

# House Calendar

Wednesday, March 12, 2014

65th DAY OF THE ADJOURNED SESSION

House Convenes at 1:00 P.M.

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**ORDERS OF THE DAY**

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**ACTION CALENDAR**

**Third Reading**

**H. 123**

An act relating to Lyme disease and other tick-borne illnesses

**H. 542**

An act relating to the taxation of soil amendments

**H. 650**

An act relating to establishing the Ecosystem Restoration and Water Quality Improvement Special Fund

**H. 685**

An act relating to identification and registration of moorings

**H. 795**

An act relating to victim's compensation and restitution procedures

**H. 799**

An act relating to the importation of untreated firewood

**Amendment to be offered by Rep. Buxton of Tunbridge to H. 799**

Sec. 1, 10 V.S.A. § 2681, in subsection (b), as follows:

First: After "the rules shall" and before the colon by striking "address"

Second: In subdivisions (b)(1)-(3) before "whether" by inserting address

Third: In subdivision (b)(3), by striking "and" at the end of the subdivision

Fourth: By adding a new subdivision (b)(4) to read:

(4) include a process under which the Commissioner may declare a statewide or regional shortage of firewood supply and waive requirements or prohibitions under the rule related to the importation of firewood; and

and by renumbering the remaining subdivision to be numerically correct.

## Favorable with Amendment

### H. 501

An act relating to operating a motor vehicle under the influence of alcohol or drugs

**Rep. Waite-Simpson of Essex**, for the Committee on **Judiciary**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

#### Sec. 1. INTENT

It is the intent of the General Assembly that 23 V.S.A. § 1201(a)(3) as amended by this act be construed in the same manner that the Vermont Supreme Court has construed 23 V.S.A. § 1201(a)(2). In cases such as *State v. Schmitt*, 150 Vt. 503, 508 (1988) and *State v. Storrs*, 105 Vt. 180, 185 (1933), the Court has said that “under the influence of intoxicating liquor” means that a person’s full mental or physical abilities are diminished, impaired, or affected in the slightest degree by intoxicating liquor. It is the intent of the General Assembly that the words “under the influence of any other drug or under the combined influence of alcohol and any other drug” in 23 V.S.A. § 1201(a)(3) be interpreted in the same manner.

Sec. 2. 23 V.S.A. § 1201 is amended to read:

#### § 1201. OPERATING VEHICLE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR OTHER SUBSTANCE; CRIMINAL REFUSAL; ENHANCED PENALTY FOR BAC OF 0.16 OR MORE

(a) A person shall not operate, attempt to operate, or be in actual physical control of any vehicle on a highway:

(1) when the person’s alcohol concentration is 0.08 or more, or 0.02 or more if the person is operating a school bus as defined in subdivision 4(34) of this title; or

(2) when the person is under the influence of intoxicating liquor; or

(3) when the person is under the influence of any other drug or under the combined influence of alcohol and any other drug ~~to a degree which renders the person incapable of driving safely~~; or

(4) when the person’s alcohol concentration is 0.04 or more if the person is operating a commercial motor vehicle as defined in subdivision 4103(4) of this title.

\* \* \*

#### Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

( Committee Vote: 10-0-1)

### H. 555

An act relating to the commitment of a criminal defendant who is incompetent to stand trial because of a traumatic brain injury

**Rep. Koch of Barre Town**, for the Committee on **Judiciary**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 4801 is amended to read:

#### § 4801. TEST OF INSANITY IN CRIMINAL CASES

(a) The test when used as a defense in criminal cases shall be as follows:

(1) A person is not responsible for criminal conduct if at the time of such conduct, as a result of mental ~~disease or defect~~ illness, intellectual disability, or traumatic brain injury, he or she lacks adequate capacity either to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law.

(2) The terms "~~mental disease or defect~~" "mental illness, intellectual disability, or traumatic brain injury" do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct. ~~The terms "mental disease or defect" shall include congenital and traumatic mental conditions as well as disease.~~

(b) The defendant shall have the burden of proof in establishing insanity as an affirmative defense by a preponderance of the evidence.

Sec. 2. 13 V.S.A. § 4814 is amended to read:

#### § 4814. ORDER FOR EXAMINATION

(a) Any court before which a criminal prosecution is pending may order the ~~department of mental health~~ Department of Mental Health to have the defendant examined by a psychiatrist at any time before, during or after trial, and before final judgment in any of the following cases:

(1) ~~When~~ when the defendant enters a plea of not guilty, or when such a plea is entered in the defendant's behalf, and then gives notice of the defendant's intention to rely upon the defense of insanity at the time of the alleged crime, or to introduce expert testimony relating to a ~~mental disease, defect,~~ mental illness, intellectual disability, traumatic brain injury or other condition bearing upon the issue of whether he or she had the mental state required for the offense charged;

(2) ~~When~~ when the defendant, the ~~state~~ State, or an attorney, guardian, or other person acting on behalf of the defendant, raises before ~~such~~ the court the issue of whether the defendant is mentally competent to stand trial for the alleged offense;

(3) ~~When~~ when the court believes that there is doubt as to the defendant's sanity at the time of the alleged offense; or

(4) ~~When~~ when the court believes that there is doubt as to the defendant's mental competency to be tried for the alleged offense.

(b) ~~Such~~ An order under this section may be issued by the court on its own motion, or on motion of the ~~state~~ State, the defendant, or an attorney, guardian, or other person acting on behalf of the defendant.

Sec. 3. 13 V.S.A. § 4815 is amended to read:

§ 4815. PLACE OF EXAMINATION; TEMPORARY COMMITMENT

(a) It is the purpose of this section to provide a mechanism by which a defendant is examined in the least restrictive environment deemed sufficient to complete the examination and prevent unnecessary pre-trial detention and substantial threat of physical violence to any person, including a defendant.

(b) The order for examination may provide for an examination at any jail or correctional center, or at the State Vermont Psychiatric Care Hospital or a designated hospital, ~~or at its successor in interest~~, or at such other place as the Court shall determine, after hearing a recommendation by the Commissioner of Mental Health.

(c) A motion for examination shall be made as soon as practicable after a party or the Court has good faith reason to believe that there are grounds for an examination. An attorney making such a motion shall be subject to the potential sanctions of Rule 11 of the Vermont Rules of Civil Procedure.

(d) Upon the making of a motion for examination, the Court shall order a mental health screening to be completed by a designated mental health professional while the defendant is still at the Court.

(e) If the screening cannot be commenced and completed at the courthouse within two hours from the time of the defendant's appearance before the Court, the Court may ~~forego~~ forgo consideration of the screener's recommendations.

(f) The Court and parties shall review the recommendation of the designated mental health professional and consider the facts and circumstances surrounding the charge and observations of the defendant in court. If the Court finds sufficient facts to order an examination, it may be ordered to be

completed in the least restrictive environment deemed sufficient to complete the examination, consistent with subsection (a) of this section.

(g)(1) Inpatient examination at the Vermont ~~State~~ Psychiatric Care Hospital, ~~or its successor in interest~~, or a designated hospital. The Court shall not order an inpatient examination unless the designated mental health professional determines that the defendant is a person in need of treatment as defined in 18 V.S.A. § 7101(17).

(2) Before ordering the inpatient examination, the ~~court~~ Court shall determine what terms, if any, shall govern the defendant's release from custody under sections 7553-7554 of this title.

(3) An order for inpatient examination shall provide for placement of the defendant in the custody and care of the ~~commissioner of mental health~~ Commissioner of Mental Health.

(A) If a Vermont ~~State~~ Psychiatric Care Hospital psychiatrist, ~~or a psychiatrist of its successor in interest~~, or a designated hospital psychiatrist determines prior to admission that the defendant is not in need of inpatient hospitalization ~~prior to admission~~, the Commissioner shall release the defendant pursuant to the terms governing the defendant's release from the Commissioner's custody as ordered by the Court. The Commissioner of Mental Health shall ensure that all individuals who are determined not to be in need of inpatient hospitalization receive appropriate referrals for outpatient mental health services.

(B) If a Vermont ~~State~~ Psychiatric Care Hospital psychiatrist, ~~or a psychiatrist of its successor in interest~~, or designated hospital psychiatrist determines that the defendant is in need of inpatient hospitalization:

(i) The Commissioner shall obtain an appropriate inpatient placement for the defendant at the Vermont ~~State~~ Psychiatric Care Hospital psychiatrist, ~~or a psychiatrist of its successor in interest~~, or a designated hospital and, based on the defendant's clinical needs, may transfer the defendant between hospitals at any time while the order is in effect. A transfer to a designated hospital outside the no refusal system is subject to acceptance of the patient for admission by that hospital.

(ii) The defendant shall be returned to court for further appearance on the following business day if the defendant is no longer in need of inpatient hospitalization, unless the terms established by the ~~court~~ Court pursuant to subdivision (2) of this section permit the defendant to be released from custody.

(C) The defendant shall be returned to court for further appearance within two business days after the Commissioner notifies the ~~court~~ Court that the examination has been completed, unless the terms established by the Court pursuant to subdivision (2) of this section permit the defendant to be released from custody.

(4) If the defendant is to be released pursuant to subdivision (3)(A), (3)(B)(ii), or (3)(C) of this subsection and is not in the custody of the Commissioner of Corrections, the defendant shall be returned to the defendant's residence or ~~such other~~ to another appropriate place within the State of Vermont by the Department of Mental Health at the expense of the ~~court~~ Court.

(5) If it appears that an inpatient examination cannot reasonably be completed within 30 days, the Court issuing the original order, on request of the ~~commissioner~~ Commissioner and upon good cause shown, may order placement at the hospital extended for additional periods of 15 days in order to complete the examination, and the defendant on the expiration of the period provided for in such order shall be returned in accordance with this subsection.

(6) ~~For the purposes of~~ As used in this subsection, "in need of inpatient hospitalization" means an individual has been determined under clinical standards of care to require inpatient treatment.

(h) Except upon good cause shown, defendants charged with misdemeanor offenses who are not in the custody of the Commissioner of Corrections shall be examined on an outpatient basis for mental competency. Examinations occurring in the community shall be conducted at a location within 60 miles of the defendant's residence or at another location agreed to by the defendant.

(i) As used in this section:

(1) ~~No~~, "no refusal system" means a system of hospitals and intensive residential recovery facilities under contract with the Department of Mental Health that provides high intensity services, in which the facilities shall admit any individual for care if the individual meets the eligibility criteria established by the Commissioner in contract.

(2) ~~"Successor in interest" shall mean the mental health hospital owned and operated by the State that provides acute inpatient care and replaces the Vermont State Hospital.~~

Sec. 4. 13 V.S.A. § 4816 is amended to read:

#### § 4816. SCOPE OF EXAMINATION; REPORT; EVIDENCE

(a) Examinations provided for in the preceding section shall have reference to:



(1) ~~Mental~~ mental competency of the person examined to stand trial for the alleged offense; and

(2) ~~Sanity~~ sanity of the person examined at the time of the alleged offense.

(b) A competency evaluation for an individual thought to have a ~~developmental~~ an intellectual disability or traumatic brain injury shall include a current evaluation by a psychologist or other appropriate medical professional skilled in assessing individuals with ~~developmental disabilities~~ those conditions.

(c) As soon as practicable after the examination has been completed, the examining psychiatrist or psychologist, if applicable, shall prepare a report containing findings in regard to each of the matters listed in subsection (a) of this section. The report shall be transmitted to the Court issuing the order for examination, and copies of the report shall be sent to the ~~state's attorney~~ State's Attorney, and to the respondent's attorney if the respondent is represented by counsel.

(d) No statement made in the course of the examination by the person examined, whether or not he or she has consented to the examination, shall be admitted as evidence in any criminal proceeding for the purpose of proving the commission of a criminal offense or for the purpose of impeaching testimony of the person examined.

(e) The relevant portion of a psychiatrist's report shall be admitted into evidence as an exhibit on the issue of the person's mental competency to stand trial, and the opinion therein shall be conclusive on the issue if agreed to by the parties and if found by the Court to be relevant and probative on the issue.

(f) Introduction of a report under subsection (d) of this section shall not preclude either party or the Court from calling the psychiatrist who wrote the report as a witness or from calling witnesses or introducing other relevant evidence. Any witness called by either party on the issue of the defendant's competency shall be at the state's expense, or, if called by the Court, at the Court's expense.

Sec. 5. 13 V.S.A. § 4817 is amended to read:

§ 4817. COMPETENCY TO STAND TRIAL; DETERMINATION

(a) A person shall not be tried for a criminal offense if he or she is incompetent to stand trial.

(b) If a person indicted, complained, or informed against for an alleged criminal offense, an attorney or guardian acting in his or her behalf, or the ~~state~~ State, at any time before final judgment, raises before the court before which

~~such the~~ person is tried or is to be tried, the issue of whether ~~such the~~ person is incompetent to stand trial, or if the court has reason to believe that ~~such the~~ person may not be competent to stand trial, a hearing shall be held before ~~such the~~ court at which evidence shall be received and a finding made regarding his or her competency to stand trial. However, in cases where the court has reason to believe that ~~such the~~ person may be incompetent to stand trial due to a mental ~~disease or mental defect~~, such illness, intellectual disability, or traumatic brain injury, the hearing shall not be held until an examination has been made and a report submitted by an examining psychiatrist in accordance with sections 4814-4816 of this title.

(c) A person who has been found incompetent to stand trial for an alleged offense may be tried for that offense if, upon subsequent hearing, ~~such the~~ person is found by the court having jurisdiction of his or her trial for the offense to have become competent to stand trial.

Sec. 6. 13 V.S.A. § 4819 is amended to read:

#### § 4819. ACQUITTAL BY REASON OF INSANITY

When a person tried on information, complaint, or indictment is acquitted by a jury by reason of insanity at the time of the alleged offense, the jury shall state in its verdict of not guilty that the ~~same is given for such cause~~ acquittal is for that reason.

Sec. 7. 13 V.S.A. § 4820 is amended to read:

#### § 4820. HEARING REGARDING COMMITMENT

When a person charged on information, complaint, or indictment with a criminal offense:

(1) Is reported by the examining psychiatrist following examination pursuant to sections 4814-4816 of this title, to have been insane at the time of the alleged offense; ~~or~~,

(2) Is found upon hearing pursuant to section 4817 of this title to be incompetent to stand trial due to a mental ~~disease or mental defect~~; ~~or~~ illness, intellectual disability, or traumatic brain injury.

(3) Is not indicted upon hearing by grand jury by reason of insanity at the time of the alleged offense, duly certified to the court; ~~or~~,

(4) Upon trial by court or jury is acquitted by reason of insanity at the time of the alleged offense; the court before which ~~such the~~ person is tried or is to be tried for ~~such the~~ offense, shall hold a hearing for the purpose of determining whether ~~such the~~ person should be committed to the custody of the ~~commissioner of mental health~~ Commissioner of Mental Health or the

Commissioner of Disabilities, Aging, and Independent Living. Such person may be confined in jail or some other suitable place by order of the court pending hearing for a period not exceeding 15 days.

Sec. 8. 13 V.S.A. § 4821 is amended to read:

§ 4821. NOTICE OF HEARING; PROCEDURES

The person who is the subject of the proceedings, his or her attorney, the legal guardian, if any, the ~~commissioner of mental health or the commissioner of disabilities, aging, and independent living, and the state's attorney~~ Commissioner of Mental Health or the Commissioner of Disabilities, Aging, and Independent Living, and the State's Attorney or other prosecuting officer representing the ~~state~~ State in the case, shall be given notice of the time and place of a hearing under the preceding section. Procedures for hearings for persons who are mentally ill shall be as provided in 18 V.S.A. chapter 181 of Title 18. Procedures for hearings for persons who are ~~mentally retarded intellectually disabled or have a traumatic brain injury~~ shall be as provided in 18 V.S.A. chapter 206, subchapter 3 of chapter 206 of Title 18.

Sec. 9. 13 V.S.A. § 4822 is amended to read:

§ 4822. FINDINGS AND ORDER; MENTALLY ILL PERSONS

(a) If the Court finds that ~~such~~ the person is a person in need of treatment or a patient in need of further treatment as defined in 18 V.S.A. § 7101, the ~~court~~ Court shall issue an order of commitment directed to the Commissioner of Mental Health, which shall admit the person to the care and custody of the Department of Mental Health for an indeterminate period. In any case involving personal injury or threat of personal injury, the committing Court may issue an order requiring a court hearing before a person committed under this section may be discharged from custody.

(b) ~~Such~~ The order of commitment shall have the same force and effect as an order issued under 18 V.S.A. §§ 7611-7622, and persons committed under such an order shall have the same status, and the same rights, including the right to receive care and treatment, to be examined and discharged, and to apply for and obtain judicial review of their cases, as persons ordered committed under 18 V.S.A. §§ 7611-7622.

(c) Notwithstanding the provisions of subsection (b) of this section, at least 10 days prior to the proposed discharge of any person committed under this section the Commissioner of Mental Health shall give notice thereof to the committing Court and ~~state's attorney~~ State's Attorney of the county where the prosecution originated. In all cases requiring a hearing prior to discharge of a person found incompetent to stand trial under section 4817 of this title, the

hearing shall be conducted by the committing Court issuing the order under that section. In all other cases, when the committing Court orders a hearing under subsection (a) of this section or when, in the discretion of the Commissioner of Mental Health, a hearing should be held prior to the discharge, the hearing shall be held in the Family Division of the Superior Court to determine if the committed person is no longer a person in need of treatment or a patient in need of further treatment as set forth in subsection (a) of this section. Notice of the hearing shall be given to the Commissioner, the ~~state's attorney~~ State's Attorney of the county where the prosecution originated, the committed person, and the person's attorney. Prior to the hearing, the ~~state's attorney~~ State's Attorney may enter an appearance in the proceedings and may request examination of the patient by an independent psychiatrist, who may testify at the hearing.

(d) The Court may continue the hearing provided in subsection (c) of this section for a period of 15 additional days upon a showing of good cause.

(e) If the ~~court~~ Court determines that commitment shall no longer be necessary, it shall issue an order discharging the patient from the custody of the ~~department of developmental and mental health services~~ Department of Mental Health.

(f) The Court shall issue its findings and order not later than 15 days from the date of hearing.

Sec. 10. 13 V.S.A. § 4823 is amended to read:

§ 4823. FINDINGS AND ORDER; PERSONS WITH ~~MENTAL~~  
~~RETARDATION~~ INTELLECTUAL DISABILITY OR  
TRAUMATIC BRAIN INJURY

(a) If the court finds that ~~such~~ the person is a person in need of custody, care, and habilitation as defined in 18 V.S.A. § 8839, the court shall issue an order of commitment directed to the Commissioner of Disabilities, Aging, and Independent Living for care and habilitation of such person for an indefinite or limited period in a designated program.

(b) ~~Such~~ The order of commitment shall have the same force and effect as an order issued under 18 V.S.A. § 8843 and persons committed under ~~such an~~ the order shall have the same status, and the same rights, including the right to receive care and habilitation, to be examined and discharged, and to apply for and obtain judicial review of their cases, as persons ordered committed under 18 V.S.A. § 8843.

(c) Section 4822 of this title shall apply to persons proposed for discharge under this section; however, judicial proceedings shall be conducted in the

Criminal Division of the Superior Court in which the person then resides, unless the person resides out of state in which case the proceedings shall be conducted in the original committing Court.

Sec. 11. 18 V.S.A. § 8839 is amended to read:

§ 8839. DEFINITIONS

As used in this subchapter:

\* \* \*

(3) “Person in need of custody, care, and habilitation” means:

(A) a ~~mentally-retarded~~ person with an intellectual disability or a person with a traumatic brain injury;

(B) who presents a danger of harm to others; and

(C) for whom appropriate custody, care, and habilitation can be provided by the ~~commissioner~~ Commissioner in a designated program.

Sec. 12. CONSTRUCTION

This act’s replacement of the terms “mental disease or mental defect” with the terms “mental illness” or “intellectual disability” in 13 V.S.A. chapter 157 shall not be construed to alter the substance or effect of existing law or judicial precedent. These changes in terminology are merely meant to reflect evolving attitudes toward persons with disabilities.

Sec. 13. REPORTS

(a) On or before September 1, 2014 the Court Administrator shall report to the House and Senate Committees on Judiciary on the number of cases from July 1, 2011 through June 30, 2013 in which the Court ordered the Department of Mental Health to examine a defendant pursuant to 13 V.S.A. § 4814 to determine if he or she was insane at the time of the offense or is incompetent to stand trial. The report shall include a break-down indicating how many orders were based on mental illness, intellectual disability, and traumatic brain injury, and shall include the number of persons who were found to be in need of custody, care, and habilitation under 13 V.S.A. § 4823. A copy of the report shall be provided to the Department of Disabilities, Aging, and Independent Living.

(b)(1) On or before September 1, 2014, the Department of Sheriffs and State’s Attorneys shall report to the House and Senate Committees on Judiciary regarding the charging practices of State’s Attorneys for persons with traumatic brain injury.

(2) The report shall describe the number of cases from July 1, 2011 through June 30, 2013, broken down by the type of criminal charge, in which a person with traumatic brain injury was:

(A) charged with a criminal offense, including the disposition of the offense;

(B) charged with a criminal offense and the charges were dismissed because the person was suffering from a traumatic brain injury; and

(C) arrested for, or otherwise believed to be responsible for, a crime and criminal charges were not brought because the person was suffering from a traumatic brain injury.

(3) A copy of the report shall be provided to the Department of Disabilities, Aging, and Independent Living.

(c) On or before October 1, 2014 and on or before February 1, 2015, the Department of Disabilities, Aging, and Independent Living shall report to the House and Senate Committees on Judiciary on the status of the Department's implementation of this act. The status reports shall include updates on the Department's progress developing the programs and services needed to treat persons with traumatic brain injuries who have been found not guilty by reason of insanity or incompetent to stand trial as required by this act.

#### Sec. 14. EFFECTIVE DATES

(a) Secs. 1–12 shall take effect on July 1, 2015.

(b) Sec. 13 and this section shall take effect on passage.

**( Committee Vote: 10-0-1)**

### **H. 618**

An act relating to exclusive jurisdiction over delinquency proceedings by the Family Division of the Superior Court

**Rep. Wizowaty of Burlington**, for the Committee on **Judiciary**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

#### Sec. 1. REPORT; PROTOCOLS FOR CHARGING ARRESTED MINORS

On or before January 1, 2015, the Department of Sheriffs and State's Attorneys shall report to the House and Senate Committees on Judiciary regarding the treatment of arrested minors under 18 years of age. The report shall include written protocols for use by the Vermont State's Attorneys describing under what circumstances, according to which criteria, and for what types of offenses minors under 18 years of age are:

(1) charged as juveniles in the Family Division or as adults in the Criminal Division;

(2) treated as youthful offenders; and

(3) transferred between the Family and Criminal Divisions.

Sec. 2. COURT ADMINISTRATOR; NOTICE OF RIGHT TO TRANSFER;  
FORM

(a) The Court Administrator shall develop a form that informs a minor charged with a criminal offense in the Criminal Division that:

(1) there may be collateral consequences that result from pleading guilty to a criminal offense in the Criminal Division; and

(2) the minor has the right to request that the charges against him or her be transferred from the Criminal Division to the Family Division pursuant to 33 V.S.A. chapter 52 (Delinquency Proceedings).

(b) The Court Administrator shall ensure that the form developed pursuant to subsection (a) of this section is provided to all persons under 18 years of age who are charged with a criminal offense in the Criminal Division.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

and that after passage the title of the bill be amended to read: "An act relating to delinquency proceedings".

**( Committee Vote: 10-0-1)**

**H. 852**

An act relating to improving workforce education and training

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

Sec. 1. 10 V.S.A. chapter 22A is amended to read:

CHAPTER 22A. WORKFORCE EDUCATION AND TRAINING

§ 540. WORKFORCE EDUCATION AND TRAINING LEADER

The Commissioner of Labor shall be the leader of workforce education and training in the State, and shall have the authority and responsibility for the

coordination of workforce education and training within State government, including the following duties:

(1) Perform the following duties in consultation with the State Workforce Investment Board:

(A) Advise the Governor on the establishment of an integrated system of workforce education and training for Vermont.

(B) Create and maintain an inventory of all existing workforce education and training programs and activities in the State.

(C) Use data to ensure that State workforce education and training activities are aligned with the needs of the available workforce, the current and future job opportunities in the State, and the specific credentials needed to achieve employment in those jobs.

(D) Develop a State plan, as required by federal law, to ensure that workforce education and training programs and activities in the State serve Vermont citizens and businesses to the maximum extent possible.

(E) Ensure coordination and non-duplication of workforce education and training activities.

(F) Identify best practices and gaps in the delivery of workforce education and training programs.

(G) Design and implement criteria and performance measures for workforce education and training activities.

(H) Establish goals for the integrated workforce education and training system.

(2) Require from each business, training provider, or program that receives State funding to conduct workforce education and training a report that evaluates the results of the training. Each recipient shall submit its report on a schedule determined by the Commissioner and shall include at least the following information:

(A) name of the person who receives funding;

(B) amount of funding;

(C) activities and training provided;

(D) number of trainees and their general description;

(E) employment status of trainees

(F) future needs for resources.



(3) Review reports submitted by each recipient of workforce education and training funding.

(4) Issue an annual report to the Governor and the General Assembly on or before December 1 that includes a systematic evaluation of the accomplishments of the State workforce investment system and the performance of participating agencies and institutions.

(5) Coordinate public and private workforce programs to assure that information is easily accessible to students, employees, and employers, and that all information and necessary counseling is available through one contact.

(6) Facilitate effective communication between the business community and public and private educational institutions.

**§ 541. WORKFORCE DEVELOPMENT COUNCIL; STATE WORKFORCE INVESTMENT BOARD; MEMBERS, TERMS**

~~(a) The Workforce education and training Council is created as the successor to and the continuation of the Governor's Human Resources Investment Council and shall be the State Workforce Investment Board under Public Law 105-220, the Workforce Investment Act of 1998, and any reauthorization of that act. The Council shall consist of the members required under the federal act and the following: the President of the University of Vermont or designee; the Chancellor of the Vermont State Colleges or designee; the President of the Vermont Student Assistance corporation or designee; the President of the Association of Vermont Independent Colleges or designee; a representative of the Abenaki Self Help Organization; at least two representatives of labor appointed by the Governor in addition to the two required under the federal act, who shall be chosen from a list of names submitted by Vermont AFL CIO, Vermont NEA, and the Vermont State Employees Association; one representative of the low income community appointed by the Governor; two members of the Senate appointed by the Senate Committee on Committees; and two members of the house appointed by the speaker. In addition, the Governor shall appoint enough other members who are representatives of business or employers so that one half plus one of the members of the council are representatives of business or employers. At least one third of those appointed by the Governor as representatives of business or employers shall be chosen from a list of names submitted by the regional technical centers. As used in this section, "representative of business" means a business owner, a chief executive operating officer, or other business executive, and "employer" means an individual with policy making or hiring authority, including a public school superintendent or school board member and representatives from the nonprofit, social services, and health sectors of the economy. If there is a dispute as to who is to represent an interest as~~

~~required under the federal law, the Governor shall decide who shall be the member of the Council.~~

~~(b) Appointed members, except legislative appointees, shall be appointed for three year terms and serve at the pleasure of the Governor.~~

~~(c) A vacancy shall be filled for the unexpired term in the same manner as the initial appointment.~~

~~(d) The Governor shall appoint one of the business or employer members to chair the council for a term of two years. A member shall not serve more than three consecutive terms as chair.~~

~~(e) Legislative members shall be entitled to compensation and expenses as provided in 2 V.S.A. § 406, and other members shall be entitled to compensation and expenses as provided in 32 V.S.A. § 1010.~~

~~(f) The Department of Labor shall provide the Council with administrative support.~~

~~(g) The Workforce education and training Council shall be subject to 1 V.S.A. chapter 5, subchapters 2 and 3, relating to public meetings and access to public records.~~

~~(h) [Repealed.]~~

~~(i) The Workforce education and training Council shall:~~

~~(1) Advise the Governor on the establishment of an integrated network of workforce education and training for Vermont.~~

~~(2) Coordinate planning and services for an integrated network of workforce education and training and oversee its implementation at State and regional levels.~~

~~(3) Establish goals for and coordinate the State's workforce education and training policies.~~

~~(4) Speak for the workforce needs of employers.~~

~~(5) Negotiate memoranda of understanding between the Council and agencies and institutions involved in Vermont's integrated network of workforce education and training in order to ensure that each is working to achieve annual objectives developed by the Council.~~

~~(6) Carry out the duties assigned to the State Workforce Investment Board, as required for a single service delivery state, under P.L. 105-220, the Workforce Investment Act of 1998, and any amendments that may be made to it. [Repealed.]~~

§ 541a. STATE WORKFORCE INVESTMENT BOARD

(a) Board established; duties. Pursuant to the requirements of 29 U.S.C. § 2821, the Governor shall establish a State Workforce Investment Board to assist the Governor in the execution of his or her duties under the Workforce Investment Act of 1998 and to assist the Commissioner of Labor as specified in section 540 of this title.

(b) Additional duties; planning; process. In order to inform its decision-making and to provide effective assistance under subsection (a) of this section, the Board shall:

(1) Conduct an ongoing public engagement process throughout the State at which Vermonters have the opportunity to provide feedback and information concerning their workforce education and training needs.

(2) Maintain familiarity with the federal Comprehensive Economic Development Strategy (CEDS) and other economic development planning processes, and coordinate workforce and education activities in the State, including the development and implementation of the state plan required under the Workforce Investment Act of 1998, with economic development planning processes occurring in the State, as appropriate.

(c) Membership. The Board shall consist of the Governor and the following members who are appointed by the Governor and serve at his or her pleasure, unless otherwise indicated:

(1) two Members of the Vermont House of Representatives appointed by the Speaker of the House;

(2) two Members of the Vermont Senate appointed by the Senate Committee on Committees;

(3) the President of the University of Vermont or his or her designee;

(4) the Chancellor of the Vermont State Colleges or his or her designee;

(5) the President of the Vermont Student Assistance Corporation or his or her designee;

(6) a representative of an independent Vermont college or university;

(7) the Secretary of Education or his or her designee;

(8) a director of a regional technical center;

(9) a principal of a Vermont high school;

(10) two representatives of labor organizations who have been nominated by State labor federations;

(11) two representatives of individuals and organizations who have experience with respect to youth activities, as defined in 29 U.S.C. § 2801(52);

(12) two representatives of individuals and organizations who have experience in the delivery of workforce investment activities, as defined in 29 U.S.C. § 2801(51);

(13) the lead State agency officials with responsibility for the programs and activities carried out by one-stop partners, as described in 29 U.S.C. § 2841(b), or if no official has that responsibility, a representative in the State with expertise relating to these programs and activities;

(14) the Commissioner of Economic Development;

(15) the Commissioner of Labor;

(16) the Secretary of Human Services or his or her designee;

(17) two individuals who have experience in, and can speak for, the training needs of underemployed and unemployed Vermonters; and

(18) a number of appointees sufficient to constitute a majority of the Board who:

(A) are owners, chief executives, or operating officers of businesses, and other business executives or employers with optimum policymaking or hiring authority;

(B) represent businesses with employment opportunities that reflect the employment opportunities of the State; and

(C) are appointed from among individuals nominated by State business organizations and business trade associations.

(d) Operation of Board.

(1) Member representation.

(A) Members of the State Board who represent organizations, agencies, or other entities shall be individuals with optimum policymaking authority within the organizations, agencies, or entities.

(B) The members of the Board shall represent diverse regions of the State, including urban, rural, and suburban areas.

(2) Chair. The Governor shall select a chair for the Board from among the business representatives appointed pursuant to subdivision (c)(18) of this section.

(3) Meetings. The Board shall meet at least three times annually and shall hold additional meetings upon call of the Chair.

(4) Work groups; task forces. The Chair, in consultation with the Commissioner of Labor, may:

(A) assign one or more members to work groups to carry out the work of the Board; and

(B) appoint one or more members of the Board, or non-members of the Board, or both, to one or more task forces for a discrete purpose and duration.

(5) Quorum; meetings; voting.

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

(B) The Board may permit one or more members to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication, including an electronic, telecommunications, and video- or audio-conferencing conference telephone call, by which all members participating may simultaneously or sequentially communicate with each other during the meeting. A member participating in a meeting by this means is deemed to be present in person at the meeting.

(C) The Board shall deliver electronically the minutes for each of its meetings to each member of the Board and to the Chairs of the House Committees on Education and on Commerce and Economic Development, and to the Senate Committees on Education and on Economic Development, Housing and General Affairs.

(6) Reimbursement. Unless otherwise compensated by his or her employer for performance of his or her duties on the Board, a member of the Board shall be eligible for per diem compensation of \$50.00 per day for attendance at a meeting of the Board, and for reimbursement of his or her necessary expenses, which shall be paid by the Department of Labor solely from funds available for that purpose under the Workforce Investment Act of 1998.

(7) Conflict of interest. A member of the Board shall not:

(A) vote on a matter under consideration by the Board:

(i) regarding the provision of services by the member, or by an entity that the member represents; or

(ii) that would provide direct financial benefit to the member or the immediate family of the member; or

(B) engage in any activity that the Governor determines constitutes a conflict of interest as specified in the State Plan required under 29 U.S.C. § 2822.

(8) Sunshine provision. The Board shall make available to the public, on a regular basis through open meetings, information regarding the activities of the Board, including information regarding the State Plan adopted pursuant to 29 U.S.C. § 2822 and prior to submission of the State Plan to the U.S. Secretary of Labor, information regarding membership, and, on request, minutes of formal meetings of the Board.

§ 541b. WORKFORCE EDUCATION AND TRAINING; DUTIES OF OTHER STATE AGENCIES, DEPARTMENTS, AND PRIVATE PARTNERS

(a) To ensure the Workforce Investment Board and the Commissioner of Labor are able to fully perform their duties under this chapter, each agency and department within State government, and each person who receives funding from the State, shall comply within a reasonable period of time with a request for data and information made by the Board or the Commissioner in furtherance of their duties under this chapter.

(b) The Agency of Commerce and Community Development shall coordinate its work in adopting a statewide economic development plan with the activities of the Board and the Commissioner of Labor, including the development and implementation of the state plan for workforce education and training required under the Workforce Investment Act of 1998.

§ 542. REGIONAL WORKFORCE DEVELOPMENT EDUCATION AND TRAINING

(a) The Commissioner of Labor, in coordination with the Secretary of Commerce and Community Development, and in consultation with the Workforce ~~education and training Council~~ Investment Board, is authorized to issue performance grants to one or more persons to perform workforce education and training activities in a region.

(b) Each grant shall specify the scope of the workforce education and training activities to be performed and the geographic region to be served, and shall include outcomes and measures to evaluate the grantee's performance.

(c) The Commissioner of Labor and the Secretary of Commerce and Community Development shall jointly develop a grant process and eligibility criteria, as well as an outreach process for notifying potential participants of the grant program. The Commissioner of Labor shall have final authority to approve each grant.

§ 543. WORKFORCE EDUCATION AND TRAINING FUND; GRANT  
PROGRAMS

(a) Creation. There is created a Workforce Education and Training Fund in the ~~department of labor~~ Department of Labor to be managed in accordance with 32 V.S.A. chapter 7, subchapter 5.

(b) Purposes. The Fund shall be used exclusively for the following ~~two~~ purposes:

(1) training ~~to improve the skills of~~ for Vermont workers, including those who are unemployed, underemployed, or in transition from one job or career to another; and

(2) internships to provide students with work-based learning opportunities with Vermont employers; and

(3) apprenticeship-related instruction.

(c) Administrative Support. Administrative support for the grant award process shall be provided by the ~~Departments~~ Department of Labor ~~and of Economic Development~~. Technical, ~~administrative, financial, and other~~ support shall be provided whenever appropriate and reasonable by the Workforce ~~Development Council~~ Investment Board and all other public entities involved in ~~Economic Development, workforce development and training, and education~~ economic development and workforce education and training.

(d) Eligible Activities. Awards from the Fund shall be made to employers and entities that offer programs that require collaboration between employees and businesses, including private, public, and nonprofit entities, institutions of higher education, high schools, technical centers, and workforce education and training programs. Funding shall be for training programs and student internship programs that offer education, training, apprenticeship, mentoring, or work-based learning activities, or any combination; that employ innovative intensive student-oriented competency-based or collaborative approaches to workforce education and training; and that link workforce education and economic development strategies. Training programs or projects that demonstrate actual increased income and economic opportunity for employees and employers may be funded for more than one year. Student internships and training programs that involve the same employer may be funded multiple times, provided that new students participate.

~~(e) Award Criteria and Process. The Workforce education and training Council, in consultation with the Commissioners of Labor and of Economic~~

~~Development and the Secretary of Education, shall develop criteria consistent with subsection (d) of this section for making awards under this section. The Commissioners of Labor and of Economic Development and the Secretary of Education, shall develop a process for making awards. [Repealed].~~

(f) Awards. ~~Based on guidelines set by the council, the~~ The Commissioner of labor, and the Secretary of Education Labor, in consultation with the Workforce Investment Board, shall ~~jointly~~ develop award criteria and may make awards to the following:

(1) Training Programs.

(A) Public, private, and nonprofit entities for existing or new innovative training programs. Awards may be made to programs that retrain enhance the skills of Vermont incumbent workers and:

(i) train workers for trades or occupations that are expected to lead to jobs paying at least 200 percent of the current minimum wage or at least 150 percent if benefits are included; this requirement may be waived when warranted based on regional or occupational wages or economic reality;

(ii) do not duplicate, supplant, or replace other available programs funded with public money;

(iii) articulate clear goals and demonstrate readily accountable, reportable, and measurable results; and

(iv) demonstrate an integrated connection between training and specific new or continuing employment opportunities.

(B) Awards under this subdivision shall be made to programs or projects that do all the following:

~~(A)~~(i) offer innovative programs of intensive, student-centric, competency-based education, training, apprenticeship, mentoring, or any combination of these;

~~(B)~~(ii) address the needs of workers who are unemployed, underemployed, or are at risk of becoming unemployed due to changing workplace demands by increasing productivity and developing new skills for incumbent workers; or

(iii) in the discretion of the Commissioner, otherwise serves the purposes of this chapter.

~~(C) train workers for trades or occupations that are expected to lead to jobs paying at least 200 percent of the current minimum wage or at least 150 percent if benefits are included; this requirement may be waived when warranted based on regional or occupational wages or economic reality;~~



~~(D) do not duplicate, supplant, or replace other available programs funded with public money;~~

~~(E) articulate clear goals and demonstrate readily accountable, reportable, and measurable results;~~

~~(F) demonstrate an integrated connection between training and specific employment opportunities, including an effort and consideration by participating employers to hire those who successfully complete a training program; and.~~

(2) Vermont Career Internship Program. Funding for eligible internship programs and activities under the Vermont Career Internship Program established in section 544 of this title.

(3) Apprenticeship Program. The Vermont Apprenticeship Program established under 21 V.S.A. chapter 13. Awards under this subdivision may be used to fund the cost of apprenticeship-related instruction provided by the Department of Labor.

(g) [Repealed.]

#### § 544. VERMONT CAREER INTERNSHIP PROGRAM

(a)(1) The Department of Labor, in consultation with the Agency of Education, shall develop and implement a statewide Vermont Career Internship Program for Vermonters who are in high school or in college and for those who are recent graduates of 24 months or less.

(2) The Department of Labor shall coordinate and provide funding to public and private entities for internship programs that match Vermont employers with students from public and private secondary schools, regional technical centers, the Community High School of Vermont, colleges, and recent graduates of 24 months or less.

(3) Funding awarded through the Vermont Career Internship Program may be used to administer an internship program and to provide participants with a stipend during the internship, based on need. Funds may be made only to programs or projects that do all the following:

(A) do not replace or supplant existing positions;

(B) create real workplace expectations and consequences;

(C) provide a process that measures progress toward mastery of skills, attitude, behavior, and sense of responsibility required for success in that workplace;

(D) are designed to motivate and educate secondary and postsecondary students and recent graduates through work-based learning opportunities with Vermont employers that are likely to lead to real employment;

(E) include mechanisms that promote employer involvement with secondary and postsecondary students and curriculum and the delivery of education at the participating schools; and

(F) offer participants a continuum of learning, experience, and relationships with employers that will make it financially possible and attractive for graduates to continue to work and live in Vermont.

(4) ~~For the purposes of~~ As used in this section, “internship” means a learning experience working with an employer where the intern may, but does not necessarily, receive academic credit, financial remuneration, a stipend, or any combination of these.

(b) The Department of Labor, in collaboration with the Agencies of Agriculture, Food and Markets and of Education, ~~state-funded~~ State-funded postsecondary educational institutions, the Workforce ~~Development Council~~ Investment Board, and other ~~state~~ State agencies and departments that have workforce education and training and training monies, shall:

(1) identify new and existing funding sources that may be allocated to the Vermont Career Internship Program;

(2) collect data and establish program goals and quantifiable performance measures for internship programs funded through the Vermont Career Internship Program;

(3) develop or enhance a website that will connect students and graduates with internship opportunities with Vermont employers;

(4) engage appropriate agencies and departments of the State in the Internship Program to expand internship opportunities with State government and with entities awarded State contracts; and

(5) work with other public and private entities to develop and enhance internship programs, opportunities, and activities throughout the State.

Sec. 2. 10 V.S.A. chapter 22 is amended to read:

CHAPTER 22. ~~EMPLOYMENT~~ THE VERMONT  
TRAINING PROGRAM

§ 531. ~~EMPLOYMENT~~ THE VERMONT TRAINING PROGRAM

(a)(1) The Secretary of Commerce and Community Development may, in consultation with the Workforce Investment Board, shall have the authority to design and implement a Vermont Training Program, the purpose of which shall be to issue performance-based grants to any employer, consortium of employers, or providers of training, either individuals or organizations, as necessary, to conduct training under the following circumstances: to employers and to education and training providers to increase employment opportunities in Vermont consistent with this chapter.

(2) The Secretary shall structure the Vermont Training Program to serve as a flexible, nimble, and strategic resource for Vermont businesses and workers across all sectors of the economy.

~~(1) when issuing grants to an employer or consortium of employers, the employer promises as a condition of the grant to where eligible facility is defined as in subdivision 212(6) of this title relating to the Vermont Economic Development Authority, or the employer or consortium of employers promises to open an eligible facility within the State which will employ persons, provided that for the purposes of this section, eligible facility may be broadly interpreted to include employers in sectors other than manufacturing; and~~

~~(2) training is required for potential employees, new employees, or long-standing employees in the methods, either singularly or in combination relating to pre-employment training, on-the-job training, upgrade training, and crossover training, or specialized instruction, either in plant or through a training provider.~~

(b) Eligibility for grant. The Secretary of Commerce and Community Development may award a grant to an employer if:

(1) the employer's new or expanded initiative will enhance employment opportunities for Vermont residents; the training is for pre-employment, new employees, or incumbent employees in the methods, either singularly or in combination, relating to pre-employment training, on-the-job training, upgrade training, and crossover training, or specialized instruction, either on-site or through a training provider;

(2) the employer provides its employees with at least three of the following:

(A) health care benefits with 50 percent or more of the premium paid by the employer;

(B) dental assistance;

(C) paid vacation; and

(D) paid holidays;

- ~~(D)~~(E) child care;
- ~~(E)~~(F) other extraordinary employee benefits;
- ~~(F)~~(G) retirement benefits; and
- (H) other paid time off, including paid sick days;

(3) the training is directly related to the employment responsibilities of the trainee; and

(4) unless modified by the Secretary if warranted based on regional or occupational wages or economic reality, the training is expected to lead to a position for which the employee is compensated at least twice the State minimum wage, reduced by the value of any benefit package up to a limit of 30 percent of the employee's gross wage; provided that for each grant in which the Secretary modifies the compensation provisions of this subdivision, he or she shall identify in the records for that grant the basis and nature of the modification.

~~(c) The employer promises as a condition of the grant to:~~

~~(1) employ new persons at a wage which, at the completion of the training program, is two times the prevailing state or federal minimum wage, whichever is greater, reduced by the value of any existing health benefit package up to a limit of 30 percent of the gross program wage, or for existing employees, to increase the wage to two times the prevailing state and federal minimum wage, whichever is greater, reduced by the value of any existing health benefit package up to a limit of 20 percent of the gross program wage, upon completion of training; provided, however, that in areas defined by the Secretary of Commerce and Community Development in which the Secretary finds that the rate of unemployment is 50 percent greater than the average for the State, the wage rate under this subsection may be set by the Secretary at a rate no less than one and one half times the federal or state minimum wage, whichever is greater;~~

~~(2) employ persons who have completed the training provided for them and nominated as qualified for a reasonable period at the wages and occupations described in the contract, unless the employer reasonably finds the nominee is not qualified;~~

~~(3) provide its employees with at least three of the following:~~

~~(A) health care benefits with 50 percent or more of the premium paid by the employer;~~

~~(B) dental assistance;~~

~~(C) paid vacation and holidays;~~

~~(D) child care;~~

~~(E) other extraordinary employee benefits; and~~

~~(F) retirement benefits.~~

~~(4) submit a customer satisfaction report to the Secretary of Commerce and Community Development, on a form prepared by the Secretary for that purpose, no more than 30 days from the last day of the training program.~~

In the case of a grant to a training provider, the Secretary shall require as a condition of the grant that the provider shall disclose to the Secretary the name of the employer and the number of employees trained prior to final payment for the training.

(d) In order to avoid duplication of programs or services and to provide the greatest return on investment from training provided under this section, the Secretary of Commerce and Community Development shall:

~~(1) first consult with the Commissioner of Labor regarding whether the grantee has accessed, or is eligible to access, other workforce education and training resources offered by public or private workforce education and training partners;~~

(2) disburse grant funds only for training hours that have been successfully completed by employees; provided that a grant for on-the-job training shall either provide not more than 50 percent of wages for each employee in training, or not more than 50 percent of trainer expense, but not both, and further provided that training shall be performed in accordance with a training plan that defines the subject of the training, the number of training hours, and how the effectiveness of the training will be evaluated; and

(3) use funds under this section only to supplement training efforts of employers and not to replace or supplant training efforts of employers.

~~(e) The Secretary of Commerce and Community Development shall administer all training programs under this section, may select and use providers of training as appropriate, and shall adopt rules and may accept services, money, or property donated for the purposes of this section. The Secretary may promote awareness of, and may give priority to, training that enhances critical skills, productivity, innovation, quality, or competitiveness, such as training in Innovation Engineering, "Lean" systems, and ISO certification for expansion into new markets. [Repealed.]~~

(f) Upon completion of the training program for any individual, the secretary of Commerce and Community Development shall review the records and shall award to the trainee, if appropriate, a certificate of completion for the training.

~~(g) None of the criteria in subdivision (a)(1) of this section shall apply to a designated job development zone under chapter 29, subchapter 2 of this title. [Repealed.]~~

~~(h) The Secretary may designate the Commissioner of Economic Development to carry out his or her powers and duties under this chapter. [Repealed.]~~

~~(i) Program Outcomes:~~

~~(1) On or before September 1, 2011, the Agency of Commerce and Community Development, in coordination with the department of labor, and in consultation with the Workforce education and training Council and the legislative Joint Fiscal Office, shall develop, to the extent appropriate, a common set of benchmarks and performance measures for the training program established in this section and the Workforce Education and Training Fund established in section 543 of this title, and shall collect employee-specific data on training outcomes regarding the performance measures; provided, however, that the Secretary shall redact personal identifying information from such data.~~

~~(2) On or before January 15, 2013, the Joint Fiscal Office shall prepare a performance report using the benchmarks and performance measures created pursuant to subdivision (1) of this subsection. The Joint Fiscal Office shall submit its report to the Senate Committee on Economic Development, Housing and General Affairs and the House Committee on Commerce and Economic Development.~~

~~(3) The Secretary shall use information gathered pursuant to this subsection and customer satisfaction reports submitted pursuant to subdivision (c)(4) of this section to evaluate the program and make necessary changes that fall within the Secretary's authority or, if beyond the scope of the Secretary's authority, to recommend necessary changes to the appropriate committees of the General Assembly. [Repealed.]~~

~~(j) Consistent with the training program's goal of providing specialized training and increased employment opportunities for Vermonters, and notwithstanding provisions of this section to the contrary, the Secretary shall canvas apprenticeship sponsors to determine demand for various levels of training and classes and shall transfer up to \$250,000.00 annually to the regional technical centers to fund or provide supplemental funding for apprenticeship training programs leading up to certification or licensing as journeyman or master electricians or plumbers. The Secretary shall seek to provide these funds equitably throughout Vermont; however, the Secretary shall give priority to regions not currently served by apprenticeship programs~~

~~offered through the Vermont Department of Labor pursuant to 21 V.S.A. chapter 13. [Repealed].~~

(k) Annually on or before January 15, the Secretary shall submit a report to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs, summarizing In addition to the reporting requirements under section 540 of this title, the report shall identify:

(1) all active and completed contracts and grants;

(2) the types of training activities provided, from among the following, the category the training addressed:

(A) pre-employment training or other training for a new employee to begin a newly created position with the employer;

(B) pre-employment training or other training for a new employee to begin in an existing position with the employer;

(C) training for an incumbent employee who, upon completion of training, assumes a newly created position with the employer;

(D) training for an incumbent employee who upon completion of training assumes a different position with the employer;

(E) training for an incumbent employee to upgrade skills;

(3) for the training identified in subdivision whether the training is onsite or classroom-based;

(4) the number of employees served, and ;

(5) the average wage by employer, and addressing ;

(6) any waivers granted;

(7) the identity of the employer, or, if unknown at the time of the report, the category of employer;

(8) the identity of each training provider; and

(9) whether training results in a wage increase for a trainee, and the amount of increase.

### Sec. 3. REPEAL

2007 Acts and Resolves No. 46, Sec. 6(a), as amended by 2009 Acts and Resolves No. 54, Sec. 8 (workforce education and training leader) and 2013 Acts and Resolves No. 81, Sec. 2, is repealed.

### Sec. 4. DEPARTMENT OF LABOR; AGENCY OF COMMERCE AND

## COMMUNITY DEVELOPMENT; STATUTORY PROPOSALS

On or before November 1, 2014:

(1) The Commissioner of Labor shall submit to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs a proposal to amend the language of 10 V.S.A. § 543 to reflect best practices and improve clarity in the administration of, and for applicants to, the grant program from the Workforce Education and Training Fund under that section.

(2) The Secretary of Commerce and Community Development shall submit to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs a proposal to amend the language of 10 V.S.A. § 531 to reflect best practices and improve clarity in the administration of, and for applicants to, the Vermont Training Program under that section.

### Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2014.

**( Committee Vote: 11-0-0)**

**Favorable**

**H. 584**

An act relating to municipal regulation of parking lots and meters

**Rep. Martin of Wolcott**, for the Committee on **Government Operations**, recommends the bill ought to pass.

**( Committee Vote: 7-3-1)**

### **Senate Proposal of Amendment**

**H. 526**

An act relating to the establishment of lake shoreland protection standards

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

### Sec. 1. LEGISLATIVE FINDINGS AND LEGISLATIVE INTENT

The General Assembly finds and declares that:

(1) Clean water is essential in Vermont's quality of life.

(2) Preserving, protecting, and restoring the water quality of all lakes, ponds, rivers, and streams are necessary for the clean water, recreation,



economic opportunity, wildlife habitat, and ecological value that such waters provide.

(3) Currently, there are multiple pressures on the protection of the water quality of the State's surface waters.

(4) The State has responded to the multiple pressures on water quality by implementing regulatory programs for stormwater, wastewater, and agricultural runoff, but water quality issues remain that need addressing.

(5) Vermont's lakes are among the State's most valuable and fragile economic and natural resources, and the protection of naturally vegetated shorelands adjacent to lakes is necessary to prevent water quality degradation, maintain healthy habitat, and promote flood resilience.

(6) Naturally vegetated shorelands and implementation of best management practices in lands adjacent to lakes function to:

(A) intercept and infiltrate surface water runoff, wastewater, and groundwater flows from upland sources;

(B) remove or minimize the effects of nutrients, sediment, organic matter, pesticides, and other pollutants;

(C) moderate the temperature of shallow water habitat;

(D) maintain the conditions that sustain the full support of aquatic biota, wildlife, and aquatic habitat uses; and

(E) promote stability and flood resilience by protecting shoreline banks from erosion.

(7) Healthy lakes and adjacent shorelands:

(A) support Vermont's tourism economy and promote widespread recreational opportunities, including swimming, boating, fishing, and hunting;

(B) support property values and tax base; and

(C) reduce human health risks.

(8) According to the Agency of Natural Resources Water Quality Remediation, Implementation, and Funding Report in 2013, review of the development, protection, and stabilization of shorelands is necessary because of the importance of shorelands to the health of lakes.

(9) A lake or pond of more than 10 acres is located in 184 of the State's 251 municipalities. However, only 48 municipalities have shoreland zoning that requires vegetative cover. Scientifically based standards for impervious surface and cleared area adjacent to lakes are necessary to protect and maintain

the integrity of water quality and aquatic and shoreland habitat, while also allowing for reasonable development of shorelands.

(10) The shorelands of the state owned by private persons remain private property, and this act does not extend the common-law public trust doctrine to private shoreland that is not currently public trust land. The State has an interest in protecting lakes and adjacent shorelands in a manner that respects existing rights of property owners to control access to land they own in lake shorelands, and the regulation of the creation of new impervious surface or cleared area in the shoreland areas should not and does not affect the ability of property owners to control access to their lands.

(11) In order to fulfill the State's role as trustee of its waters and promote public health, safety, and the general welfare, it is in the public interest for the General Assembly to establish lake shoreland protection standards for impervious surface and cleared area in the shorelands adjacent to the State's lakes.

Sec. 2. 10 V.S.A. chapter 49A is added to read:

#### CHAPTER 49A. LAKE SHORELAND PROTECTION STANDARDS

##### § 1441. PURPOSE

The purposes of this chapter shall be to:

(1) provide clear and adaptable standards for the creation of impervious surface or cleared area in lands adjacent to lakes;

(2) prevent degradation of water quality in lakes and preserve natural stability of shoreline;

(3) protect aquatic biota and protect habitat for wildlife and aquatic life;

(4) mitigate, minimize, and manage any impact of new impervious surface and new cleared area on the lakes of the State;

(5) mitigate the damage that floods and erosion cause to development, structures, and other resources in the lands adjacent to lakes;

(6) accommodate creation of cleared areas and impervious surfaces in protected shoreland areas in a manner that allows for reasonable development of existing parcels;

(7) protect shoreland owners' access to, views of, and use of the State's lakes; and

(8) preserve and further the economic benefits and values of lakes and their adjacent shorelands.

§ 1442. DEFINITIONS

As used in this chapter:

(1) “Agency” means the Agency of Natural Resources.

(2) “Best management practices” means approved activities, maintenance procedures, and other practices to prevent or reduce the effects of impervious surface or cleared area on water quality and natural resources.

(3) “Cleared area” means an area where existing vegetative cover, soil, tree canopy, or duff is permanently removed or altered. Cleared area shall not mean management of vegetative cover conducted according to the requirements of section 1447 of this title.

(4) “Duff” means leaf litter plus small fragments of plants and organic debris that provide a spongy substrate that absorbs the energy of falling water and allows runoff to infiltrate soil.

(5) “Expansion” means an increase or addition of impervious surface or cleared area.

(6) “Grass lawn” means land maintained in continuous plant coverage of grasses and similar plants that are closely and regularly mowed, including meadow or pasture on nonagricultural land. “Grass lawn” does not include pasture cropland, land used to grow sod, or similar land used for agricultural production.

(7) “Habitable structure” means a permanent assembly of materials built for the support, shelter, or enclosure of persons, animals, goods, or property, including a dwelling, a commercial or industrial building, and driveways, decks, and patios attached or appurtenant to a dwelling or commercial or industrial building. “Habitable structure” shall not mean a motor home, as that term is defined under 32 V.S.A. § 8902, tents, lean-tos, or other temporary structures.

(8) “Impervious surface” means those manmade surfaces, including paved and unpaved roads, parking areas, roofs, driveways, and walkways, from which precipitation runs off rather than infiltrates.

(9) “Lake” means a body of standing water, including a pond or a reservoir, which may have natural or artificial water level control. Private ponds shall not be considered lakes.

(10) “Mean water level” means the mean water level of a lake as defined in the Mean Water Level Rules of the Agency of Natural Resources adopted under 29 V.S.A. § 410.

(11) "Parcel" means a portion of land or a tract of land with defined boundaries created by dividing the land by sale, gift, lease, mortgage, foreclosure, court-ordered partition or decree, or filing of a plat, plan, or deed in the records of the municipality where the act of division occurred.

(12) "Private pond" means a body of standing water that is a natural water body of not more than 20 acres located on property owned by a person or an artificial water body of any size located on property owned by one person. A "private pond" shall include a reservoir specifically constructed for one of the following purposes: snowmaking storage, golf course irrigation, stormwater management, or fire suppression.

(13) "Private road" means a road or street other than a highway, as that term is defined in 19 V.S.A. § 1(12), that is owned by one or more persons and that is used as a means of travel from a highway to more than one parcel of land.

(14) "Project" means an act or activity that results in cleared area or the creation of impervious surface in a protected shoreland area.

(15) "Protected shoreland area" means all land located within 250 feet of the mean water level of a lake that is greater than 10 acres in surface area.

(16) "Secretary" means the Secretary of Natural Resources or the Secretary's duly authorized representative.

(17) "Slope" means the vertical rise divided by the horizontal run of a place expressed as a percentage.

(18) "Stormwater runoff" means precipitation and snowmelt that does not infiltrate into the soil, including material dissolved or suspended in it, but does not include discharges from undisturbed natural terrain or wastes from combined sewer overflows.

(19) "Vegetative cover" means mixed vegetation within the protected shoreland area, consisting of trees, shrubs, groundcover, and duff. "Vegetative cover" shall not mean grass lawns, noxious weeds designated by the Secretary of Agriculture, Food and Markets under 6 V.S.A. chapter 84, or nuisance plants, such as poison ivy and poison oak, designated by the Secretary of Natural Resources.

§ 1443. INDIVIDUAL PERMIT REQUIREMENT FOR IMPERVIOUS SURFACE OR CLEARED AREA IN A PROTECTED SHORELAND AREA

(a) Permit requirement. A person shall not create cleared area or impervious surface in a protected shoreland area without a permit from the

Secretary, except for activities authorized to occur without a permit under section 1446 of this title.

(b) Permit issuance. The Secretary shall issue a permit under this section if the proposed impervious surface or cleared area meets the requirements of sections 1444 or 1445 of this title.

(c) Permit process.

(1) A person applying for a permit shall do so on a form provided by the Secretary. The application shall be posted on the Agency's website.

(2) A person applying for a permit shall provide notice, on a form provided by the Secretary, to the municipal clerk of the municipality in which the construction of impervious surface or creation of cleared area is located at the time the application is filed with the Secretary.

(3) The Secretary shall provide an opportunity for written comment, regarding whether an application complies with the requirements of this chapter or any rule adopted by the Secretary, for 30 days following receipt of the application.

(d) Permit condition. A permit issued under this section may include permit conditions, including authorizing a permittee, no more frequently than two times per year, to clear vegetative cover within three feet of both sides of a footpath within the protected shoreland area in order to allow access to the mean water level for maintenance or repair of recreational structures or for other activity approved by the Secretary.

(e) Permit term. Individual permits issued under this section shall be for an indefinite term, provided that the permittee complies with the requirements of the permit and takes no additional action for which an individual permit is required.

(f) Recording. A permit or registration issued under this chapter shall, for the purposes of having the permit or registration run with the land, be recorded in the land records of the municipality in which the impervious surface or cleared area is located.

#### § 1444. PERMIT STANDARDS

(a) Permit standards; generally. Except for permits issued under section 1445 of this title, the Secretary shall issue a permit under this chapter if the permit applicant demonstrates that:

(1) cleared area or impervious surface shall be located at least 100 feet from the mean water level, except for a public recreational access when

compliance with this subdivision (1) would be inconsistent or in conflict with applicable federal requirements for the management of the parcel;

(2) cleared area or impervious surface within the protected shoreland area shall be located on a site:

(A) with a slope of less than 20 percent; or

(B) that the permit applicant demonstrates will have a stable slope with minimal erosion and minimal negative impacts to water quality;

(3)(A) no more than 20 percent of the protected shoreland area of the parcel shall consist of impervious surface; or

(B) the permit applicant shall demonstrate that best management practices will be used to manage, treat, and control erosion due to stormwater runoff from that portion of impervious surface that exceeds 20 percent of the protected shoreland area;

(4)(A) no more than 40 percent of the protected shoreland area of the parcel shall consist of cleared area, including area cleared for the purposes of creating impervious surface; or

(B) the permit applicant shall demonstrate that best management practices will be used to provide erosion control, bank stability, and wildlife habitat functionally equivalent to that which would be provided by clearing less than 40 percent of the shoreland protection area;

(5) within 100 feet of the mean water level, vegetative cover shall be managed according to the requirements of section 1447 of this title.

(b) Repair of highway or private road. When the repair, emergency repair, or replacement of a private road or highway, as that term is defined in 19 V.S.A. § 1(12), results in the construction, creation, or expansion of impervious surface or cleared area on a property adjacent to the private road or highway, the impervious surface or cleared area constructed or created on the adjacent property shall not be calculated as square footage of impervious surface or cleared area for purposes of permitting or registration under this chapter.

(c) Calculation of area. Under this chapter, the area of constructed, created, or expanded impervious surface or cleared area shall be the square footage as measured on a horizontal plane.

#### § 1445. NONCONFORMING PARCELS; PERMIT STANDARDS

(a) Permit for nonconforming parcels. A permit applicant shall comply with the requirements of subsection (b) of this section if the applicant cannot

meet the standard required under subdivision 1444(a)(1) of this title on a parcel of land in existence on July 1, 2014, due to one of the following limitations:

(1) parcel size;

(2) the site characteristic or site limitations of the parcel, including presence of highway or rights of way and soil type; or

(3) application of municipal setback requirement in a municipal bylaw adopted on or before July 1, 2014.

(b) Permit standards for nonconforming parcels.

(1) For a parcel on which there is no habitable structure, the cleared area or impervious surface shall be as far as possible from the mean water level, and at a minimum shall be no less than 25 feet from the mean water level.

(2) For a parcel on which a habitable structure is located, the expansion of any portion of the structure within 100 feet of the mean water level shall be on the side of the structure farthest from the lake, unless the Secretary determines that:

(A) expansion on an alternate side of the structure will have an impact on water quality that is equivalent to or less than expansion of the structure on the side farthest from the lake; and

(B) the structure is not expanded toward the mean water level.

(3) Cleared area or impervious surface within the protected shoreland area shall be located on a site:

(A) with a slope of less than 20 percent; or

(B) that the permit applicant demonstrates will have a stable slope with minimal erosion and minimal negative impacts to water quality.

(4)(A) No more than 20 percent of the protected shoreland area of the parcel shall consist of impervious surface.

(B) The permit applicant shall demonstrate that best management practices will be used to manage, treat, and control erosion due to stormwater runoff from that portion of impervious surface that exceeds 20 percent of the protected shoreland area.

(5)(A) No more than 40 percent of the protected shoreland area of the parcel shall consist of cleared area, including area cleared for the purposes of creating an impervious surface.

(B) The permit applicant shall demonstrate that best management practices will be used to provide erosion control, bank stability, and wildlife

habitat functionally equivalent to that which would be provided by clearing less than 40 percent of the protected shoreland area.

(c) Vegetation maintenance on nonconforming parcels. A permit issued under this section for creation of cleared area or impervious surface on a nonconforming parcel shall not require compliance with the requirements of section 1447 for the management of vegetative cover.

(d) Application process. An applicant for a permit under this section shall submit to the Secretary a form that identifies the basis of the nonconformity on the parcel. The Secretary may issue a permit under this section to an applicant who meets the requirements of subsection (b) of this section.

#### § 1446. REGISTERED PROJECTS; EXEMPTIONS FROM PERMITTING

(a)(1) Registered projects. The following projects in a protected shoreland area do not require a permit under section 1444 or 1445 of this title:

(A) The creation of no more than 100 square feet of impervious surface or cleared within 100 feet of the mean water level, provided that:

(i) the owner of the property on which the impervious surface or cleared area is created registers with the Secretary, on a form provided by the Secretary that contains the name of the property owner, the address of the property, and a certification that the project meets the requirements of this subsection (a);

(ii) the impervious surface or cleared area is located at least 25 feet from the mean water level; and

(iii) vegetative cover in the protected shoreland area shall be managed according to the requirements of section 1447 of this title.

(B) The creation of 500 square feet or less of impervious surface, cleared area, or a combination of impervious surface and cleared area, provided that:

(i) the owner of the property on which the impervious surface or cleared area is created registers with the Secretary a form provided by the Secretary that contains the name of the property owner, the address of the property, and a certification that the project meets the requirements of this subsection;

(ii) the impervious surface or cleared area is at least 100 feet from the mean water level;

(iii) any proposed cleared area or area within the protected shoreland area where an impervious surface shall be sited has a slope of less than 20 percent;



(iv) after the completion of the project, the protected shoreland area shall consist of no more than 20 percent impervious surface; and

(v) after the completion of the project, the protected shoreland area shall consist of no more than 40 percent cleared area, including any area cleared for the purposes of creating impervious surface.

(2) Limit on registration per parcel. A person shall not use the registration process under this subsection to create more than a maximum total per parcel of:

(A) 100 square feet of impervious surface or cleared area within 100 feet of the mean water level; and

(B) 500 square feet of impervious surface or cleared area within the protected shoreland area that is at least 100 feet from the mean water level.

(3) Effect of registration. A registration shall take effect 15 days after being filed with the Secretary, unless the Secretary requests that the person registering submit additional information that the Secretary considers necessary or the Secretary notifies the person registering that an individual permit is required.

(4) Term. Registrations shall be for an indefinite term, provided that the person complied with the requirements of this subsection and takes no action for which an individual permit is required.

(b) Exemptions. The following activities in a protected shoreland area do not require a permit under section 1444 or 1445 of this title:

(1) Management of vegetative cover. Management of vegetative cover conducted in compliance with section 1447 of this title.

(2) Removal of vegetation for recreational purposes. The cutting or removal of no more than 250 square feet of the existing vegetation under three feet in height within 100 feet of the mean water level to allow for recreational use in the protected shoreland area, provided that:

(A) the cutting or removal of vegetation occurs at least 25 feet from the mean water level; and

(B) other ground cover, including leaf litter and the forest duff layer, shall not be removed from the area in which cutting occurs.

(3) Maintenance of lawns. The maintenance, but not the enlargement, of lawns, gardens, landscaped areas, and beaches in existence as of July 1, 2014.

(4) Creation of footpaths. The creation of one footpath per parcel with a width of no greater than six feet that provides access to the mean water level. Under this subdivision, a footpath includes stairs, landings, or platforms within the authorized six-foot width.

(5) Construction within footprint. Construction within the footprint of an impervious surface, existing as of July 1, 2014, that does not result in a net increase in the amount of impervious surface on a parcel.

(6) Silvicultural activities. Silvicultural activities in a protected shoreland area if the silvicultural activities are in compliance with:

(A) a forest management plan, approved by the Commissioner of Forests, Parks and Recreation, for the land in the protected shoreland area in which the silvicultural activities occur;

(B) the accepted management practices adopted by the Commissioner of Forests, Parks and Recreation under section 2622 of this title.

(7) Agricultural activities. Agricultural activities on land in agricultural production on July 1, 2014, provided that:

(A) no impervious surface shall be created or expanded in a protected shoreland area except when no alternative outside the protected shoreland area exists, the construction of a best management practice to abate an agricultural water quality issue when the best management practice is approved by the Secretary of Agriculture, Food and Markets under 6 V.S.A. chapter 215; and

(B) the agricultural activities within the protected shoreland area comply with the rules adopted by the Secretary of Agriculture, Food and Markets under 6 V.S.A. chapter 215 regarding agricultural water quality, including accepted agricultural practices, best management practices, medium and small farm operation, and large farm operation; and

(8) Transportation infrastructure and private roads. The maintenance, emergency repair, repair, and replacement of:

(A) Transportation infrastructure by the Vermont Agency of Transportation or by a municipality.

(B) A private road that does not require a permit under section 1264 of this title, provided that emergency repair, repair, and replacement of the private road shall comply with the applicable water quality best management practices approved by the Secretary under 19 V.S.A. § 996 and incorporated within the Vermont Agency of Transportation town road and bridge standards for controlling stormwater runoff and direct discharges to State waters. The requirement to comply with the water quality best management practices shall apply even if the municipality in which the private road is located has not

adopted the town road and bridge standards. Under this subdivision, expansion of a private road in order to allow for passage of emergency vehicles shall be considered repair that does not require a permit under section 1443 of this title.

(9) Railroad activities. Railroad activities and facilities within the jurisdiction of federal law.

(10) Parcel intersected by public highway. The creation or expansion of impervious surface or cleared area on a parcel within the protected shoreland area when the parcel is intersected by a public highway, as that term is defined in 19 V.S.A. § 1, and the impervious surface or cleared area is created or expanded on that portion of the parcel on the side of the highway away from the mean water level.

(11) Wastewater systems and potable water supplies. Installation, maintenance, repair, or replacement of a wastewater system or potable water supply permitted by the Agency of Natural Resources under chapter 64 of this title.

(12) Stormwater treatment. Discharges of stormwater, stormwater treatment facilities or practices, including repair or maintenance, permitted by the Agency of Natural Resources under section 1264 of this title.

(13) Utility projects and utility lines.

(A) The construction of projects that require a certificate of public good under 30 V.S.A. § 248 subject to the Agency of Natural Resources Riparian Buffer Guidance for Act 250 and Section 248 projects.

(B) The routine repair and maintenance of utility lines and structures including vegetation maintenance in utility line corridors, in a protected shoreland area that are subject to 30 V.S.A. § 248, chapter 151 of this title, or a vegetation management plan approved by the Agency in a protected shoreland area. Vegetation management practices in a protected shoreland area shall be performed in accordance with a vegetation management plan approved by the Agency of Natural Resources.

(C) The emergency repair of utility lines and poles in protected shoreland areas, provided that such repair minimizes adverse impacts to vegetation in the protected shoreland area.

(14) Act 250 permit. Projects which have received a permit pursuant to chapter 151 of this title.

(15) Designated downtowns and village centers. Projects in downtowns and village centers designated pursuant to 24 V.S.A. chapter 76A.

(16) Urban and industrial redevelopment. Construction, creation, or expansion of impervious surface or cleared area within a protected shoreland area, provided that:

(A) the area in which the impervious surface or cleared area will be constructed, created, or expanded is:

(i) urban or industrial in nature;

(ii) contains as of July 1, 2014 impervious surface or cleared area; and

(iii) has been designated by municipal bylaw for redevelopment.

(B) the municipality has adopted a shoreland bylaw or ordinance that:

(i) is at least as stringent as the permitting requirements and exemptions of this chapter; or

(ii) requires best management practices or other controls that are, as determined by the Secretary, functionally equivalent to compliance with the permitting requirements and exemptions of this chapter.

(17) Mosquito control. Where mosquito populations create a public health hazard, as that term is defined in 18 V.S.A. § 2, physical practices or activities approved by the Secretary that create cleared area or remove vegetative cover in order to reduce mosquito breeding habitat, provided that any activity authorized under this subdivision shall comply with the Vermont wetlands rules.

(c) Application of vegetative cover requirements. Activities authorized under subdivisions (b)(2)–(13) of this section shall not be required to comply with the requirements for the management of vegetative cover under section 1447 of this title.

#### § 1447. LAKE SHORELAND VEGETATION PROTECTION STANDARDS

(a) Within 100 feet of the mean water level, cutting of trees is allowed provided that a well-distributed stand of trees and other natural vegetation is maintained. Vegetation management that occurs within the protected shoreland area and that is conducted according to the requirements of this section shall not be counted toward the cleared area on a parcel.

(b) A “well-distributed stand of trees adjacent to a lake” shall be defined as maintaining a minimum rating score of 12, in each 25-foot by 25-foot area within 100 feet of the mean water level, as determined by the following rating system.

<u>(1) Diameter of tree at 4-1/2 feet above ground level (inches)</u>	<u>Points</u>
<u>2—&lt; 4 in.</u>	<u>1</u>
<u>4—&lt; 8 in.</u>	<u>2</u>
<u>8—&lt; 12 in.</u>	<u>4</u>
<u>12 in. or greater</u>	<u>8</u>

(2) The following shall govern in applying this point system:

(A) 25-foot by 25-foot plots shall be established within 100 feet of the mean water level for vegetation management purposes.

(B) Each successive plot must be adjacent to but not overlap a previous plot.

(C) Any plot not containing the required points must have no vegetative cover removed unless the removal is allowed pursuant to a registration or individual permit.

(D) Any plot containing the required points may have trees removed down to the minimum points allowed.

(E) Existing vegetation under three feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath or as allowed pursuant to a registration or individual permit.

(F) Pruning of tree branches on the bottom one-third of a tree's height is allowed.

(G) Removal of dead, diseased, or unsafe trees shall be allowed regardless of points.

(c) As used in this section, "other natural vegetation" means retaining existing vegetation under three feet in height and other ground cover and retaining at least five saplings less than two inches in diameter at four and one-half feet above ground level for each 25-foot by 25-foot area. If five saplings do not exist, no woody stems less than two inches in diameter can be removed until five saplings have been planted or rooted in the plot.

#### § 1448. MUNICIPAL DELEGATION

(a) Municipal shoreland bylaws or ordinances. The Secretary may delegate authority to permit the construction, creation, or expansion of impervious surface or cleared area under this chapter to a municipality that has adopted a shoreland bylaw or ordinance if:

(1) the municipality adopts a bylaw or ordinance regulating construction of impervious surface or creation of cleared area in a protected shoreland area; and

(2) the municipal bylaw or ordinance is at least as stringent as the permitting requirements and exemptions of this chapter, upon a determination by the Secretary that the bylaw or ordinance is functionally equivalent to the requirements under sections 1444, 1445, 1446, and 1447 of this title.

(b) Delegation agreement.

(1) Delegation under subsection (a) of this section shall be by agreement between the Secretary and the delegated municipality. The delegation agreement shall set the terms for revocation of delegation.

(2) Under the delegation agreement, the Secretary and the municipality may agree, in instances where a delegated municipality does not or cannot address noncompliance, that the Secretary, after consultation with the municipality, may institute enforcement proceedings under chapter 201 of this title.

(3) The delegation agreement shall require the municipality to:

(A) have or establish a process for accepting, reviewing, and processing applications and issuing permits for construction of impervious surface or creation of cleared area in protected shoreland areas;

(B) take timely and appropriate enforcement actions;

(C) commit to reporting annually to the Secretary on a form and date determined by the Secretary;

(D) comply with all other requirements of the rules adopted under this chapter; and

(E) cure any defects in such bylaw or ordinance or in the administration or enforcement of such bylaw or ordinance upon notice of a defect from the Secretary.

(4) A municipality that seeks delegation under subsection (a) of this section shall be presumed to satisfy the requirements of this subsection for a permit process and enforcement if the municipality has designated a municipal zoning administrator or other municipal employee or official as responsible for the permitting and enforcement of the construction, creation, or expansion of impervious surface or cleared area within the municipality.

§ 1449. COORDINATION OF AGENCY OF NATURAL RESOURCES'  
PERMITTING OF ACTIVITIES IN PROTECTED SHORELAND  
AREAS

(a) Coordination of permitting in protected shoreland area. During technical review of a permit application for a wastewater system, potable water supply, stormwater discharge, or stormwater treatment facility that is proposed to be located in a protected shoreland area and that does not require a permit under this chapter, the Agency division issuing the wastewater system, potable water supply, stormwater discharge, or stormwater treatment facility permit shall consult with the Agency's Lakes and Ponds Section regarding practices or activities that could reduce the impact of the proposed activity on the protected shoreland area or water quality of lakes adjacent to the protected shoreland area.

(b) Agency guidance or procedure. The Agency may formalize the consultation process required by this section in a guidance document or internal agency procedure.

(c) Agency lands. All lands held by the Agency within a protected shoreland area shall be managed according to the requirements of this chapter when consistent and not in conflict with applicable federal requirements for the management of a parcel of land held by the Agency.

#### § 1450. MUNICIPAL ZONING BYLAW OR ORDINANCE

(a) Construction of impervious surface or creation of cleared area occurring outside protected shoreland areas. Construction of impervious surface or creation of cleared area occurring outside a protected shoreland area shall conform to duly adopted municipal zoning bylaws and applicable municipal ordinances and shall not be subject to regulation by the Secretary of Natural Resources under this chapter.

(b) Existing municipal bylaws and ordinances. The requirements of this chapter are in addition to existing municipal bylaws and ordinances, and proposed construction of impervious surface or creation of cleared area within the protected shoreland area shall comply with all relevant, existing municipal, State, and federal requirements.

#### § 1451. RULEMAKING

The Secretary may adopt rules to implement the requirements of this chapter.

#### § 1452. EDUCATION AND OUTREACH; CITIZEN'S GUIDE

The Secretary shall conduct ongoing education and outreach to assist Vermont citizens with understanding and complying with the requirements of this chapter. The education and outreach activities shall include publication on or before January 1, 2015 of a Citizen's Guide to Shoreland Protection, which shall provide easily understood instructions on the requirements of this chapter.

how to apply for a permit or registration, and the activities that are exempt from or otherwise not subject to the requirements of this chapter.

Sec. 3. 10 V.S.A. § 8003(a) is amended to read:

(a) The ~~secretary~~ Secretary may take action under this chapter to enforce the following statutes:

\* \* \*

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

(23) 24 V.S.A. § 2202a, relating to a municipality's adoption and implementation of a solid waste implementation plan that is consistent with the State Solid Waste Plan; and

(24) 10 V.S.A. chapter 49A, relating to lake shoreland protection standards.

Sec. 4. 10 V.S.A. § 8503 is amended to read:

#### § 8503. APPLICABILITY

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

(1) The following provisions of this title:

\* \* \*

(R) chapter 32 (flood hazard areas).

(S) chapter 49A (lake shoreland protection standards).

\* \* \*

Sec. 5. 3 V.S.A. § 2822(j)(32) is added to read:

(32) For projects taking place in a protected shoreland area that require:

(A) a registration under 10 V.S.A. § 1446: \$100.00.

(B) a permit under 10 V.S.A. §§ 1443, 1444, and 1445: \$125.00 plus \$0.50 per square foot of impervious surface.

#### Sec. 5a. REPORT ON COSTS OF LAKE SHORELAND PROTECTION PROGRAM

On or before January 15, 2016, the Secretary of Natural Resources shall submit to the Senate Committee on Finance, the House Committee on Ways



and Means, the Senate Committee on Natural Resources and Energy, and the House Committee on Fish, Wildlife and Water Resources a report regarding the costs to the Agency of Natural Resources of administering the Lake Shoreland Protection Program under 10 V.S.A. chapter 49A. The report shall include:

(1) the number of lake shoreland protection registrations and permits issued by the Agency;

(2) the permit and registration fees collected by the Agency; and

(3) the cost to the Agency of implementing the Lake Shoreland Protection Program.

Sec. 6. 10 V.S.A. § 1454 is amended to read:

§ 1454. TRANSPORT OF AQUATIC PLANTS AND AQUATIC  
NUISANCE SPECIES

(a) No person shall transport an aquatic plant or aquatic plant part, zebra mussels (*Dreissena polymorpha*), quagga mussels (*Dreissena bugensis*), or other aquatic nuisance species identified by the ~~secretary~~ Secretary by rule to or from any Vermont waters on the outside of a vehicle, boat, personal watercraft, trailer, or other equipment. This section shall not restrict proper harvesting or other control activities undertaken for the purpose of eliminating or controlling the growth or propagation of aquatic plants, zebra mussels, quagga mussels, or other aquatic nuisance species.

(b) The ~~secretary~~ Secretary may grant exceptions to persons to allow the transport of aquatic plants, zebra mussels, quagga mussels, or other aquatic nuisance species for scientific or educational purposes. When granting exceptions, the ~~secretary~~ Secretary shall take into consideration both the value of the scientific or educational purpose and the risk to Vermont surface waters posed by the transport and ultimate use of the specimens. A letter from the ~~secretary~~ Secretary authorizing the transport must accompany the specimens during transport.

(c) A violation of this section may be brought by any law enforcement officer, as that term is defined in 23 V.S.A. § 4(11), in the Environmental Division of the Superior Court. When a violation is brought by an enforcement officer other than an environmental enforcement officer employed by the Agency of Natural Resources, the enforcement officer shall submit to the Secretary a copy of the citation for purposes of compliance with the public participation requirements of section 8020 of this title.

Sec. 7. TRANSITION

A permit or registration under 10 V.S.A. chapter 49A for the creation of impervious surface or cleared area within a protected shoreland area shall not be required on a parcel of land for a project for which:

(1) all necessary State, local, or federal permits have been obtained prior to the effective date of this act and the permit holder takes no subsequent act that would require a permit or registration under 10 V.S.A. chapter 49A; or

(2) a complete application for all applicable local, State, and federal permits has been submitted on or before the effective date of this act, provided that the applicant does not subsequently file an application for a permit amendment that would require a permit under 10 V.S.A. chapter 49A and substantial construction of the impervious surface or cleared area commences within two years of the date on which all applicable local, State, and federal permits become final.

Sec. 8. EFFECTIVE DATE

This act shall take effect July 1, 2014.

(For text see House Journal 3/27/2013 & 3/28/2013 )

**NOTICE CALENDAR**

**Favorable with Amendment**

**H. 661**

An act relating to exhumation requirements and notice

**Rep. Moran of Wardsboro**, for the Committee on **General, Housing and Military Affairs**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. § 5212 is amended to read:

§ 5212. PERMIT TO REMOVE DEAD BODIES; NOTICE

\* \* \*

(b) An applicant for a removal permit shall publish notice of his or her intent to remove the remains. This notice shall be published for two successive weeks in a newspaper of general circulation in the municipality in which the body is interred or entombed. The notice shall include a statement that the spouse, child, parent, sibling, or descendant of the deceased, or that the ~~cemetary commissioner~~ Cemetery Commissioner or other municipal authority responsible for cemeteries in the municipality may object to the proposed removal by filing a complaint in the ~~probate division of the superior court~~

Probate Division of the Superior Court of the district in which the body is located as provided in section 5212a of this title. In addition to the published notice, an applicant for a removal permit shall notify directly, by certified mail, the town clerk in the municipality in which the body is interred or entombed and:

(1)(A) the surviving spouse of the deceased, if any;

(B) all surviving adult children of the deceased;

(C) all surviving parents of the deceased; and

(D) all surviving adult siblings of the deceased;

(2) any descendants of the deceased if the individuals listed in subdivisions (1)(A)-(D) of this subsection are nonexistent.

\* \* \*

Sec. 2. 18 V.S.A. § 5212a is amended to read:

§ 5212a. REMOVAL; OBJECTIONS

(a) Unless removal is otherwise authorized by law, a spouse, child, parent, or sibling of the deceased may, after receipt of the certified mail as required under section 5212 of this title or within 30 days after the date notice was last published under section 5212 of this title, object to the proposed removal by filing a complaint in the ~~probate division of the superior court~~ Probate Division of the Superior Court of the district in which the body is interred or entombed. A copy of the complaint shall be filed with the clerk of the town where the body is interred or entombed.

\* \* \*

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2014.

( **Committee Vote: 8-0-0** )

## **H. 766**

An act relating to harassment of a fish and wildlife warden

**Rep. Webb of Shelburne**, for the Committee on **Fish, Wildlife & Water Resources**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 1061 is amended to read:

§ 1061. DEFINITIONS

As used in this ~~subchapter~~ chapter:

(1) “Stalk” means to engage in a course of conduct which consists of following, lying in wait for, or harassing, and:

(A) serves no legitimate purpose; and

(B) would cause a reasonable person to fear for his or her physical safety or would cause a reasonable person substantial emotional distress.

(2) “Course of conduct” means a pattern of conduct composed of two or more acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of “course of conduct.”

(3) “Following” means maintaining over a period of time a visual or physical proximity to another person in such manner as would cause a reasonable person to have a fear of unlawful sexual conduct, unlawful restraint, bodily injury, or death.

(4) “Harassing” means actions directed at a specific person, or a member of the person’s family, which would cause a reasonable person to fear unlawful sexual conduct, unlawful restraint, bodily injury, ~~or death,~~ or damage to property, including ~~but not limited to~~ verbal threats, written, telephonic, or other electronically communicated threats, vandalism, or physical contact without consent.

(5) “Lying in wait” means hiding or being concealed for the purpose of attacking or harming another person.

Sec. 2. 13 V.S.A. § 1028b is added to read:

§ 1028b. HARASSMENT OF A LAW ENFORCEMENT OFFICER OR CORRECTIONS OFFICER

(a) As used in this section:

(1) “Law enforcement officer” means a member of the Department of Public Safety who exercises law enforcement powers, a member of the State police, a capitol police officer, a municipal police officer, a constable who exercises law enforcement powers, a motor vehicle inspector, an employee of the Department of Liquor Control who exercises law enforcement powers, an investigator employed by the Secretary of State, the Department of Health, Attorney General, or a State’s Attorney, a fish and wildlife warden, a sheriff or deputy sheriff who exercises law enforcement powers, and a railroad police officer commissioned pursuant to 5 V.S.A. chapter 68, subchapter 8.

(2) “Corrections officer” means an employee of the Department of Corrections whose official duties or job classification includes the supervision

or monitoring of a person on parole or probation or serving any sentence of incarceration whether inside or outside a correctional facility.

(b) A person shall not harass a law enforcement officer, corrections officer, or a member of a law enforcement officer's or corrections officer's family, in connection with the officer's exercise of his or her duties.

(c) A person who is convicted of harassment of a law enforcement or corrections officer shall be imprisoned not more than two years or fined not more than \$5,000.00, or both.

### Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2014.

and that after passage the title of the bill be amended to read: "An act relating to harassment of law enforcement and corrections officers" .

( Committee Vote: 9-0-0)

## H. 823

An act relating to encouraging growth in designated centers and protecting natural resources

**Rep. Ellis of Waterbury**, for the Committee on **Natural Resources and Energy**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

\* \* \* Amendments to 10 V.S.A. chapter 151 (Act 250) \* \* \*

Sec. 1. 10 V.S.A. § 6001 is amended to read:

### § 6001. DEFINITIONS

In this chapter:

\* \* \*

(3)(A) "Development" means each of the following:

\* \* \*

(iv) The construction of housing projects such as cooperatives, condominiums, or dwellings, or construction or maintenance of mobile homes or ~~trailer~~ mobile home parks, with 10 or more units, constructed or maintained on a tract or tracts of land, owned or controlled by a person, within a radius of five miles of any point on any involved land, and within any continuous period of five years. However:

(I) A priority housing project shall constitute a development under this subdivision (iv) only if the number of housing units in the project is:

(aa) 275 or more, in a municipality with a population of 15,000 or more;

(bb) 150 or more, in a municipality with a population of 10,000 or more but less than 15,000;

(cc) 75 or more, in a municipality with a population of 6,000 or more but less than 10,000.

(dd) 50 or more, in a municipality with a population of 3,000 or more but less than 6,000;

(ee) 25 or more, in a municipality with a population of less than 3,000; and

(ff) notwithstanding subdivisions (aa) through (ee) of this subdivision (iv)(I), 10 or more if the construction involves the demolition of one or more buildings that are listed on or eligible to be listed on the State or National Register of Historic Places. However, demolition shall not be considered to create jurisdiction under this subdivision if the Division for Historic Preservation has determined that the proposed demolition will have no adverse effect, will have no adverse effect if specified conditions are met, or will have an adverse effect that will be adequately mitigated. Any imposed conditions shall be enforceable through a grant condition, deed covenant, or other legally binding document.

(II) The determination of jurisdiction over a priority housing project shall count only the housing units included in that discrete project.

(III) Housing units in a priority housing project shall not count toward determining jurisdiction over any other project.

\* \* \*

~~(B)(i) Smart Growth Jurisdictional Thresholds. Notwithstanding the provisions of subdivision (3)(A) of this section, if a project consists exclusively of mixed income housing or mixed use, or any combination thereof, and is located entirely within a growth center designated pursuant to 24 V.S.A. 2793c or, entirely within a downtown development district designated pursuant to 24 V.S.A. § 2793, “development” means:~~

~~(I) Construction of mixed income housing with 200 or more housing units or a mixed use project with 200 or more housing units, in a municipality with a population of 15,000 or more.~~

~~(II) Construction of mixed income housing with 100 or more housing units or a mixed use project with 100 or more housing units, in a municipality with a population of 10,000 or more but less than 15,000.~~

~~(III) Construction of mixed income housing with 50 or more housing units or a mixed use project with 50 or more housing units, in a municipality with a population of 6,000 or more and less than 10,000.~~

~~(IV) Construction of mixed income housing with 30 or more housing units or a mixed use project with 30 or more housing units, in a municipality with a population of 3,000 or more but less than 6,000.~~

~~(V) Construction of mixed income housing with 25 or more housing units or a mixed use project with 25 or more housing units, in a municipality with a population of less than 3,000.~~

~~(VI) Historic Buildings. Construction of 10 or more units of mixed income housing or a mixed use project with 10 or more housing units where if the construction involves the demolition of one or more buildings that are listed on or eligible to be listed on the State or National Register of Historic Places. However, demolition shall not be considered to create jurisdiction under this subdivision if the Division for Historic Preservation has determined the proposed demolition will have: no adverse effect; no adverse effect provided that specified conditions are met; or, will have an adverse effect, but that adverse effect will be adequately mitigated. Any imposed conditions shall be enforceable through a grant condition, deed covenant, or other legally binding document.~~

~~(ii) Mixed Income Housing Jurisdictional Thresholds. Notwithstanding the provisions of subdivision (3)(A) of this section, if a project consists exclusively of mixed income housing and is located entirely within a Vermont neighborhood designated pursuant to 24 V.S.A. § 2793d or a neighborhood development area as defined in 24 V.S.A. § 2791(16), “development” means:~~

~~(I) Construction of mixed income housing with 200 or more housing units, in a municipality with a population of 15,000 or more.~~

~~(II) Construction of mixed income housing with 100 or more housing units, in a municipality with a population of 10,000 or more but less than 15,000.~~

~~(III) Construction of mixed income housing with 50 or more housing units, in a municipality with a population of 6,000 or more and less than 10,000.~~

~~(IV) Construction of mixed income housing with 30 or more housing units, in a municipality with a population of 3,000 or more but less than 6,000.~~

~~(V) Construction of mixed income housing with 25 or more housing units, in a municipality with a population of less than 3,000.~~

~~(VI) Historic Buildings. Construction of 10 or more units of mixed income housing where the construction involves the demolition of one or more buildings that are listed on or eligible to be listed on the State or National Register of Historic Places. However, demolition shall not be considered to create jurisdiction under this subdivision if the Division for Historic Preservation has determined the proposed demolition will have: no adverse effect; no adverse effect provided that specified conditions are met; or will have an adverse effect, but that adverse effect will be adequately mitigated. Any imposed conditions shall be enforceable through a grant condition, deed covenant, or other legally binding document. [Repealed.]~~

(C) For the purposes of determining jurisdiction under subdivisions subdivision (3)(A) and ~~(3)(B)~~ of this section, the following shall apply:

~~(i) Incentive for Growth Inside Designated Areas. Notwithstanding subdivision (3)(A)(iv) of this section, housing units constructed by a person partially or completely outside a designated downtown development district, designated growth center, designated Vermont neighborhood, or designated neighborhood development area shall not be counted to determine jurisdiction over housing units constructed by that person entirely within a designated downtown development district, designated growth center, designated Vermont neighborhood, or designated neighborhood development area. [Repealed.]~~

~~(ii) Five-Year, Five-Mile Radius Jurisdiction Analysis. Within any continuous period of five years, housing units constructed by a person entirely within a designated downtown district, designated growth center, designated Vermont neighborhood, or designated neighborhood development area shall be counted together with housing units constructed by that person partially or completely outside a designated downtown development district, designated growth center, designated Vermont neighborhood, or designated neighborhood development area to determine jurisdiction over the housing units constructed by a person partially or completely outside the designated downtown development district, designated growth center, designated Vermont neighborhood, or designated neighborhood development area and within a five mile radius in accordance with subdivision (3)(A)(iv) of this section. [Repealed.]~~

~~(iii) Discrete Housing Projects in Designated Areas and Exclusive Counting for Housing Units. Notwithstanding subdivisions (3)(A)(iv) and (19) of this section, jurisdiction shall be determined exclusively by counting housing units constructed by a person within a designated downtown~~



~~development district, designated growth center, designated Vermont neighborhood, or designated neighborhood development area, provided that the housing units are part of a discrete project located on a single tract or multiple contiguous tracts of land. [Repealed.]~~

~~\* \* \*~~

~~(16) “Rural growth areas” means lands which are not natural resources referred to in subdivisions 6086(a)(1)(A) through (F), subdivision 6086(a)(8)(A) and subdivisions 6086(a)(9)(B), (C), (D), (E) and (K) of this title.~~

~~(A) “Existing settlement” means an area that constitutes one of the following:~~

~~(i) a designated center; or~~

~~(ii) an existing community center that is compact in form and size; that contains a mixture of uses that include a substantial residential component and that are within walking distance of each other; that has significantly higher densities than densities that occur outside the center; and that is typically served by municipal infrastructure such as water, wastewater, sidewalks, paths, transit, parking areas, and public parks or greens.~~

~~(B) Strip development outside an area described in subdivision (A)(i) or (ii) of this subdivision (16) shall not constitute an existing settlement.~~

~~\* \* \*~~

(27) “Mixed income housing” means a housing project in which the following apply:

(A) Owner-occupied housing. At the option of the applicant, owner-occupied housing may be characterized by either of the following:

(i) at least 15 percent of the housing units have a purchase price which at the time of first sale does not exceed 85 percent of the new construction, targeted area purchase price limits established and published annually by the Vermont Housing Finance Agency; or

(ii) at least 20 percent of the housing units have a purchase price which at the time of first sale does not exceed 90 percent of the new construction, targeted area purchase price limits established and published annually by the Vermont Housing Finance Agency;

(B) ~~Affordable~~ Rental Housing. At least 20 percent of the housing units that is are rented by the occupants whose gross annual household income does not exceed 60 percent of the county median income, or 60 percent of the standard metropolitan statistical area income if the municipality is located in

~~such an area, as defined by the United States Department of Housing and Urban Development for use with the Housing Credit Program under Section 42(g) of the Internal Revenue Code, and the total annual cost of the housing, as defined at Section 42(g)(2)(B), is not more than 30 percent of the gross annual household income as defined at Section 42(g)(2)(C), and with constitute affordable housing and have a duration of affordability of no less than 30 20~~ years.

(28) “Mixed use” means construction of both mixed income housing and construction of space for any combination of retail, office, services, artisan, and recreational and community facilities, provided at least 40 percent of the gross floor area of the buildings involved is mixed income housing. “Mixed use” does not include industrial use.

(29) “Affordable housing” means either of the following:

(A) Housing that is owned by its occupants whose gross annual household income does not exceed 80 percent of the county median income, or 80 percent of the standard metropolitan statistical area income if the municipality is located in such an area, as defined by the United States Department of Housing and Urban Development, and the total annual cost of the housing, including principal, interest, taxes, insurance, and condominium association fees, is not more than 30 percent of the gross annual household income.

(B) Housing that is rented by the occupants whose gross annual household income does not exceed 80 percent of the county median income, or 80 percent of the standard metropolitan statistical area income if the municipality is located in such an area, as defined by the United States Department of Housing and Urban Development, and the total annual cost of the housing, including rent, utilities, and condominium association fees, is not more than 30 percent of the gross annual household income.

(30) “Designated ~~growth~~ center” means a ~~growth center designated by the Vermont Downtown Development Board under the provisions of 24 V.S.A. chapter 76A~~ downtown development district, village center, new town center, growth center, Vermont neighborhood, or neighborhood development area designated under 24 V.S.A. chapter 76A.

\* \* \*

(35) “Priority housing project” means a discrete project located on a single tract or multiple contiguous tracts of land that consists exclusively of:

(A) mixed income housing or mixed use, or any combination thereof, and is located entirely within a designated downtown development district,

designated new town center; designated growth center, or designated village center that is also a designated neighborhood development area under 24 V.S.A. chapter 76A; or

(B) mixed income housing and is located entirely within a designated Vermont neighborhood or designated neighborhood development area under 24 V.S.A. chapter 76A.

(36) “Strip development” means linear commercial development along a public highway that includes three or more of the following characteristics: broad road frontage, predominance of single-story buildings, limited reliance on shared highway access, lack of connection to any existing settlement except by highway, limited accessibility for pedestrians, and lack of coordination with surrounding land uses in terms of design, signs, lighting, and parking. In determining whether a proposed development or subdivision constitutes strip development, the District Commission shall consider the topographic constraints in the area in which the development or subdivision is to be located.

\* \* \*

Sec. 2. 10 V.S.A. § 6086 is amended to read:

§ 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

(a) Before granting a permit, the ~~district commission~~ District Commission shall find that the subdivision or development:

\* \* \*

(5)(A) Will not cause unreasonable congestion or unsafe conditions with respect to use of the highways, waterways, railways, airports and airways, and other means of transportation existing or proposed.

(B) As appropriate, will incorporate transportation demand management strategies and provide safe access and connections to adjacent lands and facilities and to existing and planned pedestrian, bicycle, and transit networks and services. This subdivision (B) shall not require an applicant to construct an improvement on a tract that the applicant does not own or control. However, the District Commission may require an applicant to contribute to the cost of constructing such an improvement.

\* \* \*

(9) Is in conformance with a duly adopted capability and development plan, and land use plan when adopted. However, the legislative findings of subdivisions 7(a)(1) through (19) of Act 85 of 1973 shall not be used as criteria

in the consideration of applications by a ~~district commission~~ District Commission.

\* \* \*

~~(L) Rural growth areas.—A permit will be granted for the development or subdivision of rural growth areas when it is demonstrated by the applicant that in addition to all other applicable criteria provision will be made in accordance with subdivisions (9)(A) “impact of growth,” (G) “private utility service,” (H) “costs of scattered development” and (J) “public utility services” of subsection (a) of this section for reasonable population densities, reasonable rates of growth, and the use of cluster planning and new community planning designed to economize on the cost of roads, utilities and land usage. Settlement patterns. To promote Vermont’s historic settlement pattern of compact village and urban centers separated by rural countryside, a permit will be granted for a development or subdivision outside an existing settlement when it is demonstrated by the applicant that in addition to all other applicable criteria, the development or subdivision:~~

(i) will make efficient use of land, energy, roads, utilities, and other supporting infrastructure;

(ii) is designed in a manner consistent with the planning goals set forth in 24 V.S.A. § 4302(c)(1);

(iii) will conform to the land use element, map, and resource protection policies included in the municipal and regional plans applicable to the proposed location of the development or subdivision;

(iv) will not establish, extend, or contribute to a pattern of strip development along public highways;

(v) if the development or subdivision will be located in an area that already constitutes strip development, incorporates infill as defined in 24 V.S.A. § 2791 and is designed to avoid or minimize the characteristics listed in the definition of strip development under subdivision 6001(36) of this title; and

(vi) if the development or subdivision will be adjacent to an area that already constitutes strip development, is designed to avoid or minimize the characteristics listed in the definition of strip development under subdivision 6001(36) of this title.

\* \* \*

Sec. 3. 10 V.S.A. § 6086b is added to read:

§ 6086b. DOWNTOWN DEVELOPMENT; FINDINGS

Notwithstanding any provision of this chapter to the contrary, each of the following shall apply to a development or subdivision that is completely within a downtown development district designated under 24 V.S.A. chapter 76A and for which a permit or permit amendment would otherwise be required under this chapter:

(1) In lieu of obtaining a permit or permit amendment, a person may request findings and conclusions from the Board, which shall approve the request if it finds that the development or subdivision will meet subdivisions 6086 (a)(1) (air and water pollution), (2) (sufficient water available), (3) (burden on existing water supply), (4) (soil erosion), (5) (traffic), (8) (historic sites and rare and irreplaceable natural areas only) (8)(A) (endangered species; necessary wildlife habitat), (9)(B) (primary agricultural soils), (9)(C) (productive forest soils), (9)(F) (energy conservation), and (9)(K) (public facilities, services, and lands) of this title.

(2) The request shall be complete as to the criteria listed in subdivision (1) of this subsection and need not address other criteria of subsection (a) of this section.

(A) The requestor shall file the request in accordance with the requirements of subsection 6084(a) of this title, except that the filing shall be with the Board, and the requestor shall provide a copy of the request to each agency and department listed in subdivision (3) of this section.

(B) Within five days of the request's filing, the Chair of the Board shall determine whether the request is complete. Within five days of the date the Chair determines the request to be complete, the Board shall provide notice of the complete request to each person required to receive a copy of the filing under subdivision (2)(A) of this section and to each adjoining property owner and shall post the notice and a copy of the request on its web page. The computation of time under this subdivision (2)(B) shall exclude Saturdays, Sundays, and State legal holidays.

(3) Within 30 days of receiving notice of a complete request:

(A) The State Historic Preservation Officer or designee shall submit a written determination on whether the improvements will have an undue adverse effect on any historic site.

(B) The Commissioner of Public Service or designee shall submit a written determination on whether the improvements will meet or exceed the applicable energy conservation and building energy standards under subdivision 6086(a)(9)(F) of this title.

(C) The Secretary of Transportation or designee shall submit a written determination on whether the improvements will have a significant impact on any highway, transportation facility, or other land or structure under the Secretary's jurisdiction.

(D) The Commissioner of Buildings and General Services or designee shall submit a written determination on whether the improvements will have a significant impact on any adjacent land or facilities under the Commissioner's jurisdiction.

(E) The Secretary of Natural Resources or designee shall submit a written determination on whether the improvements will have a significant impact on any land or facilities under its jurisdiction or on any important natural resources, other than primary agricultural soils. In this subdivision (E), "important natural resources" shall have the same meaning as under 24 V.S.A. § 2791.

(F) The Secretary of Agriculture, Food and Markets or designee shall submit a written determination on whether the improvements will reduce or convert primary agricultural soils and on whether there will be appropriate mitigation for any reduction in or conversion of those soils.

(4) Any person may submit written comments or ask for a hearing within 30 days of the date on which the Board issues notice of a complete request. If the person asks for a hearing, the person shall include a petition for party status in the submission. The petition for party status shall meet the requirements of subdivision 6085(c)(2) of this title, except that it shall be filed with the Board.

(5) The Board shall not hold a hearing on the request unless it determines that there is a substantial issue under one or more applicable criteria that requires a hearing. The Board shall hold any hearing within 20 days of the end of the comment period specified in subdivisions (3) and (4) of this section.

(A) The Board shall conduct the hearing as a contested case under the Vermont Administrative Procedure Act.

(B) Subdivisions 6085(c)(1)–(5) of this title shall govern participation in a hearing under this section.

(6) The Board shall issue a decision within 60 days of issuing notice of a complete request under this section or, if it holds a hearing, within 15 days of adjourning the hearing. The Board shall send a copy of the decision to the District Commission in whose district the development or subdivision is located, to each State agency listed in subdivision (3) of this section, to the

municipality, to the municipal and regional planning commissions for the municipality, and to each person that submitted a comment, requested a hearing, or participated in the hearing, if any. The decision may include conditions that meet the standards of subsection 6086(c) of this title.

(7) The requestor may waive the time periods required under subdivisions (3), (4), and (6) of this section as to one or more agencies, departments, the Board, or other persons. Such a waiver shall extend the applicable and subsequent time periods by the amount of time waived.

(8) The record of a proceeding under this section shall consist of the request, each written determination issued under subdivision (3) of this section, each comment and request for hearing submitted under subdivision (4) of this section, each document submitted for introduction into evidence at the hearing, an audio or audiovisual recording of the hearing, and the decision of the Board.

Sec. 4. 10 V.S.A. § 6081(v) is added to read:

(v) A permit or permit amendment shall not be required for a development or subdivision in a designated downtown development district for which the Board has issued positive findings and conclusions under section 6086b of this title on all the criteria listed in that section. A person shall obtain new or amended findings and conclusions from the Board under section 6086b of this title prior to commencement of a material change, as defined in the rules of the Board, to a development or subdivision for which the Board has issued such findings and conclusions. A person may seek a jurisdictional opinion under section 6007 of this title concerning whether such a change is a material change.

Sec. 5. 10 V.S.A. § 6089 is amended to read:

#### § 6089. APPEALS

Appeals of any act or decision of a ~~district commission~~ District Commission under this chapter or the Natural Resources Board under ~~section~~ subsection 6007(d) of this title or under section 6086b of this title shall be made to the Environmental Division in accordance with chapter 220 of this title. For the purpose of this section, a decision of the chair of a ~~district commission~~ District Commission under section 6001e of this title on whether action has been taken to circumvent the requirements of this chapter shall be considered an act or decision of the ~~district commission~~ District Commission.

Sec. 6. 10 V.S.A. § 6093 is amended to read:

#### § 6093. MITIGATION OF PRIMARY AGRICULTURAL SOILS

(a) Mitigation for loss of primary agricultural soils. Suitable mitigation for the conversion of primary agricultural soils necessary to satisfy subdivision 6086(a)(9)(B)(iv) of this title shall depend on where the project tract is located.

(1) Project located in ~~growth center~~ certain designated areas. This subdivision (1) applies to projects located in the following areas designated under 24 V.S.A. chapter 76A: a downtown development district, a growth center, a new town center designated on or before January 1, 2014, and a neighborhood development area associated with a designated downtown development district. If the project tract is located in a ~~designated growth center~~ one of these designated areas, an applicant who complies with subdivision 6086(a)(9)(B)(iv) of this title shall deposit an offsite mitigation fee into the Vermont ~~housing and conservation trust fund~~ Housing and Conservation Trust Fund established under section 312 of this title for the purpose of preserving primary agricultural soils of equal or greater value with the highest priority given to preserving prime agricultural soils as defined by the U.S. Department of Agriculture. Any required offsite mitigation fee shall be derived by:

(A) ~~determining~~ Determining the number of acres of primary agricultural soils affected by the proposed development or subdivision;

(B) ~~multiplying~~ Multiplied the number of affected acres of primary agricultural soils by a factor resulting in a ratio established as follows:

(i) ~~for~~ For development or subdivision within a designated ~~growth center~~ area described in this subdivision (a)(1), the ratio shall be 1:1;

(ii) ~~for~~ For residential construction that has a density of at least eight units of housing per acre, of which at least eight units per acre or at least 40 percent of the units, on average, in the entire development or subdivision, whichever is greater, meets the definition of affordable housing established in this chapter, no mitigation shall be required, regardless of location in or outside a designated area described in this subdivision (a)(1). However, all affordable housing units shall be subject to housing subsidy covenants, as defined in 27 V.S.A. § 610, that preserve their affordability for a period of 99 years or longer. ~~For purposes of~~ As used in this section, housing that is rented shall be considered affordable housing when its inhabitants have a gross annual household income that does not exceed 60 percent of the county median income or 60 percent of the standard metropolitan statistical area income if the municipality is located in such an area.

(C) ~~multiplying~~ Multiplied the resulting product by a “price-per-acre” value, which shall be based on the amount that the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets



has determined to be the recent, per-acre cost to acquire conservation easements for primary agricultural soils in the same geographic region as the proposed development or subdivision.

(2) Project located outside certain designated ~~growth-center~~ areas. If the project tract is not located in a designated ~~growth-center~~ area described in subdivision (a)(1) of this section, mitigation shall be provided on site in order to preserve primary agricultural soils for present and future agricultural use, with special emphasis on preserving prime agricultural soils. Preservation of primary agricultural soils shall be accomplished through innovative land use design resulting in compact development patterns which will maintain a sufficient acreage of primary agricultural soils on the project tract capable of supporting or contributing to an economic or commercial agricultural operation and shall be enforceable by permit conditions issued by the ~~district commission~~ District Commission. The number of acres of primary agricultural soils to be preserved shall be derived by:

(A) ~~determining~~ Determining the number of acres of primary agricultural soils affected by the proposed development or subdivision; ~~and~~.

(B) ~~multiplying~~ Multiplied the number of affected acres of primary agricultural soils by a factor based on the quality of those primary agricultural soils, and other factors as the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets may deem relevant, including the soil's location; accessibility; tract size; existing agricultural operations; water sources; drainage; slope; the presence of ledge or protected wetlands; the infrastructure of the existing farm or municipality in which the soils are located; and the N.R.C.S. rating system for Vermont soils. This factor shall result in a ratio of no less than 2:1, but no more than 3:1, protected acres to acres of impacted primary agricultural soils.

(3) Mitigation flexibility.

(A) Notwithstanding the provisions of subdivision ~~(a)(1)~~ (a)(1) of this ~~subsection~~ section pertaining to a development or subdivision on primary agricultural soils within a certain designated ~~growth-center~~ areas, the ~~district commission~~ District Commission may, in appropriate circumstances, require onsite mitigation with special emphasis on preserving prime agricultural soils if that action is deemed consistent with the agricultural elements of local and regional plans and the goals of 24 V.S.A. § 4302. In this situation, the approved plans must designate specific soils that shall be preserved inside ~~growth-centers~~ a designated area described in subdivision (a)(1) of this section. For projects located within such a designated ~~growth-center~~ area, all factors used to calculate suitable mitigation acreage or fees, or some combination of these measures, shall be as specified in this subsection, subject to a ratio of 1:1.

(B) Notwithstanding the provisions of subdivision (a)(2) of this ~~subsection~~ section pertaining to a development or subdivision on primary agricultural soils outside a designated ~~growth-center~~ area described in subdivision (a)(1) of this section, the ~~district commission~~ District Commission may, in appropriate circumstances, approve off-site mitigation or some combination of onsite and off-site mitigation if that action is deemed consistent with the agricultural elements of local and regional plans and the goals of 24 V.S.A. § 4302. For projects located outside such a designated ~~growth center~~ area, all factors used to calculate suitable mitigation acreage or fees, or some combination of these measures, shall be as specified in this subsection (a), subject to a ratio of no less than 2:1, but no more than 3:1.

\* \* \*

Sec. 7. 10 V.S.A. § 8003 is amended to read:

#### § 8003. APPLICABILITY

(a) The Secretary may take action under this chapter to enforce the following statutes and rules, permits, assurances, or orders implementing the following statutes, and the Board may take such action with respect to subdivision (10) of this subsection:

\* \* \*

(10) 10 V.S.A. chapter 151, relating to land use, and including findings and conclusions issued by the Board under section 6086b of this title;

\* \* \*

\* \* \* Appeal of Downtown Development Findings \* \* \*

Sec. 8. 10 V.S.A. § 8504 is amended to read:

#### § 8504. APPEALS TO THE ENVIRONMENTAL DIVISION

(a) Act 250 and agency appeals. Within 30 days of the date of the act or decision, any person aggrieved by an act or decision of the Secretary, the Natural Resources Board, or a district commission under the provisions of law listed in section 8503 of this title, or any party by right, may appeal to the Environmental Division, except for an act or decision of the Secretary under subdivision 6086b(3)(E) of this title or governed by section 8506 of this title.

\* \* \*

(h) De novo hearing. The Environmental Division, applying the substantive standards that were applicable before the tribunal appealed from, shall hold a de novo hearing on those issues which have been appealed, except in the case of:

(1) a A decision being appealed on the record pursuant to 24 V.S.A. chapter 117.

(2) a A decision of the Commissioner of Forests, Parks and Recreation under section 2625 of this title being appealed on the record, in which case the court shall affirm the decision, unless it finds that the Commissioner did not have reasonable grounds on which to base the decision.

(3) An act or decision of the Natural Resources Board under section 6086b of this title (downtown development; findings), which shall be reviewed on the record created by the Board. The Environmental Division shall uphold the Board unless the Division determines that the Board abused its discretion or made factual determinations not supported by substantial evidence when the record is viewed as a whole. The Division shall not consider an appellant's objection that was not urged before the Board, unless the failure or neglect to urge the objection is excused by extraordinary circumstances.

\* \* \*

\* \* \* Agency of Natural Resource Rule Revisions \* \* \*

#### Sec. 9. MUNICIPAL POLLUTION CONTROL PRIORITY SYSTEM

(a) In the Environmental Protection Rules of the Agency of Natural Resources, chapter 2 (municipal pollution control priority system), subchapter 500 (definitions), the definition of "designated growth center" is struck and a new definition of "designated center" is inserted in lieu thereof to read:

"Designated center" shall mean a downtown development district, village center, new town center, growth center, Vermont neighborhood, or neighborhood development area designated under 24 V.S.A. chapter 76A.

(b) On or before August 1, 2014, the Secretary of Natural Resources shall conform the published version of the rules described in this section to the requirements of subsection (a) of this section. Provided that the only revision to those rules is the change required by subsection (a) of this section, the rulemaking procedures of the Vermont Administrative Procedure Act shall not apply to the publication of this conformed version of the rules. However, on publication, the Secretary shall send a copy of the conformed version of the rules to the Office of the Secretary of State and the Legislative Committee on Administrative Rules.

Sec. 10. 10 V.S.A. § 1571 is amended to read:

#### § 1571. DEFINITIONS

As used in this chapter:

\* \* \*

(10) “Designated center” means a downtown development district, village center, new town center, growth center, Vermont neighborhood, or neighborhood development area designated under 24 V.S.A. chapter 76A.

Sec. 11. 10 V.S.A. § 1628 is amended to read:

§ 1628. PRIORITIES

The ~~department~~ Department shall make awards under this chapter to eligible municipal projects on the basis of urgency of need as determined according to a system of priorities adopted by the ~~department~~ Department and to the extent appropriate funds are available. The system of priorities shall include increased priority to eligible municipal projects in designated centers. The ~~department~~ Department shall assure that projects sponsored by a town school district, or incorporated school district shall be given increased priority for purposes of the receipt of engineering planning advances awarded under section 1593 of this chapter. The total amount of the engineering planning advances made and still outstanding during a period for this purpose shall not exceed 30 percent of the bond issue or appropriation voted for construction grant funds by the ~~general assembly~~ General Assembly for the period in which the award is made.

Sec. 12. 10 V.S.A. § 1973 is amended to read:

§ 1973. PERMITS

(a) Except as provided in this section and sections 1974 and 1978 of this title, a person shall obtain a permit from the Secretary before:

- (1) subdividing land;
- (2) creating or modifying a campground in a manner that affects a potable water supply or wastewater system or the requirements for providing potable water and wastewater disposal;
- (3) constructing, replacing, or modifying a potable water supply or wastewater system;
- (4) using or operating a failed supply or failed system;
- (5) constructing a new building or structure;
- (6) modifying an existing building or structure in a manner that increases the design flow or modifies other operational requirements of a potable water supply or wastewater system;
- (7) making a new or modified connection to a new or existing potable water supply or wastewater system; or

(8) changing the use of a building or structure in a manner that increases the design flows or modifies other operational requirements of a potable water supply or wastewater system.

\* \* \*

(f)(1) The Secretary shall give deference to a certification by a licensed designer with respect to the engineering design or judgment exercised by the designer in order to minimize agency review of certified designs. Nothing in this section shall limit the responsibility of the licensed designer to comply with all standards and rules, or the authority of the Secretary to review and comment on design aspects of an application or to enforce agency rules with respect to the design or the design certification.

(2) The Secretary shall issue a permit for a new or modified connection to a water main and a sewer main or indirect discharge system from a building or structure in a designated downtown development district upon submission of an application under subsection (b) of this section that consists solely of the certification of a licensed designer, in accordance with subsection (d) of this section, and a letter from the owner of the water main and sewer main or indirect discharge system allocating the capacity needed to accommodate the new or modified connection. However, this subdivision (2) shall not apply if the Secretary finds one of the following:

(A) The Secretary has prohibited the system that submitted the allocation letter from issuing new allocation letters due to a lack of capacity.

(B) As a result of an audit of the application performed on a random basis or in response to a complaint, the system is not designed in accordance with the rules adopted under this chapter.

\* \* \*

### Sec. 13. WASTEWATER RULES; AMENDMENT

On or before December 1, 2014, the Agency of Natural Resources shall amend its form under 10 V.S.A. § 1973 and its rules under 10 V.S.A. § 1978 to conform to the provisions of Sec. 12 of this act.

\* \* \* Inclusionary Zoning \* \* \*

Sec. 14. 24 V.S.A. § 4414(7) is amended to read:

(7) Inclusionary zoning. In order to provide for affordable housing, bylaws may require that a certain percentage of housing units in a proposed subdivision ~~or~~ planned unit development, or multi-unit development meets defined affordability standards, which may include lower income limits than contained in the definition of “affordable housing” in subdivision 4303(1) of

this title and may contain different affordability percentages than contained in the definition of “affordable housing development” in subdivision 4303(2) of this title. These provisions, at a minimum, shall comply with all the following:

\* \* \*

\* \* \* Effective Dates \* \* \*

#### Sec. 15. EFFECTIVE DATES

(a) This section and Sec. 9 (municipal pollution control priority system) shall take effect on passage.

(b) The remainder of this act shall take effect on June 1, 2014.

**( Committee Vote: 9-2-0)**

#### **Information Notice**

##### Deadline for Introducing Bills

Pursuant to Rule 40(c) during the second year of the biennium, except with the prior consent of the Committee on Rules, no committee, except the Committees on Appropriations, Ways and Means or Government Operations, may introduce a bill drafted in standard form after the last day of March (March 31, 2014). The Committees on Appropriations and Ways and Means bill may be drafted in standard form at any time, and Government Operations bills pertaining to city or town charters, may be drafted in standard form at any time.

#### **CROSSOVER DEADLINES**

The Joint Rules Committee established the following Crossover deadlines:

(1) All House bills must be reported out of the last committee of reference on or before Friday, March 14, 2014, and filed with the House Clerk’s Office so that they may be placed on the Calendar for Notice the next legislative day.

(2) All House bills referred pursuant to the Committees on Appropriations and Ways and Means must be reported out by the last of those committees on or before Friday, March 21, 2014, and filed with the House Clerk’s Office so that they may be placed on the Calendar for Notice the next legislative day.