An act relating to miscellaneous tax changes for 2012.

Reported recommending 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:

\* \* \* Administrative Provisions \* \* \*

Sec. 1. 10 V.S.A. § 1942(b) is amended to read:

(b) There is assessed against every seller receiving more than \$10,000.00 annually for the bulk retail sale of heating oil, kerosene, or other dyed diesel fuel sold in this state and ~~not used to propel a motor vehicle~~; a licensing fee of one cent per gallon of such heating oil, kerosene, or other dyed diesel fuel. This fee shall be subject to the collection, administration, and enforcement provisions of 32 V.S.A. chapter 233 of Title 32, and the fees collected under this subsection by the commissioner of taxes shall be deposited into the petroleum cleanup fund established pursuant to subsection 1941(a) of this title. The secretary, in consultation with the petroleum cleanup fund advisory committee established pursuant to subsection 1941(e) of this title, shall annually report to the legislature on the balance of the heating fuel account of the fund and shall make recommendations, if any, for changes to the program. The secretary shall also determine the unencumbered balance of the heating fuel account of the fund as of May 15 of each year, and if the balance is equal to or greater than \$3,000,000.00, then the licensing fee shall not be assessed in the upcoming fiscal year. The secretary shall promptly notify all sellers assessing this fee of the status of the fee for the upcoming fiscal year. This fee provision shall terminate April 1, 2016.

Sec. 2. PETROLEUM CLEANUP FUND OUTREACH

The secretary of agriculture, food and markets shall publish or broadcast in media designed to reach a farming audience information advising Vermont farmers of the existence of the petroleum cleanup fund under 10 V.S.A. chapter 59 and the terms of available assistance to farmers from that fund. The secretary shall publish or broadcast this information no fewer than four times each year that the fund is in existence.

Sec. 3. 14 V.S.A. § 3502(f) is added to read:

(f) Notwithstanding any other provision of law, a power of attorney appointing a representative to represent a person before the Vermont department of taxes that conforms to the requirements of the United States Internal Revenue Service for a valid power of attorney and declaration of representative pursuant to 25 C.F.R. § 601.503 shall be deemed to be legally executed and shall be of the same force and effect for purposes of representation before the department of taxes as if executed in the manner prescribed in this chapter.

Sec. 4. 32 V.S.A. § 3102(e) is amended to read:

(e) The commissioner may, in his or her discretion and subject to such conditions and requirements as he or she may provide, including any confidentiality requirements of the Internal Revenue Service, disclose a return or return information:

\* \* \*

(14) to the office of the state treasurer, only in the form of mailing labels, with only the last address known to the department of taxes of any person identified to the department by the treasurer by name and Social Security number, for the treasurer's use in notifying owners of unclaimed property; and

(15) to the department of liquor control provided that the information is limited to information concerning the sales and use tax and meals and rooms tax filing history with respect to the most recent five years of a person seeking a liquor license or a renewal of a liquor license.

Sec. 5. 32 V.S.A. § 3102(j) and (k) are added to read:

(j) Tax bills prepared by a municipality under subdivision 5402(b)(1) of this title showing only the amount of total tax due shall not be considered confidential return information under this section. For the purposes of calculating adjustments under chapter 154 of this title, information provided by the commissioner to a municipality under subsection 6066a(a) of this title and information provided by the municipality to a taxpayer under subsection 6066a(f) shall be considered confidential return information under this section.

(k) Notwithstanding subsection (j) of this section, the commissioner or a municipal official acting as his or her agent may provide the information in subsection 6066a(f) of this title to the following people without incurring liability under this section:

(1) an escrow agent, the owner of the property to which the adjustment applies, a town auditor, or a person hired by the town to serve as an auditor;

(2) a lawyer, including a paralegal or assistant of the lawyer, an employee or agent of a financial institution as that term is defined in 8 V.S.A. § 11101, a realtor, or a certified public accountant as that term is defined in 26 V.S.A. § 13(12) who represents that he or she has a need for the information as it pertains to a real estate transaction or to a client or customer relationship; and

(3) any other person as long as the taxpayer has filed a written consent to such disclosure with the municipality.

Sec. 6. 32 V.S.A. § 3206 is added to read:

§ 3206. RECOMMENDATION FOR EXTRAORDINARY RELIEF

(a) The taxpayer advocate may make a written recommendation for extraordinary relief to the commissioner under the provisions of this section. A recommendation for extraordinary relief may be made only in response to a request from a taxpayer and after a thorough investigation of the taxpayer's circumstances by the taxpayer advocate which results in findings by the taxpayer advocate that:

(1) Vermont tax laws apply to the taxpayer's circumstances in a way that is unfair and unforeseen or that results in significant hardship; and

(2) the taxpayer has no available appeal rights or administrative remedies to correct the issue that led to such unfair result or hardship.

(b) For purposes of this section, "extraordinary relief" means a remedy that is within the power of the commissioner to grant under this title, a remedy that compensates for the result of inaccurate classification of property as homestead or nonresidential pursuant to section 5410 of this title through no fault of the taxpayer, or a remedy that makes changes to a taxpayer's property tax adjustment or renter rebate claim necessary to remedy the problem identified by the taxpayer advocate.

(c) Notwithstanding any other provision of law, if in response to the taxpayer advocate's recommendation, the commissioner determines that the taxpayer should receive a refund or other monetary adjustment, the commissioner shall certify that amount to the commissioner of finance and management who shall issue his or her warrant in favor of the taxpayer for payment by the treasurer from the appropriate fund.

(d) A recommendation for extraordinary relief shall be in writing, shall be addressed to the commissioner, and shall include a description of the problem sought to be remedied along with specific recommendations to the commissioner. The taxpayer advocate's decision to make or not make a

recommendation for extraordinary relief shall be final and not subject to review.

(e) The commissioner may choose to act on the recommendation of the taxpayer advocate, not act on the recommendation, or act on part of the taxpayer advocate's recommendation, and the commissioner's decision shall be final and not subject to any further review. Nothing in this section shall be construed to limit any other power or authority granted to the commissioner in this title.

Sec. 7. 32 V.S.A. § 5824 is amended to read:

§ 5824. ADOPTION OF FEDERAL INCOME TAX LAWS

The statutes of the United States relating to the federal income tax, as in effect for taxable year ~~2010~~ 2011, but without regard to federal income tax rates under Section 1 of the Internal Revenue Code, are hereby adopted for the purpose of computing the tax liability under this chapter.

Sec. 8. 32 V.S.A. § 6061(5) is amended to read:

(5) "Modified adjusted gross income" means "federal adjusted gross income":

(A) before the deduction of any trade or business loss, loss from a partnership, loss from a small business or "subchapter S" corporation, loss from a rental property, or capital loss, except that in the case of a business which sells a business property with respect to which it is required, under the Internal Revenue Code, to report a capital gain, a business loss incurred in the same tax year with respect to the same business may be netted against such capital gain, and except that a business loss incurred in the same tax year with respect to a different business may be netted against any business gain;

Sec. 9. 32 V.S.A. § 6066a(f) is amended to read:

(f) Property tax bills.

(1) For individuals and amounts stated in the notice to towns on July 1, municipalities shall ~~include on the~~ create and send to taxpayers a homestead property tax bill ~~notice to the taxpayer of,~~ separate from the bill required under subdivision 5402(b)(1) of this title, providing the total amount allocated to payment of homestead education property tax liabilities and notice of the balance due. Municipalities shall apply the amount allocated under this chapter to current-year property taxes in equal amounts to each of the taxpayers' property tax installments that include education taxes.

\* \* \*

Sec. 10. 32 V.S.A. § 7475 is amended to read:

§ 7475. ADOPTION OF FEDERAL ESTATE AND GIFT TAX LAWS

The laws of the United States, relating to federal estate and gift taxes as in effect on ~~January 1, 2009~~ December 31, 2011, are hereby adopted for the purpose of computing the tax liability under this chapter, except:

(1) the credit for state death taxes shall remain as provided for under Sections 2011 and 2604 of the Internal Revenue Code as in effect on January 1, 2001;

(2) the applicable credit amount shall remain as provided for under Section 2010 of the Internal Revenue Code as in effect on January 1, 2008; and

(3) the deduction for state death taxes under Section 2058 of the Internal Revenue Code shall not apply.

Sec. 11. Sec. 1(c) of No. 71 of the Acts of the 2011 Adj. Sess. (2012) is amended to read:

(c) Use. ~~Residents of the state of Vermont may display an approved commemorative plate on a motor vehicle registered as a pleasure car and on motor trucks registered.~~ An approved Vermont Strong commemorative plate may be displayed on a motor vehicle registered in Vermont as a pleasure car or on a motor truck registered in Vermont for less than 26,001 pounds (but excluding vehicles registered under the International Registration Plan) by covering the front registration plate with the commemorative plate any time from the effective date of this act until June 30, 2014. The regular front registration plate shall not be removed. The regular rear registration plate shall be in place and clearly visible at all times.

\* \* \* Compliance Provisions \* \* \*

Sec. 12. 7 V.S.A. § 421(c) is amended to read:

(c) For the purpose of ascertaining the amount of tax, on or before the tenth day of each calendar month, each bottler and wholesaler shall transmit to the commissioner of taxes, upon a form prepared and furnished by the commissioner, a statement or return under oath or affirmation showing the quantity of malt and vinous beverages sold by the bottler or wholesaler during the preceding calendar month, and report any other information requested by the commissioner accompanied by payment of the tax required by this section. The amount of tax computed under subsection (a) of this section shall be rounded to the nearest whole cent. At the same time this form is due, each bottler and wholesaler also shall transmit to the commissioner in electronic format a separate report showing the description, quantity, and price of malt and vinous beverages sold by the bottler or wholesaler to each retail dealer as

defined in 7 V.S.A. § 2(18); provided, however, for direct sales to retail dealers by manufacturers or rectifiers of vinous beverages the report required by this subsection may be submitted in a nonelectronic format.

Sec. 13. 32 V.S.A. § 3108 is amended to read:

§ 3108. ESTABLISHMENT OF INTEREST RATE

(a) Not later than December 15 of each year, the commissioner shall establish a rate of interest applicable to ~~unpaid tax liabilities and~~ tax overpayments which shall be equal to the average prime rate charged by banks during the immediately preceding 12 months commencing on October 1 of the prior year, rounded upwards to the nearest ~~whole~~ quarter percent. ~~The~~ An annual rate thus established ~~may~~ shall be converted to a monthly rate which shall be rounded upwards to the nearest tenth of a percent. Not later than December 15 of each year, the commissioner shall establish annual and monthly rates of interest applicable to unpaid tax liabilities, which in each instance shall be equal to the annual and monthly rates established for tax overpayments plus 200 basis points. The ~~rate~~ rates established hereunder shall be effective on January 1 of the immediately following year. For purposes of this section, the term “prime rate charged by banks” shall mean the average predominate prime rate quoted by commercial banks to large businesses as determined by the board of governors of the Federal Reserve ~~System~~ Board.

(b) Whenever the commissioner is authorized or directed to pay interest on an overpayment of any taxes, nevertheless no interest shall be paid on such overpayment:

(1) where the commissioner finds that such overpayment was made with the intention or expectation of receiving a payment of interest thereon and for no other reason;

(2) for any period of time prior to: 45 days after the date the return other than a corporate income tax return was due, including any extensions of time thereto; or 45 days after the return was filed, whichever is the later date, and with respect to corporate income tax returns, for any period of time prior to 90 days after the date the return was due or 90 days after the return was filed, whichever is the later date;

\* \* \*

\* \* \* Income Tax Provisions \* \* \*

Sec. 14. 32 V.S.A. § 5832(2) is amended to read:

(2)(A) \$75.00 for small farm corporations. “Small farm corporation” means any corporation organized for the purpose of farming, which during the taxable year is owned solely by active participants in that farm business and

receives less than \$100,000.00 gross receipts from that farm operation, exclusive of any income from forest crops; or

(B) An amount determined in accordance with section 5832a of this title for a corporation which qualifies as and has elected to be taxed as a digital business entity for the taxable year; or

(C) ~~\$250.00 for all other corporations~~ For C corporations with gross receipts from \$0–\$2,000,000.00, the greater of the amount determined under subdivision (1) of this section or \$250.00; or

(D) For C corporations with gross receipts from \$2,000,001.00–\$5,000,000.00, the greater of the amount determined under subdivision (1) of this section or \$500.00; or

(E) For C corporations with gross receipts greater than \$5,000,000.00, the greater of the amount determined under subdivision (1) of this section or \$750.00.

Sec. 15. 32 V.S.A. § 5920(g) is added to read:

(g)(1) Subsection (c) of this section shall not apply to a partnership or limited liability company engaged solely in the business of operating one or more federal new market tax credit projects in this state, provided such partnership or limited liability company shall:

(A) notify its nonresident partners or nonresident members of their obligation under subchapter 6 of this chapter to file Vermont personal income tax returns and under subchapter 2 of this chapter to pay a tax on income earned from such investment;

(B) instruct each nonresident partner or nonresident member to pay such tax; and

(C) in addition to filing copies of all schedules K-1 with its partnership or limited liability company return, file with the commissioner segregated duplicate copies of all nonresident schedules K-1.

(2) For purposes of this subsection, “federal new market tax credit project” means a business that is intended primarily to benefit low income Vermont residents throughout the period of investment and that is subject to the following:

(A) has been determined by the United States Department of the Treasury to be a community development entity;

(B) has been awarded an allocation of federal new market tax credits under 26 U.S.C. § 45D; and

(C) is a partnership or limited liability corporation which is a pass-through of the federal new market tax credit to the nonresident investor.

Sec. 16. 32 V.S.A. § 5930b(c)(9) is amended to read:

(9) Incentive claims must be filed annually no later than the last day of April of each year of the utilization period. For a claim to be considered a timely filing and eligible for an incentive payment, all forms and workbooks must be complete and all underlying documentation, such as that required pursuant to subsection 5842(b) of this title, must be filed with the department of taxes. Incomplete claims may be considered to have been timely filed if a complete claim is filed within the time prescribed by the department of taxes. If a claim is not filed each year of the utilization period, any incentive installment previously paid shall be recaptured in accordance with subsection (d) of this section. The incentive return shall be subject to all provisions of this chapter governing the filing of tax returns. No interest shall be paid by the department of taxes for any reason with respect to incentives allowed under this section.

Sec. 17. 32 V.S.A. § 5930b(e) is amended to read:

(e) Reporting. ~~By May 1, 2008 and by May 1~~ September 1 each year ~~thereafter~~, the council and the department of taxes shall file a joint report on the employment growth incentives authorized by this section with the chairs of the house committee on ways and means, the house committee on commerce and economic development, the senate committee on finance, the senate committee on economic development, housing and general affairs, the house and senate committees on appropriations, and the joint fiscal committee of the general assembly and provide notice of the report to the members of those committees. ~~The joint report shall contain the total authorized award amount of incentives granted authorized during the preceding year, amounts actually earned and paid from inception of the program to the date of the report, including the date and amount of the award, the expected calendar year or years in which the award will be exercised, whether the award is currently available, the date the award will expire, and the amount and date of all incentives exercised and, with respect to each recipient, the date and amount of authorization, the calendar year or years in which the authorization is expected to be exercised, whether the authorization is active, and the date the authorization will expire.~~ The joint report shall also include information on recipient performance in the year in which the incentives were applied, including the number of applications for the incentive, the number of approved applicants who complied with all their requirements for the incentive, the following aggregate information: total number of claims and total incentive payments made in the current and prior claim years, the balance of credits not



~~yet allocated, the aggregate number of qualifying new jobs created, the aggregate and qualifying payroll of those jobs and the identity of businesses whose applications were approved, and qualifying new capital investments.~~ The council and department shall use measures to protect proprietary financial information, such as reporting information in an aggregate form. Data and information in the joint report ~~made available to the public~~ shall be presented in a searchable format.

Sec. 18. Sec. 3(c) of No. 184 of the Acts of the 2005 Adj. Sess. (2006), as amended by Sec. 2 of No. 52 of the Acts of 2011, is amended to read:

(c) Beginning April 1, 2009, the economic incentive review board is authorized to grant payroll-based growth incentives pursuant to the Vermont employment growth incentive program established by Sec. 9 of this act. Unless extended by act of the General Assembly, as of July 1, ~~2012~~ 2017, no new Vermont employment growth incentive (VEGI) awards under 32 V.S.A. § 5930b may be made. Any VEGI awards granted prior to July 1, ~~2012~~ 2017 may remain in effect until used.

Sec. 19. 32 V.S.A. § 5930u(g) is amended to read:

(g) In any fiscal year, the allocating agency may award up to \$400,000.00 in total first-year credit allocations to all applicants for rental housing projects; and may award up to ~~\$100,000.00~~ \$300,000.00 per year for owner-occupied unit applicants. In any fiscal year, total first-year allocations plus succeeding-year deemed allocations shall not exceed ~~\$2,500,000.00~~ \$3,500,000.00.

Sec. 20. 32 V.S.A. § 5930bb(d) is added to read:

(d) Notwithstanding any other provision of this subchapter, qualified applicants may apply to the state board at any time prior to June 30, 2013 to obtain a tax credit not otherwise available under subsections 5930cc(a)–(c) of this title of 10 percent of qualified expenditures resulting from damage caused by a federally declared disaster in Vermont in 2011. The credit shall only be claimed against the taxpayer’s state individual income tax under section 5822 of this title. To the extent that any allocated tax credit exceeds the taxpayer’s tax liability for the first tax year in which the qualified project is completed, the taxpayer shall receive a refund equal to the unused portion of the tax credit. If within two years after the date of the credit allocation no claim for a tax credit or refund has been filed, the tax credit allocation shall be rescinded and recaptured pursuant to subdivision 5930ee(6) of this title. The total amount of tax credits available under this subsection shall not be less than \$500,000.00 and not more than \$700,000.00 and shall not be subject to the limitations contained in section 5930ee(2) of this subchapter.

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Sec. 21. CREDIT LIMIT FOR FISCAL YEAR 2013

Notwithstanding any other provision of law, for fiscal year 2013 only, the limitation provided in 32 V.S.A. § 5930ee(1) shall be \$2,200,000.00 instead of \$1,700,000.00.

Sec. 21a. 32 V.S.A. § 9603(23) is amended to read:

(23) Transfers of leasehold or fee interests made to low income individuals by organizations qualifying under Section 501(c)(3) of the Internal Revenue Code of 1986 or from a wholly-owned subsidiary of such an organization when such a transfer is made concurrently with the transfer of an improvement located on the leasehold or fee property, or is a renewal of such a lease where the purpose of the lease is to provide affordable housing, or to ensure the continued affordability of such housing, or both.

\* \* \* Property Tax Adjustment and Renter Rebate Provisions \* \* \*

Sec. 22. 32 V.S.A. § 5410(b) is amended to read:

(b)(1) Annually on or before the due date for filing the Vermont income tax return, without extension, each homestead owner shall, on a form prescribed by the commissioner, which shall be verified under the pains and penalties of perjury, declare his or her homestead, if any, as of, or expected to be as of, April 1 of the year in which the declaration is made ~~for property that was acquired by the declarant or was made the declarant's homestead after April 1 of the previous year. The declaration of homestead shall remain in effect until the earlier of:~~

~~(A) the transfer of title of all or any portion of the homestead; or~~

~~(B) that time that the property or any portion of the property ceases to qualify as a homestead.~~

(2) Within 30 days of the transfer of title of all or any portion of the homestead, or upon any portion of the property ceasing to be a homestead, the declarant shall provide notice to the commissioner on a form to be prescribed by the commissioner.

Sec. 23. 32 V.S.A. § 6061(5)(D) is amended to read:

(D) without the inclusion of adjustments to total income except certain business expenses of reservists, one-half of self-employment tax paid, alimony paid, deductions for tuition and fees, ~~and~~ health insurance costs of self-employed individuals, and health savings account deductions; and

Sec. 24. 32 V.S.A. § 6066a is amended to read:

§ 6066a. DETERMINATION OF PROPERTY TAX ADJUSTMENTS

(a) Annually, the commissioner shall determine the property tax adjustment amount under section 6066 of this title, related to a homestead owned by the claimant. The commissioner shall notify the municipality in which the housesite is located of the amount of the property tax adjustment for the claimant for homestead property tax liabilities, on July 1 for ~~timely filed~~ timely filed claims and on ~~September 15~~ November 1 for late claims filed by ~~September 1~~ October 15. The tax adjustment of a claimant who was assessed property tax by a town which revised the dates of its fiscal year, however, is the excess of the property tax which was assessed in the last 12 months of the revised fiscal year, over the adjusted property tax of the claimant for the revised fiscal year as determined under section 6066 of this title, related to a homestead owned by the claimant.

\* \* \*

(c) The commissioner shall notify the municipality of any claim and refund amounts unresolved by ~~September 15~~ November 1 at the time of final resolution, including adjudication if any; provided, however, that towns will not be notified of any additional adjustment amounts after ~~September 15~~ November 1 of the claim year, and such amounts shall be paid to the claimant by the commissioner.

\* \* \*

(f) Property tax bills.

\* \* \*

(2) For property tax adjustment amounts for which municipalities receive notice on or after ~~September 15~~ November 1, municipalities shall issue a new homestead property tax bill with notice to the taxpayer of the total amount allocated to payment of homestead property tax liabilities and notice of the balance due.

\* \* \*

(g) Annually, on August 1 and on ~~September 15~~ November 1, the commissioner of taxes shall pay to each municipality the amount of property tax adjustment of which the municipality was notified on July 1 for the August 1 transfer, or ~~September 15~~ November 1 for the ~~September 15~~ November 1 transfer, related to municipal property tax on homesteads within that municipality, as determined by the commissioner of taxes.

Sec. 25. 32 V.S.A. § 6074 is amended to read:

§ 6074. AMENDMENT OF CERTAIN CLAIMS

At any time within three years after the date for filing claims under subsection 6068(a) of this chapter, a claimant who filed a claim by ~~September 1~~ October 15 may file to amend that claim to correct the amount of household income reported on that claim.

Sec. 26. 32 V.S.A. § 6068 is amended to read:

(a) A tax adjustment claim or request for allocation of an income tax refund to homestead property tax payment shall be filed with the commissioner on or before the due date for filing the Vermont income tax return, without extension, and shall describe the school district in which the homestead property is located and shall particularly describe the homestead property for which the adjustment or allocation is sought, including the school parcel account number prescribed in subsection 5404(b) of this title. A renter rebate claim shall be filed with the commissioner on or before the due date for filing the Vermont income tax return, without extension.

(b) Late-filing penalties. If the claimant fails to file a timely claim, the amount of the property tax adjustment under this chapter shall be reduced by \$15.00, but not below \$0.00, which shall be paid to the municipality for the cost of issuing an adjusted homestead property tax bill. No benefit shall be allowed in the calendar year unless the claim is filed with the commissioner on or before ~~September 1~~ October 15.

(c) No request for allocation of an income tax refund or for a renter rebate claim may be made after ~~September 1~~ October 15.

Sec. 27. 32 V.S.A. § 6067 is amended to read:

§ 6067. CREDIT LIMITATIONS

Only one individual per household per taxable year shall be entitled to a benefit under this chapter. An individual who received a homestead exemption or adjustment with respect to property taxes assessed by another state for the taxable year shall not be entitled to receive an adjustment under this chapter. No taxpayer shall receive an adjustment under subsection 6066(b) of this title in excess of \$3,000.00. No taxpayer shall receive total adjustments under this chapter in excess of \$8,000.00 related to any one property tax year.

Sec. 28. RENTER REBATE CLAIM

The office of legislative council is authorized to change references to “renter credit claim” in 32 V.S.A. chapter 154 to read “renter rebate claim.”

Sec. 29. Sec. 51(b) of No. 160 of the Acts of the 2009 Adj. Sess. (2010) is amended to read:

(b) ~~The following sections of Title 32 relating to homestead education property tax income sensitivity adjustments are repealed for claims filed on and after January 1, 2013:~~

~~(1) 32 V.S.A. § 6061(5)(E) (requiring adjustment for interest and dividend income for purposes of calculating modified adjusted gross income).~~

~~(2) The amendments in this act to 32 V.S.A. § 6066(a) regarding the equalized value of a housesite in excess of \$500,000.00~~ The amendments in this act related to 32 V.S.A. § 6066(a), regarding the equalized value of a housesite in excess of \$500,000.00, are repealed on January 1, 2013.

#### Sec. 30. LANDLORD CERTIFICATES

The commissioner of taxes shall report to the senate committee on finance and the house committee on ways and means no later than January 15, 2013 on how to develop an electronic system for the reporting and issuance of the landlord certificate under 32 V.S.A. § 6069. The commissioner's report shall include recommendations for legislative changes to implement such a system.

\* \* \* Property Tax Provisions \* \* \*

Sec. 31. 27A V.S.A. § 1-105 is amended to read:

#### § 1-105. SEPARATE TITLES AND TAXATION

(a) In a condominium or planned community:

(1) if there is any unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate;

(2) if there is any unit owner other than a declarant, each unit shall be separately taxed and assessed, and no separate tax or assessment may be rendered against any common elements for which a declarant has reserved no development rights; provided, however, that if a portion of the common elements is located in a town other than the town in which the unit is located, the town in which the common elements are located may designate that portion of the common elements within its boundaries as a parcel for property tax assessment purposes and may tax each unit owner at an appraisal value pursuant to 32 V.S.A. § 3481.

\* \* \*

Sec. 32. 32 V.S.A. § 3409 is amended to read:

§ 3409. PREPARATION OF PROPERTY MAPS

Consistent with available resources and pursuant to a memorandum of understanding entered into between the commissioner and the Vermont center for geographic information, the center shall provide regional planning commissions, state agencies, and the general public with orthophotographic maps of the state at a scale appropriate for the production and revision of town property maps. Periodically, such ~~maps~~ digital imagery shall be ~~revised and updated to reflect~~ updated to capture land use changes, new settlement patterns and such additional information as may have become available to the director or the center.

(1) The center shall supply to ~~the clerk and to the listers or assessors of~~ each town such ~~maps~~ orthophotographic imagery as ~~have~~ has been prepared by it of the total area of that town. Any map shall be available, without charge, for public inspection in the office of the town clerk to whom the map was supplied.

(2) ~~The state of Vermont shall retain the copyright of any map prepared by the Vermont mapping program, and the center and the Vermont mapping program shall jointly own the copyright to any map prepared on or after the effective date of this act.~~

(3) ~~A person who, without the written authorization of the director and the center, copies, reprints, duplicates, sells, or attempts to sell any map prepared under this chapter shall be fined an amount not to exceed \$1,000.00.~~

(4) At a reasonable charge to be established by the center and the director, the center shall supply to any person or agency other than a town clerk or lister a copy of any ~~map~~ digital format orthophotographic imagery prepared created under this section.

(3) Hardcopy or nondigital format orthophotographic imagery created under this section shall be available for public review at the state archives.

Sec. 33. 32 V.S.A. § 4301 is amended to read:

§ 4301. BASIS FOR COUNTY TAXES

(a) The equalized municipal property tax grand lists for each town, unorganized town and gore, and the unified towns and gores of Essex County shall be the basis of taxation for county purposes.

(b) Annually, on or before January 1, the director shall provide to each county treasurer the equalized municipal property tax grand list for each town, unorganized town, and gore, and the unified towns and gores of Essex County

within the county. "Equalized municipal property tax grand list" in this section shall mean the equalized education property tax grand list as defined in chapter 135 of this title plus inventory, machinery and equipment subject to municipal tax in that municipality at its grand list value.

Sec. 34. 32 V.S.A. chapter 133, subchapter 5 is amended to read:

Subchapter 5. Assessment and Collection in  
~~Unified~~ Unorganized Towns and Gores

\* \* \*

Sec. 35. 32 V.S.A. § 5401(13) is amended to read:

(13) "District spending adjustment" means the greater of: one or a fraction in which the numerator is the district's education spending plus excess spending, per equalized pupil, for the school year; and the denominator is the base education amount for the school year, as defined in 16 V.S.A. § 4001. For a district that pays tuition to a public school or an approved independent school, or both, for all of its resident students in any year, and which has decided by a majority vote of its school board to opt into this provision, the district spending adjustment shall be the average of the district spending adjustment calculated under this subdivision for the previous year and for the current year. Any district opting for a two-year average under this subdivision may not opt out of such treatment, and the averaging shall continue until the district no longer qualifies for such treatment.

Sec. 36. FISCAL YEAR 2013 EDUCATION PROPERTY TAX RATE

(a) For fiscal year 2013 only, the education property tax imposed under 32 V.S.A. § 5402(a) shall be reduced from the rates of \$1.59 and \$1.10 and shall instead be at the following rates:

(1) the tax rate for nonresidential property shall be \$1.38 per \$100.00; and

(2) the tax rate for homestead property shall be \$0.89 multiplied by the district spending adjustment for the municipality per \$100.00 of equalized property value as most recently determined under 32 V.S.A. § 5405.

(b) For claims filed in 2013 only, "applicable percentage" in 32 V.S.A. § 6066(a)(2) shall be reduced from 2.0 percent and instead shall be 1.80 percent multiplied by the fiscal year 2013 district spending adjustment for the municipality in which the homestead residence is located; but in no event shall the applicable percentage be less than 1.80 percent.

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Sec. 37. FISCAL YEAR 2013 BASE EDUCATION AMOUNT

Notwithstanding 16 V.S.A. § 4011(b) or any other provision of law, the base education amount for fiscal year 2013 shall be \$8,723.00.

Sec. 38. SUPPLEMENTAL PROPERTY TAX RELIEF

Notwithstanding any other provision of law, on October 1, 2012, the commissioner shall determine the balance in the supplemental property tax relief fund and determine by how much the “applicable percentage” in 32 V.S.A. § 6066(a)(2) could be reduced if the entire balance of the fund was transferred to the education fund for that purpose, while maintaining the existing balance in the education fund. If the “applicable percentage” could be reduced by 0.1 of one percent or more for the upcoming fiscal year, the commissioner shall disregard 32 V.S.A. § 6075(b), and recommend in 32 V.S.A. § 5402(b) that the balance of the property tax relief fund be transferred to the education fund and the applicable percentage be lowered by the amount determined under that subsection, even if that recommendation would take the applicable percentage below 1.8 percent.

Sec. 39. 32 V.S.A. § 5402b(b) is amended to read:

(b) If the commissioner makes a recommendation to the general assembly to adjust the education tax rates under section 5402 of this title, the commissioner shall also recommend a proportional adjustment to the applicable percentage base for homestead income based adjustments under section 6066 of this title, but the applicable percentage base shall not be adjusted below ~~1.8~~ 1.7 percent.

\* \* \* Current Use Provisions \* \* \*

Sec. 40. 32 V.S.A. § 3752(5) is amended to read:

(5) “Development” means, for the purposes of determining whether a land use change tax is to be assessed under section 3757 of this chapter, the construction of any building, road or other structure, or any mining, excavation or landfill activity. “Development” also means the subdivision of a parcel of land into two or more parcels, regardless of whether a change in use actually occurs, where one or more of the resulting parcels contains less than 25 acres each; but if subdivision is solely the result of a transfer to one or more of a spouse, parent, grandparent, child, grandchild, niece, nephew, or sibling of the transferor, or to the surviving spouse of any of the foregoing, then “development” shall not apply to any portion of the ~~newly created~~ newly created parcel or parcels which qualifies for enrollment and for which, within 30 days following the transfer, each transferee or transferor applies for reenrollment in the use value appraisal program. “Development” also means the cutting of timber on property appraised under this chapter at use value in a



manner contrary to a forest or conservation management plan as provided for in subsection 3755(b) of this title during the remaining term of the plan, or contrary to the minimum acceptable standards for forest management if the plan has expired; or a change in the parcel or use of the parcel in violation of the conservation management standards established by the commissioner of forests, parks and recreation. The term “development” shall not include the construction, reconstruction, structural alteration, relocation, or enlargement of any building, road, or other structure for farming, logging, forestry, or conservation purposes, but shall include the subsequent commencement of a use of that building, road, or structure for other than farming, logging, or forestry purposes.

Sec. 41. 32 V.S.A. § 3753(b) is amended to read:

(b) The membership of the board shall consist of:

(1) The following persons or their designees:

\* \* \*

(E) ~~Dean of the college of natural resources, agriculture and life sciences of the University of Vermont.~~ [Deleted.]

\* \* \*

Sec. 42. 32 V.S.A. § 3755(b) is amended to read:

(b) Managed ~~forest land~~ forestland shall be eligible for use value appraisal under this subchapter only if:

(1) the land is subject to a forest management plan, or subject to a conservation management plan in the case of lands certified under 10 V.S.A. § 6306(b), which:

(A) is signed by the owner of a tract the parcel;

(B) which complies with subdivision 3752(9) of this title;

(C) is filed with and approved by the department of forests, parks and recreation; and

(D) ~~by October 1, which provides for continued conservation management or forest crop production on the tract parcel for at least ten years. During a period of use value appraisal under this subchapter, a conservation or forest management plan for at least ten years, including the 12 month period beginning April 1 of the year for which use value appraisal is sought, signed by the owner, shall be on file with the department in such a manner and in such form as is prescribed by the department. Upon the~~ An initial forest management plan or conservation management plan must be filed with the department of forests, parks and recreation no later than October 1 and shall be

effective for a ten-year period beginning the following April 1. Prior to expiration of a ~~ten-year~~ ten-year plan and no later than April 1 of the year in which the plan expires, the owner shall file a new conservation or forest management plan for ~~at least~~ the next succeeding ten years to remain in the program.

\* \* \*

\* \* \* Wastewater permit provisions \* \* \*

Sec. 43. 32 V.S.A. § 3752(5) is amended to read:

(5) “Development” means, for the purposes of determining whether a land use change tax is to be assessed under section 3757 of this chapter, the construction of any building, road or other structure, or any mining, excavation or landfill activity. “Development” also means the subdivision of a parcel of land into two or more parcels, regardless of whether a change in use actually occurs, where one or more of the resulting parcels contains less than 25 acres each; but if subdivision is solely the result of a transfer to one or more of a spouse, parent, grandparent, child, grandchild, niece, nephew, or sibling of the transferor, or to the surviving spouse of any of the foregoing, then “development” shall not apply to any portion of the newly created parcel or parcels which qualifies for enrollment and for which, within 30 days following the transfer, each transferee or transferor applies for reenrollment in the use value appraisal program. “Development” also means the cutting of timber on property appraised under this chapter at use value in a manner contrary to a forest or conservation management plan as provided for in subsection 3755(b) of this title during the remaining term of the plan, or contrary to the minimum acceptable standards for forest management if the plan has expired; or a change in the parcel or use of the parcel in violation of the conservation management standards established by the commissioner of forests, parks and recreation. Enrolled land is also considered “developed” under this section if a wastewater system permit has been issued for the land pursuant to 10 V.S.A § 1973 and the commissioner of the department of forest, parks, and recreation has certified to the director that (1) the permit is contrary to a forest or conservation management plan or the minimum acceptable standards for forest management; (2) use of the parcel would violate the conservation management standards; or (3) after consulting with the secretary of agriculture, the permit is not part of a farm operation. The commissioner of forests, parks and recreation may develop standards regarding circumstances under which land with wastewater system and potable water permits will not be certified to the director. The term “development” shall not include the construction, reconstruction, structural alteration, relocation, issuance of a wastewater system permit under 10 V.S.A § 1973 or enlargement of any building, road, or

other structure for farming, logging, forestry, or conservation purposes, but shall include the subsequent commencement of a use of that building, road, ~~or structure~~ or wastewater system permit for other than farming, logging, or forestry purposes.

Sec. 44. 32 V.S.A. § 3757 is amended to read:

§ 3757. LAND USE CHANGE TAX

(a) Land which has been classified as agricultural land or managed forest land pursuant to this chapter shall be subject to a land use change tax ~~on the earliest of either upon~~ the development of that land, as defined in section 3752 of this chapter, ~~or two years after the issuance of all permits legally required by a municipality for any action constituting development, or two years after the issuance of a wastewater system and potable water supply permit under 10 V.S.A. § 1973.~~ Said tax shall be at the rate of 20 percent of the full fair market value of the changed land determined without regard to the use value appraisal; or the tax shall be at the rate of 10 percent if the owner demonstrates to the satisfaction of the director that the parcel has been enrolled continuously more than 10 years. If changed land is a portion of a parcel, the fair market value of the changed land shall be the fair market value of the changed land prorated on the basis of acreage, divided by the common level of appraisal. Such fair market value shall be determined as of the date the land is no longer eligible for use value appraisal. This tax shall be in addition to the annual property tax imposed upon such property. Nothing in this section shall be construed to require payment of an additional land use change tax upon the subsequent development of the same land, nor shall it be construed to require payment of a land use change tax merely because previously eligible land becomes ineligible, provided no development of the land has occurred.

\* \* \*

(d) The land use change tax shall be due and payable by the owner 30 days after the tax notice is mailed to the taxpayer unless, in the case of land use change tax due with respect to development occurring as a result of the issuance of a wastewater system permit, the landowner enters into a payment agreement with the commissioner of taxes. The tax shall be paid to the commissioner for deposit into the general fund. The commissioner shall issue a form to the assessing officials which shall provide for a description of the land developed, the amount of tax payable, and the fair market value of the land at the time of development or withdrawal from use value appraisal. The owner shall fill out the form and shall sign it under the penalty of perjury. After receipt of payment, the commissioner shall furnish the owner with one copy, shall retain one copy and shall forward one copy to the local assessing officials and one to the register of deeds of the municipality in which the land

is located. Thereafter, the land which has been developed shall be appraised and listed at its full fair market value in accordance with the provisions of chapter 121 of this title.

\* \* \*

Sec. 45. 32 V.S.A. § 3758(d) is amended to read:

(d) Any owner who is aggrieved by a decision of the department of forests, parks and recreation concerning the filing of an adverse inspection report or denial of approval of a management plan or certification to the director with respect to land for which a wastewater permit is issued may appeal to the commissioner of the department of forests, parks and recreation. An appeal of this decision of the commissioner may be taken to the superior court in the same manner and under the same procedures as an appeal from a decision of a board of civil authority, as set forth in chapter 131, subchapter 2 of chapter 131 of this title.

Sec. 46. REPEAL

Sec. 13h of No. 45 of the Acts of 2011 (tracking wastewater permits) is repealed.

\* \* \* Sales and Use Tax Provisions \* \* \*

Sec. 47. 24 V.S.A. § 138(g) is added to read:

(g) If the legislative body of a municipality by a majority vote recommends, or by petition of ten percent of the voters of a municipality recommends, the voters of a municipality may, at an annual or special meeting warned for that purpose, by a majority vote of those present and voting, rescind any or all of the local option taxes assessed under subsection (b) of this section.

Sec. 48. 32 V.S.A. § 9741(48) is amended to read:

(48) Sales of tangible personal property sold by an auctioneer licensed under 26 V.S.A. chapter 89 of Title 26, including any buyer's premium charged by the auctioneer, that are conducted on the premises of the owner of the property, provided that no other person's property is sold on the auction premises and provided that the property was obtained by the owner, through purchase or otherwise, for his or her own use.

Sec. 49. 32 V.S.A. § 9771 is amended to read:

§ 9771. IMPOSITION OF SALES TAX

Except as otherwise provided in this chapter, there is imposed a tax on retail sales in the state. The tax shall be paid at the rate of six percent of the sales price charged for but in no case shall any one transaction be taxed under more than one of the following:

\* \* \*

(8) Specified digital products transferred electronically to an end user regardless of whether for permanent use or less than permanent use and regardless of whether or not conditioned upon continued payment from the purchaser.

Sec. 50. 32 V.S.A. § 9817(a) is amended to read:

(a) Any aggrieved taxpayer may, within 30 days after any decision, order, finding, assessment or action of the commissioner made under this chapter, appeal to the Washington superior court or the superior court of the county in which the taxpayer resides or has a place of business. The appellant shall give security, approved by the commissioner, conditioned to pay the tax levied, if it remains unpaid, with interest and costs, as set forth in subsection (c) of this section.

Sec. 51. TEMPORARY MORATORIUM ON ENFORCEMENT OF SALES TAX ON PREWRITTEN SOFTWARE ACCESSED REMOTELY

Notwithstanding the imposition of sales and use tax on prewritten computer software by 32 V.S.A. chapter 233, the department of taxes shall not assess tax on charges for remotely accessed software made after December 31, 2006 and before January 1, 2014, and taxes paid on such charges shall be refunded upon request if within the statute of limitations and documented to the satisfaction of the commissioner. "Charges for remotely accessed software" means charges for the right to access and use prewritten software run on underlying infrastructure that is not managed or controlled by the consumer or a related company. Enforcement of the sales and use tax imposed on the purchase of specified digital products pursuant to 32 V.S.A. § 9771(8) is not affected by this section.

Sec. 52. STUDY COMMITTEE ON CLOUD COMPUTING

(a) Creation of committee. There is created a cloud computing study committee to examine issues related to the taxation of software as a service.

(b) Membership. The committee shall be composed of five members. Two members of the committee shall be members of the general assembly. The committee on committees of the senate shall appoint one member of the senate and the speaker of the house shall appoint one member of the house. The committee on committees shall appoint a chair of the study committee who shall be a committee member who is also a member of the general assembly. Three members of the committee shall be as follows:

(1) the governor shall appoint a member representing consumers of software and software services;

(2) the secretary of administration or his or her designee;

(3) the commissioner of taxes or his or her designee;

(c) Powers and duties.

(1) The committee established by this section shall study the taxation of software as a service, including the character of sales transactions involving software accessed remotely, the sourcing of such sales, and experience of other jurisdictions in taxing software as a service.

(2) For purposes of its study of these issues, the committee shall have the assistance of the office of legislative council, the joint fiscal office, and the department of taxes.

(d) Report. By January 15, 2013, the committee shall report to the senate committee on finance and the house committee on ways and means on its findings and any recommendations for legislative action.

(e) Reimbursement. For attendance at meetings during adjournment of the general assembly, legislative members of the committee shall be entitled to compensation and reimbursement for expenses as provided in 2 V.S.A. § 406; and other members of the committee who are not employees of the state of Vermont shall be reimbursed at the per diem rate set in 32 V.S.A. § 1010.

#### Sec. 53. SECONDARY PACKAGING

The commissioner of taxes shall study the taxation and exemption of secondary packaging machinery and no later than January 15, 2013 shall report to the senate committee on finance and the house committee on ways and means on its findings. The commissioner shall specifically examine and report on the various types of secondary machinery typically used in manufacturing, the use of secondary packaging machinery in Vermont, the different options for exempting secondary packaging machinery that are administratively feasible, and how other states tax or exempt secondary packaging machinery.

#### Sec. 54. SALES AND USE TAX REBATES FOR MOBILE HOMES

(a) Notwithstanding the provisions of 32 V.S.A. chapters 231 and 233 and 24 V.S.A. § 138, sales and use tax, local option sales tax, or property transfer tax shall not apply to sales to individuals of mobile homes purchased after April 1, 2011 but before July 1, 2012 to replace a mobile home that was damaged or destroyed as a result of flooding and storm damage that occurred as a result of a federally declared disaster in Vermont in 2011.

(b) Any resident of Vermont who purchased a mobile home that meets the criteria under subsection (a) of this section shall be entitled to a reimbursement

in the amount of any sales and use tax, local option sales tax, or property transfer tax paid.

(c) The department of taxes may establish standards and procedures necessary to implement this section. The department of taxes shall reimburse taxpayers that qualify under subsection (a) of this section.

\* \* \* Electrical energy generating tax provisions \* \* \*

Sec. 55. REPEAL

32 V.S.A. § 5402a (electric generating plant education property tax) is repealed.

Sec. 56. 32 V.S.A § 8661 is amended to read:

§ 8661. TAX LEVY

(a) There is hereby assessed ~~each year~~ upon electric generating plants constructed in the state subsequent to July 1, 1965, and having a name plate generating capacity of 200,000 kilowatts, or more, a state tax ~~in accordance with the following table:~~ at the rate of \$0.0025 per kWh of electrical energy produced.

<del>If megawatt hour production is:</del>	<del>tax is:</del>
<del>Less than 2,300,000 megawatt hours</del>	<del>\$2.0 million</del>
<del>2,300,000 to 3,800,000 megawatt hours</del>	<del>\$2.0 million plus \$0.40 per megawatt hour over 2,300,000</del>
<del>3,800,001 to 4,200,000 megawatt hours</del>	<del>\$2.6 million</del>
<del>Over 4,200,000 megawatt hours</del>	<del>\$2.6 million plus \$0.40 per megawatt hour over 4,200,000</del>

~~For purposes of this section, “megawatt hour production” means the average of net production for sale in the three most recent preceding calendar years. The tax imposed by this section shall be paid to the commissioner in equal quarterly installments on the electrical energy generated in the prior quarter on or before the 25th day of the calendar month succeeding the quarter ending on the last day of March, June, September, and December by the person or corporation then owning or operating such electric generating plant.~~

~~(b) If an entity subject to this tax generates no electricity during the tax year due to termination or expiration of a necessary license, or due to permanent cessation of operations, no tax shall be due for that year.~~

(e) A person or corporation failing to make returns or pay the tax imposed by this section within the time required shall be subject to and governed by the provisions of sections 3202, ~~3203, 5868,~~ and ~~5873~~ 3203 of this title.

Sec. 57. TRANSITION

An electric generating plant shall receive a credit against the tax under 32 V.S.A. § 8661 for any sums it has irrevocably paid to the state after March 21, 2012 under agreements for operation under a certificate of public good or pending a public service board proceeding for the issuance of a certificate of public good. Any credit under this section shall be applied to any current liability of the taxpayer, and if the amount of the credit exceeds the amount of the current liability, the credit may be carried forward to the next return period.

\* \* \* Meals and rooms tax provisions \* \* \*

Sec. 58. 32 V.S.A. § 9202(3) is amended to read:

(3) “Hotel” means an establishment which holds itself out to the public by offering sleeping accommodations for a consideration, whether or not the major portion of its operating receipts is derived therefrom and whether or not the sleeping accommodations are offered to the public by the owner or proprietor or lessee, sublessee, mortgagee, licensee, or any other person or the agent of any of the foregoing. The term includes but is not limited to; inns, motels, tourist homes and cabins, ski dormitories, ski lodges, lodging homes, rooming houses, furnished-room houses, boarding houses, and private clubs, as well as any building or structure or part thereof to the extent to which any such building or structure or part thereof in fact is held out to the public by offering sleeping accommodations for a consideration. The term shall not include the following:

(A) a hospital, licensed under 18 V.S.A. chapter 43 ~~of Title 18,~~ or a ~~sanatorium, convalescent home, nursing home, or a home for the aged residential care home, assisted living residence, home for the terminally ill, therapeutic community residence as defined pursuant to 33 V.S.A. chapter 71, or independent living facility;~~

\* \* \*

Sec. 59. 32 V.S.A. § 9202(10)(D)(ii)(IV) is amended to read:

(IV) prepared and served by the employees ~~thereof and served in,~~ volunteers, or contractors of any hospital licensed under 18 V.S.A. chapter



43 of Title 18, or sanatorium, convalescent home, nursing home or home for the aged, residential care home, assisted living residence, home for the terminally ill, therapeutic community residence as defined pursuant to 33 V.S.A. chapter 71, or independent living facility; provided, however, that "contractor" under this subsection excludes:

(aa) persons or entities that lease space from one of these organizations, and

(bb) means provided by a restaurant as defined by subdivision (15) of this section when furnished to residents of a nursing home, residential care home, assisted living residence, home for the terminally ill, therapeutic community residence as defined pursuant to 33 V.S.A. chapter 71, or independent living facility, when not otherwise available generally to residents of the facility;

Sec. 60. 32 V.S.A. § 9202(18) is added to read:

(18) "Independent living facility" means a congregate living environment, however named, for profit or otherwise, that meets the definitions of housing complexes for older persons as enumerated in 9 V.S.A. § 4503(b) and (c), or housing programs designed to meet the needs of individuals with a handicap or disability as defined in 9 V.S.A. § 4501(2) and (3).

Sec. 61. EFFECTIVE DATES

This act shall take effect upon passage, except:

(1) Secs. 1 (conforming petroleum cleanup fee base to fuel gross receipts tax base), 2 (petroleum cleanup fund outreach), 6 (extraordinary relief), 8 (Irene checkoff), 12 (reporting requirements), 20 (downtown tax credit for disaster expenses), 21 (limitation on downtown tax credits for fiscal year 2013), and 21a (low income property transfer tax exemption) of this act shall take effect on July 1, 2012.

(2) Secs. 7 (link to Internal Revenue Code) of this act shall apply to taxable years beginning on and after January 1, 2011, and Sec. 10 (estate tax link to Internal Revenue Code) shall apply to decedents on or after January 1, 2011.

(3) Sec. 14 (increasing minimum tax on certain C corporations) of this act shall apply to taxable years beginning on and after January 1, 2012.

(4) Secs. 23 (health savings accounts) 24, 25, and 26 (moving final date for filing renter rebate or property tax adjustment claims), and 27 (renter rebate cap) of this act shall take effect on January 1, 2013 and apply to property tax adjustments and renter rebate claims for 2013 and after.

(5) Secs. 36 (education base rates) and 37 (education base amount) shall take effect on passage and apply to education property tax rates and the base education amount for fiscal year 2013.

(6) Secs. 43 through 46 (wastewater permits) shall take effect retroactively on July 1, 2011.

(7) Sec. 48 (auction sale exemption) of this act is effective retroactively to May 24, 2011.

(8) Secs. 55 (repeal), 56 (electrical generation tax), and 57 (transition) shall take effect on July 1, 2012 and apply to power generated after that date.

(9) Secs. 58 (rooms tax definitions), 59 (meals tax definitions), and 60 (definition of independent living facility) shall take effect on passage and apply retroactively to July 1, 2012.

And that the bill ought to pass in concurrence with such proposal of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43.

Thereupon, pending the question, Shall the Senate propose to the House that the bill be amended as proposed by the Committee on Finance?, Senator Cummings moved to amend the proposal of amendment of the Committee on Finance, as follows:

By adding a new section to be numbered Sec. 60a. to read as follows:

Sec. 60a. 32 V.S.A. § 8557(a) is amended to read:

(a) Sums for the expenses of the operation of training facilities and curriculum of the Vermont fire service training council not to exceed ~~\$800,000.00~~ \$950,000.00 per year shall be paid to the fire safety special fund created by 20 V.S.A. § 3157 by insurance companies, including surplus lines companies, writing fire, homeowners multiple peril, allied lines, farm owners multiple peril, commercial multiple peril (fire and allied lines), private passenger and commercial auto, and inland marine policies on property and persons situated within the state of Vermont within 30 days after notice from the commissioner of banking, insurance, securities, and health care administration of such estimated expenses. Captive companies shall be excluded from the effect of this section. The commissioner shall annually, on or before July 1, apportion such charges among all such companies and shall assess them for the same on a fair and reasonable basis as a percentage of their gross direct written premiums on such insurance written during the second prior calendar year on property situated in the state. An amount not less than \$100,000.00 shall be specifically allocated to the provision of what are now or

formerly referred to as Level I, units I, II, and III (basic) courses for entry level firefighters. An amount not less than \$150,000.00 shall be specifically allocated to the emergency medical services special fund established under 18 V.S.A. § 908 for the provision of training programs for emergency medical technicians, advanced emergency medical technicians, and paramedics. An entity seeking funds allocated to the emergency medical services fund shall present a plan to the joint fiscal committee which shall review the plan prior to release of any funds.

Which was agreed to.

Thereupon, pending the question, Shall the Senate propose to the House that the bill be amended as proposed by the Committee on Finance?, Senator Illuzzi moved to amend the proposal of amendment of the Committee on Finance, as amended, as follows:

First: By adding a new section to be numbered Sec. 54a to read as follows:

Sec. 54a. 32 V.S.A. § 9741(2) is amended to read:

(2) Drugs intended for human use, durable medical equipment, mobility enhancing equipment, and prosthetic devices and supplies, including blood, blood plasma, insulin, and medical oxygen, used in treatment intended to alleviate human suffering or to correct, in whole or in part, human physical disabilities; provided however, that toothbrushes, floss, and similar items of nominal value given by dentists and hygienists to patients during treatment are supplies used in treatment to alleviate human suffering or to correct, in whole or part, human physical disabilities and are exempt under this subdivision.

Second: In Sec. 61(1) before “21a” by striking “and”, and after “(low income property transfer tax exemption)” by adding the following: , and 54a (dental equipment)

Which was agreed to on a roll call, Yeas 21, Nays 8.

Senator Illuzzi having demanded the yeas and nays, they were taken and are as follows:

#### **Roll Call**

**Those Senators who voted in the affirmative were:** Ayer, Baruth, Benning, Brock, Campbell, Carris, Doyle, Flory, Galbraith, Giard, Illuzzi, Kitchel, Kittell, Lyons, Mazza, Mullin, Sears, Snelling, Starr, Westman, White.

**Those Senators who voted in the negative were:** Ashe, Cummings, Fox, MacDonald, McCormack, Miller, Nitka, Pollina.

**The Senator absent and not voting was:** Hartwell.

Thereupon, pending the question, Shall the Senate propose to the House that the bill be amended as proposed by the Committee on Finance, as amended?, Senator Illuzzi moved to amend the proposal of amendment of the Committee on Finance, as amended, as follows:

By striking out Secs. 51 (cloud computing moratorium) and 52 (cloud computing study committee) in their entirety and by adding new Secs. 51 and 52 to read as follows:

**Sec. 51. SALES TAX ON PREWRITTEN SOFTWARE DOES NOT APPLY TO REMOTELY ACCESSED SOFTWARE**

The general assembly finds that assessments for the sale of remotely accessed software were based on a technical bulletin, No. TB-54 (originally issued 9/13/10), issued by the department of taxes. The imposition of sales and use tax on prewritten computer software by 32 V.S.A. chapter 233 shall not be construed to apply to charges for remotely accessed software made after December 31, 2006. Taxes paid on such charges shall be refunded upon request if within the statute of limitations and documented to the satisfaction of the commissioner. "Charges for remotely accessed software" means charges for the right to access and use prewritten software run on underlying infrastructure that is not managed or controlled by the consumer. Enforcement of the sales and use tax imposed on the purchase of specified digital products pursuant to 32 V.S.A. § 9771(8) is not affected by this section.

Sec. 52. [Deleted.]

Senator Galbraith moved to substitute a proposal of amendment for the proposal of amendment of Senator Illuzzi, as follows:

In Sec. 51 (cloud moratorium) by striking out the date "December 31, 2006" and inserting in lieu thereof the date July 1, 2012

Which was disagreed to on a roll call, Yeas 2, Nays 27.

Senator Galbraith having demanded the yeas and nays, they were taken and are as follows:

**Roll Call**

**Those Senators who voted in the affirmative were:** Galbraith, Sears.

**Those Senators who voted in the negative were:** Ashe, Ayer, Baruth, Benning, Brock, Campbell, Carris, Cummings, Doyle, Flory, Fox, Giard, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Mullin, Nitka, Pollina, Snelling, Starr, Westman, White.

**The Senator absent and not voting was:** Hartwell.

Thereupon, the pending question, Shall the Senate amend the Committee on Finance proposal of amendment as proposed by Senator Illuzzi?,

Which was agreed to on a roll call, Yeas 15, Nays 14.

Senator Illuzzi having demanded the yeas and nays, they were taken and are as follows:

#### **Roll Call**

**Those Senators who voted in the affirmative were:** Benning, Brock, Doyle, Flory, Galbraith, Giard, Illuzzi, Kitchel, Kittell, Mazza, Miller, Mullin, Nitka, Snelling, Starr.

**Those Senators who voted in the negative were:** Ashe, Ayer, Baruth, Campbell, Carris, Cummings, Fox, Lyons, MacDonald, McCormack, Pollina, Sears, Westman, White.

**The Senator absent and not voting was:** Hartwell.

Thereupon, pending the question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Finance, as amended?, Senator Kitchel, moved that the bill be committed to the Committee on Appropriations.

Thereupon, pending the question, Senator Campbell moved that the Senate recess until two o'clock and forty-five minutes.

#### **Called to Order**

The Senate was called to order by the President.

#### **Consideration Resumed; Bill Amended; Third Reading Ordered**

#### **H. 782.**

Consideration was resumed on House bill entitled:

An act relating to miscellaneous tax changes for 2012.

Thereupon, the pending question, Shall the bill be committed to the Committee on Appropriations?, Senator Kitchel requested and was granted leave to withdraw the motion.

Thereupon, the pending question, Shall the Senate propose to the House to amend the bill as proposed by the Committee on Finance, as amended?, was agreed to on a roll call, Yeas 28, Nays 1.

Senator Brock having demanded the yeas and nays, they were taken and are as follows:

### Roll Call

**Those Senators who voted in the affirmative were:** Ashe, Ayer, Baruth, Benning, Brock, Campbell, Carris, Cummings, Doyle, Fox, \*Galbraith, Giard, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Mullin, Nitka, Pollina, Sears, Snelling, Starr, Westman, White.

**The Senator who voted in the negative was:** Flory.

**The Senator absent and not voting was:** Hartwell.

Senator Illuzzi and Campbell, moved that the Senate proposal of amendment be amended by striking out Sec. 52 in its entirety and inserting in lieu thereof:

#### Sec. 52. STUDY COMMITTEE ON CLOUD COMPUTING

(a) Creation of committee. There is created a cloud computing study committee to examine issues related to the taxation of software as a service.

(b) Membership. The committee shall be composed of seven members. Four members of the committee shall be members of the general assembly. The committee on committees of the senate shall appoint two members of the senate and the speaker of the house shall appoint two members of the house. The committee on committees shall appoint a chair of the study committee who shall be a committee member who is also a member of the general assembly. Three members of the committee shall be as follows:

(1) the governor shall appoint a member representing consumers of software and software services;

(2) the secretary of administration or his or her designee;

(3) the commissioner of taxes or his or her designee;

(c) Powers and duties.

(1) The committee established by this section shall study the taxation of software as a service, including the character of sales transactions involving software accessed remotely, the sourcing of such sales, and experience of other jurisdictions in taxing software as a service.

(2) For purposes of its study of these issues, the committee shall have the assistance of the office of legislative council, the joint fiscal office, and the department of taxes.

(d) Report. By January 15, 2013, the committee shall report to the senate committee on finance and the house committee on ways and means on its findings and any recommendations for legislative action.

(e) Reimbursement. For attendance at meetings during adjournment of the general assembly, legislative members of the committee shall be entitled to compensation and reimbursement for expenses as provided in 2 V.S.A. § 406; and other members of the committee who are not employees of the state of Vermont shall be reimbursed at the per diem rate set in 32 V.S.A. § 1010.

Which was agreed to.

\*\*\*\*During debate of the measure, Senator McCormack addressed the Chair and on motion of Senator Westman, his remarks were ordered enter in the Journal, and are as follows:

“Mr. President:

“It’s no secret that there has been some ill will between the Legislature and Entergy, and it’s important that the state exercise the moral and legislative restraint to not misuse our taxing power to punish. In that regard the Senate know that the Finance Committee took testimony from Joint Fiscal and from the Attorney General’s Office and I put the question of whether the generation tax is a legitimate revenue raising measure as opposed to a hostile or punitive measure. We received assurances that the tax is indeed a revenue raising measure and defensible as such. The committee presents it to the Senate purely as a revenue raising measure and a Senate vote to pass it will be done purely as a revenue raising measure.?”

Senator Galbraith, moved that the Senate proposal of amendment be amended as follows:

First: By adding a new section to be numbered Sec. 46a to read as follows:

Sec. 46a. 32 V.S.A. § 3752(7) is amended to read:

(7) "Farmer" means a person:

(A) who earns at least one-half of the farmer's annual gross income from the business of farming as that term is defined in Regulation 1.175-3 issued under the Internal Revenue Code of 1986; or

(B)(i) who produces farm crops that are processed in a farm facility situated on land enrolled by the farmer in a use value appraisal program or on a housesite adjoining the enrolled land;

(ii) whose gross income from the sale of the processed farm products pursuant to subdivision (i) of this subdivision (B), when added to other gross income from the business of farming as used in subdivision (A) of

this subdivision (7), equals at least one-half of the farmer's annual gross income; and

(iii) who produces on the farm a minimum of 75 percent of the farm crops processed in the farm facility;

(C) The agency of agriculture, food and markets shall assist the director in making determinations of eligibility pursuant to subdivision (B) of this subdivision (7);

(D) who is in the business of breeding horses and earns at least one-half of his or her annual gross income from the business of breeding horses.

Second: By adding a new subdivision (10) in Sec. 61 (effective dates) to read as follows:

(10) Sec. 46a (definition of farmer) shall take effect retroactively on January 1, 2009.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as proposed by Senator Galbraith?, Senator Galbraith requested and was granted leave to withdraw the proposal of amendment.

Thereupon, third reading of the bill was ordered.

### **Rules Suspended; Third Reading Ordered**

#### **H. 794.**

Appearing on the Calendar for notice, on motion of Senator Campbell, the rules were suspended and Senate bill entitled:

An act relating to the management of search and rescue operations.

Was taken up for immediate consideration.

Senator Ashe, for the Committee on Economic Development, Housing and General Affairs, to which was referred House bill entitled:

An act relating to the management of search and rescue operations.

Reported recommending 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. FINDINGS

The general assembly finds:

(1) Several recent cases involving the search and rescue of persons lost in Vermont's outdoor recreation areas, including the tragic death of Levi Duclos on January 9, 2012 as he was hiking on the Emily Proctor Trail in



Ripton, have raised questions concerning whether supervision of backcountry search and rescue operations should be maintained by the department of public safety or shared with or transferred to another governmental entity and whether regional protocols should be put into place to allow for a local or regional response utilizing a combination of qualified professional and qualified volunteer searchers and rescuers.

(2) Under current law and practice, the Vermont state police division of the department of public safety has primary responsibility for finding lost hikers and other missing people in areas of the state which do not have municipal police departments and has the authority to call out qualified professional and qualified volunteer services. This duty was assigned when the Vermont state police was first created in 1946 and has not changed since that time. According to Howard Paul, a public information officer and member of the board of directors of the National Association for Search and Rescue, Vermont is one of only five states that require their state police to find and rescue people who are lost or missing outdoors.

(3) In other states in which a significant amount of outdoor recreational activity occurs, such as New Hampshire and Maine, state fish and game agencies are in charge of finding lost outdoor recreationalists. Most eastern states turn to park rangers and fish and game wardens for search and rescue.

(4) Many states collaborate with nonprofit organizations to aid in search and rescue. For example, the Maine Warden Service is in charge of search and rescue throughout that state, and it relies on the Maine Association for Search and Rescue, which is composed of approximately 15 approved member organizations.

(5) Vermont has an extensive number of first responders and emergency service personnel with specific training and experience conducting outdoor search and rescue operations. The Lincoln Fire Department, for example, has significant search and rescue experience, well-established strategies for conducting such operations, and the ability to have a team on the ground in sometimes 30 minutes or less on nights and weekends. Despite these resources, only four civilian organizations are approved by the department of public safety to provide search and rescue assistance in Vermont.

(6) In light of Vermont's minority status in charging the state police with responsibility for search and rescue of lost hikers and outdoor recreationalists and in light of the department's recent challenges in fulfilling this responsibility, it is an appropriate time to consider whether some other state entity, working with Vermont's extensive volunteer community, should assume responsibility for outdoor search and rescue operations.

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Sec. 2. BACKCOUNTRY SEARCH AND RESCUE STUDY COMMITTEE

(a) Creation of committee. There is created a backcountry search and rescue study committee to determine whether the department of public safety or a different state agency should have lead or coauthority for supervising search and rescue operations for missing persons in Vermont's backcountry and outdoor recreational areas and to recommend an appropriate organizational structure to manage Vermont's various search and rescue resources. As used in the section, "backcountry search and rescue" means the search for and provision of aid to people who are lost or stranded in the outdoors on Vermont's land or inland waterways.

(b) Membership. The backcountry search and rescue study committee shall be composed of four members. The members of the committee shall be as follows:

(1) Two members of the house appointed by the speaker.

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

(c) For purposes of its study, the committee shall consult with and seek testimony from interested parties, including the following individuals and entities or their designees:

(1) The commissioner of public safety.

(2) The commissioner of fish and wildlife.

(3) The Vermont League of Cities and Towns.

(4) Stowe Mountain Rescue.

(5) Colchester Technical Rescue.

(6) A certified first responder with search and rescue experience.

(7) The Professional Firefighters of Vermont.

(8) A member of a volunteer fire department with search and rescue experience designated by the president of the Vermont State Firefighters Association.

(9) A sheriff designated by the department of sheriffs and state's attorneys.

(d) Powers and duties. The committee shall study whether the department of public safety or a different state agency should be responsible for supervising search and rescue operations for missing persons in Vermont's backcountry and outdoor recreational areas. The committee's study shall include:

(1) reviewing the existing method and responsibility for conducting backcountry search and rescue operations in Vermont and identifying the advantages and disadvantages of the current system;

(2) considering models in other states for supervision of backcountry search and rescue operations, including the New Hampshire approach of providing authority to the New Hampshire fish and game department;

(3) evaluating whether backcountry search and rescue operations would be conducted in a more timely and efficient manner if the authority for conducting such operations were held by one or more state or nongovernmental entities other than the department of public safety or whether there should be a shared or regional approach depending on the location of the search;

(4) considering and evaluating different organizational structures to determine how to most effectively manage Vermont's backcountry search and rescue processes and resources;

(5) considering whether minimum qualifications should be set for participation in backcountry search and rescue operations and whether backcountry search and rescue responders who are not state employees should be provided with insurance coverage;

(6) considering the feasibility of establishing an online database of missing persons that would provide automatic notice to first responders;

(7) developing methods of financing search and rescue operations, including consideration of methods used in other states such as:

(A) establishing an outdoor recreation search and rescue card available for purchase by users of outdoor recreation resources on a voluntary basis to help reimburse the expenses of search and rescue missions;

(B) imposing fees on recreational and outdoor licenses and permits; and

(C) permitting recovery of expenses from any person whose negligent conduct required a search and rescue response and, if so, who should bring such an action and who should be reimbursed; and

(8) proposing any statutory changes that the committee identifies as necessary to improve the conduct and supervision of backcountry search and rescue activities in Vermont.

(e) Report. The committee shall report its findings and recommendations, together with draft legislation if any legislative action is recommended, to the general assembly on or before January 15, 2013.

(f) The legislative council shall provide administrative and drafting support to the committee.

And that the bill ought to pass in concurrence with such proposal of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the proposal of amendment was agreed to, and third reading of the bill was ordered.

**Rules Suspended; Bill Passed in Concurrence with Proposal of Amendment; Bill Messaged**

**H. 782.**

Pending entry on the Calendar for action tomorrow, on motion of Senator Campbell, the rules were suspended and House bill entitled:

An act relating to miscellaneous tax changes for 2012.

Was placed on all remaining stages of its passage in concurrence with proposal of amendment forthwith.

Thereupon, the bill was read the third time and passed in concurrence with proposals of amendment.

Thereupon, on motion of Senator Campbell, the rules were suspended and the bill was ordered messaged to the House forthwith.

**Report of Committee of Conference Accepted and Adopted on the Part of the Senate**

**S. 37.**

Senator Sears, for the Committee of Conference, submitted the following report:

To the Senate and House of Representatives:

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

An act relating to expungement of a nonviolent misdemeanor criminal history record.

Respectfully reports that it has met and considered the same and recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. chapter 230 is added to read:

CHAPTER 230. EXPUNGEMENT AND SEALING OF CRIMINAL  
HISTORY RECORDS

§ 7601. DEFINITIONS

As used in this chapter:

(1) “Court” means the criminal division of the superior court.

(2) “Criminal history record” means all information documenting an individual’s contact with the criminal justice system, including data regarding identification, arrest or citation, arraignment, judicial disposition, custody, and supervision.

(3) “Predicate offense” means a criminal offense that can be used to enhance a sentence levied for a later conviction, and includes operating a vehicle under the influence of intoxicating liquor or other substance in violation of 23 V.S.A. § 1201, domestic assault in violation of section 1042 of this title, and stalking in violation of section 1062 of this title.

(4) “Qualifying crime” means:

(A) a misdemeanor offense which is not a listed crime as defined in subdivision 5301(7) of this title, an offense involving sexual exploitation of children in violation of chapter 64 of this title, an offense involving violation of a protection order in violation of section 1030 of this title, a prohibited act as defined in section 2632 of this title, or a predicate offense;

(B) a violation of subsection 3701(a) of this title related to criminal mischief; or

(C) a violation of section 2501 of this title related to grand larceny.

§ 7602. EXPUNGEMENT AND SEALING OF RECORD,  
POSTCONVICTION; PROCEDURE

(a)(1) A person who was convicted of a qualifying crime or qualifying crimes arising out of the same incident or occurrence may file a petition with the court requesting expungement or sealing of the criminal history record related to the conviction. The state’s attorney or attorney general shall be the respondent in the matter.

(2) The court shall grant the petition without hearing if the petitioner and the respondent stipulate to the granting of the petition. The respondent shall file the stipulation with the court, and the court shall issue the petitioner a certificate and provide notice of the order in accordance with this section.

(b)(1) The court shall grant the petition and order that the criminal history record be expunged pursuant to section 7606 of this title if the following conditions are met:

(A) At least 10 years have elapsed since the date on which the person successfully completed the terms and conditions of the sentence for the conviction, or if the person has successfully completed the terms and conditions of an indeterminate term of probation that commenced at least 10 years previously.

(B) The person has not been convicted of a crime arising out of a new incident or occurrence since the person was convicted for the qualifying crime.

(C) Any restitution ordered by the court has been paid in full.

(D) The court finds that expungement of the criminal history record serves the interest of justice.

(2) The court shall grant the petition and order that all or part of the criminal history record be sealed pursuant to section 7607 of this title if the conditions of subdivisions (1)(A), (B), and (C) of this subsection are met and the court finds that:

(A) sealing the criminal history record better serves the interest of justice than expungement; and

(B) the person committed the qualifying crime after reaching 19 years of age.

(c)(1) The court shall grant the petition and order that the criminal history record be expunged pursuant to section 7606 of this title if the following conditions are met:

(A) At least 20 years have elapsed since the date on which the person successfully completed the terms and conditions of the sentence for the conviction.

(B) The person has not been convicted of a felony arising out of a new incident or occurrence since the person was convicted of the qualifying crime.

(C) The person has not been convicted of a misdemeanor during the past 15 years.

(D) Any restitution ordered by the court for any crime of which the person has been convicted has been paid in full.

(E) After considering the particular nature of any subsequent offense, the court finds that expungement of the criminal history record for the qualifying crime serves the interest of justice.

(2) The court shall grant the petition and order that all or part of the criminal history record be sealed pursuant to section 7607 of this title if the conditions of subdivisions (1)(A), (B), (C), and (D) of this subsection are met and the court finds that:

(A) sealing the criminal history record better serves the interest of justice than expungement; and

(B) the person committed the qualifying crime after reaching 19 years of age.

§ 7603. EXPUNGEMENT AND SEALING OF RECORD, NO CONVICTION; PROCEDURE

(a) A person who was cited or arrested for a qualifying crime or qualifying crimes arising out of the same incident or occurrence may file a petition with the court requesting expungement or sealing of the criminal history record related to the citation or arrest if one of the following conditions is met:

(1) No criminal charge is filed by the state and the statute of limitations has expired.

(2) The court does not make a determination of probable cause at the time of arraignment or dismisses the charge at the time of arraignment and the statute of limitations has expired.

(3) The charge is dismissed before trial:

(A) without prejudice and the statute of limitations has expired; or

(B) with prejudice.

(4) The defendant and the respondent stipulate that the court may grant the petition to expunge and seal the record.

(b) The state's attorney or attorney general shall be the respondent in the matter. The petitioner and the respondent shall be the only parties in the matter.

(c) The court shall grant the petition and order that the criminal history record be expunged pursuant to section 7606 of this title if it finds that expungement of the criminal history record serves the interest of justice.

(d) The court shall grant the petition and order that all or part of the criminal history record be sealed pursuant to section 7607 of this title if:

(1) The court finds that sealing the criminal history record better serves the interest of justice than expungement.

(2) The person committed the qualifying crime after reaching 19 years of age.

§ 7604. NEW CHARGE

If a person is charged with a criminal offense after he or she has filed a petition for expungement pursuant to this chapter, the court shall not act on the petition until disposition of the new charge.

§ 7605. DENIAL OF PETITION

If a petition for expungement is denied by the court pursuant to this chapter, no further petition shall be brought for at least five years.

§ 7606. EFFECT OF EXPUNGEMENT

(a) Upon entry of an expungement order, the person whose record is expunged shall be treated in all respects as if he or she had never been arrested, convicted, or sentenced for the offense. The court shall issue the person a certificate stating that such person's behavior after the conviction has warranted the issuance of the order and that its effect is to annul the record of arrest, conviction, and sentence. The court shall provide notice of the expungement to the respondent, Vermont crime information center (VCIC), the arresting agency, and any other entity that may have a record related to the order to expunge. The VCIC shall provide notice of the expungement to the Federal Bureau of Investigation's National Crime Information Center.

(b) In any application for employment, license, or civil right or privilege or in an appearance as a witness in any proceeding or hearing, a person may be required to answer questions about a previous criminal history record only with respect to arrests or convictions that have not been expunged.

(c) Nothing in this section shall affect any right of the person whose record has been expunged to rely on it as a bar to any subsequent proceedings for the same offense.

(d)(1) The court may keep a special index of cases that have been expunged together with the expungement order and the certificate issued pursuant to section 7602 or 7603 of this title. The index shall list only the name of the person convicted of the offense, his or her date of birth, the docket number, and the criminal offense that was the subject of the expungement.

(2) The special index and related documents specified in subdivision (1) of this subsection shall be confidential and shall be physically and



electronically segregated in a manner that ensures confidentiality and that limits access to authorized persons.

(3) Inspection of the expungement order and the certificate may be permitted only upon petition by the person who is the subject of the case or by the court if the court finds that inspection of the documents is necessary to serve the interest of justice. The administrative judge may permit special access to the index and the documents for research purposes pursuant to the rules for public access to court records.

(4) All other court documents in a case that are subject to an expungement order shall be destroyed.

(5) The court administrator shall establish policies for implementing this subsection.

(e) Upon receiving an inquiry from any person regarding an expunged record, an entity shall respond that "NO RECORD EXISTS."

#### § 7607. EFFECT OF SEALING

(a) Upon entry of an order to seal, the person whose record is sealed shall be treated in all respects as if he or she had never been arrested, convicted, or sentenced for the offense. The court shall issue the person a certificate stating that such person's behavior after the conviction has warranted the issuance of the order and that its effect is to annul the record of arrest, conviction, and sentence. The court shall provide notice of the sealing to the respondent, Vermont crime information center (VCIC), the arresting agency, and any other entity that may have a record related to the order to seal. The VCIC shall provide notice of the sealing to the Federal Bureau of Investigation's National Crime Information Center.

(b) In any application for employment, license, or civil right or privilege or in an appearance as a witness in any proceeding or hearing, a person may be required to answer questions about a previous criminal history record only with respect to arrests or convictions that have not been sealed.

(c) Notwithstanding a sealing order:

(1) An entity that possesses a sealed record may continue to use it for any litigation or claim arising out of the same incident or occurrence or involving the same defendant.

(2) An entity may use the criminal history record sealed in accordance with section 7603 of this title, regarding a person who was cited or arrested, for future criminal investigations or prosecutions without limitation.

(d) Upon receiving a sealing order, an entity shall:

- (1) Seal the investigation or prosecution record;
- (2) Enter a copy of the sealing order into the record;
- (3) Flag the record as "SEALED" to prevent inadvertent disclosure of sealed information; and
- (4) Upon receiving an inquiry from any person regarding a sealed record, respond that "NO RECORD EXISTS."

§ 7608. VICTIMS

(a) At the time a petition is filed pursuant to this chapter, the respondent shall give notice of the petition to any victim of the offense who is known to the respondent. The victim shall have the right to offer the respondent a statement prior to any stipulation or to offer the court a statement. The disposition of the petition shall not be unnecessarily delayed pending receipt of a victim's statement. The respondent's inability to locate a victim after a reasonable effort has been made shall not be a bar to granting a petition.

(b) As used in this section, "reasonable effort" means attempting to contact the victim by first class mail at the victim's last known address and by telephone at the victim's last known phone number.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

And that after passage the title of the bill be amended to read:

An act relating to expungement and sealing of criminal history records.

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

*Committee on the part of the Senate*

*THOMAS F. KOCH  
SUSAN L. WIZOWATY  
ELDRED M. FRENCH*

*Committee on the part of the House*

Thereupon, the question, Shall the Senate accept and adopt the report of the Committee of Conference?, was decided in the affirmative.

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**Proposal of Amendment; Third Reading Ordered****H. 523.**

Senator Nitka, for the Committee on Judiciary, to which was referred House bill entitled:

An act relating to revising the state highway condemnation law.

Reported recommending 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. LEGISLATIVE INTENT**

(a) The intent of the changes to the definition of necessity made in this act is to state the definition in accordance with State Transportation Board v. May, 137 Vt. 320 (1979), and to reorganize the definition for the sake of clarity. No substantive change is intended.

(b) The standard of review of the agency of transportation's determination of necessity established in 19 V.S.A. § 505(a)(3) of this act is intended to replace the former language of 19 V.S.A. § 507(a) stating that "the exercise of reasonable discretion upon the part of the agency shall not be presumed," as well as to replace the standard of review adopted in Latchis v. State Hwy. Bd., 120 Vt. 120 (1957) and relied upon in subsequent cases.

Sec. 2. 19 V.S.A. chapter 5 is amended to read:

**CHAPTER 5. CONDEMNATION FOR STATE HIGHWAY PROJECTS****§ 500. INTENT**

The purpose of this chapter is to ensure that a property owner receives fair treatment and just compensation when the owner's property is taken for state highway projects, and that condemnation proceedings are conducted expeditiously so that highway projects in the public interest are not unnecessarily delayed.

**§ 501. DEFINITIONS**

The following words and phrases as used in this chapter shall have the following meanings:

(1) "Necessity" ~~shall mean~~ means a reasonable need which considers the greatest public good and the least inconvenience and expense to the condemning party and to the property owner. Necessity shall not be measured merely by expense or convenience to the condemning party. ~~Due~~ Necessity includes a reasonable need for the highway project in general as well as a

reasonable need to take a particular property and to take it to the extent proposed. In determining necessity, consideration shall be given to the:

(A) adequacy of other property and locations ~~and to;~~

(B) ~~the~~ quantity, kind, and extent of cultivated and agricultural land which may be taken or rendered unfit for use, immediately and over the long term, by the proposed taking. ~~In this matter the court shall view the problem from both a long range agricultural land use viewpoint as well as from the immediate taking of agricultural lands which may be involved. Consideration also shall be given to the;~~

(C) effect upon home and homestead rights and the convenience of the owner of the land; ~~to the~~

(D) effect of the highway upon the scenic and recreational values of the highway; ~~to the~~

(E) need to accommodate present and future utility installations within the highway corridor; ~~to the~~

(F) need to mitigate the environmental impacts of highway construction; and ~~to the~~

(G) effect upon town grand lists and revenues.

(2) Damages resulting from the taking or use of property under the provisions of this chapter shall be the value for the most reasonable use of the property or right in the property, and of the business on the property, and the direct and proximate decrease in the value of the remaining property or right in the property and the business on the property. The added value, if any, to the remaining property or right in the property, which accrues directly to the owner of the property as a result of the taking or use, as distinguished from the general public benefit, shall be considered in the determination of damages.

(3) “Interested person” or “person interested in lands” or “property owner” means a person who has a legal interest of record in the property ~~affected~~ taken or proposed to be taken.

#### § 502. AUTHORITY; PRECONDEMNATION ~~PROCEDURE~~ HEARING

(a) Authority. The ~~transportation board~~ agency, when in its judgment the interest of the state requires, ~~shall request the agency to~~ may take any ~~land or rights in land, including easements of access, air, view and light, deemed property~~ necessary to lay out, relocate, alter, construct, reconstruct, maintain, repair, widen, grade, or improve any state highway, including affected portions of town highways. ~~All property rights shall be taken in fee simple whenever practicable.~~ In furtherance of these purposes, the agency may enter upon ~~land~~

~~adjacent to the proposed highway or upon other lands for the purpose of examination and making necessary surveys. However, that lands to conduct necessary examinations and surveys; however, the agency shall do this work shall be done with minimum damage to the land and disturbance to the owners and shall be subject to liability for actual damages. All property taken permanently shall be taken in fee simple whenever practicable. For all state highway projects involving property acquisitions, the agency shall follow the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act ("Act") and its implementing regulations, as may be amended.~~

(b) The agency, in the construction and maintenance of limited access highway facilities, may also take any land or rights of the landowner in land under 9 V.S.A. chapter 93, subchapter 2, relating to advertising on limited access highways.

(c) Public hearing; notice of hearing.

(1) A public hearing shall be held for the purpose of receiving suggestions and recommendations from the public prior to the agency's initiating proceedings under this chapter for the acquisition of any ~~lands or rights property~~. The hearing shall be conducted by the agency. ~~Public notice shall be given by printing~~

(2) The agency shall prepare an official notice stating the purpose for which the property is desired and generally describing the highway project.

(3) Not less than 30 days prior to the hearing, the agency shall:

(A) cause the official notice not less than 30 days prior to the hearing to be printed in a newspaper having general circulation in the area affected. ~~A;~~

(B) mail a copy of the notice shall be mailed to the board, to the legislative bodies of the municipalities affected; and ~~a copy sent~~

(C) by certified mail a copy of the notice to all known owners of lands and rights in land affected by whose property may be taken as a result of the proposed improvement.

~~The notice shall set forth the purpose for which the land or rights are desired and shall generally describe the improvement to be made.~~

(4) ~~The board may designate one or more members to attend the hearing and shall do so if a written request is filed with the board at least 10 days prior to the public hearing. At the hearing, the agency shall set forth the reasons for the selection of the route intended and shall hear and consider all objections, suggestions for changes, and recommendations made by any person interested. If no board member attended the hearing, a written request may be filed with~~

~~the board within 30 days after the public hearing asking the board to review the project and the record of the hearing. In such event, the board shall complete its review within 30 days after the request. Following the hearing, unless otherwise directed by the board, the agency may proceed to lay out the highway and survey and acquire the land to be taken or affected, giving consideration to any objections, suggestions, and recommendations received from the public in accordance with this chapter.~~

\* \* \*

§ 503. PRECONDEMNATION NECESSITY DETERMINATION; SURVEY AND APPRAISAL; OFFER OF JUST COMPENSATION; NOTICE OF RIGHTS; NEGOTIATION; STIPULATION

(a) ~~When~~ Necessity determination; appraisal.

(1) After conducting the hearing required under section 502 of this chapter and considering the objections, suggestions, and recommendations received from the public, if the agency of transportation desires to acquire land or any rights in land finds the taking of property to be necessary for the purpose of laying out, relocating, altering, constructing, reconstructing, maintaining, repairing, widening, grading, or improving a state highway, it shall cause the land property proposed to be acquired or affected to be surveyed and shall make a written determination of necessity consistent with subdivision 501(1) of this chapter. Prior to initiating negotiations under this section, the agency shall cause property proposed to be taken to be appraised unless:

(A) the property owner offers to donate the property after being fully informed by the agency of the right to receive just compensation for damages and releasing the agency from any obligation to conduct an appraisal; or

(B) the agency determines that an appraisal is unnecessary because the valuation question is uncomplicated and the agency estimates the property to have a low fair market value, in accordance with 49 C.F.R. § 24.102.

(2) The agency shall prepare a waiver valuation if an appraisal is not conducted, pursuant to subdivision (1)(B) of this subsection (a).

(3) The property owner or his or her designee shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(b) Offer of just compensation. Prior to the initiation of negotiations, the agency shall prepare a written offer of just compensation, which shall include a statement of the basis for the offer and a legal description of the property proposed to be acquired.

(c) Negotiation. Prior to instituting condemnation proceedings under section 504 of this chapter, the agency shall make every reasonable effort to acquire property expeditiously by negotiation and shall comply with subsection (d) of this section.

(d) Notice and other documents. The agency shall hand-deliver or send by mail to interested persons a notice of procedures and rights and the offer of just compensation. The notice of procedures and rights shall include an explanation of the proposed state highway project and its purpose, and statements that:

(1) The agency is seeking to acquire the property described in the offer of just compensation for the project.

(2) Agency representatives are available to discuss the offer of just compensation.

(3) The agency does not represent the property owner, and he or she may benefit from the advice of an attorney.

(4) If the agency and the property owner are unable to reach agreement on the agency's legal right to take the property, the agency may file a complaint in superior court to determine this issue. The property owner has the right to challenge the taking by contesting the necessity of the taking, the public purpose of the project, or both, but must contest these issues by filing an answer to the complaint with the court. If the owner does not file a timely answer, the court may enter a default judgment in favor of the agency.

(5) The property owner may enter into an agreement with the agency stipulating to the agency's legal right to take his or her property without waiving the owner's right to contest the amount of the agency's offer of compensation.

(6) If the agency and the property owner agree that a taking is lawful, or if a court issues a judgment authorizing the agency to take the owner's property, title to the property will transfer to the agency only after the agency files documentation of the agreement or judgment with the town clerk, pays or tenders payment to the owner, and sends or delivers to the owner a notice of taking.

(7) To contest the amount of compensation received, the owner must file an action with the transportation board or in superior court within 30 days of the notice of taking, except that the issue of compensation ("damages") must be decided by the superior court if the owner's demand exceeds the agency's offer of just compensation by more than \$25,000.00. The owner or the agency may appeal a decision of the board to the superior court, and may appeal a

decision of the superior court to the supreme court. Either party is entitled to demand a trial by jury in superior court on the issue of damages.

(8) A copy of an appraisal or an estimated valuation (“waiver valuation”) shall be furnished by the agency at the owner’s request.

(9) Summarize the property owner’s right to relocation assistance, if applicable.

(e) Agreement on taking, damages.

(1) An interested person may enter into an agreement with the agency stipulating to the necessity of the taking and the public purpose of the project, to damages, or to any of these. The agreement shall include:

(A) a statement that the person executing the agreement has examined a survey or appraisal of the property to be taken;

(B) an explanation of the legal and property rights affected;

(C) a statement that the person has received the documents specified in subsection (d) of this section; and

(D) if the agreement concerns only the issues of necessity or public purpose, a statement that the right of the person to object to the amount of compensation offered is not affected by the agreement.

(2) If an interested person executes an agreement stipulating to the necessity of the taking and the public purpose of the project in accordance with subdivision (1) of this subsection, the agency shall prepare, within 10 business days of entering into the agreement, a notice of condemnation and shall file it in accordance with section 506 of this chapter. The notice of condemnation shall include a legal description of the property to be taken.

§ 504. PETITION FOR HEARING TO DETERMINE NECESSITY COMPLAINT; SERVICE; ANSWER

(a) Upon completion of the survey the agency may petition a superior judge, setting forth in the petition that it proposes to acquire certain land, or rights in land, and describing the lands or rights, and the survey shall be attached to the petition and made a part of the petition. The petition shall set forth the purposes for which the land or rights are desired, and shall contain a request that the judge fix a time and place when he or she, or some other superior judge, will hear all parties concerned and determine whether the taking is necessary. Verified complaint. If a property owner has not entered into an agreement stipulating to the necessity of a taking and the public purpose of a highway project, and the agency wishes to proceed with the taking, the agency shall file a verified complaint in the civil division of the



superior court in a county where the project is located seeking a judgment of condemnation. The complaint shall name as defendants each interested person who has not stipulated to a proposed taking, and shall include:

(1) statements that the agency has complied with subsection 503(d) of this chapter;

(2) the agency's written determination of necessity;

(3) a general description of the negotiations undertaken; and

(4) a survey of the proposed project, and legal descriptions of the property and of the interests therein proposed to be taken.

(b) Service and notice.

(1) Except as otherwise provided in this section, the agency shall serve the complaint and summons in accordance with the Vermont Rules of Civil Procedure and section 519 of this chapter.

(2) The agency shall publish a notice of the complaint, the substance of the summons, and a description of the project and of the lands to be taken in a newspaper of general circulation in the municipalities where the project is located, once a week on the same day of the week for three consecutive weeks. The agency shall mail a copy of the newspaper notice to the last known address of an interested person not otherwise served, if any address is known. Upon affidavit by the secretary that diligent inquiry has been made to find all interested persons and, if applicable, that service on a known interested person cannot with due diligence be made in or outside the state by another method prescribed in Rule 4 of the Vermont Rules of Civil Procedure, the newspaper publication shall be deemed sufficient service on all unknown interested persons and all known interested persons who cannot otherwise be served. Service by newspaper publication is complete the day after the third publication.

(3) Unless otherwise served under subdivision (1) of this subsection, the agency shall mail a copy of the complaint to the clerk, legislative body, and board of listers of each municipality in which land is proposed to be taken. The clerk with responsibility over the land records shall record the copy of the complaint (including the survey), and shall enter the names of the property owners named in the complaint in the general index of transactions affecting the title to real estate.

(c) Necessity, public purpose; default. If an interested person does not file a timely answer denying the necessity of a taking or the public purpose of the project, the court may enter a judgment of condemnation by default.

§ 505. HEARING TO DETERMINE NECESSITY ON PROPOSED TAKING; JUDGMENT; APPEAL AND STAY

~~(a) The superior judge to whom the petition is presented shall fix the time for hearing, which shall not be more than 60 nor less than 40 days from the date he or she signs the order. Likewise, he or she shall fix the place for hearing, which shall be the superior court or any other place within the county in which the land in question is located. If the superior judge to whom the petition is presented cannot hear the petition at the time set he or she shall call upon the administrative judge to assign another superior judge to hear the cause at the time and place assigned in the order. Hearing.~~

(1) If a timely answer is filed denying the necessity of a taking or the public purpose of the project, the court shall schedule a final hearing to determine the contested issues, which shall be held within 90 days of expiration of the deadline for filing an answer by the last interested person served. Absent good cause shown, the final hearing date shall not be postponed beyond the 90-day period.

(2) At the hearing, the agency shall present evidence on any contested issue.

(3)(A) The court shall presume that the agency's determination of the necessity for and public purpose of a project is correct, unless a party demonstrates bad faith or abuse of discretion on the part of the agency.

(B) The court shall review de novo the agency's determination of the need to take a particular property and to take it to the extent proposed.

~~(b) If the land proposed to be acquired extends into two or more counties, then a single hearing to determine necessity may be held in one of the counties. In fixing the place for hearing, the superior judge to whom the petition is presented shall take into consideration the needs of the parties. Discovery. Absent a showing of unfair prejudice, the right to discovery on the issues of necessity and public purpose shall be limited to the plans, surveys, studies, reports, data, decisions, and analyses relating to approving and designing the highway project.~~

(c) Judgment. If the court finds a proposed taking lawful, it shall issue a judgment of condemnation describing the property authorized to be taken, declaring the right of the agency to take the property by eminent domain, and declaring that title to the property will be transferred to the agency after the agency, in accordance with section 506 of this chapter, has recorded the judgment, tendered or deposited payment, and notified the owner of the recording and payment. The court may in its judgment modify the extent of a proposed taking.

(d) Litigation expenses. The court shall award the property owner his or her costs and reasonable litigation expenses, including reasonable attorney, appraisal, and engineering fees actually incurred because of the proceeding, if the final judgment of the court is that the agency cannot acquire all of the property proposed to be taken by condemnation, or if the agency abandons the condemnation proceeding other than under a settlement. If the final judgment of the court substantially reduces the scope of the agency's proposed taking, the court shall award the owner a share of his or her costs and reasonable litigation expenses that is proportional to the reduction in the proposed taking.

(e) Appeal, stay. A judgment of condemnation may be appealed or stayed as a final judgment for possession of real estate under the Vermont Rules of Civil Procedure and the Vermont Rules of Appellate Procedure. A judgment that that the agency cannot acquire the property by condemnation likewise may be appealed.

§ 506. SERVICE AND PUBLICATION OF NECESSITY PETITION AND NOTICE OF HEARING; ANSWER RECORDING OF JUDGMENT OR NOTICE OF CONDEMNATION; PAYMENT; VESTING OF TITLE

~~(a)(1) The agency shall prepare a notice of the necessity hearing. The notice shall include the names of the municipalities in which the lands to be taken or affected are located; the names of all interested persons within the meaning of subdivision 501(2) of this chapter; and a brief statement identifying the proposed project and its location, and the date, time and place of the necessity hearing. The agency shall make service of copies of the petition, the notice of hearing and the survey (for the purposes of this section, "survey" means a plan, profile, or cross section of the proposed project) as follows:~~

~~(1) Upon interested persons in accordance with the Vermont Rules of Civil Procedure for service of process, except as stated in subsection (b) of this section and in section 519 of this title or, with respect to interested parties with no known residence or place of business within the state, by certified mail, return receipt requested. The copy of the survey that is served upon interested persons need include only the particular property in which those persons have an interest.~~

~~(2) One copy each upon the clerk, legislative body, and board of listers of each affected municipality by certified mail. The clerk shall record the notice of hearing in the municipal land records, at the agency's expense, and shall enter the names of the interested persons in the general index of transactions affecting the title to real estate. Within 15 business days of the issuance of a judgment of condemnation by the court or of the preparation of a notice of condemnation by the agency in accordance with subdivision 503(e)(2) of this chapter, the agency shall:~~

(A) record the judgment or notice, including the description of the property taken, in the office of the clerk of the town where the land is situated; and

(B) tender to the property owner, or deposit with the court, the amount of the offer of just compensation prepared under subsection 503(b) of this chapter or any other amount agreed to by the owner.

(2) For the purposes of this chapter, if an interested person has not provided the agency identification information necessary to process payment, or if an interested person refuses an offer of payment, payment shall be deemed to be tendered when the agency makes payment into an escrow account that is accessible by the interested person upon his or her providing any necessary identification information.

~~(b) The agency also shall publish the notice of hearing in a newspaper of general circulation in the municipalities in which the proposed project lies. Publication shall be made once a week for three consecutive weeks on the same day of the week, the last publication to be not less than five days before the hearing. When service on an interested person cannot with due diligence be made within or outside the state, upon affidavit of the secretary of transportation or the secretary's designee that diligent inquiry has been made to find the interested person, the publication shall be deemed sufficient service on that person. The affidavit shall be accompanied by an affidavit of the person attempting service that the location of the interested person is unknown and that the interested person has no known agent upon whom service can be made. Title in the property shall vest in the state, and the agency may proceed with the project, upon the later of:~~

~~(1) the agency's complying with the requirements of subsection (a) of this section; and~~

~~(2) the agency's mailing or delivering to the owner a notice of taking stating that it has complied with the requirements of subsection (a) of this section.~~

~~(c) Compliance with these provisions of this title shall constitute sufficient notice to and service upon all interested persons and municipalities. Except in the case of agreed compensation, an owner's acceptance and use of a payment under this section does not affect his or her right to contest or appeal damages under sections 511-513 of this chapter, but shall bar the owner's right to contest necessity and public purpose.~~

~~(d) No service need be made upon any interested person or municipality that has stipulated to necessity in accordance with section 508 of this chapter. Upon the agency's recording of the judgment or notice of condemnation, the~~

clerk with responsibility over land records shall enter the name of each property owner named in the judgment or notice as a grantor in the general index of transactions affecting the title to real estate. The agency shall comply with the provisions of 27 V.S.A. chapter 17 governing the composition and recording of project layout plats.

~~(e) Unless an answer denying the necessity or propriety of the proposed taking is filed by one or more parties served or appearing in the proceedings on or before the date set in the notice of hearing on the petition, the necessity and propriety shall be deemed to be conceded, and the court shall so find. [Repealed.]~~

~~§ 507. HEARING AND ORDER OF NECESSITY CATTLE-PASSES~~

~~(a) At the time and place appointed for the hearing, the court, consisting of the superior judge signing the order or the other superior judge as may be assigned and, if available within the meaning of 4 V.S.A. § 112, the assistant judges of the county in which the hearing is held shall hear all persons interested and wishing to be heard. If any person owning or having an interest in the land to be taken or affected appears and objects to the necessity of taking the land included within the survey or any part of the survey, then the court shall require the agency of transportation to proceed with the introduction of evidence of the necessity of the taking. The burden of proof of the necessity of the taking shall be upon the agency of transportation and shall be established by a fair preponderance of the evidence, and the exercise of reasonable discretion upon the part of the agency shall not be presumed. The court may cite in additional parties including other property owners whose interest may be concerned or affected and shall cause to be notified, the legislative body of all adjoining cities, towns, villages, or other municipal corporations affected by any taking of land or interest in land based on any ultimate order of the court. The court shall make findings of fact and file them and any party in interest may appeal under the Vermont Rules of Appellate Procedure adopted by the supreme court. The court shall, by its order, determine whether the necessity of the state requires the taking of the land and rights as set forth in the petition and may find from the evidence that another route or routes are preferable in which case the agency shall proceed in accordance with section 502 of this title and this section and may modify or alter the proposed taking in such respects as to the court may seem proper.~~

~~(b) By In its order of condemnation, the court may also direct the agency of transportation to install passes under the highway as specified in this chapter for the benefit of the large modern farm properties, the fee title of which is owned by any party to the proceedings, where a reasonable need is shown by the owner. The court may consider evidence relative to present and anticipated~~

future highway traffic volume, future land development in the area, and the amount and type of acreage separated by the highway in determining the need for an underpass of larger dimensions than a standard cattle-pass of reinforced concrete, metal, or other suitable material which provides usable dimensions five feet wide by six feet three inches high. Where a herd of greater than 50 milking cows is consistently maintained on the property, the court may direct that the dimensions of the larger underpass shall be eight feet in width and six feet three inches in height to be constructed of reinforced concrete, and the owner of the farm property shall pay one-fourth of the difference in overall cost between the standard cattle-pass and the larger underpass. Where the owner of the farm property desires an underpass of dimensions greater than eight feet in width and six feet three inches in height, the underpass may be constructed if feasible and in accordance with acceptable design standards, and the total additional costs over the dimensions specified shall be paid by the owner. The provisions of this section shall not be interpreted to prohibit the agency of transportation and the property owner from determining the specifications of a cattle-pass or underpass by mutual agreement at any time, either prior or subsequent to the date of the court's order. The owner of a fee title shall be interpreted to include lessees of so-called lease land.

§ 508. ~~STIPULATION OF NECESSITY~~

~~(a) A person or municipality owning or having an interest in lands or rights to be taken or affected, a municipality in which the land is to be taken or affected, and other interested persons may stipulate as to the necessity of the taking.~~

~~(b) The stipulation shall be an affidavit sworn to before a person authorized to take acknowledgments, and, in the case of a municipality, shall be executed by a majority of its legislative body. The stipulation shall be in a form approved by the attorney general and shall include but not be limited to the following:~~

~~(1) a recital that the person or persons executing the stipulation have examined the applicable plan and survey of the lands or rights to be taken;~~

~~(2) an explanation of the legal and property rights affected; and~~

~~(3) that the right of the person to adequate compensation is not affected by executing the stipulation.~~

~~(c) The stipulation shall be invalid unless within two years of the date of the stipulation an order of necessity is granted. [Repealed.]~~

**§ 509. PROCEDURE**

~~(a) The stipulation shall be filed with the appropriate superior court, together with the petition for an order of necessity. Notice of the hearing on the petition shall be published in accordance with section 506 of this title. Other interested persons who have not stipulated to necessity shall be notified and served in accordance with section 506 of this title. The court may also cite in additional parties in accordance with section 507 of this title.~~

~~(b) If a person claiming to be affected or concerned files a notice of objection to a proposed finding of necessity prior to the date of the hearing, the court shall at the hearing determine if the person has an interest in lands or rights to be taken such as to be entitled to object to the proposed finding of necessity, and, if he is so affected or concerned, whether there is necessity for the taking, in accordance with section 507 of this title. Nothing in this section shall prohibit an interested person from consenting to necessity. The court may continue the hearing to allow proper preparation by the agency of transportation and interested parties.~~

~~(c) If all interested persons and municipalities stipulate as to the necessity of the taking, the court may immediately issue an order of necessity.~~

~~(d) Interested persons or municipalities who do not consent to necessity are entitled to a necessity hearing in accordance with the provisions of this chapter.~~

~~(e) A copy of the order finding necessity shall be mailed to each person and municipality who consented by stipulation to necessity, by certified mail, return receipt requested.~~

~~(f) The stipulation of necessity shall not affect the rights of the person with regard to fixing the amount of compensation to be paid in accordance with sections 511-514 of this title. However, the transportation board may enter into an agreement for purchase of lands or rights affected, provided the agreement is conditioned upon the issuance of an order of necessity. [Repealed.]~~

**§ 510. APPEAL FROM ORDER OF NECESSITY**

~~(a) If the state, municipal corporation or any owner affected by the order of the court is aggrieved by the order, an appeal may be taken to the supreme court. In the event an appeal is taken according to these provisions from an order of necessity, its effect may be stayed by the superior court or the supreme court where the person requesting the stay establishes:~~

~~(1) that he or she has a likelihood of success on the merits;~~

~~(2) that he or she will suffer irreparable harm in the absence of the requested stay;~~

~~(3) that other interested parties will not be substantially harmed if a stay is granted; and~~

~~(4) that the public interest supports a grant of the proposed stay.~~

~~(b) If no stay is granted or, if a stay is granted, upon final disposition of the appeal, a copy of the order of the court shall be recorded within 30 days in the office of the clerk of each town in which the land affected lies.~~

~~(c) Thereafter for a period of one year, the agency of transportation may request the transportation board to institute proceedings for the condemnation of the land included in the survey as finally approved by the court without further hearing or consideration of any question of the necessity of the taking. In no event shall title to or possession of the appealing landowner's property pass to the state until there is a final adjudication of the issue of the necessity and propriety of the proposed taking.~~

~~(d) If the agency of transportation is delayed in requesting the transportation board to institute condemnation proceedings within the one-year period by court actions or federal procedural actions, the time lost pending final determination shall not be counted as part of the one-year necessity period. [Repealed.]~~

#### § 511. HEARING TO DETERMINE AMOUNT OF COMPENSATION DETERMINATION OF DAMAGES

~~(a) Following a determination of the necessity of the taking as above provided, when an Disputes between a property owner of land or rights and the agency of transportation are unable to agree on the amount of compensation to be paid, and if the agency of transportation desires to proceed with the taking, the transportation board as a result of a taking shall be resolved as follows:~~

~~(1) If the owner's demand exceeds the agency's offer of just compensation by \$25,000.00 or less, the owner may obtain a determination of damages by either:~~

~~(A) petitioning the transportation board, or~~

~~(B) filing a complaint or, if applicable, a motion to re-open a judgment of condemnation, in superior court.~~

~~(2) If the owner's demand exceeds the agency's offer of just compensation by more than \$25,000.00, the owner may obtain a determination of damages by filing a complaint or, if applicable, a motion to re-open a judgment of condemnation, in superior court.~~



(3) A property owner may file a petition, complaint, or motion under subdivisions (1) or (2) of this subsection no later than 30 days after the date of the notice of taking required under subsection 506(b) of this chapter.

(4) A petition improperly filed with the board shall be transferred to the superior court and, upon such transfer, the owner shall be responsible for applicable court filing fees.

(b) The board or the court shall appoint a time and place in the a county where the land is situated for examining the premises and a hearing parties interested, giving the parties at least 10 days' written notice in writing to the person owning the land or having an interest in the land. At that time and place, a member or members of the transportation board shall hear any person having an interest in the land and desiring to be heard.

(b) If the land proposed to be acquired of the hearing. If the property taken extends into two or more counties, the board or court may hold a single hearing in one of the counties to determine compensation damages. In fixing the place for the hearing, the transportation board or court shall take into consideration consider the needs of the parties.

(c) Unless the parties otherwise agree or unless the board or the court determines that it is in the public interest to proceed on the question of damages, any proceedings to determine damages shall be stayed pending the final disposition of any appeal of the questions of necessity or public purpose.

(d) Upon demand, a party is entitled to a jury trial in superior court on the issue of damages.

(e) The board or the court shall first determine the total damages as between the agency and all interested persons claiming an interest in a subject property, and the agency may thereafter withdraw from further proceedings with respect to that property. The board or the court shall then determine any further questions in the matter, including the apportionment of damages among interested persons. Any board decision on damages shall include findings of fact, and shall be served on the parties immediately after its issuance.

§ 512. ORDER FIXING COMPENSATION PAYMENT FOLLOWING DECISION ON DAMAGES; INVERSE CONDEMNATION; RELOCATION ASSISTANCE CREDIT OF STATE PLEDGED

(a) Within 30 days after the compensation hearing, the board shall by its order fix the compensation to be paid to each person from whom land or rights are taken. Within 30 days of the board's order a final decision on damages and the exhaustion or expiration of all appeal rights, the agency shall file and record the order in the office of the clerk of the town where the land is situated, deliver to each person a copy of that portion of the order directly affecting the

~~person, and pay or tender the owner the amount, if any, by which the award to each the person entitled exceeds the amount previously paid or tendered by the agency. A person to whom a compensation award is paid or tendered under this subsection may accept, retain, and dispose of the award to his or her own use without prejudice to the person's right of appeal, as provided in section 513 of this title. Upon the payment or tender of the award as above provided, the agency may proceed with the work for which the land is taken.~~

~~(b) In the event the plaintiff prevails against the state in an action for inverse condemnation, arising under this title or as a result of the acquisition of real property for a program or project undertaken by a federal agency, or with federal financial assistance, the court shall determine an award or allow to the plaintiff as part of its judgment such sum as will, in the opinion of the court, reimburse the plaintiff for his or her reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees actually incurred because of the proceeding. [Repealed.]~~

~~(c) When federal funds are available to provide relocation assistance and payments to persons displaced as a result of federal and federally assisted programs, any state agency may match the federal funds to the extent provided by federal law and grant relocation assistance and payments in the instances and on the conditions set forth by federal law and regulations. [Repealed.]~~

~~(d) The credit of the state of Vermont is pledged to the payment of all amounts awarded or allowed under the provisions of the chapter, and these amounts shall be lawful obligations of the state of Vermont.~~

~~§ 513. APPEAL FROM ORDER FIXING COMPENSATION OF DAMAGES DECISION; JURY TRIAL~~

~~(a) A person or a municipal corporation interested in the lands affected by a relocation who is party dissatisfied with the a decision of the transportation board as to the amount or apportionment of damages awarded ~~for the lands~~, may appeal to ~~the~~ a superior court where the land is situated within ~~ninety~~ 30 days after the ~~report has been filed~~ date of the decision, and any number of persons aggrieved may join in the appeal.~~

~~(b) Any person A party appealing the award of damages made by the transportation board, and the agency of transportation, shall be is entitled to a jury trial in the superior court upon demand.~~

~~(c) A party aggrieved by a superior court decision on damages under this section or section 511 of this chapter may appeal to the supreme court in accordance with the Vermont Rules of Appellate Procedure.~~

§ 514. AWARD OF COSTS IN DAMAGES ACTION; LITIGATION EXPENSES IN INVERSE CONDEMNATION ACTION

~~(a) When the appellant is allowed a sum greater than was awarded by the transportation board, the court shall tax costs against the agency of transportation. When the award fixed by the transportation board is upheld, the court shall tax costs against the appellant. The court shall fix the time for paying the damages awarded. If a damages award by a court is more than the agency's offer of just compensation or offer of judgment, whichever is greater, the court shall award the property owner his or her reasonable costs. If the damages award is less than or equal to the greater of the agency's offer of just compensation or offer of judgment, the court shall award the agency its reasonable costs.~~

~~(b) If a court renders judgment in favor of a property owner in an inverse condemnation action or if the agency effects a settlement of an inverse condemnation action, the court shall award the owner his or her reasonable costs and other litigation expenses, including reasonable attorney, appraisal, and engineering fees actually incurred because of the proceeding.~~

§ 515a. EVIDENCE OF HIGHWAY COMPLETION

~~The lack of a certificate of completion of a highway shall not alone constitute conclusive evidence that a highway is not public. [Repealed.]~~

\* \* \*

§ 517. VESTING OF TITLE

~~Title to the lands taken, or other rights acquired, under this chapter, shall vest in the state upon the filing for record with the town clerk of the transportation board's order as provided in section 512 of this chapter, unless previously acquired by deed or other appropriate instrument. [Repealed.]~~

\* \* \*

§ 519. CONDOMINIUMS; COMMON AREAS AND FACILITIES

(a) For purposes of this section, the terms "apartment owner," "association of owners," "common areas and ~~facilities~~" facilities," and "declaration" shall have the same meanings as in the Condominium Ownership Act, 27 V.S.A. chapter 15.

(b) Notwithstanding any other provision of law, whenever the agency under this chapter ~~5 of this title~~ proposes to acquire any common areas and facilities of a condominium, the association of owners shall constitute the interested person or persons interested in lands in lieu of the individual

apartment owners for purposes of the necessity hearing, the compensation hearing, and any appeals therefrom.

(c) The agency shall serve one copy of the ~~necessity petition~~ complaint and summons upon the association of owners through one of its officers or agents, instead of upon the individual apartment owners.

(d) The agency shall make the compensation check payable to the association of owners, which shall then make proportional payments to the apartment owners as their interests appear in the declaration.

Sec. 3. 19 V.S.A. § 1(12) is amended to read:

(12) “Highways” are only such as are laid out in the manner prescribed by statute; or roads which have been constructed for public travel over land which has been conveyed to and accepted by a municipal corporation or to the state by deed of a fee or easement interest; or roads which have been dedicated to the public use and accepted by the city or town in which such roads are located; or such as may be from time to time laid out by the agency or town. However, the lack of a certificate of completion of a state or town highway shall not alone constitute conclusive evidence that the highway is not public. The term “highway” includes rights-of-way, bridges, drainage structures, signs, guardrails, areas to accommodate utilities authorized by law to locate within highway limits, areas used to mitigate the environmental impacts of highway construction, vegetation, scenic enhancements, and structures. The term “highway” does not include state forest highways, management roads, easements, or rights-of-way owned by or under the control of the agency of natural resources, the department of forests, parks and recreation, the department of fish and wildlife, or the department of environmental conservation.

\* \* \* Conforming Changes \* \* \*

Sec. 4. 5 V.S.A. § 652 is amended to read:

§ 652. ~~PETITION TO SUPERIOR COURT~~

The secretary of transportation or the legislative body of a municipality, as defined in 24 V.S.A. § 2001, or the committee representing two or more municipalities, when authorized by vote of their legislative bodies, may ~~petition a~~ proceed in superior ~~judge~~ court as provided in 19 V.S.A. chapter 5, except as otherwise provided in this subchapter.

Sec. 5. REPEAL

5 V.S.A. § 654 (answer in airport condemnation proceedings) and 10 V.S.A. § 959 (determination of damages for taking of land for flood control project) are repealed.

Sec. 6. 10 V.S.A. §§ 958 and 960 are amended to read:

§ 958. EMINENT DOMAIN; DETERMINING NECESSITY

(a) The commissioner of the department of environmental conservation may ~~petition~~ file a complaint in the superior court for any county in which a portion of the real estate lies to determine that necessity requires that the state acquire real estate within the state, including real estate held for public use in the name of the state or any municipality, for the purpose of flood control projects.

\* \* \*

(c) The ~~petition~~ complaint, the service thereof and the proceedings in relation thereto, including rights of appeal, shall conform with and be controlled by ~~chapter 5 of Title 19~~ chapter 5.

§ 960. ENTRY AUTHORIZED

The commissioner of the department of environmental conservation or his or her authorized agents may enter upon any real estate at reasonable times and places for the purpose of making surveys or other investigations under this section, subsection 952(b) and sections 953, ~~957-959~~ 957-958, and 961 of this title. The owners of damaged real estate may recover for damages sustained by reason of the preliminary entry authorized by this section in an action at law against the commissioner.

Sec. 7. 24 V.S.A. § 4012 is amended to read:

§ 4012. EMINENT DOMAIN; EXEMPTION OF PROPERTY FROM EXECUTION

(a) An authority shall have the right to acquire by the exercise of the power of eminent domain any real property which it may deem necessary for its purposes under this chapter after the adoption by it of a resolution declaring that the acquisition of the real property described therein is necessary for such purposes. An authority may exercise the power of eminent domain in the manner provided for the condemnation of land or rights therein ~~by the state transportation board~~ as set forth in 19 V.S.A. §§ ~~501-514~~ 500-514 and 519 and acts amendatory thereof or supplementary thereto. Property already devoted to a public use may be acquired, provided that no real property belonging to the city, county, state, or any political subdivision thereof may be acquired without its consent.

\* \* \*

Sec. 8. 24 V.S.A. § 5104 is amended to read:

§ 5104. PURPOSES AND POWERS

(a) The authority may purchase, own, operate, or provide for the operation of land transportation facilities, and may contract for transit services, conduct studies, and contract with other governmental agencies, private companies, and individuals.

(b) The authority shall be a body politic and corporate with the powers incident to a municipal corporation under the laws of the state of Vermont consistent with the purposes of the authority, and may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of its functions, including, ~~but not limited to,~~ the following:

\* \* \*

(11) within its area of operation, to acquire by the exercise of the power of eminent domain any real property which it may have found necessary for its purposes, in the manner provided for the condemnation of land or rights therein as set forth in 19 V.S.A. §§ ~~501-514~~ 500-514 and 519.

\* \* \*

\* \* \* Transition Provision \* \* \*

Sec. 9. TRANSITION

(a) The state highway condemnation procedures of 19 V.S.A. chapter 5 in effect prior to July 1, 2012 shall continue to apply to all superior court and transportation board proceedings brought by the agency prior to July 1, 2012.

(b) With respect to any superior court proceeding brought by the agency on or after July 1, 2012 under 19 V.S.A. chapter 5, as amended by this act, the agency shall be required to demonstrate that it has satisfied the requirements of this act with respect to precondemnation appraisals, offers of just compensation, and negotiations with property owners.

Sec. 10. REPORT

By October 15, 2013, the agency shall submit to the house and senate committees on judiciary and on transportation a report listing:

(1) every acquisition of property, whether by agreement or through condemnation, for which the agency prepared a waiver valuation in fiscal year 2013;

(2) the value of the property estimated in the waiver valuation;

(3) whether an appraisal of the property was obtained by the agency or the property owner and, if so, the appraised value of the property;

(4) the date and the amount of the first offer made to the property owner;

(5) the date and the amount of the final payment to the property owner for the property; and

(6) whether the final payment to the property owner resulted from an agreement prior to the filing of a condemnation action, an agreement following the filing of a condemnation action, or a board or court decision on compensation.

#### Sec. 11. TRAINING OF TRANSPORTATION BOARD MEMBERS

(a) Within 30 days after the effective date of this act, the executive secretary of the transportation board shall arrange for transportation board members to be trained on:

(1) the methodology of condemnation appraisals;

(2) the law of Vermont, including court decisions, governing the determination of damages resulting from a condemnation for a state highway project; and

(3) provisions of the Uniform Relocation Assistance and Real Property Acquisition Properties Act related to the determination of damages.

(b) Within 30 days of a new member joining the board, the executive secretary of the board shall arrange for the new member to be trained as described in subsection (a) of this section.

\* \* \* Effective Date \* \* \*

#### Sec. 12. EFFECTIVE DATES

(a) This section, Sec. 9 (transition provision), and Sec. 11 (training of board members) of this act shall take effect on passage.

(b) All other sections shall take effect on July 1, 2012.

And that the bill ought to pass in concurrence with such proposal of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the proposal of amendment was agreed to, and third reading of the bill was ordered.

#### **Proposal of Amendment; Third Reading Ordered**

#### **H. 535.**

Senator Snelling, for the Committee on Judiciary, to which was referred House bill entitled:

An act relating to racial disparities in the Vermont criminal justice system.

Reported recommending 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. DATA COLLECTION AND ANALYSIS; APPROPRIATION

(a) Research regarding sentencing practices routinely concludes that two variables drive sentencing decisions—the seriousness of the offense and the defendant’s risk to reoffend. The Vermont Center for Justice Research (“the center”) shall examine the effect of these and other variables, including the race of the defendant, on sentencing decisions in Vermont, for a five-year period. The center shall use data from the Federal Bureau of Investigation Interstate Identification Index, the department of motor vehicles, the Vermont criminal information center, the department of corrections, and the Vermont courts to explain if the disparities are based on legal or nonlegal factors. The center’s research shall focus on the following:

(1) How do the sentences of people of particular census categories, in the aggregate and by national incident-based reporting system race data fields (NIBRS), which currently include white, black, Asian, Native American or Alaskan Native, and Hispanic, compare to the sentences of white defendants with respect to sentence type, length of sentence, and level of restriction?

(2) How does the actual time spent by people of particular census categories, in the aggregate and by NIBRS race data fields, under department of corrections’ supervision (and the degree of restriction) compare to the time spent by (and the degree of restriction of) white defendants?

(3) If disparate sentencing patterns or disparate service patterns exist for people of particular census categories, in the aggregate and by NIBRS race data fields, what variables included in the study design explain the disparity?

(b) On or before December 15, 2012, results of the study shall be reported to the house and senate committees on judiciary, to the court administrator, and to each organization or entity represented on the governor’s criminal justice cabinet.

(c) The human rights commission is authorized to transfer \$20,000.00 from its existing budget to the Vermont Center for Justice Research to finance this data collection analysis and report and is authorized to apply for and receive grants for the same purpose.



Sec. 2. 20 V.S.A. § 2366 is added to read:

§ 2366. LAW ENFORCEMENT AGENCIES; BIAS-FREE POLICING POLICY; RACE DATA COLLECTION

(a) No later than January 1, 2013, every state, local, county, and municipal law enforcement agency that employs one or more certified law enforcement officers shall adopt a bias-free policing policy. The policy shall contain the essential elements of such a policy as determined by the Law Enforcement Advisory Board after its review of the current Vermont State Police Policy and the most current model policy issued by the office of the attorney general.

(b) The policy shall encourage ongoing bias-free law enforcement training for state, local, county, and municipal law enforcement agencies.

(c) State, local, county, and municipal law enforcement agencies that employ one or more certified law enforcement officers are encouraged to work with the Vermont association of chiefs of police to extend the collection of roadside-stop race data uniformly throughout state law enforcement agencies, with the goal of obtaining uniform roadside-stop race data for analysis.

Sec. 3. 20 V.S.A. § 2358 is amended to read:

§ 2358. MINIMUM TRAINING STANDARDS

\* \* \*

(e) The criteria for all minimum training standards under this section shall include anti-bias training approved by the Vermont criminal justice training council.

Sec. 4. 24 V.S.A. § 1939 is amended as follows:

§ 1939. LAW ENFORCEMENT ADVISORY BOARD

\* \* \*

(e) The board shall examine how individuals make complaints to law enforcement and suggest, on or before December 15, 2012, to the senate and house committees on judiciary what procedures should exist to file a complaint.

Sec. 5. CRIMINAL JUSTICE AGENCIES; BIAS-FREE CRIMINAL JUSTICE POLICY

The general assembly encourages all criminal justice entities through their professional rules of conduct to ensure that all actions taken are done in a manner that is free of bias.

And that the bill ought to pass in concurrence with such proposal of amendment.

Senator Snelling, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Judiciary.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the proposal of amendment was agreed to, and third reading of the bill was ordered.

### **Proposal of Amendment; Consideration Postponed**

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

Senator Illuzzi, for the Committee on Economic Development, Housing and General Affairs, to which was referred House bill entitled:

An act relating to the national guard.

Reported recommending 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”

And that the bill ought to pass in concurrence with such proposal of amendment.

Senator Starr, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Economic Development, Housing and General Affairs.

Thereupon, the bill was read the second time by title only pursuant to Rule 43.

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as proposed by the Committee on Economic Development,

Housing and General Affairs?, Senator McDonald moved to divide the question.

Thereupon, Senator Mazza moved that action on the bill be postponed to the next legislative day which was agreed to.

### **Proposal of Amendment; Third Reading Ordered**

#### **H. 751.**

Senator Sears, for the Committee on Judiciary, to which was referred House bill entitled:

An act relating to jurisdiction of delinquency proceedings.

Reported recommending 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. 33 V.S.A. § 5103 is amended to read:

#### § 5103. JURISDICTION

(a) The family division of the superior court shall have exclusive jurisdiction over all proceedings concerning a child who is or who is alleged to be a delinquent child or a child in need of care or supervision brought under the authority of the juvenile judicial proceedings chapters, except as otherwise provided in such chapters.

(b) Orders issued under the authority of the juvenile judicial proceedings chapters shall take precedence over orders in other family division proceedings and any order of another court of this state, to the extent they are inconsistent. This section shall not apply to child support orders in a divorce, parentage, or relief from abuse proceedings until a child support order has been issued in the juvenile proceeding.

(c)(1) Except as otherwise provided by this title and by subdivision (2) of this subsection, jurisdiction over a child shall not be extended beyond the child's 18th birthday.

(2)(A) Jurisdiction over a child who has been adjudicated delinquent may be extended until six months beyond the child's 18th birthday if the offense for which the child has been adjudicated delinquent is a nonviolent misdemeanor and the child was 17 years old when he or she committed the offense.

(B) In no case shall custody of a child aged 18 years or older be retained by or transferred to the commissioner for children and families.



(C) Jurisdiction over a child in need of care or supervision shall not be extended beyond the child's 18th birthday.

(D) As used in this subdivision, "nonviolent misdemeanor" means a misdemeanor offense which is not a listed crime as defined in 13 V.S.A. § 5301(7), an offense involving sexual exploitation of children in violation of 13 V.S.A. chapter 64, or an offense involving violation of a protection order in violation of 13 V.S.A. § 1030.

(d) The court may terminate its jurisdiction over a child prior to the child's 18th birthday by order of the court. If the child is not subject to another juvenile proceeding, jurisdiction shall terminate automatically in the following circumstances:

(1) Upon the discharge of a child from juvenile probation, providing the child is not in the legal custody of the commissioner.

(2) Upon an order of the court transferring legal custody to a parent, guardian, or custodian without conditions or protective supervision.

(3) Upon the adoption of a child following a termination of parental rights proceeding.

Sec. 2. 33 V.S.A. § 5201 is amended to read:

§ 5201. COMMENCEMENT OF DELINQUENCY PROCEEDINGS

\* \* \*

(c) Consistent with applicable provisions of Title 4, any proceeding concerning a child who is alleged to have committed an act specified in subsection 5204(a) of this title after attaining the age of 14, but not the age of 18, shall originate in ~~district or~~ the criminal division of the superior court, provided that jurisdiction may be transferred in accordance with this chapter.

\* \* \*

Sec. 3. 33 V.S.A. § 5203 is amended to read:

§ 5203. TRANSFER FROM OTHER COURTS

(a) If it appears to a criminal division of the superior court that the defendant was under the age of 16 years at the time the offense charged was alleged to have been committed and the offense charged is not one of those specified in subsection 5204(a) of this title, that court shall forthwith transfer the case to the juvenile family division of the superior court under the authority of this chapter.

(b) If it appears to a criminal division of the superior court that the defendant was over the age of 16 years and under the age of 18 years at the

time the offense charged was alleged to have been committed, or that the defendant had attained the age of 14 but not the age of 16 at the time an offense specified in subsection 5204(a) of this title was alleged to have been committed, that court may forthwith transfer the proceeding to the juvenile family division of the superior court under the authority of this chapter, and the minor shall thereupon be considered to be subject to this chapter as a child charged with a delinquent act.

(c) If it appears to the state's attorney that the defendant was over the age of 16 and under the age of 18 at the time the offense charged was alleged to have been committed and the offense charged is not an offense specified in subsection 5204(a) of this title, the state's attorney may file charges in a ~~juvenile court~~ or the family or criminal division of the superior court. If charges in such a matter are filed in the criminal division of the superior court, the criminal division of the superior court may forthwith transfer the proceeding to the juvenile family division of the superior court under the authority of this chapter, and the person shall thereupon be considered to be subject to this chapter as a child charged with a delinquent act.

\* \* \*

Sec. 4. 33 V.S.A. § 5204 is amended to read:

§ 5204. TRANSFER FROM JUVENILE COURT

(a) After a petition has been filed alleging delinquency, upon motion of the state's attorney and after hearing, the juvenile family division of the superior court may transfer jurisdiction of the proceeding to the criminal division of the superior court, if the child had attained the age of 16 but not the age of 18 at the time the act was alleged to have occurred and the delinquent act set forth in the petition was not one of those specified in subdivision (1)–(12) of this subsection or if the child had attained the age of 10 but not the age of 14 at the time the act was alleged to have occurred, and if the delinquent act set forth in the petition was any of the following:

- (1) arson causing death as defined in 13 V.S.A. § 501;
- (2) assault and robbery with a dangerous weapon as defined in 13 V.S.A. § 608(b);
- (3) assault and robbery causing bodily injury as defined in 13 V.S.A. 608(c);
- (4) aggravated assault as defined in 13 V.S.A. § 1024;
- (5) murder as defined in 13 V.S.A. § 2301;
- (6) manslaughter as defined in 13 V.S.A. § 2304;

- (7) kidnapping as defined in 13 V.S.A. § 2405;
- (8) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407;
- (9) maiming as defined in 13 V.S.A. § 2701;
- (10) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2);
- (11) aggravated sexual assault as defined in 13 V.S.A. § 3253; or
- (12) burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c).

(b) The state's attorney of the county where the juvenile petition is pending may move in the juvenile family division of the superior court for an order transferring jurisdiction under subsection (a) of this section ~~within 10 days of the filing of the petition alleging delinquency at any time prior to adjudication on the merits.~~ The filing of the motion to transfer jurisdiction shall automatically stay the time for the hearing provided for in section 5225 of this title, which stay shall remain in effect until such time as the juvenile court may deny the motion to transfer jurisdiction.

(c) Upon the filing of a motion to transfer jurisdiction under subsection (b) of this section, the juvenile court shall conduct a hearing in accordance with procedures specified in subchapter 2 of this chapter to determine whether:

(1) there is probable cause to believe that the child committed an act listed in subsection (a) of this section; and

(2) public safety and the interests of the community would not be served by treatment of the child under the provisions of law relating to juvenile courts and delinquent children.

(d) In making its determination as required under subsection (c) of this section, the court may consider, among other matters:

(1) The maturity of the child as determined by consideration of his or her age, home, environment; emotional, psychological and physical maturity; and relationship with and adjustment to school and the community.

(2) The extent and nature of the child's prior record of delinquency.

(3) The nature of past treatment efforts and the nature of the child's response to them.

(4) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner.

(5) The nature of any personal injuries resulting from or intended to be caused by the alleged act.

(6) The prospects for rehabilitation of the child by use of procedures, services, and facilities available through juvenile proceedings.

(7) Whether the protection of the community would be better served by transferring jurisdiction from the ~~juvenile court~~ family division to the criminal division of the superior court.

(e) A transfer under this section shall terminate the jurisdiction of the juvenile court over the child only with respect to those delinquent acts alleged in the petition with respect to which transfer was sought.

(f)(1) The ~~juvenile court~~ family division, following completion of the transfer hearing, shall make ~~written~~ findings and, if the court orders transfer of jurisdiction from the ~~juvenile court~~ family division, shall state the reasons for that order. If the ~~juvenile court~~ family division orders transfer of jurisdiction, the child shall be treated as an adult. The state's attorney shall commence criminal proceedings as in cases commenced against adults.

(2) Notwithstanding subdivision (1) of this subsection, the parties may stipulate to a transfer of jurisdiction from the family division at any time after a motion to transfer is made pursuant to subsection (b) of this section. The court shall not be required to make findings if the parties stipulate to a transfer pursuant to this subdivision. Upon acceptance of the stipulation to transfer jurisdiction, the court shall transfer the proceedings to the criminal division and the child shall be treated as an adult. The state's attorney shall commence criminal proceedings as in cases commenced against adults.

(g) The order granting or denying transfer of jurisdiction shall not constitute a final judgment or order within the meaning of Rules 3 and 4 of the Vermont Rules of Appellate Procedure.

(h) If a person who has not attained the age of 16 at the time of the alleged offense has been prosecuted as an adult and is not convicted of one of the acts listed in subsection (a) of this section but is convicted only of one or more lesser offenses, jurisdiction shall be transferred to the ~~juvenile~~ family division of the superior court for disposition. A conviction under this subsection shall be considered an adjudication of delinquency and not a conviction of crime, and the entire matter shall be treated as if it had remained in ~~juvenile court~~ the family division throughout. In case of an acquittal for a matter specified in this subsection and in case of a transfer to ~~juvenile court~~ the family division under this subsection, the court shall order the sealing of all applicable files and records of the court, and such order shall be carried out as provided in subsection 5119(e) of this title.

(i) The record of a hearing conducted under subsection (c) of this section and any related files shall be open to inspection only by persons specified in

subsections 5117(b) and (c) of this title in accordance with section 5119 of this title and by the attorney for the child.

Sec. 5. 33 V.S.A. § 5232 is amended to read:

§ 5232. DISPOSITION ORDER

\* \* \*

(b) In carrying out the purposes outlined in subsection (a) of this section, the court may:

\* \* \*

(7) Refer a child directly to a youth-appropriate community-based provider that has been approved by the department, which may include a community justice center or a balanced and restorative justice program. Referral to a community-based provider pursuant to this subdivision shall not require the court to place the child on probation. If the community-based provider does not accept the case or if the child fails to complete the program in a manner deemed satisfactory and timely by the provider, the child shall return to the court for disposition.

\* \* \*

Sec. 6. 33 V.S.A. § 4913 is amended to read:

§ 4913. REPORTING CHILD ABUSE AND NEGLECT; REMEDIAL ACTION

(a) Any physician, surgeon, osteopath, chiropractor, or physician's assistant licensed, certified, or registered under the provisions of Title 26, any resident physician, intern, or any hospital administrator in any hospital in this state, whether or not so registered, and any registered nurse, licensed practical nurse, medical examiner, emergency medical personnel as defined in 24 V.S.A. § 2651(6), dentist, psychologist, pharmacist, any other health care provider, child care worker, school superintendent, school teacher, student teacher, school librarian, school principal, school guidance counselor, and any other individual who is regularly employed by a school district, or who is contracted and paid by a school district to provide student services for five or more hours per week during the school year, mental health professional, social worker, probation officer, any employee, contractor, and grantee of the agency of human services who have contact with clients, police officer, camp owner, camp administrator, camp counselor, or member of the clergy who has reasonable cause to believe that any child has been abused or neglected shall report or cause a report to be made in accordance with the provisions of section 4914 of this title within 24 hours. As used in this subsection, "camp" includes any residential or nonresidential recreational program.

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\* \* \*

Sec. 7. REPORT

(a)(1) A committee is established to study the effectiveness of the juvenile justice system in reducing crime and recidivism. The committee shall study changes to the juvenile justice system that could result in reducing recidivism, including the extension of jurisdiction beyond the age of 18 for the purposes of juvenile probation and the automatic expungement of criminal convictions for nonviolent offenses committed by children under 18.

(2) If funding is available, the study shall include consideration of:

(A) the number of 16- and 17-year-olds adjudicated delinquent in the family division during fiscal year 2009 who have been subsequently convicted of an adult offense within three years of the date of disposition of the delinquency;

(B) the number of 16- and 17-year-olds convicted of an adult offense in the criminal division during fiscal year 2009 who have been subsequently convicted of another adult offense; and

(C) the number of children adjudicated delinquent during fiscal year 2009 who are placed in the custody of the department for children and families at disposition, remain in the department's custody for 30 or more days after disposition, and who within three years of the date of sentencing on the first offense become incarcerated or subject to supervision by the department of corrections as a result of another offense.

(b)(1) The committee shall be composed of the following members:

(A) The commissioner for children and families or designee.

(B) The commissioner of corrections or designee.

(C) The administrative judge or designee.

(D) The executive director of state's attorneys and sheriffs or designee.

(E) The defender general or designee.

(2) The committee shall consult with the joint fiscal office regarding the costs and savings associated with the juvenile justice system and monitor the impact on those costs and savings that result from the extension of jurisdiction authorized in this section.

(c) On or before December 1, 2012, the committee shall report its findings, together with any recommendations for changes in law, to the senate and house committees on judiciary, the house committee on human services, and the senate committee on health and welfare.

Sec. 8. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

And that the bill ought to pass in concurrence with such proposal of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the proposal of amendment was agreed to, and third reading of the bill was ordered.

**Committees of Conference Appointed**

**H. 464.**

An act relating to a moratorium on hydraulic fracturing wells for natural gas and oil production.

Was taken up. Pursuant to the request of the House, the President announced the appointment of

Senator Lyons  
Senator Benning  
Senator MacDonald

as members of the Committee of Conference on the part of the Senate to consider the disagreeing votes of the two Houses.

**H. 496.**

An act relating to preserving Vermont's working landscape.

Was taken up. Pursuant to the request of the House, the President announced the appointment of

Senator Illuzzi  
Senator Lyons  
Senator Giard

as members of the Committee of Conference on the part of the Senate to consider the disagreeing votes of the two Houses.

**H. 559.**

An act relating to health care reform implementation.

Was taken up. Pursuant to the request of the House, the President announced the appointment of

Senator Ayer  
Senator Mullin  
Senator Carris

as members of the Committee of Conference on the part of the Senate to consider the disagreeing votes of the two Houses.

**Senator Campbell Assumes the Chair**

In the absence of the President (who was Acting Governor in the absence of the Governor) the President *pro tempore* assumed the Chair.

**Rules Suspended; Report of Committee of Conference Accepted and Adopted on the Part of the Senate; Bill Messaged****H. 789.**

Appearing on the Calendar for notice, on motion of Senator White, the rules were suspended and the report of the Committee of Conference on House bill entitled:

An act relating to reapportioning the final representative districts of the House of Representatives.

Was taken up for immediate consideration.

Senator White, for the Committee of Conference, submitted the following report:

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. 789.** An act relating to reapportioning the final representative districts of the House of Representatives.

Respectfully reports that it has met and considered the same and recommends that the Senate recede from its proposals 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. 17 V.S.A. § 1893, as amended by Sec. 1 of No. 74 of the Acts of the 2011 Adj. Sess. (2012), is amended to read:

§ 1893. INITIAL DIVISION

The state is divided into the following initial districts, each of which shall be entitled to the indicated number of representatives:

District	Towns and Cities	Representatives
	* * *	
<u>BENNINGTON-3</u>	<del>Arlington, Glastenbury, Sandgate, Shaftsbury, Stratton, Sunderland, and that portion of the town of Rupert encompassed within a boundary beginning at the point where the boundary line of Rupert and the state of New York intersects with VT Route 153; then northeasterly along the southern side of the centerline of VT 153 to the intersection of East Street; then easterly along the southern side of the centerline of East Street to the intersection of Kent Hollow Road; then southerly along the western side of the centerline of Kent Hollow Road to the boundary of the town of Sandgate; then westerly along the Sandgate town line to the boundary of New York; then northerly along the New York state line to the point of beginning</del>	2
<u>BENNINGTON-3</u>	<u>Glastenbury, Shaftsbury, and that portion of the town of Sunderland encompassed within a boundary beginning at the point where the boundary line of Sunderland and Glastenbury intersects with VT Route 7; then northerly along the eastern side of the centerline of VT 7 to the intersection of North Road; then northerly along the eastern side of the centerline of North Road to the intersection of Borough Road; then northerly along the eastern side of the centerline of Borough Road to the intersection of Sunderland Hill Road; then northeasterly along the southern side of the centerline of Sunderland Hill Road to the boundary of the town of Manchester; then easterly along the Manchester town line to the boundary of the town of Winhall; then easterly along the Winhall town line to the boundary of the town of Stratton; then southerly along the Stratton town line to the boundary of Glastenbury; then westerly along the Glastenbury town line to the point of beginning</u>	1

BENNINGTON-4 Arlington, Manchester, Sandgate, and that portion of the town of Sunderland not in BENNINGTON-3 12

\* \* \*

CHITTENDEN-4-1 Charlotte and, in Hinesburg, the following census block 003507: 1039 that portion of the town of Hinesburg encompassed within a boundary beginning at the point where the boundary line of Hinesburg and Charlotte intersects with Drinkwater Road; then easterly along the southern side of the centerline of Drinkwater Road to the intersection of Baldwin Road; then southerly along the western side of the centerline of Baldwin Road to the boundary of the town of Monkton; then westerly along the Monkton town line to the boundary of Charlotte; then northerly along the Charlotte town line to the point of beginning 1

CHITTENDEN-4-2 Hinesburg, except that portion of the town in CHITTENDEN-4-1 1

CHITTENDEN-5 Shelburne and St. George 2

CHITTENDEN-6 Burlington and Winooski 12

CHITTENDEN-7 South Burlington 4

CHITTENDEN-8-1 That portion of the town of Essex not included in CHITTENDEN-8-2 or 8-3 2

CHITTENDEN-8-2 The village of Essex Junction, except the following census block 002601: 1023 that portion of the village encompassed within a boundary beginning at the point where Pearl Street intersects with Warner Avenue; then northerly along the western side of the centerline of Warner Avenue to the intersection with Sunderland Brook; then northwesterly along the southern side of the centerline of Sunderland Brook to the intersection with Susie Wilson Road and Pearl Street; then southeasterly along the northern side of the centerline of Pearl Street to the point of beginning 2

CHITTENDEN-8-3 Westford and that portion of the town of Essex encompassed within a boundary beginning at the point where the boundary line of Essex and the town of Colchester intersects with Curve Hill Road; then

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	<p>southeasterly along the northern side of the centerline of Curve Hill Road to the intersection of Lost Nation Road; then southeasterly along the northern side of the centerline of Lost Nation Road to the intersection of Old Stage Road; then northerly along the western side of the centerline of Old Stage Road to the intersection of Towers Road; then southeasterly along the northern side of the centerline of Towers Road to the intersection of <del>Clover Drive; then northeasterly along the western side of the centerline of Clover Drive to the intersection with Alder Brook; then southeasterly along the northern side of the centerline of Alder Brook to the intersection with</del> Brown's River Road; then easterly along the northern side of the centerline of Brown's River Road to the intersection of Weed Road; then easterly along the northern side of the centerline of Weed Road to the intersection of Jericho Road; then easterly along the northern side of the centerline of Jericho Road to the boundary of the town of Jericho; then northeasterly along the Jericho town line to the boundary of Westford; then westerly along the Westford town line to the boundary of Colchester; then southwesterly along the Colchester town line to the point of beginning</p>	1
CHITTENDEN-9	Colchester	4
	* * *	
LAMOILLE-2	Belvidere, Hyde Park, Johnson, <u>and</u> Wolcott, <del>and that portion of the town of Eden not in</del> ORLEANS-LAMOILLE	2
	* * *	
ORLEANS-2	Coventry, Irasburg, Newport City, <del>and</del> Newport Town, <u>and that portion of the town of Troy encompassed within a boundary beginning at the point where the boundary line of Troy and Newport Town intersects with the Canadian Pacific railway; then northwesterly along the southern side of the centerline of the railway to the intersection of VT Route 105; then northwesterly along the southern side of the centerline of VT 105 to the intersection of East Hill Road; then southerly along</u>	

the eastern side of the centerline of East Hill Road to the intersection of VT Route 100; then westerly along the southern side of the centerline of VT 100 to the intersection with the Missisquoi River; then southwesterly along the eastern side of the centerline of the Missisquoi River to the boundary of the town of Westfield; then southerly along the Westfield town line to the boundary of the town of Lowell; then easterly along the Lowell town line to the boundary of Newport Town; then northerly along the Newport Town boundary to the point of beginning 2

\* \* \*

ORLEANS-

LAMOILLE Eden, Jay, Lowell, Troy, Westfield, and that portion of the town of Eden that is west of the centerline of Route 100 Troy not in ORLEANS-2 1

RUTLAND-

BENNINGTON Middletown Springs, Pawlet, Rupert, Wells, and that portion of the town of Tinmouth, that portion of the town of Wells not in RUTLAND-1, and that portion of the town of Rupert not in BENNINGTON 3 not in RUTLAND-2 1

RUTLAND-1 Ira, and Poultney, and that portion of the town of Wells encompassed within a boundary beginning at the point where the boundary line of Wells and Poultney intersects with West Lake Road; then southerly along the eastern and Lake St. Catherine side of the centerline of West Lake Road to the intersection of VT Route 30; then northerly along the western and Lake St. Catherine side of the centerline of VT 30 to the boundary of Poultney; then westerly along the Poultney town line to the point of beginning 1

RUTLAND-2 Clarendon, Proctor, Wallingford, and West Rutland, and that portion of the town of Tinmouth encompassed within a boundary beginning at the point where the boundary line of Tinmouth and Danby intersects with East Road; then northerly along the eastern side of the centerline of East Road and then continuing along the eastern side of the centerline of North East Road to the

boundary of Clarendon; then easterly along the Clarendon town line to the boundary of Wallingford; then southerly along the Wallingford town line to the boundary of Danby; then westerly along the Danby town line to the point of beginning 2

\* \* \*

WINDHAM-5 Marlboro, Newfane, and ~~that portion of the town of Townshend not in WINDHAM BENNINGTON~~ 1

WINDHAM-6 Halifax, ~~Whitingham~~, and Wilmington, and that portion of the town of Whitingham not in  
WINDHAM-BENNINGTON 1

WINDHAM-

BENNINGTON Dover, Readsboro, Searsburg, Somerset, Stamford, Wardsboro, and that portion of the town of ~~Townshend~~ Whitingham encompassed within a boundary beginning at the ~~northernmost point where the boundary line of Townshend and the town of Wardsboro intersects with West Hill Road; then northerly along the eastern side and easterly along the southern side of the centerline of West Hill Road to the intersection of State Forest Road; then easterly along the southern side and southerly along the western side of the centerline of State Forest Road to the boundary of the town of Newfane; then westerly along the town line of Newfane to the boundary line of Wardsboro; then northerly along the town line of Wardsboro to the point of beginning~~ point where the boundary line of Whitingham and Readsboro intersects with VT Route 100; then southerly along the Readsboro town line to the boundary of the state of Massachusetts; then easterly along the Massachusetts state line to the intersection of Kentfield Road; then northerly along the western side of the centerline of Kentfield Road to the intersection with the Nog Brook; then northerly along the western side of the centerline of Nog Brook to the intersection with VT 100; then southerly along the eastern side and westerly along the southern side of the centerline of VT 100 to the point of beginning 1

WINDHAM-

BENNINGTON-

WINDSOR Jamaica, Londonderry, Stratton, Weston, and Winhall  
1

\* \* \*

WINDSOR-3-1 Andover, Baltimore, Chester, and that portion of the town of Springfield encompassed within a boundary beginning at the point where the boundary line of Springfield and Chester intersects with Route 10; then easterly along the southern side of the centerline of Route 10 to the intersection of Cemetery Road; then easterly along the southern side of the centerline of Cemetery Road to the intersection of School Street; then southerly on the western side of the centerline of School Street to the intersection of Main Street; then easterly on the southern side of the centerline of Main Street to the intersection of Church Street; then southerly along the western side of the centerline of Church Street to the intersection with ~~Great Brook~~; then southerly along the western side of the centerline of ~~Great Brook~~ to the intersection with Spoonerville Road; then southerly along the western side of the centerline of Spoonerville Road to the boundary line of Chester; then northerly along the Chester town line to the point of beginning 1

WINDSOR-3-2 That portion of the town of Springfield not in WINDSOR-3-1 2

\* \* \*

Sec. 2. 17 V.S.A. § 1893a is amended to read:

§ 1893a. SUBDIVISION OF INITIAL DISTRICTS

(a) The following initial House districts, ~~created and assigned more than two members by section 1893 of this title, as amended by No. 85 of the Acts of 2002,~~ are subdivided into final representative House districts, as designated and defined below, each of which shall be entitled to elect the indicated number of representatives:

(1) ~~BENNINGTON 2 is subdivided into the following districts:~~

~~BENNINGTON 2 1. That portion of the town of Bennington not included in BENNINGTON 2 2.~~

2

~~BENNINGTON 2 2. That portion of the town of Bennington encompassed by a border beginning at the intersection of VT 7 and the Pownal town line, then northerly on the easterly side of VT 7 to the intersection with Monument Avenue, then northerly along the easterly side of Monument Avenue to the intersection with Dewey Street, then northerly along the easterly side of Dewey Street to the intersection with West Main Street, then southeasterly on the southerly side of West Main Street to the intersection with North Street, then northerly along the easterly side of North Street to the intersection with County Street, then easterly along the southerly side of County Street to the intersection with Park Street, then northerly along the easterly side of Park Street to the intersection with Roaring Branch River, then easterly along the southerly side of the river to the intersection with VT 9, then easterly along VT 9 to the intersection with the Bennington Woodford town line, then southerly along the westerly side of the Bennington Woodford town line to the intersection with the Bennington Pownal town line, then westerly along the northerly side of the Bennington Pownal town line to the point of beginning.~~

2

~~(2) CHITTENDEN 3 is subdivided into the following districts:~~

~~CHITTENDEN 3 1. Consisting of all that portion of the City of Burlington encompassed within a boundary beginning where the northerly property line of Leddy Park intersects the shore of Lake Champlain, then northeasterly along said property line and said property line extended to North Avenue, then southeasterly along North Avenue to the southerly boundary of Farrington's Trailer Park, then northeasterly and northwesterly along the boundary of Farrington's Trailer Park and the back property lines of property fronting Lopes Avenue to the northwest corner of the corner lot at the intersection of Lopes Avenue and Roseade Parkway including all the residences in Farrington's Trailer Park and on Poirier Place, then northeasterly along the back property lines between property fronting on Roseade Parkway and Arlington Court including all the residences on Arlington Court, and turning northwesterly along the back property lines of property fronting Arlington Court to the intersection of the back property lines of property fronting Farrington Parkway, then easterly along the back property lines of property fronting Farrington Parkway to the south, then easterly along Farrington Parkway to the intersection of Farrington Parkway and Ethan Allen Parkway, then northerly along Ethan Allen Parkway to a point where the back property lines of property fronting the north side of Farrington Parkway intersect Ethan Allen Parkway, then westerly along the back property lines of property fronting the north side of Farrington Parkway to include all~~

~~residences on Farrington Parkway, continuing west across the end of Gosse Court to the southeast corner of the Lyman C. Hunt School property, then northwesterly along the property boundary of the Lyman C. Hunt School property to its northeast corner, then northeasterly along the back property lines of property fronting on Janet Circle to a point where said back property lines intersect the back property lines of property fronting on James Avenue, then northwesterly along the back property lines of property fronting on James Avenue and Sandra Circle and continuing northeasterly along the back property lines of property fronting on Sandra Circle to the intersection of the right of way of the Winooski Valley Park Way, then northerly in a straight line to the Winooski River, then northerly along the Winooski River to its intersection with Lake Champlain, then southerly along the shore of Lake Champlain back to the point of beginning.~~

2

~~CHITTENDEN 3 2.—Consisting of all that portion of the City of Burlington encompassed within a boundary beginning where the northerly property line of Leddy Park intersects the shore of Lake Champlain, then northeasterly along said property line and said property line extended to North Avenue, then southeasterly along North Avenue to the southerly boundary of Farrington's Trailer Park, then northeasterly and northwesterly along the boundary of Farrington's Trailer Park and the back property lines of property fronting Lopes Avenue to the northwest corner of the corner lot at the intersection of Lopes Avenue and Roseade Parkway including all the residences on Lopes Avenue and Blondin Circle, then northeasterly along the back property lines between property fronting on Roseade Parkway and Arlington Court including all the residences on Roseade Parkway, and turning northwesterly along the back property lines of property fronting Arlington Court to the intersection of the back property lines of property fronting Farrington Parkway, then easterly along the back property lines of property fronting Farrington Parkway to the south, then easterly along Farrington Parkway to the intersection of Farrington Parkway and Ethan Allen Parkway including all units at 282 Ethan Allen Parkway, then northerly along Ethan Allen Parkway to a point where the back property lines of property fronting the north side of Farrington Parkway intersect Ethan Allen Parkway, then westerly along the back property lines of property fronting the north side of Farrington Parkway, continuing west across the end of Gosse Court to the southeast corner of the Lyman C. Hunt School property, then northwesterly along the property boundary of the Lyman C. Hunt School property to its northeast, then northeasterly along the back property lines of property fronting on Janet Circle to a point where said back property lines intersect the back property lines of property fronting on James Avenue including all residences on Janet Circle, then northwesterly along the back property lines of property fronting on James Avenue and Sandra Circle and continuing northeasterly along the back~~



~~property lines of property fronting on Sandra Circle to the intersection of the right of way of the Winooski Valley Park Way including all residences on Sandra Circle, then northerly in a straight line to the Winooski River, then following the Winooski River easterly to the railroad bridge, then westerly along the railroad bridge and continuing along the railroad tracks until it intersects at a point with the straight line extension of the property boundary between 603 and 617 Riverside Avenue, then southerly along the straight line extension of the property boundary between 603 and 617 Riverside Avenue, continuing southerly along the property boundary of 603 and 617 Riverside Avenue to its intersection with Riverside Avenue, then westerly along Riverside Avenue to the intersection of Intervale Avenue, then southwestwardly along Intervale Avenue to the intersection of Archibald Street, then westerly along Archibald Street to the intersection of Spring Street, then northwestwardly along Spring Street to the intersection of Manhattan Drive, then westerly along Manhattan Drive to the intersection of Pitkin Street, then southerly along Pitkin Street to the intersection of Strong Street, then westerly along Strong Street to the intersection of North Avenue, then northwestwardly along North Avenue to the intersection of Sunset Court, then southwestwardly along Sunset Court to its end to include all residences on the northwestwardly side of Sunset Court, continuing southeastwardly in a straight line extension of Sunset Court to its intersection with the railroad tracks, then southerly along the railroad tracks to the intersection of the northern boundary line of the property to the north of the Moran Plant, then westerly along the boundary line to the intersection of the shore of Lake Champlain, then northerly along the shore of Lake Champlain to the point of beginning.~~

†

~~CHITTENDEN 3 3. Consisting of that portion of the City of Burlington encompassed within a boundary beginning at the intersection of Maple and Willard Streets, then westerly along Maple Street to the intersection of St. Paul Street, then southerly along St. Paul Street to the intersection of Kilburn Street, then westerly along Kilburn Street to the intersection of Pine Street, then southerly along Pine Street to where the railroad track parallels Pine Street, then northwestwardly along the railroad track to the intersection of Maple Street, then westerly along Maple Street to the shore of Lake Champlain, then northerly along the shore of Lake Champlain to the intersection of the northern boundary line of the property to the north of the Moran Plant, then easterly along the boundary line to the intersection of the railroad tracks, then northerly along the railroad tracks to an intersection with a straight line extension of Sunset Court, then northeastwardly along the straight line extension of Sunset Court and continuing along Sunset Court to its intersection with North Avenue to include all residences on the southeastwardly side of Sunset Court, then southeastwardly along North Avenue to the intersection of Strong Street, then easterly along Strong Street to the intersection of Pitkin Street, then northerly~~

~~along Pitkin Street to the intersection of Manhattan Drive, then easterly along Manhattan Drive to the intersection of Spring Street, then southeasterly along Spring Street to the intersection of Archibald Street, then easterly along Archibald Street to the intersection of North Union Street, then southwesterly and southerly along North Union Street to the intersection of Pearl Street, then easterly along Pearl Street to the intersection of Willard Street, then southerly along Willard Street to the point of beginning.~~

2

~~CHITTENDEN 3 4. Consisting of that portion of the City of Burlington encompassed within a boundary beginning at the intersection of Davis Road and the boundary between the City of Burlington and the City of South Burlington, then southwesterly along Davis Road to the intersection of South Prospect Street, then northerly along South Prospect Street to the intersection of Main Street, then westerly along Main Street to the intersection of Willard Street, then northerly along Willard Street to the intersection of Pearl Street, then westerly along Pearl Street to the intersection of North Union Street, then northerly along North Union Street to the intersection of North Winooski Avenue, then northeasterly along North Winooski Avenue to the intersection of Archibald Street, then westerly along Archibald Street to the intersection of Intervale Avenue, then northeasterly along Intervale Avenue to the intersection of Riverside Avenue, then easterly along Riverside Avenue to the intersect~~

~~ion of North Winooski Avenue, then northerly along the property boundary between 603 and 617 Riverside Avenue to the northeastern corner of 617 Riverside Avenue, then northerly along the straight line extension of the property boundary between 603 and 617 Riverside Avenue to the intersection of the railroad tracks, then easterly along the railroad tracks to the intersection of Intervale Road, then southerly along Intervale Road, crossing Riverside Avenue, and continuing southerly along North Prospect Street to the intersection of North Street, then easterly along North Street to the intersection of Mansfield Avenue, then southerly along Mansfield Avenue to the intersection of Colchester Avenue, then northeasterly along Colchester Avenue to the intersection of Chase Street, then northeasterly along Chase Street to the intersection of Grove Street, then southeasterly along Grove Street to the intersection of the boundary line between the City of Burlington and the City of South Burlington, then southwesterly along the boundary line to the intersection of Main Street, then northwesterly along Main Street to the intersection with the boundary line, then southerly along the boundary line to the point of beginning.~~

2

~~CHITTENDEN 3 5. Consisting of that portion of the City of Burlington encompassed within a boundary beginning from the shore of Lake Champlain and the boundary line with the City of South Burlington, then easterly along the boundary line between the City of Burlington and the City of South~~

~~Burlington to Shelburne Street, then northerly and then easterly along the boundary line with the City of South Burlington, then northerly along the boundary line with the City of South Burlington to the intersection of Davis Road, then southwesterly along Davis Road to the intersection of South Prospect Street, then northerly along South Prospect Street to the intersection of Main Street, then westerly along Main Street to the intersection of Willard Street, then southerly along Willard Street to the intersection of Maple Street, then westerly along Maple Street to the intersection of St. Paul Street, then southerly along St. Paul Street to the intersection of Kilburn Street, then westerly along Kilburn Street to the intersection of Pine Street, then southerly along Pine Street to where the railroad track parallels Pine Street, then northwesterly along the railroad track to the intersection of Maple Street, then westerly along Maple Street to the intersection of the shore of Lake Champlain, then southerly along the shore of Lake Champlain to the point of beginning.~~

2

~~CHITTENDEN 3-6. Consisting of all the City of Winooski and that portion of the City of Burlington encompassed within a boundary beginning at the northern terminus of the boundary line between the cities of Burlington and South Burlington located at a point adjacent to the Winooski River west of Interstate 89, then southwesterly along the boundary line to the intersection of the boundary line and Grove Street, then northwesterly along Grove Street to the intersection of Chase Street, then southwesterly along Chase Street to the intersection of Colchester Avenue, then southwesterly along Colchester Avenue to the intersection of Mansfield Avenue, then northerly along Mansfield Avenue to the intersection of North Street, then westerly on North Street to the intersection of North Prospect Street, then northerly along North Prospect Street, crossing Riverside Avenue, and continuing along Intervale Road to the intersection of the railroad tracks, then easterly along the railroad tracks to the Winooski River and the boundary of the City of Burlington and the City of Winooski.~~

2

~~CHITTENDEN 3-7. That portion of the City of South Burlington starting at a point on Lake Champlain at the Shelburne-South Burlington boundary and following the Shelburne-South Burlington boundary easterly to Shelburne Road; then northerly following Shelburne Road to Allen Road; then easterly following Allen Road to Spear Street; then northerly on Spear Street to Pheasant Way; then westerly on Pheasant Way to Deerfield Drive; then northerly on Deerfield Drive; then easterly on Deerfield Drive to the intersection with Spear Street; then across Spear Street to Nowland Farm Road to the intersection with Pinnacle Drive; then northerly on Pinnacle Drive; then easterly on Pinnacle Drive; then northerly on Pinnacle Drive; then westerly on Pinnacle Drive; then southerly on Pinnacle Drive to the intersection with~~

~~Olivia Drive; then westerly along Olivia Drive to Spear Street; then northerly on Spear Street to Swift Street; then westerly on Swift Street to Shelburne Road; then westerly along the Burlington South Burlington boundary to Lake Champlain; then following the shore of Lake Champlain southerly to the point of beginning.~~ †

~~CHITTENDEN 3 8.— That portion of the City of South Burlington starting at the junction of Dorset Street and the Shelburne South Burlington boundary and proceeding easterly to the junction of the Shelburne South Burlington Williston boundaries; then northerly following the Williston South Burlington boundary to Williston Road; then continuing westerly to the intersection of Hinesburg Road/Patchen Road; then southerly following Hinesburg Road to Woodcrest Street; then westerly on Woodcrest Street; then northerly on Woodcrest Street; then westerly on Woodcrest Street; then southerly on Woodcrest Street to Dean Street; then easterly on Dean Street to Hinesburg Road; then southerly along Hinesburg Road to Interstate 89; then westerly along Interstate 89 to its intersection with Dorset Street; then southerly to Swift Street; then westerly following Swift Street to Spear Street; then southerly along Spear Street to Olivia Drive; then easterly on Olivia Drive to Pinnacle Drive; then northerly on Pinnacle Drive; then easterly on Pinnacle Drive; then southerly on Pinnacle Drive; then westerly on Pinnacle Drive; then southerly on Pinnacle Drive to Nowland Farm Road; then westerly to Spear Street; then across Spear Street to Deerfield Drive; then westerly on Deerfield Drive; then southerly on Deerfield Drive to Pheasant Way; then easterly on Pheasant Way to Spear Street; then southerly along Spear Street to Allen Road; then westerly following Allen Road to the intersection of Shelburne Road; then southerly on Shelburne Road to the Shelburne South Burlington boundary; then easterly on the Shelburne South Burlington boundary to the point of beginning at Dorset Street and the Shelburne South Burlington boundary.~~ †

~~CHITTENDEN 3 9.— That portion of the City of South Burlington starting at the junction of the Burlington South Burlington boundary and Williston Road and following that boundary starting northerly following the city boundary to the Winooski River, then following the South Burlington-Winooski River boundary to Muddy Brook, then following the Muddy Brook-South Burlington boundary to Williston Road, then westerly to Hinesburg Road/Patchen Road, then southerly to Woodcrest Street, then westerly on Woodcrest Street, then northerly on Woodcrest Street, then westerly on Woodcrest Street, then southerly on Woodcrest Street to Dean Street, then easterly on Dean Street to Hinesburg Road, then continuing southerly on Hinesburg Road to Potash Brook, then westerly following the centerline of Potash Brook to the intersection with Kennedy Drive, then westerly on Kennedy Drive to Dorset Street, then northerly on Dorset Street to Williston~~

~~Road, then westerly to the point beginning at the junction of the Burlington-South Burlington boundary and Williston Road. 1~~

~~CHITTENDEN 3-10. That portion of the City of South Burlington not contained in CHITTENDEN 3-7, 3-8, or 3-9. 1~~

~~(3) CHITTENDEN 6 is subdivided into the following districts:~~

~~CHITTENDEN 6-1. That portion of the Town of Essex not included in CHITTENDEN 6-2 or 6-3. 2~~

~~CHITTENDEN 6-2. The Village of Essex Junction. 2~~

~~CHITTENDEN 6-3. The Town of Westford, plus that portion of the Town of Essex bounded by the centerline of the road from Curve Hill at the Colchester Town line, then to Lost Nation Road, then northerly on Old Stage Road to Towers Road, then continuing easterly to Brown's River Road to Weed Road, then easterly on Jericho Road to the Jericho town line. 1~~

~~(4) CHITTENDEN 7 is subdivided into the following districts:~~

~~CHITTENDEN 7-1. That portion of the town of Colchester north of Malletts Creek and west of Interstate 89 to the Milton town line, plus that portion of the town of Colchester east of Interstate 89. 2~~

~~CHITTENDEN 7-2. That portion of the town of Colchester not included in CHITTENDEN 7-1. 2~~

~~(5) GRAND ISLE CHITTENDEN 1 is subdivided into the following districts:~~

~~GRAND ISLE CHITTENDEN 1-1. The towns of Alburg, Grand Isle, Isle La Motte, North Hero and South Hero, plus that portion of the town of Milton bounded by a line beginning at the mouth of the Lamoille River and Lake Champlain, then along the river upstream to the Interstate 89 bridge crossing the Lamoille River, then northerly along Interstate 89 to the Georgia town line, then along the Georgia town line to Lake Champlain, then southerly along the lakeshore to the place of beginning. 2~~

~~CHITTENDEN 9. That portion of the town of Milton not included in GRAND ISLE CHITTENDEN 1. 2~~

~~(6) RUTLAND 1 is subdivided into the following districts:~~

~~RUTLAND 1-1. The town of Poultney and that part of the town of Ira encompassed within a boundary beginning in the southwest at the intersection of the town boundaries of Ira, Middletown Springs and Poultney, then northerly along the boundary with Poultney and continuing northerly along the boundary with Castleton, then easterly along the boundary with Castleton to the boundary with West Rutland, then southeasterly along the boundary with~~

~~West Rutland to the ridge line of the mountain range, then southwesterly along the ridge line of the mountain range to the boundary with Middletown Springs, then westerly along the boundary with Middletown Springs to the point of beginning.~~ †

~~RUTLAND 1-2. The towns of Clarendon, Proctor, West Rutland and that part of the town of Ira not included in RUTLAND 1-1.~~ ‡

~~(7) RUTLAND 5 is subdivided into the following districts:~~

~~RUTLAND 5 1. That portion of the City of Rutland encompassed within a boundary beginning at the point where the boundary line of Rutland City and Rutland Town intersects with Lincoln Avenue, then southerly along the east side of the centerline of Lincoln Avenue to the intersection of West Street, then easterly along the north side of the centerline of West Street across North Main Street, then easterly along the north side of Terrill Street to the intersection of Lafayette Street, then southerly along the east side of the centerline of Lafayette Street to the intersection of Easterly Avenue, then easterly along the north side of Easterly Avenue to the intersection of Easterly Avenue and Piedmont Drive, then easterly along the north side of the centerline of Piedmont Drive to the intersection of Piedmont Drive and Piedmont Parkway, then easterly along the centerline of Piedmont Parkway to the intersection of Piedmont Parkway and Stratton Road, then southerly along the easterly side of the centerline of Stratton Road to the intersection of Stratton Road and Killington Avenue, then easterly along the north side of the centerline of Killington Avenue, including both sides of Grandview Terrace, to the boundary between Rutland City and Rutland Town, then northerly following the boundary line to its intersection with Gleason Road, then westerly along the south side of the centerline of Gleason Road to Woodstock Avenue, then following the boundary line back to the point of beginning.~~ †

~~RUTLAND 5 2. That portion of the City of Rutland encompassed within a boundary beginning at the point where the boundary line of Rutland City and Rutland Town intersects with South Main Street, then northerly along the easterly side of the centerline of South Main Street to the intersection of South Main Street and Strongs Avenue, then northwesterly along the east side of the centerline of Strongs Avenue to the intersection of Strongs Avenue and Prospect Street, then northerly along the east side of the centerline of Prospect Street to the intersection of Prospect Street and Washington Street, then easterly along the south side of the centerline of Washington Street to the intersection of Washington Street and Court Street, then northerly along the east side of the centerline of Court Street to the intersection of Court Street and West Street, then easterly along the south side of the centerline of West Street, to the intersection of West Street and South Main Street, then east across South~~

~~Main Street, to the intersection of South Main Street and Terrill Street, then easterly along the south side of the centerline of Terrill Street to the intersection of Terrill Street and Lafayette Street, then southerly along the west side of the centerline of Lafayette Street to the intersection of Lafayette Street and Easterly Avenue, then easterly along the south side of the centerline of Easterly Avenue to the intersection of Easterly Avenue and Piedmont Drive, then easterly along the south side of the centerline of Piedmont Drive to the intersection of Piedmont Drive and Piedmont Parkway, then easterly along the south side of the centerline of Piedmont Parkway to the intersection of Piedmont Parkway and Stratton Road, then southerly along the west side of the centerline of Stratton Road to the intersection of Stratton Road and Killington Avenue, then easterly along the south side of the centerline of Killington Avenue to the boundary of Rutland City and Rutland Town, then southerly along the city line to the intersection of the city line and South Main Street to the point of beginning.~~ †

~~RUTLAND 5-3. That portion of the City of Rutland encompassed within a boundary beginning at the point where the boundary line of Rutland City and Rutland Town intersects with South Main Street, then northerly along the west side of the centerline of South Main Street to the intersection of South Main Street and Strongs Avenue, then northwesterly along the west side of the centerline of Strongs Avenue to the intersection of Strongs Avenue and Prospect Street, then northerly along the west side of the centerline of Prospect Street to the intersection of Prospect Street and Washington Street, then easterly along the north side of the centerline of Washington Street to the intersection of Washington Street and Court Street, then northerly along the west side of the centerline of Court Street to the intersection of Court Street and West Street, then easterly along the north side of the centerline of West Street to the intersection of West Street and Lincoln Avenue, then northerly along the west side of the centerline of Lincoln Avenue to the intersection of Lincoln Avenue and Williams Street, then west along the south side of the centerline of Williams Street to the intersection of Williams Street and Grove Street, then north along the west side of the centerline of Grove Street to the intersection of Grove Street and Maple Street, then west along the south side of the centerline of Maple Street to the intersection of Maple Street and Pine Street, then south along the east side of the centerline of Pine Street to the intersection of Pine Street and Robbins Street, then west along the south side of the centerline of Robbins Street to the intersection of Robbins Street and Baxter Street, then south along the east side of the centerline of Baxter Street to the intersection of Baxter Street and State Street, then west along the south side of the centerline of State Street to the intersection of State Street and Cramton Avenue, then south along the east side of the centerline of Cramton Avenue to the intersection of Cramton Avenue and West Street, then westerly~~

~~along the south side of the centerline of West Street to the intersection of Ripley Road, then southerly along the Rutland City Rutland Town line to the intersection of the city line and South Main Street, the point of beginning. †~~

~~RUTLAND 5-4. That portion of the City of Rutland not located within the boundaries of RUTLAND 5-1, 5-2 or 5-3. †~~

~~(8) WASHINGTON 3 is subdivided into the following districts:~~

~~WASHINGTON 3-1. That portion of the City of Barre bounded on the north, east and south by Barre Town, and bounded on the west by a line running along the center of Hall Street to the intersection of Elm Street, then along the center of Elm Street to the intersection of North Main Street, then along the center of North Main Street to the intersection of Prospect Street, then along the center of Prospect Street to the intersection of Allen Street, then along the western back lot line of Allen Street to the Barre Town boundary. †~~

~~WASHINGTON 3-2. That portion of the City of Barre bound on the north and south by the Barre Town line, on the east by the boundary with WASHINGTON 3-1, and on the west by the boundary with WASHINGTON 3-3. †~~

~~WASHINGTON 3-3. The town of Berlin and that portion of the City of Barre bound on the west by the Berlin town line, on the north and south by the Barre Town line, and on the east by a boundary running from the Barre Town northern boundary along the center of Beckley Street, then along the center of Third Street to North Main Street, then along the center of North Main Street to the intersection of Berlin Street, then along the center of Berlin Street to Prospect Street, then along the center of Prospect Street to the Barre Town line. †~~

~~(9) WINDHAM 3 is subdivided into the following districts:~~

~~WINDHAM 3-1. That portion of the Town of Brattleboro to the west of a boundary beginning at Upper Dummerston Road at the Dummerston town line, then southeasterly along the centerline of Upper Dummerston Road to Interstate 91, then southerly along the median of Interstate 91 to Williams Street, then easterly along the centerline of Williams Street to where the Whetstone Brook crosses, then southwesterly along the western bank of the Whetstone Brook to Lamson Street and southerly along the centerline of Lamson Street to Chestnut Street, then westerly along the centerline of Chestnut Street to Interstate 91, then southerly along the median of Interstate 91 to the Guilford town line. †~~

~~WINDHAM 3-2. That portion of the Town of Brattleboro to the south of a boundary beginning at the Connecticut River at the Whetstone Brook, westerly along the southern bank of the Whetstone Brook to Elm Street, then~~



~~northerly along the centerline of Frost Street to Williams Street and following the centerline of Williams Street to West Street, then westerly along the centerline of West Street to Williams Street and westerly along the centerline of Williams Street to where the Whetstone Brook crosses, then southwesterly along the eastern bank of the Whetstone Brook to Lamson Street and southerly along the centerline of Lamson Street to Chestnut Street, then westerly along the centerline of Chestnut Street to Interstate 91, and east of Interstate 91 to the Guilford town line.~~

~~1~~

~~WINDHAM 3 3. That portion of the Town of Brattleboro not located in WINDHAM 3 1 or 3 2.~~

~~1~~

~~(10) WINDSOR 1 is subdivided into the following districts:~~

~~WINDSOR 1 1. The towns of Andover, Baltimore, Chester and that portion of the town of Springfield encompassed within a boundary beginning at the Chester Springfield town lines at Northfield Drive, then easterly along the centerline of Northfield Drive to the intersection with Fairbanks Road, then northerly along the centerline of Fairbanks Road to the intersection with Main Street, North Springfield, then easterly along the centerline of Main Street, North Springfield to the intersection with the County Road, then northeasterly along the centerline of the County Road to the intersection with VT 106, then northwesterly along the centerline of VT 106 to the intersection with the Baltimore Road, then northwesterly along the centerline of the Baltimore Road to the Chester boundary line, then southerly along the Chester boundary line to the point of the beginning.~~

~~1~~

~~WINDSOR 1 2. That portion of the town of Springfield not part of WINDSOR 1 1.~~

~~2~~

~~(11) WINDSOR 6 is subdivided into the following districts:~~

~~WINDSOR 6 1. The towns of Barnard and Pomfret and that portion of the town of Hartford lying westerly and northerly of a boundary beginning on the Norwich Hartford town line at the centerline of Newton Lane, then southerly along the centerline of Newton Lane to its intersection with Jericho Street, then westerly along the centerline of Jericho Street to its intersection with Dothan Road, then southerly along the centerline of Dothan Road to VT 14, then westerly along the centerline of VT 14 to the intersection of the centerline of Runnels Road and VT 14, then at a right angle to a utility pole marked 137T/6 ET&T/3>/136/GMP Corp/156/40030 on the south edge of VT 14, then southerly in a straight line across the White River to the junction of Old River Road and the beginning of Costello Road, then southerly and easterly along the center of Costello Road to its end on U.S. Route 4, then westerly along the centerline of U.S. Route 4 to the intersection of Waterman Hill Road, then northerly along the centerline of Waterman Hill Road to the~~

~~northerly low watermark of the Ottauquechee River, then westerly and southerly along the northerly and westerly low watermark of the Ottauquechee River to the Hartford Hartland town line, then westerly along the town line to the northerly low watermark of the Ottauquechee River, then along the northerly low watermark of the Ottauquechee River to the Hartford Pomfret town line.~~

‡

~~WINDSOR 6 2. That portion of the town of Hartford not located in WINDSOR 6 1.~~

‡

~~(b) The following initial House districts, created and assigned two members by section 1893 of this title, as amended by No. 85 of the Acts of 2002, are subdivided as recommended by their respective boards of civil authority into final House districts, as designated and defined below, each of which shall be entitled to elect one representative:~~

~~(1) CHITTENDEN 1 is subdivided into the following districts:~~

~~CHITTENDEN 1 1. The town of Hinesburg, except two portions: the first being that portion of the town of Hinesburg in the southwest corner of the town bounded by a line beginning at the intersection of the Monkton town line and Baldwin Road, then northerly along Baldwin Road to its intersection with Drinkwater Road, then westerly along the centerline of Drinkwater Road to the Charlotte town line, and the second being that portion of the town of Hinesburg in the northwest corner of the town bounded by a line beginning at the junction of VT 116 and the St. George town line, then southerly along the centerline of VT 116 to its intersection with Falls Road, then westerly along the centerline of Falls Road to its intersection with O'Neill Road, then westerly along the centerline of O'Neill Road to the Charlotte town border.~~

‡

~~CHITTENDEN 1 2. The town of Charlotte, plus the two portions of the town of Hinesburg not included in CHITTENDEN 1 1.~~

‡

~~(2) CHITTENDEN 5 is subdivided into the following districts:~~

~~CHITTENDEN 5 1. That portion of the town of Shelburne bounded by a line beginning on the southwest corner of the Shelburne Charlotte town line, then following the shore of Lake Champlain to the mouth of Munroe Brook, including all of the Lake that is part of the town of Shelburne, then upstream along the center of Munroe Brook to the intersection with Spear Street, then south along the centerline of Spear Street to the Shelburne Charlotte town line, then west along the Shelburne Charlotte town line to the place of beginning.~~

‡

~~CHITTENDEN 5 2. The town of St. George, plus that portion of Shelburne which is not in CHITTENDEN 5 1.~~

‡

(a) CHITTENDEN-5 is subdivided into the following districts:

(1) CHITTENDEN-5-1. That portion of the town of Shelburne encompassed within a boundary beginning at the point where the boundary line of Shelburne and the town of Charlotte intersects with the shore of Lake Champlain; then northerly along the shore of Lake Champlain to the mouth of Munroe Brook, including all of the lake that is part of the town of Shelburne; then upstream along the western side of the centerline of Munroe Brook to the intersection with Spear Street; then southerly along the western side of the centerline of Spear Street to the boundary of Charlotte; then westerly along the Charlotte town line to the point of beginning 1

(2) CHITTENDEN-5-2. St. George and that portion of the town of Shelburne not in CHITTENDEN-5-1 1

(b) CHITTENDEN-6 is subdivided into the following districts:

(1) CHITTENDEN-6-1. That portion of the city of Burlington encompassed within a boundary beginning at the point where the northwestern property line of Leddy Park intersects with the shore of Lake Champlain; then northeasterly along the northern side of that property line and continuing from that property line in a straight line to the intersection of North Avenue; then southeasterly along the northeastern side of the centerline of North Avenue to the southern boundary of Farrington's Trailer Park; then northeasterly and then northwesterly along the boundary of Farrington's Trailer Park and the back property lines of property fronting Lopes Avenue to the northwest corner of the corner lot at the intersection of Lopes Avenue and Roseade Parkway, including all of the residences in Farrington's Trailer Park and on Poirier Place; then northeasterly along the back property lines between property fronting on Roseade Parkway and Arlington Court, including all the residences on Arlington Court; then turning northwesterly along the back property lines of property fronting Arlington Court to the intersection of the back property lines of property fronting Farrington Parkway on the southern side; then easterly along those back property lines to Farrington Parkway; then easterly along the northern side of the centerline of Farrington Parkway to the intersection of Ethan Allen Parkway; then northerly along the western side of the centerline of Ethan Allen Parkway to the intersection of VT Route 127; then northwesterly along the southern side of the centerline of VT 127 to the intersection of the boundary of the town of Colchester at the Heineberg Bridge over the Winooski River; then northerly and westerly along the Colchester town line to the intersection with Lake Champlain; then southerly along the shore of Lake Champlain to the point of beginning 2

(2) CHITTENDEN-6-2. That portion of the city of Burlington encompassed within a boundary beginning at the point where the northwestern property line of Leddy Park intersects with the shore of Lake Champlain; then

northeasterly along the southern side of that property line and continuing from that property line in a straight line to the intersection of North Avenue; then southeasterly along the southwestern side of the centerline of North Avenue to the southern boundary of Farrington's Trailer Park; then northeasterly and then northwesterly along the boundary of Farrington's Trailer Park and the back property lines of property fronting Lopes Avenue to the northwest corner of the corner lot at the intersection of Lopes Avenue and Roseade Parkway, including all the residences on Lopes Avenue and Blondin Circle; then northeasterly along the back property lines between property fronting on Roseade Parkway and Arlington Court, including all the residences on Roseade Parkway; then turning northwesterly along the back property lines of property fronting Arlington Court to the intersection of the back property lines of property fronting Farrington Parkway on the southern side; then easterly along those back property lines to Farrington Parkway; then easterly along the southern side of the centerline of Farrington Parkway to the intersection of Ethan Allen Parkway, including all units at 282 Ethan Allen Parkway; then northerly along the eastern side of the centerline of Ethan Allen Parkway to the intersection of VT Route 127; then northwesterly along the northern side of the centerline of VT 127 to the intersection of the boundary of the town of Colchester at the Heineberg Bridge over the Winooski River; then easterly and southerly along the Colchester town line and continuing along the boundary of the city of Winooski to the railroad bridge; then westerly along the northern side of the centerline of the railroad bridge and continuing along the northern side of the centerline of the railroad tracks to the intersection of a point representing the centerline of the railroad tracks and a straight line extension of the centerline of Spring Street; then southeasterly along the western side of the centerline of that straight line to the intersection of Spring Street and Manhattan Drive; then westerly along the northern side of the centerline of Manhattan Drive to the intersection of Pitkin Street; then southerly along the western side of the centerline of Pitkin Street to the intersection of North Street; then easterly along the southern side of the centerline of North Street to the intersection of North Champlain Street; then southerly along the western side of the centerline of North Champlain Street to the intersection of Pearl Street; then westerly along the northern side of the centerline of Pearl Street to the intersection of Battery Street; then southerly along the western side of the centerline of Battery Street to the intersection of College Street; then westerly along the northern side of the centerline of College Street to the intersection of the Island Line Trail; then southerly along the western side of the Island Line Trail to a point representing the southern end of the Union Station building; then northwesterly from that point to a point representing the intersection of a

straight line extension of Main Street and the shore of Lake Champlain; then northwesterly along the shore of Lake Champlain to the point of beginning

1

(3) CHITTENDEN-6-3. That portion of the city of Burlington encompassed within a boundary beginning at the point of the intersection of Spring Street and Manhattan Drive; then westerly along the southern side of the centerline of Manhattan Drive to the intersection of Pitkin Street; then southerly along the eastern side of the centerline of Pitkin Street to the intersection of North Street; then easterly along the northern side of the centerline of North Street to the intersection of North Champlain Street; then southerly along the eastern side of the centerline of North Champlain Street to the intersection of Pearl Street; then westerly along the southern side of the centerline of Pearl Street to the intersection of Battery Street; then southerly along the eastern side of the centerline of Battery Street to the intersection of College Street; then westerly along the southern side of the centerline of College Street to the intersection of the Island Line Trail; then southerly along the eastern side of the centerline of the Island Line Trail to the southern end of the Union Station building; then northwesterly from that point to a point representing the intersection of a straight line extension of Main Street and the shore of Lake Champlain; then southerly along the shore of Lake Champlain to a point representing the intersection of the shore of Lake Champlain and a straight line extension of Maple Street; then easterly along the northern side of the centerline of Maple Street to the intersection of South Willard Street; then northerly along the western side of the centerline of South Willard Street to the intersection of Main Street; then westerly along the southern side of the centerline of Main Street to the intersection of South Union Street; then northerly along the western side of the centerline of South Union Street to the intersection of Pearl Street; then continuing on North Union Street to the intersection of North Street; then easterly along the northern side of the centerline of North Street to the intersection of North Willard Street; then northerly along the western side of the centerline of North Willard Street to the intersection of Hyde Street; then northeasterly along the western side of the centerline of Hyde Street to a point representing the intersection of a straight line extension of Hyde Street and the railroad tracks; then westerly along the southern side of the centerline of the railroad tracks to the intersection of a point representing the intersection of the centerline of the railroad tracks and a straight line extension of the centerline of Spring Street; then southeasterly along the eastern side of the centerline of that straight line to the point of beginning

2

(4) CHITTENDEN-6-4. That portion of the city of Burlington encompassed within a boundary beginning at the point of the intersection of

North Street and North Union Street; then southerly along the eastern side of the centerline of North Union Street to the intersection of Pearl Street; then easterly along the northern side of the centerline of Pearl Street to the intersection of South Prospect Street; then southerly along the eastern side of the centerline of South Prospect Street to the intersection of Main Street; then easterly along the northern side of the centerline of Main Street to the northeastern boundary of 461 Main Street; then southeasterly along the eastern side of the boundary of 461 Main Street and 475 Main Street, including the property at 475, 479, and 481 Main Street and excluding the property at 461 Main Street and continuing in a straight line to the southwestern corner of the property located at 475 Main Street, including that property; then continuing on to and along the eastern side of the boundary between property located on Robinson Parkway and property located on University Terrace, including the University Terrace properties, to the intersection with University Heights Road; then continuing southerly from the intersection with University Heights Road on the eastern side of the boundary between properties within University Heights and those properties on South Prospect Street and on Henderson Terrace to the intersection of a road running along the southern side of the Gucciardi Recreation and Fitness Center and the Gutterson Fieldhouse and Davis Road; then easterly along the northern side of the centerline of the road on the southern boundary of the center and fieldhouse to the boundary of the city of South Burlington; then northerly and easterly along the South Burlington city line to the intersection with Grove Street, including the residences on the inside and southern side of the circle at 284 Grove Street, also known as Apple Grove, but excluding the residences on the outside and northern side of the circle at 284 Grove Street; then westerly along the southern side and northerly along the western side of the centerline of Grove Street to the intersection of Chase Street; then westerly and southwestwesterly along the southern side of the centerline of Chase Street to the intersection of Colchester Avenue; then northerly along the western side of the centerline of Colchester Avenue to the intersection of Riverside Avenue; then southerly along the eastern side and westerly along the southern side of the centerline of Riverside Avenue to the intersection of Intervale Road; then northwestwesterly along the western side of the centerline of Intervale Road to the intersection with the railroad tracks; then westerly along the southern side of the centerline of the railroad tracks to a point representing the intersection of the centerline of the railroad tracks and a straight line extension of the centerline of Hyde Street; then southwestwesterly along the eastern side of the centerline of that line extension and then Hyde Street to the intersection of North Willard Street; then southerly along the eastern side of the centerline of North Willard Street to the intersection of North Street; then westerly along the southern side of the centerline of North Street to the point of beginning

(5) CHITTENDEN-6-5. That portion of the city of Burlington encompassed within a boundary beginning at the point where the boundary of Burlington and the city of South Burlington intersects with the shore of Lake Champlain; then northerly along the shore of Lake Champlain to the intersection of the shore of the lake with a point representing a straight line extension of Maple Street; then easterly along the southern side of the centerline of Maple Street to the intersection of South Willard Street; then southerly along the western side of the centerline of South Willard Street to the intersection of Cliff Street; then easterly along the southern side of the centerline of Cliff Street to the intersection of South Prospect Street; then southerly along the western side of the centerline of South Prospect Street to the intersection of Davis Road; then easterly along the southern side of the centerline of Davis Road to the intersection of the road running along the southern boundary of the Gucciardi Recreation and Fitness Center and the Gutterson Fieldhouse; then easterly along the southern side of the centerline of the road on the southern boundary of the center and fieldhouse to the boundary of the city of South Burlington; then southerly and westerly along the South Burlington city line to the shore of Lake Champlain and the point of beginning

2

(6) CHITTENDEN-6-6. That portion of the city of Burlington encompassed within a boundary beginning at the point of the intersection of Pearl Street and North Union Street; then easterly along the southern side of the centerline of Pearl Street to the intersection of South Prospect Street; then southerly along the western side of the centerline of South Prospect Street to the intersection of Main Street; then easterly along the southern side of the centerline of Main Street to the northeastern boundary of 461 Main Street; then southeasterly along the western side of the boundary of 461 Main Street and 475 Main Street, excluding the property at 475, 479, and 481 Main Street and including the property at 461 Main Street and continuing in a straight line to the southwestern corner of the property located at 475 Main Street, excluding that property; then continuing on to and along the western side of the boundary between property located on Robinson Parkway and property located on University Terrace, including the Robinson Parkway properties, to the intersection with University Heights Road; then continuing southerly from the intersection with University Heights Road on the western side of the boundary between properties within University Heights and those properties on South Prospect Street and on Henderson Terrace to the intersection of a road running along the southern side of the Gucciardi Recreation and Fitness Center and the Gutterson Fieldhouse and Davis Road; then westerly along the northern side of the centerline of Davis Road to the intersection of South Prospect Street; then northerly along the eastern side of the centerline of South Prospect Street to the intersection of Cliff Street; then westerly along the northern side of the

centerline of Cliff Street to the intersection of South Willard Street; then northerly along the eastern side of the centerline of South Willard Street to the intersection of Main Street; then westerly along the northern side of the centerline of Main Street to the intersection of South Union Street; then northerly along South Union Street to the intersection of Pearl Street; then continuing northerly along the eastern side of the centerline of North Union Street to the point of beginning 1

(7) CHITTENDEN-6-7. The city of Winooski and that portion of the city of Burlington not included in CHITTENDEN-6-1, 6-2, 6-3, 6-4, 6-5, or 6-6 2

(c) CHITTENDEN-7 is subdivided into the following districts:

(1) CHITTENDEN-7-1. That portion of the city of South Burlington encompassed within a boundary beginning at the point where the boundary of South Burlington and the city of Burlington intersects with the shore of Lake Champlain; then southerly along the shore of Lake Champlain, including all of the lake belonging to South Burlington, to the boundary of the town of Shelburne; then easterly along the Shelburne town line to the intersection of Shelburne Road; then northerly along the western side of the centerline of Shelburne Road to the intersection of Allen Road; then easterly along the northern side of the centerline of Allen Road to the intersection of Spear Street; then northerly along the western side of the centerline of Spear Street to the intersection of Nowland Farm Drive; then easterly along the northern side of the centerline of Nowland Farm Drive to the intersection of Dorset Street; then northerly along the western side of the centerline of Dorset Street to the intersection of Swift Street; then westerly along the southern side of the centerline of Swift Street and then continuing along the Burlington city line to the shore of Lake Champlain and the point of beginning 1

(2) CHITTENDEN-7-2. That portion of the city of South Burlington encompassed within a boundary beginning at the point of the intersection of Nowland Farm Drive and Spear Street; then southerly along the eastern side of the centerline of Spear Street to the intersection of Allen Road; then westerly along the southern side of the centerline of Allen Road to the intersection of Shelburne Road; then southerly along the eastern side of the centerline of Shelburne Road to the boundary of the town of Shelburne; then easterly along the Shelburne town line to the boundary of the town of Williston; then northerly along the Williston town line to the intersection of VT Route 2; then westerly along the southern side of the centerline of VT 2 to the intersection of the back property lines of property fronting Elsom Parkway on the western side of Elsom Parkway; then southerly along those back property lines including all of the properties along Elsom Parkway and continuing in a



straight line to the intersection with the Potash Brook; then southwesterly along the southern side of the centerline of the Potash Brook to the intersection with Hinesburg Road; then southeasterly along the eastern side of the centerline of Hinesburg Road to the intersection with Interstate 89; then westerly along the southern side of the centerline of Interstate 89 to the intersection with Dorset Street; then southerly along the eastern side of the centerline of Dorset Street to the intersection of Nowland Farm Drive; then westerly along the southern side of the centerline of Nowland Farm Drive to the point of beginning 1

(3) CHITTENDEN-7-3. That portion of the city of South Burlington encompassed within a boundary beginning at the northwestern-most point where the boundary line of South Burlington and the city of Burlington intersects with Williston Road; then southerly and westerly along the Burlington city line to the intersection with Swift Street; then easterly along the northern side of the centerline of Swift Street to the intersection of Dorset Street; then northerly along the western side of the centerline of Dorset Street to the intersection with Interstate 89; then easterly along the northern side of the centerline of Interstate 89 to the intersection with Hinesburg Road; then northwesterly along the western side of the centerline of Hinesburg Road to the intersection with the Potash Brook; then southwesterly along the southern side of the centerline of the Potash Brook to the intersection with Kennedy Drive; then westerly along the southern side of the centerline of Kennedy Drive to the intersection of Dorset Street; then northerly along the western side of the centerline of Dorset Street to the intersection of Williston Road; then northwesterly along the southern side of the centerline of Williston Road to the point of beginning 1

(4) CHITTENDEN-7-4. That portion of the city of South Burlington not in CHITTENDEN-7-1, 7-2, or 7-3 1

(d) CHITTENDEN-9 is subdivided into the following districts:

(1) CHITTENDEN-9-1. That portion of the town of Colchester north of Malletts Creek and west of Interstate 89 to the Milton town line; plus that portion of the town of Colchester east of Interstate 89, except the portion of that portion of the town encompassed within a boundary beginning at the point where Interstate 89 intersects with VT Route 127; then easterly along the southern side of the centerline of VT 127 to the intersection of the Roosevelt Highway; then southerly along the western side of the centerline of the Roosevelt Highway to the intersection of the Sunderland Brook; then westerly along the northern side of the centerline of the Sunderland Brook to the intersection with Interstate 89; then northerly along the eastern side of the centerline of Interstate 89 to the point of beginning 2

(2) CHITTENDEN-9-2. That portion of the town of Colchester not in CHITTENDEN-9-1 2

Sec. 3. 17 V.S.A. § 1881 is amended to read:

§ 1881. NUMBER TO BE ELECTED

Senatorial districts and the number of senators to be elected from each are as follows:

(1) Addison senatorial district, composed of the towns of Addison, ~~Brandon~~, Bridport, Bristol, Buel's Gore, Cornwall, Ferrisburgh, Goshen, Granville, Hancock, Huntington, Leicester, Lincoln, Middlebury, Monkton, New Haven, Orwell, Panton, Ripton, Salisbury, Shoreham, Starksboro, Vergennes, Waltham, ~~Whiting and Weybridge, and Whiting~~..... two;

(2) Bennington senatorial district, composed of the towns of Arlington, Bennington, Dorset, Glastenbury, Landgrove, Manchester, Peru, Pownal, Readsboro, Rupert, Sandgate, Searsburg, Shaftsbury, Stamford, Sunderland, Wilmington, Winhall, and Woodford..... two;

(3) Caledonia senatorial district, composed of the towns of Barnet, Bradford, Burke, Danville, Fairlee, Groton, Hardwick, Kirby, Lyndon, Newark, Newbury, Orange, Peacham, Ryegate, St. Johnsbury, Sheffield, Stannard, Sutton, Topsham, Walden, Waterford, West Fairlee, and Wheelock..... two;

(4) Chittenden senatorial district, composed of the towns of Bolton, ~~Buel's Gore~~, Burlington, Charlotte, Essex, Hinesburg, ~~Huntington~~, Jericho, Milton, Richmond, St. George, Shelburne, South Burlington, Underhill, Westford, Williston, and Winooski..... six;

(5) Essex-Orleans senatorial district, composed of the towns of Albany, Averill, Avery's Gore, Barton, Bloomfield, Brighton, Brownington, Brunswick, Canaan, Charleston, Concord, Coventry, Craftsbury, Derby, East Haven, ~~Eden~~, Ferdinand, Glover, Granby, Greensboro, Guildhall, Holland, Irasburg, Jay, Lemington, Lewis, Lowell, Lunenburg, Maidstone, Montgomery, Morgan, Newport City, Newport Town, Norton, Richford, Troy, Victory, Warner's Grant, ~~Warren's~~ Warren Gore, Westfield, Westmore, and Wolcott..... two;

(6) Franklin senatorial district, composed of the towns of ~~Alburg~~ Alburgh, Bakersfield, Berkshire, ~~Enosburg~~ Enosburgh, Fairfax, Fairfield, Fletcher, Franklin, Georgia, Highgate, St. Albans City, St. Albans Town, Sheldon, and Swanton..... two;

(7) Grand Isle senatorial district, composed of the towns of Colchester, Grand Isle, Isle La Motte, North Hero, and South Hero..... one;

(8) Lamoille senatorial district, composed of the towns of Belvidere, Cambridge, Eden, Elmore, Hyde Park, Johnson, Morristown, Stowe, and Waterville..... one;

(9) Orange senatorial district, composed of the towns of Braintree, Brookfield, Chelsea, Corinth, Randolph, Strafford, Thetford, Tunbridge, Vershire, Washington, and Williamstown..... one;

(10) Rutland senatorial district, composed of the towns of Benson, Brandon, Castleton, Chittenden, Clarendon, Danby, Fair Haven, Hubbardton, Ira, Killington, Mendon, Middletown Springs, ~~Mt. Holly~~, Mt. Tabor, Pawlet, Pittsfield, Pittsford, Poultney, Proctor, Rutland City, Rutland Town, Shrewsbury, Sudbury, Tinmouth, Wallingford, Wells, West Haven, and West Rutland..... three;

(11) Washington senatorial district, composed of the towns of Barre City, Barre Town, Berlin, Cabot, Calais, Duxbury, East Montpelier, Fayston, Marshfield, Middlesex, Montpelier, Moretown, Northfield, Plainfield, Roxbury, Waitsfield, Warren, Waterbury, Woodbury, and Worcester.....three;

(12) Windham senatorial district, composed of the towns of Athens, Brattleboro, Brookline, Dover, Dummerston, Grafton, Guilford, Halifax, Jamaica, ~~Londonderry~~, Marlboro, Newfane, Putney, Rockingham, Somerset, Stratton, Townshend, Vernon, Wardsboro, Westminster, Whitingham, and Windham..... two;

(13) Windsor senatorial district, composed of the towns of Andover, Baltimore, Barnard, Bethel, Bridgewater, Cavendish, Chester, Hartford, Hartland, Londonderry, Ludlow, Mt. Holly, Norwich, Plymouth, Pomfret, Reading, Rochester, Royalton, Sharon, Springfield, Stockbridge, Weathersfield, Weston, West Windsor, Windsor, and Woodstock..... three.

#### Sec. 4. TIME FOR FILING PRIMARY PETITIONS AND STATEMENTS OF NOMINATION

Notwithstanding the provisions of 17 V.S.A. § 2356 regarding the earliest date by which primary petitions and statements of nomination from minor party candidates and independent candidates may be filed, for the 2012 elections, primary petitions and statements of nomination shall be filed no sooner than Tuesday, May 29, 2012.

#### Sec. 5. EFFECTIVE DATE

This act shall take effect on passage and shall apply to representative and senatorial districts for the 2012 election cycle and thereafter.

*JEANETTE K. WHITE*

VINCENT ILLUZZI  
RICHARD W. SEARS

*Committee on the part of the Senate*

DONNA G. SWEANEY  
WILLEM W. JEWETT

*Committee on the part of the House*

Thereupon, Senator Galbraith raised a Point of Order under Mason's Manual of Legislative Procedure Sec. 771.2 as Section 4 of the Committee of Conference report was in that the Committee of Conference had not confined itself to the differences between the two houses.

The Presiding Officer *sustained* the Point of Order and ruled that because the Committee of Conference had not confined itself to the differences, of opinion between the houses the report could not be considered by the Senate. Thereupon, Senator Flory moved that the rules be suspended to permit the Senate to consider the Report of Committee of Conference. Which was agreed to on a roll call, Yeas 21, Nays 2 (the 3/4ths required having been attained).

Senator Galbraith having demanded the yeas and nays, they were taken and are as follows:

#### **Roll Call**

**Those Senators who voted in the affirmative were:** Ashe, Baruth, Benning, Carris, Cummings, Doyle, Flory, Fox, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Nitka, Pollina, Snelling, Starr, Westman, White.

**Those Senators who voted in the negative were:** Galbraith, Sears.

**Those Senators absent and not voting were:** Ayer, Brock, Campbell, Giard, Hartwell, Miller, Mullin.

Thereupon, Senator Sears raised a Point of Order regarding the reference during debate to litigants and suits.

The Presiding Officer *sustained* the Point of Order stating under Mason's Manual of Legislative Procedure Sec. 111 it is improper to refer to any matter awaiting adjudication.

Thereupon, the question, Shall the Senate accept and adopt the report of the Committee of Conference?, was decided in the affirmative.

Senator Galbraith having demanded the yeas and nays, they were taken and are as follows:

**Roll Call**

**Those Senators who voted in the affirmative were:** Ashe, Ayer, Baruth, Benning, Carris, Cummings, Doyle, Flory, Giard, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Nitka, Pollina, Sears, Snelling, Starr, Westman, White.

**The Senator who voted in the negative was:** Galbraith.

**Those Senators absent or not voting were:** Brock, Campbell (presiding), Fox, Hartwell, Miller, Mullin.

\*\*\*\*During debate of the measure, Senator Doyle addressed the Chair and on motion of Senator Lyons, his remarks were ordered entered in the Journal, and are as follows:

“Mr. President:

“This is my fifth time I have been involved in Senate Reapportionment. Every plan over the years has been a good faith effort. The Senate plan this year is not exception and has followed Constitutional principals.”

\*\*\*\*During debate of the measure, Senator Illuzzi addressed the Chair and on motion of Senator Sears, his remarks were ordered entered in the Journal, and are as follows:

“Mr. President:

“As a member of the Committee of Conference, and before that the Senate Reapportionment Committee, I would like to explain my reasons for supporting the Senate redistricting plan.

“There was a statement made that this map was developed in the final analysis in response to a threat of litigation. I don’t believe there was a threat. There was a comment made that if the deviation was greater than 18%, it might involve a challenge. It was merely a statement that if the deviation went above 18%, there could be a lawsuit, but it was not a threat and it did not guide our work.

“I believe that the final plans developed were in fact based on the best interests of Vermonters, and the Senate plan protects the regional interests of our state.

“Mr. President, may I quote from one of our own Vermont Supreme Court cases? This is from the *Hartland* case in the 90’s.

“Early on, the Supreme Court acknowledged the practical impossibility of arranging state legislative districts ‘so that each one has an identical number of residents,’ and required only ‘that a State make an honest and good faith effort to construct districts . . . as nearly of equal population as is practicable.”

“In another case from the 70’s, *In re Senate Bill 177*, the Court noted that:

“Vermont is a state of small population. In over three quarters of the counties there are towns in which the variation of a single registered voter amounts to a one percent change.”

“The rural nature of our state necessarily requires us to establish districts that are rural in nature, and it is often difficult to bring the deviations within ten percent for that reason.

“The courts have held that when reapportioning the state, it is permissible to consider nonnumerical criteria, such as common interests, because it helps assure more effective representation. In the *Hartland* case, the Vermont Supreme Court said:

“The nonnumerical criteria are neither superfluous nor unimportant. They assure our citizens obtain effective representation by being placed in districts comprised of communities with shared interests.

“Our county lines were established over 200 years ago and do not reflect our current patterns of commerce and development. However, the proposed senate districts follow the operation of our law enforcement, transportation, social services, and schools.

“The districts we’ve proposed in the Senate map will assure effective and strong regional representation.

“For these reasons, I believe the proposed maps comport with federal and state law, will serve Vermonters well over the next decade, and should be adopted by the Senate.”

Thereupon, on motion of Senator Mazza, the rules were suspended, and the bill was ordered messaged to the House forthwith.

Which was agreed to on a roll call, Yeas 23, Nays 1.

Senator Galbraith having demanded the yeas and nays, they were taken and are as follows:

#### **Roll Call**

**Those Senators who voted in the affirmative were:** Ashe, Ayer, Baruth, Benning, Carris, Cummings, Doyle, Flory, Giard, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Nitka, Pollina, Sears, Snelling, Starr, Westman, White.

**The Senator who voted in the negative was:** \*Galbraith.

**Those Senators absent or not voting were:** Brock, Campbell (presiding), Fox, Hartwell, Miller, Mullin.

\*Senator Galbraith explained his vote as follows:

“With a deviation of greater than 18% for both the House and Senate maps, this bill violates the principle of equality of representation. There is no consistently applied state policy to justify the deviations in either map.

“In the colloquy on the conference report, the reporter explained that the conference committee moved Londonderry from the Windham District to the Windsor District in response to the threat of a legal challenge. I think that was inappropriate.”

#### **Message from the House No. 61**

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has considered a bill originating in the Senate of the following title:

**S. 115.** An act relating to ineffective assistance claims against assigned counsel.

And has passed the same in concurrence.

The House has considered Senate proposal of amendment to the following House bill:

**H. 627.** An act relating to an opioid addiction treatment system.

And has severally concurred therein.

The House has considered Senate proposal of amendment to House bill entitled:

**H. 559.** An act relating to health care reform implementation.

And has refused to concur therein and asks for a Committee of Conference upon the disagreeing votes of the two Houses;

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The Speaker appointed as members of such Committee on the part of the House:

Rep. Fisher of Lincoln  
Rep. Copeland-Hanzas of Bradford  
Rep. Dakin

**Message from the House No. 62**

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has considered Senate proposals of amendment to House bill of the following title:

**H. 781.** An act relating to making appropriations for the support of government.

And has refused to concur therein and asks for a Committee of Conference upon the disagreeing votes of the two Houses;

And the Speaker appointed as members of such Committee on the part of the House:

Rep. Heath of Westford  
Rep. Johnson of South Hero  
Rep. Crawford

**Committee of Conference Appointed**

**H. 781.**

An act relating to making appropriations for the support of government.

Was taken up. Pursuant to the request of the House, the President announced the appointment of

Senator Kitchel  
Senator Sears  
Senator Snelling

as members of the Committee of Conference on the part of the Senate to consider the disagreeing votes of the two Houses.



**House Concurrent Resolutions**

The following joint concurrent resolutions having been placed on the consent calendar on the preceding legislative day, and no Senator having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, were adopted in concurrence:

By Representative Woodward and others,

By Senator Westman,

**H.C.R. 370.**

House concurrent resolution recognizing the efforts of Community Health Services of Lamoille Valley to create a seamless and more effective health care environment.

By Representative Botzow,

By Senators Hartwell and Sears,

**H.C.R. 371.**

House concurrent resolution in memory of Donald E. Prouty, Jr., of Pownal.

By Representative Conquest and others,

**H.C.R. 372.**

House concurrent resolution in memory of former Representative Susan Webb.

By Representative Andrews and others,

By Senators Carris, Flory and Mullin,

**H.C.R. 373.**

House concurrent resolution designating May 2012 as Vermont Osteoporosis Awareness Month.

By Representative Morrissey and others,

By Senators Hartwell and Sears,

**H.C.R. 374.**

House concurrent resolution commemorating the 40th anniversary of the Retired Senior Volunteer Program's establishment in Bennington County.

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By Representative Morrissey and others,

By Senators Hartwell and Sears,

**H.C.R. 375.**

House concurrent resolution congratulating the H.W. Putnam Hose Company # 3 of the Bennington Fire Department on its 125th anniversary.

By Representative French,

By Senator Brock,

**H.C.R. 376.**

House concurrent resolution honoring Dr. William Pendlebury, cofounder of The Memory Center at Fletcher Allen Health Care.

By Representatives French and Townsend,

**H.C.R. 377.**

House concurrent resolution honoring the Reverend Kathy Wonson Eddy for her community leadership and spiritual guidance at Bethany Church and in the town of Randolph.

By Representative Taylor and others,

**H.C.R. 378.**

House concurrent resolution congratulating the Pepin Granite Company, Inc. on its 50th anniversary.

By Representative Klein and others,

**H.C.R. 379.**

House concurrent resolution congratulating Vermont Energy Investment Corporation on its 25th anniversary.

By Representative Donovan and others,

**H.C.R. 380.**

House concurrent resolution honoring former Representative William Keogh on his retirement from the Burlington City Council and its presidency.

By Representative Young,

**H.C.R. 381.**

House concurrent resolution recognizing the ecological importance and scenic beauty of the Lowell Mountain Range.

By Representative Savage and others,

By Senators Brock and Kittell,

**H.C.R. 383.**

House concurrent resolution honoring fish and game warden Sergeant Daniel Swainbank for his career accomplishments.

By Representative Krowinski and others,

**H.C.R. 384.**

House concurrent resolution honoring Burlington Fletcher Free Library co-director Amber Collins.

By Representative Buxton,

**H.C.R. 385.**

House concurrent resolution honoring retiring Vermont Law School President, Dean, and Professor of Law Geoffrey B. Shields and his wife, Genie.

By Representative Mook,

**H.C.R. 386.**

House concurrent resolution honoring and extending best wishes on future endeavors to each of the 2012 retiring faculty members of the Southwest Vermont Supervisory Union.

By Representatives Peltz and Smith,

**H.C.R. 387.**

House concurrent resolution in memory of former Woodbury town clerk and moderator Morris P. Lilley.

By Representative Dakin,

**H.C.R. 388.**

House concurrent resolution honoring librarian and Chester community leader Cynthia Collins.

By Representative Campion and others,

**H.C.R. 389.**

House concurrent resolution in memory of St. Michael's college alumni Michael and Jill Casey.

By Representatives Clark and Lanpher,

**H.C.R. 390.**

House concurrent resolution honoring the 5th grade civics education initiative at Ferrisburgh Central School.

**Adjournment**

On motion of Senator Mazza, the Senate adjourned until nine o'clock in the morning.