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S.165

Introduced by Committee on Economic Development, Housing and General
Affairs

Date:

Subject: Executive; deputy state's attorneys; collective bargaining

Statement of purpose of bill as introduced: This bill proposes to allow
collective bargaining benefits for deputy state's attorneys.

An act relating to collective bargaining for deputy state's attorneys

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 3 V.S.A. chapter 31 is added to read:

CHAPTER 31. THE DEPUTY STATE'S ATTORNEY LABOR
RELATIONS ACT

§ 1201. PURPOSE

It is the purpose and policy of this chapter to recognize the right of certain
employees of the Department of State's Attorneys to join a labor organization
of their own choosing and to be represented by that organization in collective
bargaining for terms and conditions of their employment.

§ 1202. DEFINITIONS

As used in this chapter:

1 (1) “Agreement,” means a written agreement resulting from collective
2 bargaining negotiation and covers the terms and conditions of employment.

3 (2) “Board,” means the State Labor Relations Board established
4 pursuant to section 921 of this title.

5 (3) “Collective bargaining,” means the process of negotiating terms or
6 conditions of employment as described in section 1204 of this title between the
7 state’s attorneys and representatives of the employees with the intent to arrive
8 at a written agreement.

9 (4) “Collective bargaining service fee,” means a fee deducted by an
10 employer from the salary or wages of an employee who is not a member of an
11 employee organization, and that fee is paid to the employee organization that is
12 the exclusive bargaining agent for the bargaining unit of the employee. A
13 collective bargaining service fee shall not exceed 85 percent of the amount
14 payable as dues by members of the employee organization; shall be deducted
15 in the same manner as dues are deducted from the salary or wages of members
16 of the employee organization; and shall be used to defray the costs incurred by
17 the employee organization in fulfilling its duty to represent the employees in
18 their employment relations with the employer.

19 (5) “Collective bargaining unit,” means either all the employees of the
20 employer or a unit or units determined by the Board to be appropriate to
21 represent the interests of employees.

1 (6) “Complaint,” means an informal expression made by the employees
2 or a group of employees to the immediate supervisor about dissatisfaction with
3 any aspect of employment or working conditions under a collective bargaining
4 agreement.

5 (7) “Confidential employee,” means an employee, as determined by the
6 Board, who has responsibility, knowledge, or access to information relating to
7 collective bargaining, personnel administration, or budgetary matters that is
8 incompatible with that employee’s membership in or representation by an
9 employee organization.

10 (8) “Department” means the Department of State’s Attorneys as defined
11 by 24 V.S.A. § 367.

12 (9) “Employee,” means any individual employed on a permanent or
13 limited status basis by the Department, including permanent part-time
14 employees and any individual whose employment has ceased as a consequence
15 of, or in connection with, any current labor dispute or because of an unfair
16 labor practice. “Employee” does not include any of the following:

17 (A) the executive director, business manager, personnel manager, or
18 information technology manager of the Department of State’s Attorneys;

19 (B) a managerial, supervisory, or confidential employee;

20 (C) an individual employed on a temporary, contractual, seasonal, or
21 on-call basis, including an intern; and

1 (D) an employee who, after hearing by the Board upon petition of
2 any individual, the employer, or a collective bargaining unit, is determined to
3 be in a position that is sufficiently inconsistent with the spirit and intent of this
4 chapter to warrant exclusion.

5 (10) “Employee organization,” means an organization of any kind in
6 which employees participate and that exists for the purpose of representing
7 employees.

8 (11) “Employer,” means the Department of State’s Attorneys as defined
9 in 24 V.S.A. § 367 or designee.

10 (12) “Grievance,” means a written notice from an employee or a group
11 of employees covered by an agreement or the employee’s representative about
12 dissatisfaction with any aspect of employment covered by a collective
13 bargaining agreement or about the discriminatory application of a rule or
14 regulation, and the dissatisfaction has not been satisfactorily resolved after
15 informal discussion with immediate supervisors.

16 (13) “Labor dispute,” means any controversy concerning terms of
17 employment, or concerning the association or representation of individuals in
18 negotiating, fixing, maintaining, changing, or seeking to arrange terms of
19 employment, regardless of whether the disputants are employer and employee.

1 (14) “Managerial employee,” means an individual, as determined by the
2 Board, who functions as the head of a department, institution, district
3 operation, or a major program or division or section.

4 (15) “Person,” means an individual, the State of Vermont, the
5 Department, an employee organization, partnership, corporation, a legal
6 representative, trustee, or any other natural or legal entity whatsoever.

7 (16) “Representative,” means an individual or employee organization
8 certified by the Board to represent employees in collective bargaining and
9 grievance proceedings.

10 (17) “Strike,” means any concerted work stoppage by employees,
11 including concerted slowdowns, interference, or interruption of operations or
12 services. “Strike” also includes boycotts, refusal to use any products or
13 services, or refusal to work or cooperate with any person by employees in the
14 course of employment when properly directed to do so by the employer,
15 supervisor, or superior.

16 (18) “Supervisory employee,” means an employee, as determined by the
17 Board, who has authority from the employer to hire, transfer, suspend, lay off,
18 recall, promote, discharge, assign, reward, or discipline other employees or
19 who has the responsibility for directing employees or adjusting employee
20 grievances or effectively recommending such action, provided the exercise of
21 authority is not merely routine or clerical, but requires independent judgment.

1 § 1203. EMPLOYEES' RIGHTS AND DUTIES; PROHIBITED ACTS

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

8 (b) An employee may not strike or recognize a picket line of an employee
9 organization while performing the employee's official duties.

10 (c) The employer, employees, and employees' representatives shall exert
11 every reasonable effort to make and maintain agreements concerning matters
12 allowable under section 1204, subjects for bargaining, of this title and to settle
13 all disputes whether arising out of the application of those agreements or
14 growing out of any dispute between employer and employee.

15 § 1204. SUBJECTS FOR BARGAINING

16 Except those matters which are prescribed or controlled by statute, the
17 matters appropriate for collective bargaining under this chapter are limited to:

18 (1) wages, salaries, and reimbursement practices relating to necessary
19 expenses and the limits of reimbursable expenses;

1 (2) overtime compensation for victim advocates and secretaries, and
2 compensation for on-call responsibilities for deputy state's attorneys, and
3 related matters;

4 (3) leave compensation and related matters;

5 (4) grievance procedures;

6 (5) terms of coverage and amount of employee financial participation in
7 long-term disability insurance programs; and

8 (6) a collective bargaining service fee.

9 § 1205. STATE-PROVIDED RETIREMENT BENEFITS

10 To the extent the State of Vermont provides defined benefit retirement
11 benefits or defined contribution retirement benefits to the nonmanagement unit
12 of the state employees, the employees of the Department of State's Attorneys
13 and employees hired and serving at the pleasure of the state's attorney shall
14 receive the same benefits.

15 § 1206. MANAGEMENT RIGHTS

16 (a) The employer shall not agree to any terms or conditions for which
17 adequate funds are not available.

18 (b) Nothing in this chapter shall be construed to interfere with a state's
19 attorney's statutory authority to hire and dismiss employees as provided in
20 24 V.S.A. § 363, 13 V.S.A. § 5306, and 32 V.S.A. § 1185. A state's attorney
21 shall have the discretion to manage, direct, and control the deputy state's

1 attorneys and other personnel he or she hires in order to ensure the proper and
2 efficient performance of the office.

3 (c) Subject to rights guaranteed by this chapter and other applicable laws,
4 nothing in this chapter shall be construed to interfere with the right of the
5 employer to:

6 (1) carry out its statutory mandate and goals and to utilize personnel,
7 methods, and means in the most appropriate manner; and

8 (2) take necessary action to carry out its mission in an emergency
9 situation.

10 (d) The employer shall take any action necessary to implement and
11 administer the provisions of a legally binding agreement between the employer
12 and an employee organization.

13 (e) The Agency of Administration shall provide to the Department, on
14 request, any information that it possesses or can reasonably produce that it uses
15 to prepare for or conduct collective bargaining negotiations. The Agency shall
16 also provide any services it provides to executive and legislative agencies or
17 departments related to the processing of the State's payroll and the
18 administration of benefits under the same terms and conditions applicable to
19 state employees. In the event the bargaining agreement contains provisions
20 that require the Agency of Administration or the Department to expend more
21 than what is typically budgeted for administration and maintenance of the

1 payroll or benefit administration system, the Department shall request the
2 funding at the time the agreement is submitted to the General Assembly for
3 approval under subsection 1218(c) of this title. Nothing in this chapter shall
4 require the Agency of Administration to maintain different procedures or
5 systems to administer payroll or benefits under this chapter.

6 § 1207. DESIGNATION OF MANAGERIAL, SUPERVISORY, AND
7 CONFIDENTIAL EMPLOYEES

8 The employer shall determine the designation of employees as managerial,
9 supervisory, or confidential. Any disputes arising from this determination
10 shall be resolved by the Board.

11 § 1208. OBLIGATION TO BARGAIN

12 The employer and the representative of the employees shall bargain
13 collectively, which for the purposes of this chapter means performing the
14 mutual obligation to meet at reasonable times and confer in good faith with
15 respect to all matters bargainable under the provisions of this chapter. The
16 failure or refusal of either party to agree to a proposal, to change or withdraw a
17 lawful proposal, or to make a concession shall not constitute, or be direct or
18 indirect evidence of, a breach of this obligation.

19 § 1209. GRIEVANCE PROCEDURES; BINDING ARBITRATION

20 (a) The employer and the representative of the employees shall negotiate a
21 procedure for resolving complaints and grievances. Unless otherwise agreed to

1 by the parties, the Board shall hear and make final determination on a
2 grievance. A grievance hearing shall be conducted in accordance to the rules
3 of the Board.

4 (b) A collective bargaining agreement may provide for binding arbitration
5 as the final step of a grievance procedure. An agreement that includes a
6 binding arbitration provision shall also include the procedure for conducting
7 the grievance arbitration proceedings and the following provisions:

8 (1) The parties shall mutually agree on an arbitrator from a list of
9 arbitrators provided by the American Arbitration Association. An arbitrator
10 chosen or appointed under this section shall have no authority to add to,
11 subtract from, or modify the collective bargaining agreement.

12 (2) An acknowledgment of arbitration that provides substantially the
13 following:

14 (The parties) understand that this agreement contains an agreement that
15 the final step of the grievance process shall be binding arbitration. After the
16 effective date of this agreement, no grievance may be brought to the Vermont
17 Labor Relations Board and no lawsuit concerning any grievance may be
18 brought, unless it involves a question of constitutional or civil rights.

19 (c) This section shall not apply to labor interest arbitration, which for the
20 purposes of this chapter means the method of concluding labor negotiations by
21 means of a disinterested person to determine the terms of a labor agreement.

1 (d) A party may apply to the arbitrator for a modification of an award if the
2 application is made within 30 days after delivery of a copy of an award to the
3 applicant. An arbitrator may modify an award only if the arbitrator finds any
4 one of the following:

5 (1) There was an evident miscalculation of figures or an evident mistake
6 in the description of any person, thing, or property referred to in the award.

7 (2) The award was based on a matter not submitted to the arbitrator, and
8 the award may be corrected without affecting the merits of the decision on the
9 issues submitted.

10 (3) The award is imperfect in form and the award may be corrected
11 without affecting the merits of the controversy.

12 (e) A party may apply to the Superior Court for review of the award,
13 provided the application is made within 30 days after delivery of a copy of the
14 award to the applicant or, in case of a claim of corruption, fraud, or other
15 undue means, the application is made within 30 days after those grounds are
16 known or should have been known. The Superior Court shall vacate an
17 arbitration award based on any of the following:

18 (1) The award was procured by corruption, fraud, or other undue means.

19 (2) There was partiality or prejudicial misconduct by the arbitrator.

20 (3) The arbitrator exceeded his or her power or rendered an award
21 requiring a person to commit an act or engage in conduct prohibited by law.

1 (4) There is an absence of substantial evidence on the record as a whole
2 to support the award.

3 § 1210. MEDIATION; FACT-FINDING; LAST BEST OFFER

4 (a) If after a reasonable period of negotiation, the representative of a
5 collective bargaining unit and the employer reach an impasse, the Board, upon
6 petition of either party, may authorize the parties to submit their differences to
7 mediation. Within five days after receipt of the petition, the Board shall
8 appoint a mediator who shall communicate with the parties and attempt to
9 mediate an amicable settlement. A mediator shall be of high standing and in
10 no way actively connected with labor or management.

11 (b) If, after a minimum of 15 days after the appointment of a mediator the
12 impasse is not resolved, the mediator shall certify to the Board that the impasse
13 continues.

14 (c) Upon the request of either party, the Board shall appoint a fact finder
15 who has been mutually agreed upon by the parties. If the parties fail to agree
16 on a fact finder within five days, the Board shall appoint a fact finder who shall
17 be a person of high standing and not actively connected with labor or
18 management. A member of the Board or any individual who has actively
19 participated in mediation proceedings for which fact-finding has been called
20 shall not be eligible to serve as a fact finder under this section, unless agreed
21 upon by the parties.

1 (d) The fact finder shall conduct hearings pursuant to rules of the Board.
2 Upon request of either party or of the fact finder, the Board may issue
3 subpoenas of persons and documents for the hearings, and the fact finder may
4 require that testimony be given under oath and may administer oaths.

5 (e) Nothing in this section shall prohibit the fact finder from mediating the
6 dispute at any time prior to issuing recommendations.

7 (f) The fact finder shall consider, if applicable to the issues, the following
8 factors in making a recommendation:

9 (1) wage and salary schedules to the extent they are inconsistent with
10 prevailing rates, both within state government as a whole and for comparable
11 work in commerce or industry within the State; and

12 (2) those subjects of bargaining as described in section 1204 of this title
13 to the extent they are inconsistent with accepted state standards and conditions
14 prevailing in commerce and industry within the state.

15 (g) Upon completion of the hearings, the fact finder shall file written
16 findings and recommendations with both parties.

17 (h) The costs of witnesses and other expenses incurred by either party in
18 fact-finding proceedings shall be paid directly by the parties incurring them,
19 and the costs and expenses of the fact finder shall be paid equally by the
20 parties. The fact finder shall be paid a rate mutually agreed upon by the parties
21 for each day or any part of a day while performing fact-finding duties and shall

1 be reimbursed for all reasonable and necessary expenses incurred in the
2 performance of his or her duties. A statement of fact-finding per diem and
3 expenses shall be certified by the fact finder and submitted to the Board for
4 approval. The Board shall provide a copy of approved fact-finding costs to
5 each party with its order apportioning one-half of the total to each party for
6 payment. Each party shall pay its half of the total within 15 days after receipt
7 of the order. Approval by the Board of fact-finding and the fact finder's costs
8 and expenses and its order for payment shall be final as to the parties.

9 (i) If the dispute remains unresolved 15 days after transmittal of findings
10 and recommendations, each party shall submit to the Board its last best offer
11 on all disputed issues as a single package. Each party's last best offer shall be
12 certified to the Board by the fact finder. The Board may hold hearings and
13 consider the recommendations of the fact finder. Within 30 days of the
14 certifications, the Board shall select between the last best offers of the parties,
15 considered in their entirety without amendment, and shall determine its cost.
16 The Board shall not issue an order under this subsection that is in conflict with
17 any law or rule or that relates to an issue that is not bargainable. The decision
18 of the Board, subject to sufficient funds being appropriated by the General
19 Assembly, shall be final and binding on the parties.

1 § 1211. MEDIATION-ARBITRATION

2 (a) Notwithstanding section 1210 of this title or any other law, the parties
3 may agree in advance to a mediation and arbitration procedure.

4 (b) The parties may jointly select a mediator. If they are unable to agree,
5 either party may petition the Board to appoint a mediator who shall be a person
6 of high standing and in no way actively connected with labor or management.
7 The mediator may not be a person who has served as a mediator at an earlier
8 stage of the same proceedings.

9 (c) The mediator shall encourage the parties to reach a voluntary settlement
10 of the dispute, but may, after a reasonable period of mediation, as determined
11 by the mediator, certify to the Board that the impasse continues and end
12 mediation efforts.

13 (d) If the impasse remains unresolved for 15 days after the mediator's
14 certification to the Board, either party may petition the Board to appoint an
15 arbitrator who has been mutually agreed upon by the parties. If the parties fail
16 to agree on an arbitrator within five days, the Board shall appoint an arbitrator
17 who shall be a person of high standing and not actively connected with labor or
18 management.

19 (e) A hearing before an arbitrator shall be informal and the rules of
20 evidence for judicial proceedings shall not be binding. The arbitrator may
21 consider any relevant evidence. The arbitrator may administer oaths and may

1 issue subpoenas to persons and documents and other evidence relating to the
2 issues presented.

3 (f) In reaching a decision, the arbitrator shall consider the factors in
4 subsection 1210(f) of this title.

5 (g) The arbitrator shall submit a report, including its costs, to the parties
6 and to the Board no later than 30 days after the termination of the hearing,
7 unless the time is extended by agreement of both parties. The determination
8 by the arbitrator on all issues, subject to sufficient funds being appropriated by
9 the General Assembly, shall be final and binding on the parties and shall not be
10 appealable to the Board or to any other judicial or administrative quasi-judicial
11 challenge, except as follows:

12 (1) A party may request the arbitrator to modify an award if the request
13 is made within 30 days after delivery of the award to the applicant. An
14 arbitrator may modify an award if the arbitrator finds one of the following:

15 (A) There was an evident miscalculation of figures or an evident
16 mistake in the description of any person, thing, or property referred to in the
17 award.

18 (B) The award was based on a matter not submitted and the award
19 may be corrected without affecting the merits of the decision upon the issues
20 submitted.

1 (C) The award is imperfect in a matter of form that does not affect
2 the merits of the controversy.

3 (2) Notwithstanding any law to the contrary, upon application of a party,
4 a Superior Court shall vacate an arbitration award based on one of the
5 following:

6 (A) The award was procured by corruption, fraud, or other undue
7 means.

8 (B) There was evident partiality or prejudicial misconduct by the
9 arbitrator.

10 (C) The arbitrator exceeded his or her power or rendered an award
11 requiring a person to commit an act or engage in conduct prohibited by law.

12 (D) There is insufficient evidence on the record to support the award.

13 (3) An application to the Superior Court for review pursuant to
14 subdivision (2) of this subsection shall be made within 30 days after delivery
15 of a copy of the award to the applicant, except that in case of a claim of
16 corruption, fraud, or other undue means, in which case the petition shall be
17 made within 30 days after such grounds are known or should have been
18 known.

1 § 1212. REPORTS ARBITRATION; COSTS

2 (a) The results of all arbitration proceedings, recommendations, and awards
3 conducted under this chapter shall be filed with the Board simultaneously with
4 submission of the decisions to the parties.

5 (b) The costs of any mediation, fact-finding, or arbitration conducted
6 pursuant to this chapter, including per diem expenses and actual and necessary
7 costs for travel, subsistence, or hiring premises in which proceedings were
8 conducted shall be shared equally by the parties. All other costs shall be paid
9 by the party incurring them.

10 § 1213. UNIT DETERMINATION; CERTIFICATION

11 (a) The Board shall determine issues of unit determination, petition,
12 election, certification, and representation in accordance with this chapter and
13 the provisions of section 941 of this title. The Board shall decide the
14 appropriate unit for collective bargaining in each case and the employees to be
15 included in that unit to assure the employees the fullest freedom in exercising
16 the rights guaranteed by this chapter.

17 (b) In determining whether a unit is appropriate, the extent to which the
18 employees have organized is not controlling. The Board shall not recognize a
19 unit if, after investigation and hearing, the Board determines that the
20 employees do not constitute a unit appropriate for collective bargaining.

1 (c) If an interested person files with the Board a charge alleging that
2 employees eligible to vote in an election under this chapter were coerced or
3 restrained in the exercise of that right, the Board shall investigate and conduct
4 hearings into the validity of the charge. If the Board concludes that employees
5 were coerced or restrained, the Board may set aside the election and order
6 another election pursuant to this chapter.

7 § 1214. EMPLOYERS

8 It shall be an unfair labor practice for an employer:

9 (1) to interfere with, restrain, or coerce employees in the exercise of
10 rights guaranteed by section 1203 of this title or by any other law;

11 (2) to dominate or interfere with the formation or administration of an
12 employee organization or contribute financial or other support to it. However,
13 an employer may confer with employees during working hours without loss of
14 time or pay;

15 (3) to discriminate in hiring or tenure of employment or in regard to any
16 term or condition of employment to encourage or discourage membership in
17 any employee organization;

18 (4) to discharge or otherwise discriminate against an employee because
19 the employee filed a charge or complaint or gave testimony under this chapter;

20 (5) to refuse to bargain collectively with a representative of its
21 employees; or

1 (6) to discriminate against an employee on account of race, color, creed,
2 sex, sexual orientation, gender identity, national origin, age, religion, or
3 disability.

4 § 1215. EMPLOYEES

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

7 (1) To restrain or coerce employees in the exercise of the rights
8 guaranteed to them by law. This subdivision shall not limit the right of an
9 employee organization to prescribe its own rules with respect to the acquisition
10 or retention of membership, provided the rules are not discriminatory.

11 (2) To restrain or coerce an employer in the selection of a representative
12 for the purpose of collective bargaining or adjustments of grievances.

13 (3) To cause or attempt to cause an employer to discriminate against an
14 employee in violation of section 1214 of this title or to discriminate against an
15 employee whose membership in the employee organization has been denied or
16 terminated on a ground other than the employee's failure to pay dues or the
17 initiation fees required for membership.

18 (4) To refuse to bargain collectively with an employer, provided it is the
19 exclusive bargaining representative of the employees.

20 (5) To engage in, induce, or encourage any individual employed by any
21 person to engage in a strike or a refusal in the course of employment to use,

1 transport, or otherwise handle or work on any goods, articles, materials, or
2 commodities or to perform an authorized function.

3 (6) To threaten, coerce, or restrain any person by:

4 (A) forcing or requiring any employee to join an employee
5 organization or to enter into an agreement that is prohibited under this chapter;

6 (B) forcing or requiring any employer or employee to cease using,
7 handling, transporting, or otherwise dealing in the products of a producer,
8 processor, or manufacturer, or to cease doing business with any other person,
9 in the course of regular business, or forcing, or requiring the employer to
10 recognize or bargain with an employee organization as the representative of the
11 employees unless the employee organization has been certified as the
12 representative of the employees under this chapter;

13 (C) forcing or requiring the employer to recognize or bargain with an
14 employee organization as the representative of the employees if another
15 employee organization has been certified as the representative of the
16 employees under this chapter; or

17 (D) forcing or requiring the employer to assign particular work to
18 employees in a particular position, class, or employee organization rather than
19 to employees in another position, class, or employee organization unless the
20 employer is not conforming to an order of certification of the Board
21 determining the bargaining representative for employees performing that work.

1 (7) To cause or attempt to cause an employer to pay or deliver or agree
2 to pay or deliver any money or other thing of value for services that are not
3 performed or not to be performed or that are not needed or required by the
4 employer.

5 (8) To picket or cause to be picketed, or threaten to picket or cause to be
6 picketed, the employer in order to force or require the employer to recognize or
7 bargain with an employee organization as the representative of its employees
8 or to force or require the employees of an employer to accept or select the
9 employee organization as their collective bargaining representative.

10 (9) To engage in activities unlawful under section 1203 of this title.

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

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

16 (B) an opportunity to object to the amount of the fee requested and to
17 place in escrow any amount reasonably in dispute; and

18 (C) prompt arbitration by the Board to resolve any objection over the
19 amount of the collective bargaining service fee.

20 § 1216. MEMBERSHIP; EMPLOYEE RIGHTS

21 An employee organization entering into an agreement shall not:

1 (1) discriminate against a member or applicant for membership on
2 account of race, color, creed, sex, sexual orientation, gender identity, national
3 origin, age, religion, or disability; or

4 (2) penalize a member for exercising a right guaranteed by the
5 Constitution or laws of the United States or the State of Vermont.

6 § 1217. BUSINESS AND PRODUCTS OF OTHER EMPLOYERS

7 It shall be an unfair labor practice for any employee organization and any
8 employer to enter into any contract or agreement, express or implied, whereby
9 the employer ceases or refrains or agrees to cease or refrain from handling,
10 using, selling, transporting, or otherwise dealing in the products of any other
11 person, or to cease doing business with any other person, and any contract or
12 agreement entered into before or after enactment of this chapter containing
13 such an agreement shall be to that extent unenforceable and void.

14 § 1218. PREVENTION OF UNFAIR PRACTICES

15 (a) The Board may prevent any person from engaging in any unfair labor
16 practice prohibited under this chapter. Whenever a charge is made that any
17 person has engaged in or is engaging in any unfair labor practice, the Board
18 may issue and cause to be served upon that person a complaint stating the
19 charges and containing a notice of hearing before the Board at a place and time
20 that is at least seven days after the complaint is served. A complaint shall not
21 be issued based on any unfair labor practice occurring more than six months

1 prior to the filing of the charge with the Board and service of a copy on the
2 person against whom the charge is made, unless the person aggrieved was
3 prevented from filing the charge by reason of service in the U.S. Armed
4 Forces, in which event the six-month period shall be computed from the day of
5 discharge.

6 (b) The person complained against may file an answer to the complaint and
7 appear and present evidence. The Board may permit any other person to
8 intervene and present evidence in the matter. A proceeding under this section
9 shall, so far as practicable, be conducted in accordance with rules of evidence.
10 The Board shall make a transcript of the hearing in the event the decision of
11 the Board is appealed.

12 (c) The Board may administer oaths, take testimony, subpoena witnesses,
13 and demand production of documents. Officers who serve subpoenas issued
14 by the Board and witnesses attending hearings shall be paid fees and
15 compensation on vouchers of the Board at the same rates as officers and
16 witnesses in causes before a Criminal Division of the Superior Court.

17 (d) If the Board finds, based on a preponderance of the evidence, that any
18 person named in the complaint has engaged in or is engaging in any unfair
19 labor practice, the Board shall issue an order and findings of fact, and cause to
20 be served on that person an order requiring the person to cease and desist from
21 the unfair labor practice and to take such affirmative actions as will carry out

1 the policies of this chapter. If the Board does not find that the person has
2 engaged in any unfair labor practice, the Board shall issue written findings of
3 fact and dismiss the complaint.

4 (e) In determining whether a complaint shall issue alleging a violation of
5 subdivision 1214(1) or (2) of this title, and in deciding those cases, the same
6 rules of the Board shall apply whether or not an employee organization is
7 affiliated with a national or international employee organization.

8 § 1219. FREEDOM OF EXPRESSION

9 The expression of any views, argument, or opinion, or the dissemination of
10 such an expression in any form, shall not constitute or be evidence of an unfair
11 labor practice under this chapter, provided the expression contains no threat of
12 reprisal, force, or promise of benefit.

13 § 1220. AGREEMENTS; LIMITATIONS, RENEGOTIATION, AND

14 RENEWAL

15 (a) A collective bargaining agreement shall be for a maximum term of two
16 years. The agreement may not be canceled, supplemented, or renegotiated
17 during the term of the agreement, unless both parties consent in writing and
18 file the written consent with the Board.

19 (b) Nothing in this chapter shall be construed to require either party during
20 collective bargaining to accede to any proposal or proposals of the other party.

1 (c) An agreement between the employer and the employees' exclusive
2 bargaining representative, after ratification or an agreement imposed on the
3 parties pursuant to section 1210 or 1211 of this title shall be submitted to the
4 Department who shall request sufficient funds from the General Assembly to
5 implement the agreement. If the General Assembly appropriates sufficient
6 funds, the agreement shall become effective at the beginning of the next fiscal
7 year. If the General Assembly appropriates a different amount of funds, the
8 terms of the agreement affected by that appropriation shall be renegotiated
9 based on the amount of funds actually appropriated by the General Assembly,
10 and the agreement with the negotiated changes shall become effective at the
11 beginning of the next fiscal year.

12 (d) Any portion of any agreement shall not become effective separately
13 except with mutual consent of both parties.

14 (e) An agreement shall terminate at the expiration of its specified term.
15 Upon request of either party, negotiations for a new agreement to take effect
16 upon the expiration of the preceding agreement shall be commenced at any
17 time during the year preceding the expiration date of the agreement.
18 Negotiation may be commenced at any time before that time with the consent
19 of both parties.

20 (f) In the event the employer and the employees' exclusive bargaining
21 representative are unable to arrive at an agreement and there is no existing

1 agreement in effect, the Department may make temporary rules necessary to
2 ensure the uninterrupted and efficient conduct of business. The rules shall
3 terminate and have no further force and effect after an agreement is reached,
4 except for rights that arose under those rules.

5 § 1221. GRIEVANCES; APPLICANTS AND EXCLUDED PERSONNEL

6 (a) An applicant for employment in a position included in the bargaining
7 unit and employees who are in the initial or extended probationary period may
8 appeal to the Board if they believe they were discriminated against on account
9 of race, color, creed, sex, sexual orientation, gender identity, age, national
10 origin, religion, or disability.

11 (b) Any dispute concerning the amount of a collective bargaining service
12 fee may be grieved to the Board in accordance with the rules of the Board.

13 § 1222. ENFORCEMENT

14 (a) Orders of the Board issued under this chapter may be enforced by any
15 party or by the Board by filing a petition with the Washington Superior Court
16 or the Superior Court in the county in which the action before the Board
17 originated. The petition shall be served on the adverse party pursuant to the
18 Vermont Rules of Civil Procedure. If, after hearing, the Court determines that
19 the Board had jurisdiction over the matter and that a timely appeal was not
20 filed, or that an appeal was timely filed and a stay of the Board order or any
21 part of it was not granted, or that a Board order was affirmed on appeal in

1 pertinent part by the Supreme Court, the Court shall incorporate the order of
2 the Board as a judgment of the Court. There is no appeal from that judgment
3 except that a judgment reversing a Board decision on jurisdictional grounds
4 may be appealed to the Supreme Court.

5 (b) Upon filing of a petition by a party or the Board, the Court may grant
6 temporary relief that the Court deems proper pending formal hearing.

7 (c) Orders and decisions of the Board shall apply only to the particular case
8 under appeal, but appeals presenting similar issues may be consolidated for
9 hearing with the consent of the Board. All employees who are aggrieved by
10 the same action of the employer may join in an appeal with the consent of the
11 Board. The Board shall not modify, add to, or detract from a collective
12 bargaining agreement by any order or decision.

13 (d) A grievance arbitration award issued pursuant to this chapter may be
14 enforced by any party by filing a petition with the Washington Superior Court
15 or the Superior Court in the county in which the action originated. The petition
16 shall be served on the adverse party pursuant to the Vermont Rules of Civil
17 Procedure. If, after hearing, the Court determines that the arbitrator had
18 jurisdiction over the matter and that an application for modification or petition
19 to vacate an award was not filed, the Court shall incorporate the order of the
20 Board as a judgment of the Court. There is no appeal from that judgment

1 except that a judgment reversing an arbitration award on jurisdictional grounds
2 may be appealed to the Supreme Court.

3 § 1223. JUDICIAL REVIEW; STAY PENDING APPEAL

4 (a) Any person aggrieved by an order or decision of the Board issued under
5 this chapter, except a decision and order made pursuant to subsection 1210(i)
6 of this title, may appeal questions of law to the Supreme Court.

7 (b) An order of the Board shall not automatically be stayed pending appeal.
8 Upon request, the Board may stay the order or any part of it. If the Board
9 denies a stay, a stay may be requested from the Supreme Court. The Supreme
10 Court or a single justice may stay the order or any part of it and may order
11 additional interim relief.

12 § 1224. REPORTS; PROTECTION FROM RETALIATION

13 An employee of the Department of State's Attorneys serving at the pleasure
14 of the state's attorney, as a trustee and servant of the people, shall be free to
15 report, in good faith and with candor, waste, fraud, abuse of authority,
16 violations of law, or a threat to the health of employees, the public, or persons
17 under the care of the State without fear of reprisal, intimidation, or retaliation.

18 § 1225. PROTECTED ACTIVITY

19 (a) A state's attorney shall not engage in retaliatory action against an
20 employee of the Department of State's Attorneys serving at the pleasure of the

1 state's attorney because the employee refuses to comply with an illegal order
2 or engages in any of the following:

3 (1) providing to a public body a good faith report or good faith
4 testimony that alleges an entity of state government, a state's attorney, a state
5 employee or an employee of the Department of State's Attorneys serving at the
6 pleasure of a state's attorney, official, or a person providing services to the
7 State under contract has engaged in a violation of law or in waste, fraud, abuse
8 of authority, or a threat to the health of employees, the public, or persons under
9 the care of the State; or

10 (2) assisting or participating in a proceeding to enforce the provisions of
11 this subchapter.

12 (b) A state's attorney shall not attempt to restrict or interfere with, in any
13 manner, the ability of an employee of the Department of State's Attorneys
14 serving at the pleasure of the state's attorney to engage in any of the protected
15 activities described in subsection (a) of this section.

16 (c) A state's attorney shall not require an employee of the Department of
17 State's Attorneys serving at the pleasure of the state's attorney to discuss or
18 disclose his or her testimony, or intended testimony, prior to an employee's
19 appearance to testify before the General Assembly, the Vermont Bar
20 Association, or state or federal law enforcement officials if he or she is not
21 testifying on behalf of an entity of state government.

1 (d) An employee of the Department of State's Attorneys serving at the
2 pleasure of the state's attorney may not divulge information that is confidential
3 under state or federal law. An act by which an employee divulges such
4 information shall not be considered protected activity under this section.

5 (e) In order to establish a claim of retaliation based upon the refusal to
6 follow an illegal order, an employee of the Department of State's Attorneys
7 serving at the pleasure of the state's attorney shall assert at the time of the
8 refusal his or her good faith and reasonable belief that the order is illegal.

9 § 1226. COMMUNICATION WITH GENERAL ASSEMBLY

10 (a) A state's attorney may not prohibit an employee of the Department of
11 State's Attorneys serving at the pleasure of the state's attorney from engaging
12 in discussion with a member of the General Assembly or from testifying before
13 a legislative committee; provided, however, that an employee may not divulge
14 confidential information, and an employee shall be clear that he or she is not
15 speaking on behalf of an entity of state government.

16 (b) An employee of the Department of State's Attorneys serving at the
17 pleasure of the state's attorney shall not be subject to discipline, discharge,
18 discrimination, or other adverse employment action as a result of the employee
19 providing information to a legislator or legislative committee; provided,
20 however, that the employee does not divulge confidential information, and that
21 the employee is clear that he or she is not speaking on behalf of any entity of

1 state government. The protections set forth in this subchapter shall not apply
2 to statements that constitute hate speech or threats of violence against a person.

3 (c) In the event that an appearance before a committee of the General
4 Assembly will cause an employee of the Department of State's Attorneys
5 serving at the pleasure of the state's attorney to miss work, he or she shall
6 request to be absent from work and shall provide as much notice as is
7 reasonably possible. The request shall be granted unless there is good cause to
8 deny the request. If a request is denied, the decision and reasons for the denial
9 shall be in writing and shall be provided to the employee in advance of the
10 scheduled appearance. The protections set forth in this section are subject to
11 the efficient operation of state government, which shall prevail in any instance
12 of conflict.

13 Sec. 2. 32 V.S.A. § 1185 is amended to read:

14 § 1185. OFFICE EXPENSES

15 (a) In settlement of their accounts, ~~the commissioner of finance and~~
16 ~~management~~ Commissioner of Finance and Management shall allow state's
17 attorneys their expenses for secretarial assistance, office expenses including
18 rent, supplies, equipment, maintenance, legal forms and stationery, telephone
19 service, professional liability insurance, all expenses incurred in connection
20 with the collective bargaining process, the expense of printing briefs in cases in
21 which the state's attorney has represented the ~~state~~ State, books, advance

1 copies of the Vermont reports, advertising, dues and subscriptions, tuitions,
2 and stipends for professional training and their necessary expense when away
3 from home on official business.

4 (b) Secretaries shall be hired by and shall serve at the pleasure of the state's
5 attorney. ~~Secretaries shall be state employees paid by the state, and shall~~
6 ~~receive those benefits available to other classified state employees who are~~
7 ~~similarly situated but they shall not be subject to the rules provided for under~~
8 ~~chapter 13 of Title 3. The compensation of each secretary shall be determined~~
9 ~~by the commissioner of human resources with the approval of the governor.~~ In
10 fixing compensation, there shall be taken into consideration, among other
11 things, the volume of work requiring the services of the ~~secretary~~ Secretary and
12 whether the services are on a full or part-time basis.

13 Sec. 3. 24 V.S.A. § 363 is amended to read:

14 § 363. DEPUTY STATE'S ATTORNEYS

15 A state's attorney may appoint as many deputy state's attorneys as
16 necessary for the proper and efficient performance of his or her office, ~~and~~
17 ~~with the approval of the governor, fix their pay not to exceed that of the state's~~
18 ~~attorney making the appointment,~~ and may remove them at pleasure. Deputy
19 state's attorneys shall be compensated only for periods of actual performance
20 of the duties of such office. Deputy state's attorneys shall be reimbursed for
21 their necessary expenses incurred in connection with their official duties when

1 approved by the state's attorneys and the ~~commissioner of finance~~
2 Commissioner of Finance. Deputy state's attorneys may not be paid more than
3 an elected state's attorney in that county. Deputy state's attorneys shall
4 exercise all the powers and duties of the state's attorneys except the power to
5 designate someone to act in the event of their own disqualification. Deputy
6 state's attorneys may not enter upon the duties of the office until they have
7 taken the oath or affirmation of allegiance to the state and the oath of office
8 required by the ~~constitution~~ Constitution, and until such oath together with
9 their appointment is filed for record with the county clerk. If appointed and
10 under oath, a deputy state's attorney may prosecute cases in another county if
11 the state's attorney in the other county files the deputy's appointment in the
12 other county clerk's office. In case of a vacancy in the office of state's
13 attorney, the appointment of the deputy shall expire upon the appointment of a
14 new state's attorney.

15 Sec. 4. 3 V.S.A. § 631 is amended to read:

16 § 631. GROUP INSURANCE FOR STATE EMPLOYEES; SALARY
17 DEDUCTIONS FOR INSURANCE, SAVINGS PLANS, AND
18 CREDIT UNIONS

19 * * *

20 (2)(A) The term "employees" as used in this section shall include among
21 others any class or classes of elected or appointed officials, but it shall not

1 include members of the ~~general assembly~~ General Assembly as such, nor shall
2 it include any person rendering service on a retainer or fee basis, members of
3 boards or commissions, or persons other than employees of the Vermont
4 ~~historical society~~ Historical Society, the Vermont ~~film corporation~~ Film
5 Corporation, the Vermont ~~state employees' credit union~~ State Employees'
6 Credit Union, Vermont ~~state employees' association~~ State Employees'
7 Association, an employee of the Department of State's Attorneys or an
8 employee serving at the pleasure of the state's attorney, and the Vermont
9 ~~council on the arts~~ Council on the Arts, whose compensation for service is not
10 paid from the ~~state treasury~~ State Treasury, nor shall it include any elected or
11 appointed official unless the official is actively engaged in and devoting
12 substantially full time to the conduct of the business of his or her public office.
13 For purposes of group hospital-surgical-medical expense insurance, the term
14 "employees" shall include employees as defined in this subdivision and former
15 employees as defined in this subdivision who are retired and are receiving a
16 retirement allowance from the Vermont ~~state retirement system~~ State
17 Retirement System or the ~~state teachers' retirement system~~ State Teachers'
18 Retirement System of Vermont and, for the purposes of group life insurance
19 only, are retired on or after July 1, 1961, and have completed 20 creditable
20 years of service with the ~~state~~ State before their retirement dates and are
21 insured for group life insurance on their retirement dates. For purposes of

1 group hospital-surgical-medical expense insurance only, the term “employees”
2 shall include employees as defined in this subdivision and employees who are
3 receiving a retirement allowance based upon their employment with the
4 Vermont ~~state employees’ association~~ State Employees’ Association, the
5 Vermont ~~state employees’ credit union~~ State Employees’ Credit Union, the
6 Vermont ~~council on the arts~~ Council on the Arts, as long as they are covered as
7 active employees on their retirement date, and:

8 (i) ~~they~~ have at least 20 years of service with that employer; or

9 (ii) have attained 62 years of age, and have at least 15 years

10 service with that employer.

11 * * *

12 Sec. 5. 3 V.S.A. § 455 is amended to read:

13 § 455. DEFINITIONS

14 (a) Unless a different meaning is plainly required by the context, the
15 following words and phrases as used in this subchapter shall have the
16 following meanings:

17 * * *

18 (9) “Employee” shall mean:

19 (A) any regular officer or employee of the Vermont ~~historical society~~
20 Historical Society, the employees of the Department of State’s Attorneys and
21 the employees who serve at the pleasure of the state’s attorney, or in a

1 department other than a person included under subdivision (B) of this
2 subdivision (9), who is employed for not less than 40 calendar weeks in a
3 year; and

4 * * *

5 Sec. 6. 3 V.S.A. § 1101 is amended to read:

6 § 1101. OBLIGATION OF STATE TO DEFEND EMPLOYEES;

7 DEFINITION

8 * * *

9 (b) For purposes of this chapter, “state employee” includes

10 * * *

11 (1) sheriffs and state’s attorneys and their deputies, employees of the
12 Department of State’s Attorneys and employees serving at the pleasure of a
13 state’s attorney, and former sheriffs and state’s attorneys and their deputies.

14 * * *

15 Sec. 7. EFFECTIVE DATE AND TRANSITIONAL PROVISIONS

16 (a) This act shall take effect on passage.

17 (b) Until the time that a collective bargaining agreement is entered into and
18 terms of the agreement are implemented, each employee as defined in 3 V.S.A.
19 § 1202(9) shall retain all the benefits of employment, including retirement
20 benefits.

1 (c) Each employee shall retain the benefits of long-term disability
2 insurance purchased by the Department of Human Resources to benefit the
3 employees eligible to join a bargaining unit pursuant to Sec. 1 of this act. If
4 the insurance premium cost is in excess of the amount currently paid to cover
5 the employees, the Department of Human Resources shall be responsible for
6 the increased cost. Each employee shall retain the benefits of long-term
7 disability insurance until the time that a collective bargaining agreement is
8 negotiated and implemented between the employees and the Department of
9 State's Attorneys, whether or not that contract addresses long-term disability
10 insurance.