

House Calendar

Tuesday, March 15, 2016

71st DAY OF THE ADJOURNED SESSION

House Convenes at 10:00 A.M.

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ACTION CALENDAR

Action Postponed Until March 15, 2016

Committee Bill for Second Reading

H. 851

An act relating to the conduct of forestry operations.

(Rep. Hebert of Vernon will speak for the Committee on **Natural Resources & Energy**.)

H. 854

An act relating to timber trespass.

(Rep. Forguites of Springfield will speak for the Committee on **Natural Resources & Energy**.)

Amendment to be offered by Rep. Lalonde of South Burlington to H. 854

First: In Sec. 1, 13 V.S.A. chapter 77, by striking out 13 V.S.A. § 3604 in its entirety and inserting in lieu thereof the following:

§ 3604. EXEMPTIONS

The cutting, felling, or destruction of a tree or the harvest of timber by the following ~~is exempt from the requirements of sections 3602, 3603, and 3606~~ shall not be subject to a civil action under section 3606 of this title or a criminal penalty under section 3606a of this title:

(1) ~~The Agency of Transportation, or its representatives, conducting brush removal on State highways or Agency-maintained trails~~ vegetation management.

(2) A municipality conducting brush removal subject to the requirements of 19 V.S.A. § 904.

(3) A utility conducting vegetation maintenance within the boundaries of the utility's established right-of-way.

(4) ~~A harvester harvesting timber that a landowner has authorized for harvest within a harvest unit that has been marked by a landowner under section 3603 of this title. A landowner who harvests timber on his or her own property shall not be a "harvester" for the purposes of this subdivision.~~ [Repealed.]

(5) A railroad conducting vegetation ~~maintenance or brush removal in the railroad right-of-way~~ management.

(6) A licensed surveyor establishing boundaries between abutting parcels under 27 V.S.A. § 4.

Second: In Sec. 1, 13 V.S.A. § 3606, in subsection (a), in the first sentence after “the land or improvements thereon as a result of such action” and before the period by striking out “, together with reasonable costs of litigation, including investigation costs and attorney’s fees”

and in subsection (b), after “this section establishes” and before “that he or she” by striking out “by clear and convincing evidence that” and inserting in lieu thereof “by a preponderance of the evidence”

Third: In Sec. 1, 13 V.S.A. § 3606a, by striking out subsection (b) in its entirety and inserting in lieu thereof the following:

(b) Any person who violates subsection (a) of this section shall:

(1) be imprisoned not more than one year or fined not more than \$5,000.00, or both, if the value of the timber or forest product is less than \$1,000.00; or

(2) be imprisoned not more than two years or fined not more than \$10,000.00, or both, if the value of the timber or forest product is \$1,000.00 or greater.

ACTION CALENDAR

Third Reading

H. 308

An act relating to limiting the liability of VAST arising from snowmobile operation outside the Statewide Snowmobile Trail System

H. 529

An act relating to State aid for school construction repayment obligations

H. 570

An act relating to hunting, fishing, and trapping

H. 852

An act relating to State lands

Favorable with Amendment

H. 171

An act relating to restrictions on the use of electronic cigarettes

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

Sec. 1. 7 V.S.A. § 1003(d) is amended to read:

~~(d)(1) No person holding a tobacco license shall display or store tobacco products or tobacco substitutes where those products are accessible to consumers without direct assistance by the sales personnel~~ Persons holding a tobacco license may only display or store tobacco products or tobacco substitutes:

(A) behind a sales counter or in any other area of the establishment that is inaccessible to the public; or

(B) in a locked container that is not located on a sales counter.

(2) This subsection shall not apply to the following:

~~(1)(A) A~~ a display of tobacco products that is located in a commercial establishment in which by law no person younger than 18 years of age is permitted to enter at any time.;

~~(2)(B) Cigarettes~~ cigarettes in unopened cartons and smokeless tobacco in unopened multipack containers of 10 or more packages, any of which shall be displayed in plain view and under the control of a responsible employee so that removal of the cartons or multipacks from the display can be readily observed by that employee.;

~~or~~

~~(3)(C) Cigars~~ cigars and pipe tobacco stored in a humidor on the sales counter in plain view and under the control of a responsible employee so that the removal of these products from the humidor can be readily observed by that employee.

Sec. 2. 18 V.S.A. § 1421 is amended to read:

§ 1421. SMOKING IN THE WORKPLACE; PROHIBITION

(a) The ~~use~~ possession of lighted tobacco products or use of tobacco substitutes is prohibited in any workplace.

(b)(1) As used in this subchapter, "workplace" means an enclosed structure where employees perform services for an employer, including restaurants, bars, and other establishments in which food or drinks, or both, are served. In

the case of an employer who assigns employees to departments, divisions, or similar organizational units, "workplace" means the enclosed portion of a structure to which the employee is assigned.

* * *

(5) The prohibition on using tobacco substitutes in a workplace shall not apply to a business that does not sell food or beverages but is established for the sole purpose of providing a setting for patrons to purchase and use tobacco substitutes and related paraphernalia.

(c) Nothing in this section shall be construed to restrict the ability of residents of the Vermont ~~veterans' home~~ Veterans' Home to ~~use~~ possess lighted tobacco products or use tobacco substitutes in the indoor area of the facility in which smoking is permitted.

Sec. 3. 18 V.S.A. § 1741 is amended to read:

§ 1741. DEFINITIONS

As used in this chapter:

* * *

(5) "Tobacco substitutes" shall have the same meaning as in 7 V.S.A. § 1001.

Sec. 4. 18 V.S.A. § 1742 is amended to read:

§ 1742. RESTRICTIONS ON SMOKING IN PUBLIC PLACES

(a) The possession of lighted tobacco products or use of tobacco substitutes in any form is prohibited in:

(1) the common areas of all enclosed indoor places of public access and publicly owned buildings and offices;

(2) all enclosed indoor places in lodging establishments used for transient traveling or public vacationing, such as resorts, hotels, and motels, including sleeping quarters and adjoining rooms rented to guests;

(3) designated smoke-free areas of property or grounds owned by or leased to the State; and

(4) any other area within 25 feet of State-owned buildings and offices, except that to the extent that any portion of the 25-foot zone is not on State property, smoking is prohibited only in that portion of the zone that is on State property unless the owner of the adjoining property chooses to designate his or her property smoke-free.

(b) The possession of lighted tobacco products or use of tobacco substitutes in any form is prohibited on the grounds of any hospital or secure residential recovery facility owned or operated by the State, including all enclosed places in the hospital or facility and the surrounding outdoor property.

(c) Nothing in this section shall be construed to restrict the ability of residents of the Vermont Veterans' Home to ~~use~~ possess lighted tobacco products or use tobacco substitutes in the indoor area of the facility in which smoking is permitted.

(d) Nothing in this chapter shall be construed to prohibit the use of tobacco substitutes in a business that does not sell food or beverages but is established for the sole purpose of providing a setting for patrons to purchase and use tobacco substitutes and related paraphernalia.

Sec. 5. 18 V.S.A. § 1743 is amended to read:

§ 1743. EXCEPTIONS

The restrictions in this chapter on possession of lighted tobacco products and use of tobacco substitutes do not apply to areas not commonly open to the public of owner-operated businesses with no employees.

Sec. 6. 18 V.S.A. § 1745 is amended to read:

§ 1745. ENFORCEMENT

A proprietor, or the agent or employee of a proprietor, who observes a person in possession of lighted tobacco products or using tobacco substitutes in apparent violation of this chapter shall ask the person to extinguish all lighted tobacco products or cease using the tobacco substitutes. If the person persists in the possession of lighted tobacco products or use of tobacco substitutes, the proprietor, agent, or employee shall ask the person to leave the premises.

Sec. 7. 23 V.S.A. § 1134b is amended to read:

§ 1134b. SMOKING IN MOTOR VEHICLE WITH CHILD PRESENT

(a) A person shall not possess a lighted tobacco product or use a tobacco substitute in a motor vehicle that is occupied by a child required to be properly restrained in a federally approved child passenger restraining system pursuant to subdivision 1258(a)(1) or (2) of this title.

(b) A person who violates subsection (a) of this section shall be subject to a fine of not more than \$100.00. No points shall be assessed for a violation of this section.

Sec. 8. EFFECTIVE DATE

(a) Sec. 1 (7 V.S.A. § 1003(d)) shall take effect on January 1, 2017.

(b) The remaining sections shall take effect on July 1, 2016.

(Committee Vote: 10-1-0)

H. 559

An act relating to an exemption from licensure for visiting team physicians

Rep. Dakin of Chester, for the Committee on **Health Care**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 26 V.S.A. § 377 is added to read:

§ 377. EXEMPTION

The provisions of this chapter shall not apply to a podiatrist who is duly licensed and in good standing in another state, territory, or jurisdiction of the United States or in Canada if the podiatrist is employed as or formally designated as the team podiatrist by an athletic team visiting Vermont for a specific sporting event and the podiatrist limits his or her practice in this State to the treatment of the members, coaches, and staff of the sports team employing or designating the podiatrist.

Sec. 2. 26 V.S.A. § 1313(a) is amended to read:

(a) The provisions of this chapter shall not apply to the following:

(1) a health care professional licensed or certified by the ~~office of professional regulation~~ Office of Professional Regulation when that person is practicing within the scope of his or her profession;

(2) a member of the ~~United States military or national guard~~ U.S. Armed Forces or National Guard, including a ~~national guard~~ National Guard member in state status, or to any person giving aid, assistance, or relief in emergency or accident cases pending the arrival of a regularly licensed physician;

(3) a nonresident physician coming into this ~~state~~ State to consult or using telecommunications to consult with a duly licensed practitioner herein; ~~or~~

(4) a duly licensed physician in another state, in Canada, or in another nation as approved by the ~~board~~ Board who is visiting a medical school or a teaching hospital in this ~~state~~ State to receive or conduct medical instruction for a period not to exceed three months, provided the practice is limited to that instruction and is under the supervision of a physician licensed by the ~~board~~ Board; ~~or~~

(5) a physician who is duly licensed and in good standing in another state, territory, or jurisdiction of the United States or in Canada if the physician

is employed as or formally designated as the team physician by an athletic team visiting Vermont for a specific sporting event and the physician limits the practice of medicine in this State to medical treatment of the members, coaches, and staff of the sports team employing or designating the physician.

Sec. 3. 26 V.S.A. § 1734c is amended to read:

§ 1734c. EXEMPTIONS

Nothing herein shall be construed to require licensure under this chapter of:

(1) a physician assistant student enrolled in a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant;

(2) a physician assistant employed in the service of the U.S. ~~military or national guard~~ Armed Forces or National Guard, including ~~national guard~~ National Guard in-state status, while performing duties incident to that employment; ~~or~~

(3) a technician or other assistant or employee of a physician who performs physician-delegated tasks but who is not rendering services as a physician assistant or identifying himself or herself as a physician assistant; ~~or~~

(4) a physician assistant who is duly licensed and in good standing in another state, territory, or jurisdiction of the United States or in Canada if the physician assistant is employed as or formally designated as the team physician assistant by an athletic team visiting Vermont for a specific sporting event and the physician assistant limits his or her practice in this State to the treatment of the members, coaches, and staff of the sports team employing or designating the physician assistant.

Sec. 4. 26 V.S.A. § 1753(c) is amended to read:

(c) The provisions of this chapter shall not apply to:

(1) ~~A~~ a commissioned officer of the U.S. Armed Forces or Public Health Service when acting within the scope of his or her official duties; ~~;~~

(2) ~~A~~ a nonresident licensed osteopathic physician or surgeon who is called to treat or to consult on a particular case in this State, ~~;~~ provided he or she does not otherwise practice in this State; ~~or~~

(3) an osteopathic physician who is duly licensed and in good standing in another state, territory, or jurisdiction of the United States or in Canada if the physician is employed as or formally designated as the team physician by an athletic team visiting Vermont for a specific sporting event and the physician limits the practice of medicine in this State to medical treatment of

the members, coaches, and staff of the sports team employing or designating the physician.

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

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

H. 571

An act relating to driver's license suspensions, driving with a suspended license, and DUI penalties

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

* * * Pre-July 1, 1990 Criminal Traffic Offenses * * *

Sec. 1. TERMINATION OF SUSPENSIONS ARISING FROM PRE-JULY 1, 1990 CRIMINAL TRAFFIC OFFENSES

(a) Background.

(1) Prior to July 1, 1990, traffic offenses that are handled as civil traffic violations under current Vermont law were charged as criminal offenses.

(2) A defendant's failure to appear on such charges resulted in suspension of the defendant's privilege to operate a motor vehicle in Vermont.

(3) As of February 2016, approximately 26,260 defendants who failed to appear in connection with pre-July 1, 1990 criminal traffic charges have pending suspensions as a result of their failure to appear. None of these charges relate to conduct that is criminal under current Vermont law.

(4) Many of the criminal complaints in these matters are fire- and water-damaged. In many of these cases, the facts underlying the complaints no longer can be proved.

(5) On February 22, 2016, the Office of the Attorney General mailed to all Criminal Divisions of the Superior Court and to the Judicial Bureau notices of dismissal of these pre-July 1, 1990 charges.

(b) Termination of suspensions.

(1) Notwithstanding 23 V.S.A. § 675 (fee prior to termination of suspension), as soon as possible after this act takes effect, the Commissioner of Motor Vehicles shall, without requiring an application or payment of a fee, terminate pending suspensions of a person's license or privilege to operate a

motor vehicle that resulted from the person's failure to appear prior to July 1, 1990 on a criminal traffic offense charged by the State for conduct that is a civil traffic violation under current Vermont law.

(2) This subsection shall not affect pending suspensions of a person's license or privilege to operate other than those specifically described in subdivision (1) of this subsection.

* * * Statewide Driver Restoration Program * * *

Sec. 2. STATEWIDE DRIVER RESTORATION PROGRAM

(a) Program established; one-time event.

(1) The Judicial Bureau and the Department of Motor Vehicles shall carry out a Statewide Driver Restoration Program (Program) from September 1, 2016 through November 30, 2016 (the "Program time period"). It is the intent of the General Assembly that the Program shall be a one-time statewide event.

(2) As used in this section, "suspension" means a suspension of a person's license or privilege to operate a motor vehicle in Vermont imposed by the Commissioner of Motor Vehicles.

(b) Traffic violation judgments entered before January 1, 2015; exception.

(1) During the Program time period, a person who has not paid in full the amount due on a traffic violation judgment entered prior to January 1, 2015 may apply to the Judicial Bureau for a reduction in the amount due on a form approved by the Court Administrator. Judgments for traffic violations that involve violation of a law specifically governing the operation of commercial motor vehicles shall not be eligible for reduction under the Program. The Program shall not apply to pre-July 1, 1990 criminal traffic offenses.

(2) A person shall be permitted to apply in person or through the mail. The Judicial Bureau may accept applications electronically or by other means.

(3) If a person submits a complete application during the Program time period and the judgment is eligible for reduction under subdivision (1) of this subsection, the Clerk of the Judicial Bureau or designee shall reduce the amount due on the judgment to \$30.00. Amounts paid toward a traffic violation judgment prior to the Judicial Bureau's granting an application under this subsection shall not be refunded or credited toward the amount due under the amended judgment.

(c) Traffic violation judgments entered on or after January 1, 2015.

(1) Notwithstanding the usual time periods for filing postjudgment motions to amend and the standards for granting such motions, a person who

has not paid the full amount due on a traffic violation judgment entered on or after January 1, 2015 and before July 1, 2016 may file a motion with the Judicial Bureau pursuant to Rules 60 and 80.6 of the Vermont Rules of Civil Procedure seeking an individualized determination of his or her ability to pay the amount due on the judgment. In deciding the motion, the Judicial Bureau hearing officer shall consider the person's ability to pay the amount due and may reduce the amount due and waive any reinstatement or suspension termination fee in his or her discretion.

(2) Consistent with Sec. 4 of this act, amending 4 V.S.A. § 1109 to direct the Judicial Bureau to provide a more flexible payment plan option, a person who has an amount due on a traffic violation judgment shall not be required to pay more than \$100.00 per month in order to be current on all of his or her traffic violation judgments, regardless of the dates when the judgments were entered. This subdivision (c)(2) shall not be limited by the Program time period.

(d) Restoration of driving privileges.

(1) If a person has paid all traffic violation judgments reduced under subsection (b) of this section, and is under a payment plan for any other outstanding traffic violation judgments, the Judicial Bureau shall notify the Department of Motor Vehicles that the person is in compliance with his or her obligations.

(2) Notwithstanding 23 V.S.A. § 675 (fee prior to termination of suspension), the Commissioner of Motor Vehicles shall:

(A) upon receipt of the notice of compliance from the Judicial Bureau and without requiring an application or payment of a reinstatement fee, terminate suspensions arising from nonpayment of a traffic violation judgment of a person described in subdivision (1) of this subsection (d);

(B) during the Program time period and without requiring an application or payment of a reinstatement fee, terminate suspensions arising from nonpayment of a traffic violation judgment of a person who has paid all outstanding traffic violation judgments in full or is in compliance with a Judicial Bureau payment plan prior to December 1, 2016.

(3) If a person described in subdivision (1) or (2)(B) of this subsection fails to make a payment under a payment plan, the Judicial Bureau shall notify the Department of Motor Vehicles if required under 4 V.S.A. § 1109, as amended by Sec. 4 of this act.

(4) This subsection shall not affect pending suspensions other than as specifically described in this subsection.

(e) Public awareness campaign. Prior to the start of the Program, the Agency of Transportation shall commence a campaign to raise public awareness of the Program, and shall conduct the campaign until the end of the Program. The Judicial Bureau, the Department of Motor Vehicles, and the Agency of Transportation shall prominently advertise the Program on their websites until the Program ends.

(f) Allocation of fines collected. Amounts collected on traffic violation judgments reduced under subsection (b) or subdivision (c)(1) of this section shall be allocated in accordance with the Process Review approved by the Court Administrator's Office entitled "Revenue Distributions - Civil Violations" and dated November 3, 2015.

(g) Collection and reporting of statistics. On or before January 15, 2017:

(1) The Court Administrator shall report to the House and Senate Committees on Judiciary and on Transportation:

(A) the number of traffic violation judgments reduced to \$30.00 under subsection (b) of this section, the total number of the judgments paid, and the total amount collected in connection with payment of the judgments;

(B) the number of postjudgment motions filed under subdivision (c)(1) of this section and in connection with such motions:

(i) the number of hearings held;

(ii) the number of judgments reduced pursuant to such hearings, the total number of the reduced judgments paid, and the total amount collected in connection with payment of the reduced judgments; and

(iii) the number of hearings scheduled but not yet held;

(C) the number of persons eligible for a reduced judgment under subsection (b) of this section who did not apply for a reduced judgment.

(2) The Commissioner of Motor Vehicles shall report to the House and Senate Committees on Judiciary and on Transportation:

(A) the number of suspensions terminated, as well as the number of unique persons whose suspensions were terminated, under subdivision (d)(2) of this section; and

(B) the number of persons whose license or privilege to operate was fully reinstated as a result of the termination of suspensions under subdivision (d)(2) of this section.

* * * Termination of Suspensions Repealed in Act * * *

Sec. 2a. TERMINATION OF SUSPENSIONS REPEALED IN ACT

Notwithstanding 23 V.S.A. § 675 (fee prior to termination of suspension), as soon as possible after this act takes effect the Commissioner of Motor Vehicles shall, without requiring an application or payment of a fee, terminate pending suspensions of a person's license or privilege to operate a motor vehicle and refusals of a person's license or privilege to operate that were imposed pursuant to the following provisions:

- (1) 7 V.S.A. § 656 (underage alcohol violation);
- (2) 7 V.S.A. § 1005 (underage tobacco violation);
- (3) 13 V.S.A. § 1753 (false public alarm; students and minors);
- (4) 18 V.S.A. § 4230b (underage marijuana violation); and
- (5) 32 V.S.A. § 8909 (driver's license suspensions for nonpayment of purchase and use tax).

* * * Amendment or Repeal of License Suspension and Registration Refusal Provisions and Underage Alcohol and Marijuana Crimes * * *

Sec. 3. REPEALS

23 V.S.A. §§ 305a (registration not renewed following nonpayment of traffic violation judgment) and 2307 (remedies for failure to pay traffic violations) are repealed.

Sec. 4. 4 V.S.A. § 1109 is amended to read:

§ 1109. REMEDIES FOR FAILURE TO PAY; CONTEMPT

(a) Definitions. As used in this section:

(1) "Amount due" means all financial assessments contained in a Judicial Bureau judgment, including penalties, fines, surcharges, court costs, and any other assessment authorized by law.

(2) "Designated collection agency" means a collection agency designated by the Court Administrator.

(3) [Repealed.]

(b) Late fees; suspensions for nonpayment of certain traffic violation judgments.

(1) A Judicial Bureau judgment shall provide notice that a \$30.00 fee shall be assessed for failure to pay within 30 days. If the defendant fails to pay the amount due within 30 days, the fee shall be added to the judgment amount and deposited in the Court Technology Special Fund established pursuant to section 27 of this title.

(2)(A) In the case of a judgment on a traffic violation for which the imposition of points against the person's driving record is authorized by law, the judgment shall contain a notice that failure to pay or otherwise satisfy the amount due within 30 days of the notice will result in suspension of the person's operator's license or privilege to operate, and that payment plan options are available. If the defendant fails to pay the amount due within 30 days of the notice, or by a later date as determined by a Judicial Bureau clerk or hearing officer, and the case is not pending on appeal, the Judicial Bureau shall provide electronic notice thereof to the Commissioner of Motor Vehicles. After 20 days from the date of receiving the electronic notice, the Commissioner shall suspend the person's operator's license or privilege to operate for a period of 30 days or until the amount due is satisfied, whichever is earlier.

(B) At minimum, the Judicial Bureau shall offer a payment plan option that allows a person to avoid a suspension of his or her license or privilege to operate by paying no more than \$30.00 per traffic violation judgment per month, and not to exceed \$100.00 per month if the person has four or more outstanding judgments.

(c)(1) Civil contempt proceedings. If an amount due remains unpaid for 75 days after the Judicial Bureau provides the defendant with a notice of judgment, the Judicial Bureau may initiate civil contempt proceedings pursuant to this subsection.

~~(1)(2)~~ Notice of hearing. The Judicial Bureau shall provide notice by first class mail sent to the defendant's last known address that a contempt hearing will be held pursuant to this subsection, and that failure to appear at the contempt hearing may result in the sanctions listed in subdivision ~~(2)(3)~~ of this subsection.

~~(2)(3)~~ Failure to appear. If the defendant fails to appear at the contempt hearing, the hearing officer may direct the clerk of the Judicial Bureau to do one or more of the following:

(A) ~~Cause~~ cause the matter to be reported to one or more designated collection agencies; or

(B) ~~Refer~~ refer the matter to the Criminal Division of the Superior Court for contempt proceedings.

(C) ~~Provide electronic notice thereof to the Commissioner of Motor Vehicles who shall suspend the person's operator's license or privilege to operate. However, the person shall become eligible for reinstatement if the amount due is paid or otherwise satisfied. [Repealed.]~~

~~(3)~~(4)(A) Hearing. The hearing shall be conducted in a summary manner. The hearing officer shall examine the defendant and any other witnesses and may require the defendant to produce documents relevant to the defendant's ability to pay the amount due. The State or municipality shall not be a party except with the permission of the hearing officer. The defendant may be represented by counsel at the defendant's own expense.

(B) Traffic violations; reduction of amount due. When the judgment is based upon a traffic violation, the hearing officer may reduce the amount due on the basis of the defendant's driving history, ability to pay, or service to the community; the collateral consequences of the violation; or the interests of justice. The hearing officer's decision on a motion to reduce the amount due shall not be subject to review or appeal except in the case of a violation of rights guaranteed under the Vermont or U.S. Constitution.

~~(4)~~(5) Contempt.

(A) The hearing officer may conclude that the defendant is in contempt if the hearing officer states in written findings a factual basis for concluding that:

(i) the defendant knew or reasonably should have known that he or she owed an amount due on a Judicial Bureau judgment;

(ii) the defendant had the ability to pay all or any portion of the amount due; and

(iii) the defendant failed to pay all or any portion of the amount due.

(B) In the contempt order, the hearing officer may do one or more of the following:

(i) Set a date by which the defendant shall pay the amount due.

(ii) Assess an additional penalty not to exceed ten percent of the amount due.

~~(iii) Order that the Commissioner of Motor Vehicles suspend the person's operator's license or privilege to operate. However, the person shall become eligible for reinstatement if the amount due is paid or otherwise satisfied. [Repealed.]~~

(iv) Recommend that the Criminal Division of the Superior Court incarcerate the defendant until the amount due is paid. If incarceration is recommended pursuant to this subdivision ~~(4)~~(c)(5), the Judicial Bureau shall notify the Criminal Division of the Superior Court that contempt proceedings should be commenced against the defendant. The Criminal Division of the

Superior Court proceedings shall be de novo. If the defendant cannot afford counsel for the contempt proceedings in the Criminal Division of the Superior Court, the Defender General shall assign counsel at the Defender General's expense.

(d) Collections.

(1) If an amount due remains unpaid after the issuance of a notice of judgment, the Court Administrator may authorize the clerk of the Judicial Bureau to refer the matter to a designated collection agency.

(2) The Court Administrator or the Court Administrator's designee is authorized to contract with one or more collection agencies for the purpose of collecting unpaid Judicial Bureau judgments pursuant to 13 V.S.A. § 7171.

(e) For purposes of civil contempt proceedings, venue shall be statewide. No entry or motion fee shall be charged to a defendant who applies for a reduced judgment under subdivision (c)(4)(B) of this section.

(f) Notwithstanding 32 V.S.A. § 502, the Court Administrator is authorized to contract with a third party to collect fines, penalties, and fees by credit card, debit card, charge card, prepaid card, stored value card, and direct bank account withdrawals or transfers, as authorized by 32 V.S.A. § 583, and to add on and collect, or charge against collections, a processing charge in an amount approved by the Court Administrator.

Sec. 5. 7 V.S.A. § 656 is amended to read:

§ 656. PERSON UNDER 21 YEARS OF AGE MISREPRESENTING AGE, PROCURING, POSSESSING, OR CONSUMING ALCOHOLIC BEVERAGES; FIRST OR SECOND OFFENSE; CIVIL VIOLATION

(a)(1) Prohibited conduct. A person under 21 years of age shall not:

(A) ~~falsely~~ Falsely represent his or her age for the purpose of procuring or attempting to procure malt or vinous beverages, spirits, or fortified wines from any licensee, State liquor agency, or other person or persons;

(B) ~~possess~~ Possess malt or vinous beverages, spirits, or fortified wines for the purpose of consumption by himself or herself or other minors, except in the regular performance of duties as an employee of a licensee licensed to sell alcoholic liquor;

(C) ~~consume~~ Consume malt or vinous beverages, spirits, or fortified wines. A violation of this subdivision may be prosecuted in a jurisdiction where the minor has consumed malt or vinous beverages, spirits, or fortified wines or in a jurisdiction where the indicators of consumption are observed.

(2) Offense. ~~Except as otherwise provided in section 657 of this title, a~~ A person under 21 years of age who knowingly and unlawfully violates subdivision (1) of this subsection commits a civil violation and shall be referred to the Court Diversion Program for the purpose of enrollment in the Youth Substance Abuse Safety Program. A person who fails to complete the program successfully shall be subject to:

(A) ~~a civil penalty of \$300.00 and suspension of the person's operator's license and privilege to operate a motor vehicle for a period of 90 days,~~ \$400.00 for a first offense; and

(B) a civil penalty of not less than \$400.00 and not more than \$600.00 ~~and suspension of the person's operator's license and privilege to operate a motor vehicle for a period of 180 days,~~ for a second or subsequent offense.

(b) Issuance of Notice of Violation. A law enforcement officer shall issue a person under 21 years of age who violates this section a notice of violation, in a form approved by the Court Administrator. The notice of violation shall require the person to provide his or her name and address and shall explain procedures under this section, including that:

(1) the person shall contact the Diversion Program in the county where the offense occurred within 15 days;

(2) failure to contact the Diversion Program within 15 days will result in the case being referred to the Judicial Bureau, where the person, if found liable for the violation, will be subject to a civil penalty ~~and a suspension of the person's operator's license and may face substantially increased insurance rates;~~

(3) no money should be submitted to pay any penalty until after adjudication; and

(4) the person shall notify the Diversion Program if the person's address changes.

* * *

(e) Notice to Report to Diversion. Upon receipt from a law enforcement officer of a summons and complaint completed under this section, the Diversion Program shall send the person a notice to report to the Diversion Program. The notice to report shall provide that:

(1) The person is required to complete all conditions related to the offense imposed by the Diversion Program, including substance abuse screening and, if deemed appropriate following the screening, substance abuse education or substance abuse counseling, or both.

(2) If the person does not satisfactorily complete the substance abuse screening, any required substance abuse education or substance abuse counseling, or any other condition related to the offense imposed by the Diversion Program, the case will be referred to the Judicial Bureau, where the person, if found liable for the violation, shall be assessed a civil penalty, ~~the person's driver's license will be suspended, and the person's automobile insurance rates may increase substantially.~~

(3) If the person satisfactorily completes the substance abuse screening, any required substance abuse education or substance abuse counseling, and any other condition related to the offense imposed by the Diversion Program, no penalty shall be imposed ~~and the person's operator's license shall not be suspended.~~

(f)(4) Diversion Program Requirements.

(1) Upon being contacted by a person who has been issued a notice of violation, the Diversion Program shall register the person in the Youth Substance Abuse Safety Program. Pursuant to the Youth Substance Abuse Safety Program, the Diversion Program shall impose conditions on the person. The conditions imposed shall include only conditions related to the offense and in every case shall include a condition requiring satisfactory completion of substance abuse screening using an evidence-based tool and, if deemed appropriate following the screening, substance abuse assessment and substance abuse education or substance abuse counseling, or both. If the screener recommends substance abuse counseling, the person shall choose a State-certified or State-licensed substance abuse counselor or substance abuse treatment provider to provide the services.

(2) Substance abuse screening required under this subsection shall be completed within 60 days after the Diversion Program receives a summons and complaint. The person shall complete all conditions at his or her own expense.

(3) When a person has satisfactorily completed substance abuse screening, any required substance abuse education or substance abuse counseling, and any other condition related to the offense which the Diversion Program has imposed, the Diversion Program shall:

(A) ~~void~~ Void the summons and complaint with no penalty due; ~~and,~~

(B) ~~send~~ Send copies of the voided summons and complaint to the Judicial Bureau and to the law enforcement officer who completed them. Before sending copies of the voided summons and complaint to the Judicial Bureau under this subdivision, the Diversion Program shall redact all language containing the person's name, address, Social Security number, and any other information which identifies the person.

(4) If a person does not satisfactorily complete substance abuse screening, any required substance abuse education or substance abuse counseling, or any other condition related to the offense imposed by the Diversion Program or if the person fails to pay the Diversion Program any required program fees, the Diversion Program shall file the summons and complaint with the Judicial Bureau for adjudication under 4 V.S.A. chapter 29. The Diversion Program shall provide a copy of the summons and complaint to the law enforcement officer who issued the notice of violation and shall provide two copies to the person charged with the violation.

(5) A person aggrieved by a decision of the Diversion Program or alcohol counselor may seek review of that decision pursuant to Rule 75 of the Vermont Rules of Civil Procedure.

~~(g) Failure to Pay Penalty. If a person fails to pay a penalty imposed under this section by the time ordered, the Judicial Bureau shall notify the Commissioner of Motor Vehicles, who shall suspend the person's operator's license and privilege to operate a motor vehicle until payment is made. [Repealed.]~~

~~(h) Record of Adjudications. Upon adjudicating a person in violation of this section, the Judicial Bureau shall notify the Commissioner of Motor Vehicles, who shall maintain a record of all such adjudications which shall be separate from the registry maintained by the Department for motor vehicle driving records. The identity of a person in the registry shall be revealed only to a law enforcement officer determining whether the person has previously violated this section. [Repealed.]~~

Sec. 6. REPEAL

7 V.S.A. § 657 (persons under 21; third or subsequent alcohol offense; crime) is repealed.

Sec. 7. 13 V.S.A. § 5201(5) is amended to read:

(5) "Serious crime" does not include the following misdemeanor offenses unless the judge at arraignment but before the entry of a plea determines and states on the record that a sentence of imprisonment or a fine over \$1,000.00 may be imposed on conviction:

~~(A) Minors misrepresenting age, procuring or possessing malt or vinous beverages or spirituous liquor (7 V.S.A. § 657(a)) [Repealed.]~~

* * *

Sec. 8. 28 V.S.A. § 205(c) is amended to read:

(c)(1) Unless the Court in its discretion finds that the interests of justice require additional standard and special conditions of probation, when the Court orders a specific term of probation for a qualifying offense, the offender shall be placed on administrative probation, which means that the only conditions of probation shall be that the probationer:

* * *

(2) As used in this subsection, “qualifying offense” means:

* * *

(M) ~~A first offense of a minor’s misrepresenting age, procuring, possessing, or consuming liquors under 7 V.S.A. § 657. [Repealed.]~~

* * *

Sec. 9. 7 V.S.A. § 1005 is amended to read:

§ 1005. PERSONS UNDER 18 YEARS OF AGE; POSSESSION OF
TOBACCO PRODUCTS; MISREPRESENTING AGE OR
PURCHASING TOBACCO PRODUCTS; PENALTY

(a) A person under 18 years of age shall not possess, purchase, or attempt to purchase tobacco products, tobacco substitutes, or tobacco paraphernalia unless the person is an employee of a holder of a tobacco license and is in possession of tobacco products, tobacco substitutes, or tobacco paraphernalia to effect a sale in the course of employment. A person under 18 years of age shall not misrepresent his or her age to purchase or attempt to purchase tobacco products, tobacco substitutes, or tobacco paraphernalia. A person who possesses tobacco products, tobacco substitutes, or tobacco paraphernalia in violation of this subsection shall be subject to having the tobacco products, tobacco substitutes, or tobacco paraphernalia immediately confiscated and shall be further subject to a civil penalty of \$25.00. ~~In the case of failure to pay a penalty, the Judicial Bureau shall mail a notice to the person at the address in the complaint notifying the person that failure to pay the penalty within 60 days of the notice will result in either the suspension of the person’s operator’s license for a period of not more than 90 days or the delay of the initial licensing of the person for a period of not more than one year. A copy of the notice shall be sent to the Commissioner of Motor Vehicles, who, after expiration of 60 days from the date of notice and unless notified by the Judicial Bureau that the penalty has been paid shall either suspend the person’s operator’s license or cause initial licensing of the person to be delayed for the periods set forth in this subsection and the rules.~~ An action under this subsection shall be brought in the same manner as a traffic violation pursuant to 23 V.S.A. chapter 24. ~~The Commissioner of Motor Vehicles shall adopt~~

~~rules in accordance with the provisions of 3 V.S.A. chapter 25 to implement the provisions of this subsection, which may provide for incremental suspension or delays not exceeding cumulatively the maximum periods established by this subsection.~~

(b) A person under 18 years of age who misrepresents his or her age by presenting false identification to purchase tobacco products, tobacco substitutes, or tobacco paraphernalia shall be fined not more than \$50.00 or provide up to 10 hours of community service, or both.

Sec. 10. 13 V.S.A. § 1753 is amended to read:

§ 1753. FALSE PUBLIC ALARMS

(a) A person who initiates or willfully circulates or transmits a report or warning of an impending bombing or other offense or catastrophe, knowing that the report or warning is false or baseless and that it is likely to cause evacuation of a building, place of assembly, or facility of public transport, or to cause public inconvenience or alarm, shall, for the first offense, be imprisoned for not more than two years or fined not more than \$5,000.00, or both. For the second or subsequent offense, the person shall be imprisoned for not more than five years or fined not more than \$10,000.00, or both. In addition, the court may order the person to perform community service. Any community service ordered under this section shall be supervised by the ~~department of corrections~~ Department of Corrections.

~~(b) In addition, if the person is under 18 years of age, or if the person is enrolled in a public school, an approved or recognized independent school, a home study program, or tutorial program as those terms are defined in section 11 of Title 16:~~

~~(1) if the person has a motor vehicle operator's license issued under chapter 9 of Title 23, the commissioner of motor vehicles shall suspend the license for 180 days for a first offense and two years for a second offense; or~~

~~(2) if the person does not qualify for a license because the person is underage, the commissioner of motor vehicles shall delay the person's eligibility to obtain a drivers license for 180 days for the first offense and two years for the second offense. [Repealed.]~~

Sec. 11. 18 V.S.A. § 4230b is amended to read:

§ 4230b. MARIJUANA POSSESSION BY A PERSON UNDER 21 YEARS
OF AGE; FIRST OR SECOND OFFENSE; CIVIL VIOLATION

(a) Offense. ~~Except as otherwise provided in section 4230c of this title, a~~ A person under 21 years of age who knowingly and unlawfully possesses one

ounce or less of marijuana or five grams or less of hashish commits a civil violation and shall be referred to the Court Diversion Program for the purpose of enrollment in the Youth Substance Abuse Safety Program. A person who fails to complete the program successfully shall be subject to:

(1) a civil penalty of ~~\$300.00 and suspension of the person's operator's license and privilege to operate a motor vehicle for a period of 90 days,~~ \$400.00 for a first offense; and

(2) a civil penalty of not less than \$400.00 and not more than \$600.00 ~~and suspension of the person's operator's license and privilege to operate a motor vehicle for a period of 180 days,~~ for a second or subsequent offense.

(b) Issuance of Notice of Violation. A law enforcement officer shall issue a person under 21 years of age who violates this section with a notice of violation, in a form approved by the Court Administrator. The notice of violation shall require the person to provide his or her name and address and shall explain procedures under this section, including that:

(1) the person shall contact the Diversion Program in the county where the offense occurred within 15 days;

(2) failure to contact the Diversion Program within 15 days will result in the case being referred to the Judicial Bureau, where the person, if found liable for the violation, will be subject to a civil penalty ~~and a suspension of the person's operator's license and may face substantially increased insurance rates;~~

(3) no money should be submitted to pay any penalty until after adjudication; and

(4) the person shall notify the Diversion Program if the person's address changes.

* * *

(e) Notice to Report to Diversion. Upon receipt from a law enforcement officer of a summons and complaint completed under this section, the Diversion Program shall send the person a notice to report to the Diversion Program. The notice to report shall provide that:

(1) The person is required to complete all conditions related to the offense imposed by the Diversion Program, including substance abuse screening and, if deemed appropriate following the screening, substance abuse education or substance abuse counseling, or both.

(2) If the person does not satisfactorily complete the substance abuse screening, any required substance abuse education or substance abuse

counseling, or any other condition related to the offense imposed by the Diversion Program, the case will be referred to the Judicial Bureau, where the person, if found liable for the violation, shall be assessed a civil penalty, ~~the person's driver's license will be suspended, and the person's automobile insurance rates may increase substantially.~~

(3) If the person satisfactorily completes the substance abuse screening, any required substance abuse education or substance abuse counseling, and any other condition related to the offense imposed by the Diversion Program, no penalty shall be imposed ~~and the person's operator's license shall not be suspended.~~

* * *

~~(g) Failure to Pay Penalty. If a person fails to pay a penalty imposed under this section by the time ordered, the Judicial Bureau shall notify the Commissioner of Motor Vehicles, who shall suspend the person's operator's license and privilege to operate a motor vehicle until payment is made. [Repealed.]~~

~~(h) Record of Adjudications. Upon adjudicating a person in violation of this section, the Judicial Bureau shall notify the Commissioner of Motor Vehicles, who shall maintain a record of all such adjudications which shall be separate from the registry maintained by the Department for motor vehicle driving records. The identity of a person in the registry shall be revealed only to a law enforcement officer determining whether the person has previously violated this section. [Repealed.]~~

Sec. 12. DEPARTMENT OF MOTOR VEHICLES REGISTRY OF UNDERAGE ALCOHOL AND MARIJUANA OFFENSES

It is the intent of the General Assembly that any copy of the registry of underage alcohol and marijuana adjudications that the Department of Motor Vehicles was required to maintain under the former 7 V.S.A. § 656(h) and 18 V.S.A. § 4230b(h) (repealed in Secs. 5 and 11 of this act, respectively) be destroyed.

Sec. 13. REPEAL

18 V.S.A. § 4230c (marijuana possession by a person under 21 years of age; third or subsequent offense; crime) is repealed.

Sec. 14. 20 V.S.A. § 2358 (b)(2)(B)(i)(XX) is amended to read:

(XX) 18 V.S.A. §§ 4230(a), ~~4230c,~~ and 4230d (marijuana possession);

Sec. 15. 32 V.S.A. § 8909 is amended to read:

§ 8909. ENFORCEMENT

If the tax due under subsection ~~8903(a), (b) and (d)~~ 8903(d) of this title is not paid as hereinbefore provided the Commissioner shall suspend ~~such purchaser's or the rental company's right to operate a motor vehicle license to act as a rental company and motor vehicle registrations~~ within the State of Vermont until such tax is paid, and such tax may be recovered with costs in an action brought in the name of the State on this statute.

* * * Driving with License Suspended* * *

Sec. 16. 23 V.S.A. § 674 is amended to read:

§ 674. OPERATING AFTER SUSPENSION OR REVOCATION OF

LICENSE; PENALTY; REMOVAL OF REGISTRATION PLATES;

TOWING

(a)(1) Except as provided in section 676 of this title, a person whose license or privilege to operate a motor vehicle has been suspended or revoked for a violation of this section or subsection 1091(b), 1094(b), or 1128(b) or (c) of this title and who operates or attempts to operate a motor vehicle upon a public highway before the suspension period imposed for the violation has expired shall be imprisoned not more than two years or fined not more than \$5,000.00, or both.

(2)(A) A person whose license or privilege to operate a motor vehicle has been suspended or revoked for a violation of section 2506 of this title (points suspensions) and who operates or attempts to operate a motor vehicle upon a public highway for a third or subsequent time on or after July 1, 2016 before the suspension period imposed for the violation has expired shall be imprisoned not more than two years or fined not more than \$5,000.00, or both.

(B) A Other than as provided in subdivision (A) of this subdivision (a)(2), a person who violates section 676 of this title for the sixth or subsequent time shall, if the five prior offenses occurred on or after July 1, 2003 December 1, 2016, be imprisoned not more than two years or fined not more than \$5,000.00, or both.

(3) Violations of section 676 of this title that occurred prior to the date a person successfully completes the DLS Diversion Program ~~or prior to the date that a person pays the amount due to the Judicial Bureau in accordance with subsection 2307(b) of this chapter~~ shall not be counted as prior offenses under subdivision (2) of this subsection.

* * *

* * * Assessment of Points Against a Person's Driving Record * * *

Sec. 17. 23 V.S.A. § 1006a is amended to read:

§ 1006a. HIGHWAYS; EMERGENCY CLOSURE; TEMPORARY SPEED LIMITS

* * *

(b) The Traffic Committee may establish a temporary speed limit within that portion of the State highways that is being reconstructed or maintained. The limit shall be effective when appropriate signs stating the limit are erected.

(c) Under 3 V.S.A. chapter 25, the Traffic Committee shall adopt such rules as are necessary to administer this section and may delegate this authority to the Agency of Transportation.

(d) Notwithstanding the limit established in section 2302 of this title and the waiver penalties established under 4 V.S.A. § 1102(d), the penalty and points assessed against a person's driving record for a violation of the speed limits established under subsection (b) of this section shall be twice the penalty and the points assessed for non-worksites speed violations.

Sec. 18. 23 V.S.A. § 1010 is amended to read:

§ 1010. SPECIAL OCCASIONS; TOWN HIGHWAY MAINTENANCE

(a) When it appears that traffic will be congested by reason of a public occasion, or when a town highway is being reconstructed or maintained, or where utilities are being installed, relocated, or maintained, the legislative body of a municipality may make special regulations as to the speed of motor vehicles on town highways, may exclude motor vehicles from town highways, and may make such traffic rules and regulations as the public good requires. However, signs indicating the special regulations must be conspicuously posted in and near all affected areas, giving as much notice as possible to the public so that alternative routes of travel could be considered.

(b) Notwithstanding the limit established in section 2302 of this title and the waiver penalties established under 4 V.S.A. § 1102(d), the penalty and points assessed against a person's driving record for a violation of the speed limits established under the worksite provision of this section shall be twice the penalty and the points assessed for non-worksites speed violations.

Sec. 19. 23 V.S.A. § 1081 is amended to read:

§ 1081. BASIC RULE AND MAXIMUM LIMITS

* * *

(b) Except when there exists a special hazard that requires lower speed in accordance with subsection (a) of this section, the limits specified in this section or established as hereinafter authorized are maximum lawful speeds, and no person shall drive a vehicle on a highway at a speed in excess of 50 miles per hour.

(c) The maximum speed limits set forth in this section may be altered in accordance with sections 1003, 1004, 1006a, 1007, and 1010 of this title.

* * *

Sec. 20. 23 V.S.A. § 1095b is amended to read:

§ 1095b. HANDHELD USE OF PORTABLE ELECTRONIC DEVICE

PROHIBITED

* * *

(c) Penalties.

(1) A person who violates this section commits a traffic violation and shall be subject to a fine of not less than \$100.00 and not more than \$200.00 for a first violation, and of not less than \$250.00 and not more than \$500.00 for a second or subsequent violation within any two-year period.

(2) A person convicted of violating this section while operating within a ~~properly designated work zone in which construction, maintenance, or utility personnel are present~~ the following areas shall have ~~two~~ five points assessed against his or her driving record ~~for a first conviction and five points assessed for a second or subsequent conviction:~~

(A) a properly designated work zone in which construction, maintenance, or utility personnel are present; or

(B) a school zone marked with warning signs conforming to the Manual on Uniform Traffic Control Devices.

(3) A person convicted of violating this section outside ~~a work zone in which personnel are present~~ the areas designated in subdivision (2) of this subsection shall ~~not~~ have two points assessed against his or her driving record.

* * *

Sec. 21. 23 V.S.A. § 1099 is amended to read:

§ 1099. TEXTING PROHIBITED

* * *

(c) A person who violates this section commits a traffic violation as defined in section 2302 of this title and shall be subject to:

(1) a penalty of not less than \$100.00 and not more than \$200.00 for a first violation, and of not less than \$250.00 and not more than \$500.00 for a second or subsequent violation within any two-year period; and

(2)(A) an assessment of five points against his or her driving record if the violation occurred outside the areas designated in subdivision (B) of this subdivision (c)(2); or

(B) an assessment of seven points against his or her driving record when the violation occurred within:

(i) a properly designated work zone in which construction, maintenance, or utility personnel are present; or

(ii) a school zone marked with warning signs conforming to the Manual on Uniform Traffic Control Devices.

Sec. 22. 23 V.S.A. § 2502 is amended to read:

§ 2502. POINT ASSESSMENT; SCHEDULE

(a) Unless the assessment of points is waived by a Superior judge or a Judicial Bureau hearing officer in the interests of justice and in accordance with subsection 2501(b) of this title, a person operating a motor vehicle shall have points assessed against his or her driving record for convictions for moving violations of the indicated motor vehicle statutes in accord with the following schedule: (All references are to Title 23 of the Vermont Statutes Annotated.)

(1) Two points assessed for:

* * *

(LL)(i) § 1095. Entertainment picture visible to operator;

(ii) § 1095b~~(e)~~(2) Use of portable electronic device in—outside work or school zone—first offense

* * *

(EEE) § 1258 Child restraint systems;

~~(FFF)~~ § 800.

Operating without financial responsibility;

~~(FFF)~~(GGG)

All other moving violations which have no specified points;

* * *

(4) Five points assessed for:

(A) § 1050.

Failure to yield to emergency vehicles;

(B) § 1075.

Illegal passing of school bus;

(C) § 1099.

Texting prohibited—outside work or school zone;

(D) § 1095b~~(e)~~(2)

Use of portable electronic device in work or school zone—~~second and subsequent offenses~~;

* * *

(6) Two points assessed for sections 1003 ~~and~~, 1007, and 1081. State speed zones ~~and~~, local speed limits, and basic speed rule, less than 10 miles per hour over and in excess of speed limit;

(7) Three points assessed for sections 1003 ~~and~~, 1007, and 1081. State speed zones ~~and~~, local speed limits, and basic speed rule, more than 10 miles per hour over and in excess of speed limit;

(8) Five points assessed for sections 1003 ~~and~~, 1007, and 1081. State speed zones ~~and~~, local speed limits, and basic speed rule, more than 20 miles per hour over and in excess of speed limit;

(9) Eight points assessed for sections 1003 ~~and~~, 1007, 1081, and 1097. State speed zones ~~and~~, local speed limits, and basic speed rule, more than 30 miles per hour over and in excess of the speed limit, and criminal excessive speed;

(10) Seven points assessed for subdivision 1099(c)(2)(B) (texting in a work or school zone).

* * *

* * * Judicial Bureau Hearings; Consideration of Ability to Pay * * *

Sec. 23. 4 V.S.A. § 1106 is amended to read:

§ 1106. HEARING

(a) The Bureau shall notify the person charged and the issuing officer of the time and place for the hearing.

(b) The hearing shall be held before a hearing officer and conducted in an impartial manner. The hearing officer may, by subpoena, compel the attendance and testimony of witnesses and the production of books and records. All witnesses shall be sworn. The burden of proof shall be on the State or municipality to prove the allegations by clear and convincing evidence. As used in this section, “clear and convincing evidence” means evidence which establishes that the truth of the facts asserted is highly probable. Certified copies of records supplied by the Department of Motor Vehicles or the Agency of Natural Resources and presented by the issuing officer or other person shall be admissible without testimony by a representative of the Department of Motor Vehicles or the Agency of Natural Resources.

(c)(1) Prior to entering judgment against a defendant, a hearing officer shall consider evidence of ability to pay if offered by the defendant.

(2) The hearing officer shall make findings which shall be stated on the record or, if more time is needed, made in writing at a later date. The hearing officer may make a finding that the person has committed a lesser included violation.

(d) A law enforcement officer may void or amend a complaint issued by that officer by so marking the complaint and returning it to the Bureau, regardless of whether the amended complaint is a lesser included violation. At the hearing, a law enforcement officer may void or amend a complaint issued by that officer in the discretion of that officer.

(e) A State’s Attorney may dismiss or amend a complaint.

(f) The Supreme Court shall establish rules for the conduct of hearings under this chapter.

* * * DLS Diversion Program * * *

Sec. 24. DLS DIVERSION PROGRAM; REPEAL

2012 Acts and Resolves No. 147, Sec. 2, as amended by 2013 Acts and Resolves No. 18, Sec. 1a (DLS Diversion Program) shall be repealed on July 1, 2016.

* * * Awareness of Payment and Hearing Options * * *

Sec. 25. RAISING AWARENESS OF TRAFFIC VIOLATION JUDGMENT
PAYMENT AND HEARING OPTIONS

(a) In conducting basic training courses and annual in-service trainings, the Criminal Justice Training Council is encouraged to train enforcement officers about the existence of payment plan options for traffic violation judgments. Enforcement officers are encouraged to mention these options to a motorist at the time of issuing a complaint for a traffic violation.

(b) The General Assembly recommends that the Judicial Bureau update the standard materials that enforcement officers provide to persons issued a civil complaint for a traffic violation to notify such persons of payment plan options and of the person's right to request a hearing on ability to pay.

(c) The General Assembly encourages the Judicial Bureau to prominently display on its website information about the existence of payment plan options for traffic violation judgments and the right of a person issued a complaint for a traffic violation to request a hearing on ability to pay.

(d) The Agency of Transportation shall carry out a campaign to raise public awareness of traffic violation judgment payment plan options and of a person's right to request a hearing before a Judicial Bureau hearing officer on his or her ability to pay a Judicial Bureau judgment.

* * * Criminal DLS Charges; Statistics * * *

Sec. 26. STATISTICS REGARDING CRIMINAL DLS CHARGES

(a) On or before January 15, 2018, and separately for calendar years 2013, 2014, 2015, 2016, and 2017, the Court Administrator shall submit in writing to the House and Senate Committees on Judiciary the number, and a breakdown of the dispositions, of criminal driving with license suspended charges filed statewide:

(1) under 23 V.S.A. § 674(b) (driving while suspended for a DUI offense);

(2) under 23 V.S.A. § 674(a)(1) (driving while suspended for certain non-DUI criminal motor vehicle offenses);

(3) for a sixth or subsequent violation of 23 V.S.A. § 676 (civil DLS);

(4) under 23 V.S.A. § 674(a)(2)(A) (a third or subsequent DLS arising from a suspension for points) for 2016 and after.

(b) On or before January 15 of 2019, 2020, and 2021, respectively, the Court Administrator shall submit in writing to the House and Senate

Committees on Judiciary the statistics specified in subdivisions (a)(1)–(4) of this section for the prior calendar year.

* * * Traffic Violation Judgments; Receipts; Statistics * * *

Sec. 27. STATISTICS RELATED TO TRAFFIC VIOLATION JUDGMENT
HEARINGS, RECEIPTS

(a) On or before January 15, 2018, and separately for calendar years 2013, 2014, 2015, 2016, and 2017, the Court Administrator shall submit in writing to the House and Senate Committees on Judiciary and on Transportation:

- (1) the total number of traffic violation judgments entered; and
- (2) the total payments collected on traffic violation judgments.

(b) On or before January 15 of 2019, 2020, and 2021, respectively, the Court Administrator shall submit in writing to the Committees on Judiciary and on Transportation the statistics specified in subdivisions (a)(1) and (2) of this section for the prior calendar year.

(c) On or before January 15 of 2017–2021, respectively, the Court Administrator shall submit in writing to the House and Senate Committees on Judiciary and on Transportation:

- (1) the total unpaid amount of outstanding traffic violation judgments as of January 1 of each year;
- (2) the number of persons under payment plans as of January 1 of each year and the number of persons who successfully completed a payment plan in the prior calendar year;
- (3) the number of judgments reduced in the prior calendar year as a result of a hearing held pursuant to 4 V.S.A. § 1106; and
- (4) the number of judgments reduced in the prior calendar year as a result of postjudgment motions to amend.

* * * Underage Alcohol and Marijuana Violations; Statistics * * *

Sec. 28. UNDERAGE ALCOHOL AND MARIJUANA VIOLATIONS;
COMPLETION OF DIVERSION

On or before January 25, 2018, the Diversion Program shall submit to the House and Senate Committees on Judiciary, the House Committee on Human Services, and the Senate Committee on Health and Welfare statistics showing:

(1) for calendar years 2014 and 2015 separately, the number of notices to report received by the Diversion Program from law enforcement, as well as the number of persons who successfully completed Diversion, for:

(A) a violation of 7 V.S.A. § 656 (underage alcohol violation); and

(B) a violation of 18 V.S.A. § 4230b (underage marijuana violation);

(2) for calendar years 2016 and 2017 separately, the number of notices to report received by the Diversion Program from law enforcement, as well as the number of persons who successfully completed Diversion, for:

(A) a first or second violation of 7 V.S.A. § 656;

(B) a third or subsequent violation of 7 V.S.A. § 656;

(C) a first or second violation of 18 V.S.A. § 4230b; and

(D) a third or subsequent violation of 18 V.S.A. § 4230b.

Sec. 29. 23 V.S.A. § 4(44) is amended to read:

(44) “Moving violation” ~~shall mean~~ means any violation of any provision of this title, while the motor vehicle is being operated on a public highway, over which operation the operator has discretion as to commission of the act, ~~with exception of~~ except for offenses pertaining to a parked vehicle, equipment, size, weight, inspection, or registration of the vehicle, and ~~child restraint or safety belt systems or~~ child restraint or safety belt systems or seat belts as required in section ~~1258 or~~ 1259 of this title.

* * * Effective Dates * * *

Sec. 30. EFFECTIVE DATES

(a) This section, Sec. 1 (termination of suspensions arising from pre-1990 failures to appear on criminal traffic offense charges), Sec. 2(e) (public awareness campaign), Sec. 2a (termination of suspensions repealed in act), and Secs. 3–15 (amendment or repeal of license suspension and registration refusal provisions and underage alcohol and marijuana crimes) shall take effect on passage.

(b) All other sections shall take effect on July 1, 2016.

(Committee Vote: 11-0-0)

Rep. Donovan of Burlington, for the Committee on **Ways & Means**, recommends the bill ought to pass when amended as recommended by the Committee on **Judiciary**.

(Committee Vote: 10-1-0)

NOTICE CALENDAR

Committee Bill for Second Reading

H. 860

An act relating to on-farm livestock slaughter.

(Rep. Smith of New Haven will speak for the Committee on **Agriculture & Forest Products.**)

H. 861

An act relating to regulation of treated article pesticides.

(Rep. Zagar of Barnard will speak for the Committee on **Agriculture & Forest Products.**)

H. 862

An act relating to insurance laws.

(Rep. Kitzmiller of Montpelier will speak for the Committee on **Commerce & Economic Development.**)

Favorable with Amendment

H. 74

An act relating to safety protocols for social and mental health workers

Rep. McCoy of Poultney, for the Committee on **Human Services**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 33 V.S.A. chapter 82 is added to read:

CHAPTER 82. SAFETY PROVISIONS FOR WORKERS

§ 8201. SAFETY POLICIES FOR SOCIAL AND MENTAL HEALTH WORKERS

(a)(1) The Agency of Human Services and each department of the Agency shall establish and maintain a written workplace violence prevention and crisis response policy that meets or exceeds the requirements of this chapter in place for the benefit of employees working directly with clients.

(2) The Agency shall ensure that its contracts with providers that directly serve clients and that are administered or designated by a department of the Agency require the providers to establish and maintain a written workplace violence prevention and crisis response policy that meets or exceeds the requirements of this chapter in place for the benefit of employees working directly with clients.

(b) A written workplace violence prevention and crisis response policy prepared with input from employees working directly with clients shall minimally include the following:

(1) measures the program intends to take to respond to an incident of or credible threat of workplace violence against employees providing direct services to clients;

(2) a system for centrally recording all incidents of or credible threats of workplace violence against employees providing direct services to clients;

(3) a training program to educate employees providing direct services to clients about workplace violence and ways to reduce the risks; and

(4) the development and maintenance of a violence prevention and response committee that includes employees working directly with clients to monitor ongoing compliance with the violence prevention and crisis response policy and to assist employees providing direct services to clients.

(c) In preparing the written violence prevention and crisis response policy required by this section, the Agency, each department of the Agency, and providers identified in subdivision (a)(2) of this section shall ensure the policy is consistent with the U.S. Occupational Safety and Health Administration's Guidelines for Preventing Workplace Violence for Healthcare and Social Service Workers or any subsequently adopted federal regulations or State rules governing workplace safety.

(d) A written workplace violence prevention and crisis response policy shall be evaluated annually and updated as necessary by the violence and prevention response committee and provided to employees who work directly with clients.

(e) The requirements of this section shall neither be construed as a waiver of sovereign immunity by the State, nor as creating any private right of action against the State for damages resulting from failure to comply with this section.

Sec. 2. 18 V.S.A. § 7114 is added to read:

§ 7114. SAFETY POLICIES FOR SOCIAL AND MENTAL HEALTH WORKERS

(a) The Agency of Human Services and each department of the Agency shall establish and maintain a workplace violence prevention and crisis response policy for the benefit of employees working directly with clients pursuant to 33 V.S.A. § 8201.

(b) The Agency shall ensure that its contracts with providers described in 33 V.S.A. § 8201(a)(2) require the providers to establish and maintain a written workplace violence prevention and crisis response policy for the benefit of employees working directly with clients pursuant to 33 V.S.A. § 8201.

Sec. 3. EFFECTIVE DATE

This act shall take effect on January 1, 2017.

(Committee Vote: 9-0-2)

H. 111

An act relating to the removal of grievance decisions from the Vermont Labor Relations Board's website

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

Sec. 1. 3 V.S.A. § 928 is amended to read:

§ 928. ~~RULES AND REGULATIONS~~

* * *

(b) Notwithstanding the provisions of subsection (a) of this section, ~~rules and regulations~~ adopted by the Board as they relate to grievance appeals shall provide:

* * *

(7)(A)(i) That the name of any grievant whom the Board exonerates of misconduct for which he or she was disciplined shall be redacted from the version of the Board's decision that is posted on the Board's website.

(ii) Nothing in this subdivision (7)(A) shall be construed to require the Board to redact the name of the grievant from any other version of the Board's decision or from any other documents related to the grievance.

(B) Nothing in this subdivision (7) shall be construed to modify an individual's right to privacy pursuant to any law, rule, or policy.

Sec. 2. GRIEVANT PREVIOUSLY EXONERATED; REDACTION OF
NAME FROM BOARD DECISION

(a) On or before January 1, 2017, the Vermont Labor Relations Board shall adopt rules necessary to permit a grievant whom, in a decision issued after December 31, 1994, the Board exonerated of misconduct for which he or she

was disciplined to petition the Board to redact his or her name from the version of the Board's decision that is posted on the Board's website.

(b)(1) Nothing in this section shall be construed to require the Board to redact the name of the grievant from any other version of the Board's decision or from any other documents related to the grievance.

(2) Nothing in this section shall be construed to modify an individual's right to privacy pursuant to any law, rule, or policy.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2016.

(Committee Vote: 7-0-1)

H. 183

An act relating to security in the Capitol Complex

Rep. Macaig of Williston, for the Committee on **Corrections & Institutions**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 2 V.S.A. chapter 30 is added to read:

CHAPTER 30. CAPITOL COMPLEX SECURITY ADVISORY COMMITTEE

§ 991. CAPITOL COMPLEX SECURITY ADVISORY COMMITTEE

(a) Creation. There is created an advisory committee for the purpose of:

(1) reviewing and coordinating security in the Capitol Complex; and

(2) enhancing communication, operability, and efficiency on security issues in the Capitol Complex among the Executive, Legislative, and Judicial branches.

(b) Membership.

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

(A) the Commissioner of Buildings and General Services or designee;

(B) the Commissioner of Public Safety or designee;

(C) the Commissioner of Motor Vehicles or designee;

(D) the Chief of the Capitol Police or designee;

(E) the Chairs of the House Committee on Corrections and Institutions and the Senate Committee on Institutions;

(F) the Sergeant at Arms;

(G) the Court Administrator or designee; and

(H) the Chief of the Montpelier Police Department or designee.

(2) The Chairs of the House Committee on Corrections and Institutions and the Senate Committee on Institutions shall co-chair the Committee.

(3) The Committee shall have the assistance of the staff of the Office of Legislative Council and the Joint Fiscal Office.

(c) Powers and duties. The Committee shall:

(1) review proposed security enhancements and security plans for the Capitol Complex, and make recommendations to the House Committee on Corrections and Institutions and the Senate Committee on Institutions;

(2) review the coordination of security plans and law enforcement services in the Capitol Complex among the Commissioner of Buildings and General Services, the Court Administrator, and the Sergeant at Arms; and

(3) annually review the memorandum of understanding coordinating the provision of security plans and law enforcement activities in the Capitol Complex, as required by 29 V.S.A. § 171(f).

(d) Meetings. The Committee may meet at any time at the call of the Co-Chairs, but no less than one time per year.

(e) Reimbursement. For attendance at meetings during adjournment of the General Assembly, legislative members of the Committee shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406.

(f) Definition. As used in this section, "Capitol Complex" shall have the same meaning as in 29 V.S.A. § 182.

Sec. 2. 2 V.S.A. § 70(c) is amended to read:

(c) Coordination of Capitol Complex security. The Capitol Police Department shall ~~coordinate~~ provide security within the State House and assist the Commissioner of Buildings and General Services in providing security and law enforcement services within the Capitol Complex, ~~as delineated in a memorandum of understanding signed by the Commissioner and the Sergeant at Arms no later than June 30, 2000, and as subsequently amended. In all other areas of the Capitol Complex, except the space occupied by the Supreme Court, the security, control of traffic, and coordination of law enforcement activity shall be under the direction of the Commissioner of Buildings and~~

~~General Services, with which the Capitol Police Department may assist pursuant to the memorandum of understanding required by 29 V.S.A. § 171(f).~~

Sec. 3. 29 V.S.A. § 171 is amended to read:

§ 171. RESPONSIBILITY FOR SECURITY

(a) ~~The commissioner of buildings and general services~~ Commissioner of Buildings and General Services shall be responsible for ensuring the security of all ~~state~~ State facilities, regardless of funding source for construction or renovation, the lands upon which those facilities are located, and the occupants of those facilities and places, except that:

(1) in those ~~state-owned~~ State-owned or ~~state-leased~~ State-leased buildings which house a court plus one or more other functions, security for the space occupied by the court shall be under the jurisdiction of the ~~supreme court~~ Supreme Court and security elsewhere shall be under the jurisdiction of the ~~commissioner of buildings and general services~~ Commissioner of Buildings and General Services;

(2) in those buildings which function exclusively as courthouses, security shall be under the jurisdiction of the ~~supreme court~~ Supreme Court;

(3) the space occupied by the ~~supreme court~~ Supreme Court shall be under the jurisdiction of the ~~supreme court~~ Supreme Court; and

(4) in the ~~state house~~ State House, security shall be under the jurisdiction of the ~~sergeant at arms~~ Sergeant at Arms.

(b) ~~The commissioner of buildings and general services~~ Commissioner of Buildings and General Services shall develop a security plan for each facility, except for those under the jurisdiction of the ~~supreme court~~ Supreme Court and of the ~~sergeant at arms~~ Sergeant at Arms, and shall regularly update these plans as necessary and be responsible for coordinating responses to all security needs. ~~The supreme court and the sergeant at arms shall, in cooperation with the commissioner of buildings and general services, Supreme Court and the Sergeant at Arms shall, in cooperation with the Commissioner of Buildings and General Services,~~ prepare and update such plans for the facilities under their respective jurisdictions.

* * *

(f) The Commissioner of Buildings and General Services, the Sergeant at Arms, and the Court Administrator shall execute a memorandum of understanding to coordinate the provision of security plans and law enforcement services within the Capitol Complex. The memorandum of understanding shall incorporate any existing agreements related to the provision of law enforcement services or security in the Capitol Complex. As

used in this section, “Capitol Complex” shall have the same meaning as used in section 182 of this title.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

(Committee Vote: 11-0-0)

H. 206

An act relating to regulating notaries public

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

Sec. 1. 26 V.S.A. chapter 101 is added to read:

CHAPTER 101. NOTARIES PUBLIC

Subchapter 1. General Provisions

§ 5201. SHORT TITLE

This chapter may be cited as the Uniform Law on Notarial Acts.

§ 5202. UNIFORMITY OF APPLICATION AND CONSTRUCTION

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 5203. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT

This act modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. § 7003(b).

§ 5204. DEFINITIONS

As used in this chapter:

(1) “Acknowledgment” means a declaration by an individual before a notarial officer that the individual has signed a record for the purpose stated in the record and, if the record is signed in a representative capacity, that the individual signed the record with proper authority and signed it as the act of the individual or entity identified in the record.

(2) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) “Electronic signature” means an electronic symbol, sound, or process attached to or logically associated with a record and executed or adopted by an individual with the intent to sign the record.

(4) “In a representative capacity” means acting as:

(A) an authorized officer, agent, partner, trustee, or other representative for a person other than an individual;

(B) a public officer, personal representative, guardian, or other representative, in the capacity stated in a record;

(C) an agent or attorney-in-fact for a principal; or

(D) an authorized representative of another in any other capacity.

(5) “Notarial act” means an act, whether performed with respect to a tangible or electronic record, that a notarial officer may perform under the law of this State. The term includes taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument.

(6) “Notarial officer” means a notary public or other individual authorized to perform a notarial act.

(7) “Notary public” means an individual commissioned to perform a notarial act by the Office.

(8) “Office” means the Office of the Secretary of State.

(9) “Official stamp” means a physical image affixed to or embossed on a tangible record or an electronic image attached to or logically associated with an electronic record.

(10) “Person” means an individual, corporation, business trust, statutory trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(11) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(12) “Sign” means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(13) “Signature” means a tangible symbol or an electronic signature that evidences the signing of a record.

(14) “Stamping device” means:

(A) a physical device capable of affixing to or embossing on a tangible record an official stamp; or

(B) an electronic device or process capable of attaching to or logically associating with an electronic record an official stamp.

(15) “State” means a state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(16) “Verification on oath or affirmation” means a declaration, made by an individual on oath or affirmation before a notarial officer, that a statement in a record is true.

§ 5205. EXEMPTIONS

(a) Generally.

(1) The persons set forth in subdivision (2) of this subsection shall be exempt from the following requirements of this chapter:

(A) the examination set forth in § 5241(b);

(B) continuing education set forth in § 5243;

(C) the penalties set forth in § 5242;

(D) the certificate and official stamp described in § 5267, if acting within the scope of his or her official duties; and

(E) maintaining the journal described in § 5271, if acting within the scope of his or her official duties.

(2)(A) Notaries public employed by the Judiciary, including judges, Superior Court clerks, court operations managers, Probate registers, case managers, docket clerks, and after-hours relief from abuse contract employees.

(B) Notaries public employed as law enforcement officers certified under 20 V.S.A. chapter 151, who are noncertified constables, or who are employed by Vermont law enforcement agencies; the Departments of Public Safety, of Fish and Wildlife, of Motor Vehicles, of Liquor Control, or for Children and Families; the Office of the Defender General; the Attorney General; or a State’s Attorney or Sheriff.

(b) Attorneys. Attorneys licensed and in good standing in this State are exempt from the following requirements of this chapter:

- (1) the examination requirement set forth in § 5241(b); and
- (2) the continuing education requirement set forth in § 5243.

(c) Fees. The following persons are exempt from the fee required under section 5225 of this chapter:

- (1) a judge, clerk, or other court staff, as designated by the Court Administrator;
- (2) State's Attorneys and their deputies;
- (3) justices of the peace and town clerks and their assistants; and
- (4) State Police officers, municipal police officers, fish and game wardens, sheriffs and deputy sheriffs, motor vehicle inspectors, employees of the Department of Corrections, and employees of the Department for Children and Families.

Subchapter 2. Administration

§ 5221. SECRETARY OF STATE'S OFFICE DUTIES

The Office shall:

- (1) provide general information to applicants for commissioning as a notary public;
- (2) administer fees as provided under section 5225 of this chapter;
- (3) explain appeal procedures to notaries public and applicants and explain complaint procedures to the public;
- (4) receive applications for commissioning, review applications, refer applications for commissioning to the Assistant Judges in the county of jurisdiction, and renew commissions;
- (5) refer all disciplinary matters to the Assistant Judges in the county of jurisdiction; and
- (6) impose administrative penalties, issue warnings or reprimands, or revoke, suspend, reinstate, or condition commissions, as ordered by the Assistant Judges.

§ 5222. ASSISTANT JUDGE'S DUTIES

The Assistant Judges in a county of jurisdiction shall:

- (1) receive applications for commissioning from the Secretary of State's office and commission applicants;

(2) receive disciplinary matters referred by the Secretary of State's office; and

(3) impose administrative penalties, issue warnings or reprimands, or revoke, suspend, reinstate, or condition commissions after notice and an opportunity for a hearing.

§ 5223. ADVISOR APPOINTEES

(a) The Secretary of State shall appoint two notaries public to serve as advisors in matters relating to notarial acts. The advisors shall be appointed for staggered five-year terms and serve at the pleasure of the Secretary. One of the initial appointments shall be for less than a five-year term.

(b) Each appointee shall have at least three years of experience as a notary public during the period immediately preceding appointment and shall be actively commissioned in Vermont and remain in good standing during incumbency.

(c) The Office shall seek the advice of the advisor appointees in carrying out the provisions of this chapter. The appointees shall be entitled to compensation and reimbursement of expenses as set forth in 32 V.S.A. § 1010 for attendance at any meeting called by the Office for this purpose.

§ 5224. RULES

(a) The Office, with the advice of the advisor appointees and the Assistant Judges, may adopt rules to implement this chapter. The rules may:

(1) prescribe the manner of performing notarial acts regarding tangible and electronic records;

(2) include provisions to ensure that any change to or tampering with a record bearing a certificate of a notarial act is self-evident;

(3) include provisions to ensure integrity in the creation, transmittal, storage, or authentication of electronic records or signatures;

(4) prescribe the process of granting, renewing, conditioning, denying, suspending, or revoking or otherwise disciplining a notary public commission and assuring the trustworthiness of an individual holding a commission as notary public; and

(5) include provisions to prevent fraud or mistake in the performance of notarial acts.

(b) Rules adopted regarding the performance of notarial acts with respect to electronic records may not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical

specification. In adopting, amending, or repealing rules regarding notarial acts with respect to electronic records, the Office shall consider, as far as is consistent with this chapter:

(1) the most recent standards regarding electronic records promulgated by national bodies, such as the National Association of Secretaries of State;

(2) standards, practices, and customs of other jurisdictions that substantially enact this chapter; and

(3) the views of governmental officials and entities and other interested persons.

§ 5225. FEES

For the issuance of a commission as a notary public, the Secretary of State shall collect a fee of \$30.00, of which \$9.00 shall accrue to the State, \$9.00 shall accrue to the county, and \$12.00 shall accrue to the Secretary of State.

Subchapter 3. Commissions

§ 5241. COMMISSION AS NOTARY PUBLIC; QUALIFICATIONS; NO IMMUNITY OR BENEFIT

(a) An individual qualified under subsection (b) of this section may apply to the Office for a commission as a notary public. The applicant shall comply with and provide the information required by rules adopted by the Office and pay the application fee set forth in section 5225 of this chapter.

(b) An applicant for a commission as a notary public shall:

(1) be at least 18 years of age;

(2) be a citizen or permanent legal resident of the United States;

(3) be a resident of or have a place of employment or practice in this State;

(4) not be disqualified to receive a commission under section 5242 of this chapter; and

(5) pass an examination approved by the Office based on the statutes, rules, and ethics relevant to notarial acts.

(c) Before issuance of a commission as a notary public, an applicant for the commission shall execute an oath of office and submit it to the Office.

(d) Upon compliance with this section, the Office, with the approval of the Assistant Judges in the county of jurisdiction, shall issue a commission as a notary public to an applicant for a term of two years.

(e) A commission to act as a notary public authorizes the notary public to perform notarial acts. The commission does not provide the notary public any immunity or benefit conferred by law of this State on public officials or employees.

§ 5242. GROUNDS TO DENY, REFUSE TO RENEW, REVOKE, SUSPEND, OR CONDITION COMMISSION OF NOTARY PUBLIC

(a) The Office, with the approval of the Assistant Judges in the county of jurisdiction, may deny, refuse to renew, revoke, suspend, or impose a condition on a commission as notary public for any act or omission that demonstrates the individual lacks the honesty, integrity, competence, or reliability to act as a notary public, including:

(1) failure to comply with this chapter;

(2) a fraudulent, dishonest, or deceitful misstatement or omission in the application for a commission as a notary public submitted to the Office;

(3) a conviction of the applicant or notary public of any felony or a crime involving fraud, dishonesty, or deceit;

(4) a finding against, or admission of liability by, the applicant or notary public in any legal proceeding or disciplinary action based on the applicant's or notary public's fraud, dishonesty, or deceit;

(5) failure by the notary public to discharge any duty required of a notary public, whether by this chapter, rules of the Office, or any federal or State law;

(6) use of false or misleading advertising or representation by the notary public representing that the notary has a duty, right, or privilege that the notary does not have;

(7) violation by the notary public of a rule of the Office regarding a notary public;

(8) denial, refusal to renew, revocation, suspension, or conditioning of a notary public commission in another state; or

(9) committing any of the conduct set forth in 3 V.S.A. § 129a(a).

(b) If the Office, with the approval of the Assistant Judges in the county of jurisdiction, denies, refuses to renew, revokes, suspends, or imposes conditions on a commission as a notary public, the applicant or notary public is entitled to timely notice and hearing in accordance with 3 V.S.A. chapter 25.

§ 5243. RENEWALS; CONTINUING EDUCATION

(a) Commissions shall be renewed every two years upon payment of the fee set forth in section 5225 of this chapter, provided the person applying for renewal completes continuing education approved by the Office, which shall not be required to exceed more than two hours, during the preceding two-year period.

(b) The Office, with the advice of the advisor appointees, shall establish by rule guidelines and criteria for continuing education credit.

(c) Biennially, the Office shall provide a renewal notice to each licensee. Upon receipt of a licensee's completed renewal, fee, and evidence of eligibility, the Office shall issue to him or her a new commission.

§ 5244. DATABASE OF NOTARIES PUBLIC

The Office shall maintain an electronic database of notaries public:

(1) through which a person may verify the authority of a notary public to perform notarial acts; and

(2) that indicates whether a notary public has notified the Office that the notary public will be performing notarial acts on electronic records.

§ 5245. PROHIBITIONS; OFFENSES

(a) A person shall not perform or attempt to perform a notarial act or hold himself or herself out as being able to do so in this State without first having been commissioned.

(b) A person shall not use in connection with the person's name any letters, words, or insignia indicating or implying that the person is a notary public unless commissioned in accordance with this chapter.

(c) A person shall not perform or attempt to perform a notarial act while his or her commission has been revoked or suspended.

(d) A person who violates a provision of this section shall be subject to a fine of not more than \$5,000.00 or imprisonment for not more than one year, or both. Prosecution may occur upon the complaint of the Attorney General or a State's Attorney and shall not act as a bar to civil or administrative proceedings involving the same conduct.

(e) A commission as a notary public shall not authorize an individual to:

(1) assist a person in drafting legal records, give legal advice, or otherwise practice law;

(2) act as an immigration consultant or an expert on immigration matters;

(3) represent a person in a judicial or administrative proceeding relating to immigration to the United States, U.S. citizenship, or related matters; or

(4) receive compensation for performing any of the activities listed in this subsection.

(f) A notary public, other than an attorney licensed to practice law in this State, shall not use the term “notario” or “notario publico.”

(g)(1) A notary public, other than an attorney licensed to practice law in this State, shall not advertise or represent that the notary public may assist persons in drafting legal records, give legal advice, or otherwise practice law.

(2) If a notary public who is not an attorney licensed to practice law in this State in any manner advertises or represents that the notary public offers notarial services, whether orally or in a record, including broadcast media, print media, and the Internet, the notary public shall include the following statement, or an alternate statement authorized or required by Office, in the advertisement or representation, prominently and in each language used in the advertisement or representation: “I am not an attorney licensed to practice law in this State. I am not allowed to draft legal records, give advice on legal matters, including immigration, or charge a fee for those activities.” If the form of advertisement or representation is not broadcast media, print media, or the Internet and does not permit inclusion of the statement required by this subsection because of size, it shall be displayed prominently or provided at the place of performance of the notarial act before the notarial act is performed.

(h) Except as otherwise allowed by law, a notary public shall not withhold access to or possession of an original record provided by a person that seeks performance of a notarial act by the notary public.

Subchapter 4. Notarial Acts

§ 5261. NOTARIAL ACTS IN THIS STATE; AUTHORITY TO PERFORM

(a) A notarial act may only be performed in this State by a notary public commissioned under this chapter.

(b) The signature and title of an individual performing a notarial act in this State are prima facie evidence that the signature is genuine and that the individual holds the designated title.

§ 5262. AUTHORIZED NOTARIAL ACTS

(a) A notarial officer may perform a notarial act authorized by this chapter or otherwise by law of this State.

(b) A notarial officer shall not perform a notarial act with respect to a record to which the officer or the officer's spouse is a party, or in which either of them has a direct beneficial interest. A notarial act performed in violation of this subsection is voidable.

§ 5263. REQUIREMENTS FOR CERTAIN NOTARIAL ACTS

(a) Acknowledgments. A notarial officer who takes an acknowledgment of a record shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and making the acknowledgment has the identity claimed and that the signature on the record is the signature of the individual.

(b) Verifications. A notarial officer who takes a verification of a statement on oath or affirmation shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and making the verification has the identity claimed and that the signature on the statement verified is the signature of the individual.

(c) Signatures. A notarial officer who witnesses or attests to a signature shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and signing the record has the identity claimed.

(d) Copies. A notarial officer who certifies or attests a copy of a record or an item that was copied shall determine that the copy is a full, true, and accurate transcription or reproduction of the record or item.

(e) Protests. A notarial officer who makes or notes a protest of a negotiable instrument shall determine the matters set forth in 9A V.S.A. § 3-505(b) (protest; certificate of dishonor).

§ 5264. PERSONAL APPEARANCE REQUIRED

If a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature shall appear personally before the notarial officer.

§ 5265. IDENTIFICATION OF INDIVIDUAL

(a) Personal knowledge. A notarial officer has personal knowledge of the identity of an individual appearing before the officer if the individual is personally known to the officer through dealings sufficient to provide reasonable certainty that the individual has the identity claimed.

(b) Satisfactory evidence. A notarial officer has satisfactory evidence of the identity of an individual appearing before the officer if the officer can identify the individual:

(1) by means of:

(A) a passport, driver's license, or government issued non-driver identification card, which is current or expired not more than three years before performance of the notarial act; or

(B) another form of government identification issued to an individual, which is current or expired not more than three years before performance of the notarial act, contains the signature or a photograph of the individual, and is satisfactory to the officer; or

(2) by a verification on oath or affirmation of a credible witness personally appearing before the officer and known to the officer or whom the officer can identify on the basis of a passport, driver's license, or government issued non-driver identification card, which is current or expired not more than three years before performance of the notarial act.

(c) Additional information. A notarial officer may require an individual to provide additional information or identification credentials necessary to assure the officer of the identity of the individual.

§ 5266. SIGNATURE IF INDIVIDUAL UNABLE TO SIGN

If an individual is physically unable to sign a record, the individual may direct an individual other than the notarial officer to sign the individual's name on the record. The notarial officer shall insert "Signature affixed by (name of other individual) at the direction of (name of individual)" or words of similar import.

§ 5267. CERTIFICATE OF NOTARIAL ACT

(a) A notarial act shall be evidenced by a certificate. The certificate shall:

(1) be executed contemporaneously with the performance of the notarial act;

(2) be signed and dated by the notarial officer and be signed in the same manner as on file with the Office;

(3) identify the jurisdiction in which the notarial act is performed;

(4) contain the title of office of the notarial officer; and

(5) indicate the date of expiration of the officer's commission.

(b)(1) If a notarial act regarding a tangible record is performed by a notary public, an official stamp shall be affixed to or embossed on the certificate.

(2) If a notarial act regarding an electronic record is performed by a notarial officer and the certificate contains the information specified in subdivisions (a)(2)–(4) of this section, an official stamp may be attached to or logically associated with the certificate.

(c) A certificate of a notarial act is sufficient if it meets the requirements of subsections (a) and (b) of this section and:

(1) is in a short form as set forth in section 5068 of this chapter;

(2) is in a form otherwise permitted by the law of this State;

(3) is in a form permitted by the law applicable in the jurisdiction in which the notarial act was performed; or

(4) sets forth the actions of the notarial officer and the actions are sufficient to meet the requirements of the notarial act as provided in sections 5262–5264 of this chapter or a law of this State other than this chapter.

(d) By executing a certificate of a notarial act, a notarial officer certifies that the officer has complied with the requirements and made the determinations specified in sections 5263–5265 of this chapter.

(e) A notarial officer shall not affix the officer’s signature to, or logically associate it with, a certificate until the notarial act has been performed.

(f)(1) If a notarial act is performed regarding a tangible record, a certificate shall be part of, or securely attached to, the record.

(2) If a notarial act is performed regarding an electronic record, the certificate shall be affixed to, or logically associated with, the electronic record.

(3) If the Office has established standards by rule pursuant to section 5224 of this chapter for attaching, affixing, or logically associating the certificate, the process shall conform to those standards.

§ 5268. SHORT FORM CERTIFICATES

The following short form certificates of notarial acts shall be sufficient for the purposes indicated, if completed with the information required by subsections 5267(a) and (b) of this chapter:

(1) For an acknowledgment in an individual capacity:

State of _____ [County] of _____

This record was acknowledged before me on _____ by _____

Date _____ Name(s) of individual(s) _____

Signature of notarial officer _____

Stamp [_____]

Title of office _____ [My commission expires: _____]

(2) For an acknowledgment in a representative capacity:

State of _____ [County] of _____

This record was acknowledged before me on _____ by _____

Date _____ Name(s) of individual(s) _____
as _____ (type of authority, such as officer or trustee) of _____ (name of party on behalf of whom _____ record was _____ executed).

Signature of notarial officer _____

Stamp [_____]

Title of office _____ [My commission expires: _____]

(3) For a verification on oath or affirmation:

State of _____ [County] of _____

Signed and sworn to (or affirmed) before me on _____ by _____

Date _____

Name(s) of individual(s) making statement _____

Signature of notarial officer _____

Stamp [_____]

Title of office _____ [My commission expires: _____]

(4) For witnessing or attesting a signature:

State of _____ [County] of _____

Signed [or attested] before me on _____ by _____

Date _____ Name(s) of individual(s) _____

Signature of notarial officer _____

Stamp [_____]

Title of office _____ [My commission expires: _____]

(5) For certifying a copy of a record:

State of _____ [County] of _____

I certify that this is a true and correct copy of a record in the possession of _____.

Dated _____

Signature of notarial officer _____

Stamp [_____]

Title of office _____ [My commission expires: _____]

§ 5269. OFFICIAL STAMP

The official stamp of a notary public shall:

(1) include the notary public's name, jurisdiction, and other information required by the Office; and

(2) be capable of being copied together with the record to which it is affixed or attached or with which it is logically associated.

§ 5270. STAMPING DEVICE

(a) A notary public is responsible for the security of the notary public's stamping device and shall not allow another individual to use the device to perform a notarial act.

(b) If a notary public's stamping device is lost or stolen, the notary public or the notary public's personal representative or guardian shall notify promptly the Office on discovering that the device is lost or stolen.

§ 5271. JOURNAL

(a) A notary public shall maintain a journal in which the notary public chronicles all notarial acts that the notary public performs. The notary public shall retain the journal for 10 years after the performance of the last notarial act chronicled in the journal.

(b) A journal may be created on a tangible medium or in an electronic format. A notary public shall maintain only one journal at a time to chronicle all notarial acts, whether those notarial acts are performed regarding tangible or electronic records.

(1) If the journal is maintained on a tangible medium, it shall be a permanent, bound register with numbered pages.

(2) If the journal is maintained in an electronic format, it shall be in a permanent, tamper-evident electronic format complying with the rules of the Office.

(c) An entry in a journal shall be made contemporaneously with the performance of the notarial act and contain the following information:

(1) the date and time of the notarial act;

(2) a description of the record, if any, and type of notarial act;

(3) the full name and address of each individual for whom the notarial act is performed;

(4) if identity of the individual is based on personal knowledge, a statement to that effect;

(5) if identity of the individual is based on satisfactory evidence, a brief description of the method of identification and the identification credential presented, if any, including the date of issuance and expiration of any identification credential; and

(6) the fee, if any, charged by the notary public.

(d) If a notary public's journal is lost or stolen, the notary public promptly shall notify the Office on discovering that the journal is lost or stolen.

(e) On resignation from, or the revocation or suspension of, a notary public's commission, the notary public shall retain the notary public's journal in accordance with subsection (a) of this section and inform the Office where the journal is located.

(f) Instead of retaining a journal as provided in subsection (e) of this section, a current or former notary public may transmit the journal to the Office or a repository approved by the Office.

(g) On the death or adjudication of incompetency of a current or former notary public, the notary public's personal representative or guardian or any other person knowingly in possession of the journal shall transmit it to the Office or a repository approved by the Office.

§ 5272. NOTIFICATION REGARDING PERFORMANCE OF NOTARIAL ACT ON ELECTRONIC RECORD; SELECTION OF TECHNOLOGY.

(a) A notary public may select one or more tamper-evident technologies to perform notarial acts with respect to electronic records. A person shall not require a notary public to perform a notarial act with respect to an electronic record with a technology that the notary public has not selected.

(b) Before a notary public performs the notary public's initial notarial act with respect to an electronic record, the notary public shall notify the Office that the notary public will be performing notarial acts with respect to electronic

records and identify the technology the notary public intends to use. If the Office has established standards by rule for approval of technology pursuant to section 5223 of this chapter, the technology shall conform to the standards. If the technology conforms to the standards, the Office shall approve the use of the technology.

§ 5273. AUTHORITY TO REFUSE TO PERFORM NOTARIAL ACT

(a) A notarial officer shall refuse to perform a notarial act if the officer is not satisfied that:

(1) the individual executing the record is competent or has the capacity to execute the record; or

(2) the individual's signature is knowingly and voluntarily made.

(b) A notarial officer may refuse to perform a notarial act unless refusal is prohibited by law other than this chapter.

§ 5274. VALIDITY OF NOTARIAL ACTS

(a) Except as otherwise provided in subsection 5273(b) of this chapter, the failure of a notarial officer to perform a duty or meet a requirement specified in this chapter shall not invalidate a notarial act performed by the notarial officer.

(b) The validity of a notarial act under this chapter shall not prevent an aggrieved person from seeking to invalidate the record or transaction that is the subject of the notarial act or from seeking other remedies based on law of this State other than this chapter or law of the United States.

(c) This section does not validate a purported notarial act performed by an individual who does not have the authority to perform notarial acts.

§ 5275. NOTARIAL ACT IN ANOTHER STATE

(a) A notarial act performed in another state has the same effect under the law of this State as if performed by a notarial officer of this State, if the act performed in that state is performed by:

(1) a notary public of that state;

(2) a judge, clerk, or deputy clerk of a court of that state; or

(3) any other individual authorized by the law of that state to perform the notarial act.

(b) The signature and title of an individual performing a notarial act in another state are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(c) The signature and title of a notarial officer described in subdivision (a)(1) or (2) of this section conclusively establish the authority of the officer to perform the notarial act.

§ 5276. NOTARIAL ACT UNDER AUTHORITY OF FEDERALLY RECOGNIZED INDIAN TRIBE

(a) A notarial act performed under the authority and in the jurisdiction of a federally recognized Indian tribe has the same effect as if performed by a notarial officer of this State, if the act performed in the jurisdiction of the tribe is performed by:

(1) a notary public of the tribe;

(2) a judge, clerk, or deputy clerk of a court of the tribe; or

(3) any other individual authorized by the law of the tribe to perform the notarial act.

(b) The signature and title of an individual performing a notarial act under the authority of and in the jurisdiction of a federally recognized Indian tribe are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(c) The signature and title of a notarial officer described in subdivision (a)(1) or (2) of this section conclusively establish the authority of the officer to perform the notarial act.

§ 5277. NOTARIAL ACT UNDER FEDERAL AUTHORITY

(a) A notarial act performed under federal law has the same effect under the law of this State as if performed by a notarial officer of this State, if the act performed under federal law is performed by:

(1) a judge, clerk, or deputy clerk of a court;

(2) an individual in military service or performing duties under the authority of military service who is authorized to perform notarial acts under federal law;

(3) an individual designated a notarizing officer by the U.S. Department of State for performing notarial acts overseas; or

(4) any other individual authorized by federal law to perform the notarial act.

(b) The signature and title of an individual acting under federal authority and performing a notarial act are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(c) The signature and title of an officer described in subdivision (a)(1), (2), or (3) of this section shall conclusively establish the authority of the officer to perform the notarial act.

§ 5278. FOREIGN NOTARIAL ACT

(a) In this section, “foreign state” means a government other than the United States, a state, or a federally recognized Indian tribe.

(b) If a notarial act is performed under authority and in the jurisdiction of a foreign state or constituent unit of the foreign state or is performed under the authority of a multinational or international governmental organization, the act has the same effect under the law of this State as if performed by a notarial officer of this State.

(c) If the title of office and indication of authority to perform notarial acts in a foreign state appears in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.

(d) The signature and official stamp of an individual holding an office described in subsection (c) of this section are prima facie evidence that the signature is genuine and the individual holds the designated title.

(e) An apostille in the form prescribed by the Hague Convention of October 5, 1961, and issued by a foreign state party to the Convention conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

(f) A consular authentication issued by an individual designated by the U.S. Department of State as a notarizing officer for performing notarial acts overseas and attached to the record with respect to which the notarial act is performed conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

Sec. 2. REPEAL

The following are repealed:

- (1) 24 V.S.A. chapter 5, subchapter 9 (notaries public);
- (2) 32 V.S.A. § 1403(b) (county clerk; notaries public without charge or fee);
- (3) 32 V.S.A. § 1436 (fee for certification of appointment as notary public); and
- (4) 32 V.S.A. § 1759 (notaries public fees).

Sec. 3. APPLICABILITY; NOTARY PUBLIC COMMISSION IN EFFECT

(a)(1) This act shall apply to a notarial act performed on or after the effective date of this act.

(2) A notary public, in performing notarial acts on and after the effective date of this act, shall comply with the provisions of this act.

(b)(1) A commission as a notary public in effect on the effective date of this act shall continue until its date of expiration.

(2) A notary public who applies to renew a commission as a notary public on or after the effective date of this act shall comply with the provisions of this act.

Sec. 4. SAVINGS CLAUSE

This act shall not affect the validity or effect of a notarial act performed prior to the effective date of this act.

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2017.

(Committee Vote: 9-1-1)

H. 261

An act relating to criminal record inquiries by an employer

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

Sec. 1. 21 V.S.A. § 495j is added to read:

§ 495j. CRIMINAL HISTORY RECORDS; EMPLOYMENT

APPLICATIONS

(a) Except as provided in subsection (b) of this section, an employer shall not request criminal history record information on its initial employee application form. An employer may inquire about a prospective employee's criminal history record during an interview or once the prospective employee has been deemed otherwise qualified for the position.

(b) An employer may inquire about criminal convictions on an initial employee application form if the following conditions are met:

(1)(A) the prospective employee is applying for a position for which any federal or State law or regulation creates a mandatory or presumptive

disqualification based on a conviction for one or more types of criminal offenses; or

(B) the employer or an affiliate of the employer is subject to an obligation imposed by any federal or State law or regulation not to employ individuals, in either one or more positions, who have been convicted of one or more types of criminal offenses; and

(2) the questions on the application form are limited to the types of criminal offenses creating the disqualification or obligation.

(c) If an employer inquires about a prospective employee's criminal history record information, the prospective employee, if still eligible for the position under applicable federal or State law, must be afforded an opportunity to explain the information and the circumstances regarding any convictions, including postconviction rehabilitation.

(d) An employer who violates the provisions of this section shall be assessed a civil penalty of up to \$100.00 for each violation.

(e) As used in this section:

(1) "Criminal history record" has the same meaning as set forth in 20 V.S.A. § 2056a.

(2) "Employee" has the same meaning as set forth in section 495d of this chapter.

(3) "Employer" has the same meaning as set forth in section 495d of this chapter.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2017.

(Committee Vote: 7-0-1)

H. 522

An act relating to establishing an Office of the Child Protection Advocate

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

Sec. 1. 3 V.S.A. chapter 45, subchapter 4 is redesignated to read:

Subchapter 4. Departments, Divisions, Offices, and Boards

Sec. 2. 3 V.S.A. § 2284 is added to read:

§ 2284. OFFICE OF THE CHILD PROTECTION OMBUDSMAN

(a) The Office of the Child Protection Ombudsman is created in the Agency of Administration.

(b) The Office shall be headed by the Child Protection Ombudsman, who shall be an individual with expertise and experience relevant to protecting children from abuse and neglect. The Child Protection Ombudsman shall be appointed by the Governor, subject to the advice and consent of the Senate, for a term of four years or until his or her successor is appointed and qualified.

(c) The Child Protection Ombudsman shall:

(1) investigate and resolve complaints on behalf of persons involved in the child protection system;

(2) analyze and monitor the development and implementation of federal, State, and local laws and of regulations and policies relating to child protection and to the Department for Children and Families and make recommendations as he or she deems appropriate;

(3) provide information to the public, agencies, legislators, and others regarding problems and concerns of persons involved in the child protection system, including recommendations relating to such problems and concerns;

(4) promote the development and involvement of citizen organizations in the work of the Office and in protecting children from abuse and neglect;

(5) train persons and organizations in advocating for the interests of children and of persons involved in protecting children from abuse and neglect;

(6) develop and implement a reporting system to collect and analyze information relating to complaints by persons involved in the child protection system;

(7) have access to the records of State agencies as necessary to carry out the provisions of this section; and

(8) submit to the General Assembly and the Governor on or before January 15 of each year a report on the Office's activities and recommendations.

(d) The Child Protection Ombudsman may:

(1) hire or contract with persons to fulfill the purposes of this section;

(2) delegate to employees of the Office any part of his or her authority; and

(3) adopt rules, policies, and procedures necessary to carry out the provisions of this section, including prohibiting any employee or immediate family member of any employee from having any interest that creates a

conflict of interest in carrying out the Ombudsman's responsibilities under this section.

(e) All State agencies shall comply with requests of the Child Protection Ombudsman for records, information, and assistance.

(f) The Child Protection Ombudsman shall be notified of all investigations of serious physical abuse or neglect requiring emergency medical care or resulting in death conducted by the Department for Children and Families or by law enforcement.

(g) No civil liability shall attach to the Child Protection Ombudsman or any employee of the Office of the Child Protection Ombudsman for good-faith performance of the duties imposed by this section.

(h) A person who intentionally hinders the Child Protection Ombudsman or hinders a representative of the Office of the Child Protection Ombudsman acting pursuant to this section shall be imprisoned not more than one year or fined not more than \$5,000.00, or both.

(i) A person who takes discriminatory, disciplinary, or retaliatory action against any person for any communication made or information disclosed to the Child Protection Ombudsman or to a representative of the Office of the Child Protection Ombudsman to aid the Ombudsman in carrying out his or her duties, unless the communication or disclosure was done maliciously or without good faith, shall be imprisoned not more than one year or fined not more than \$5,000.00, or both.

Sec. 3. REALLOCATION OF TWO POSITIONS AND NECESSARY FUNDING; CHILD PROTECTION OMBUDSMAN

(a) The Executive Branch shall reallocate one position and necessary funding to establish the position of Child Protection Ombudsman set forth in 3 V.S.A. § 2284 and one other position and necessary funding to staff the Office of the Child Protection Ombudsman on or before January 1, 2017. The two positions shall be transferred and converted from existing vacant positions in the Department for Children and Families, and shall not increase the total number of authorized State positions. The necessary funding shall be taken from the Department for Children and Families.

(b) The Governor shall appoint the Child Protection Ombudsman pursuant to 3 V.S.A. § 2284 on or before January 1, 2017.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2016.

(Committee Vote: 9-1-1)

H. 531

An act relating to aboveground storage tanks

Rep. Lefebvre of Newark, 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. 10 V.S.A. § 1929a is amended to read:

§ 1929a. STANDARDS FOR ABOVEGROUND STORAGE TANKS

(a) ~~No later than~~ On or before December 31, 2011, the ~~secretary~~ Secretary shall adopt rules addressing the design and proper installation of aboveground storage tanks.

(b) After January 1, 2012, no person shall offer for sale, install, or substantially improve an aboveground storage tank that does not meet the standards adopted by the ~~secretary~~ Secretary under subsection (a) of this section.

(c) On or before July 1, 2017, the Secretary shall adopt rules for the inspection of aboveground storage tanks. The rules shall include, at a minimum, the following:

(1) when installation of secondary containment systems for types of aboveground storage tanks is required, the required specifications of the systems, and the process for installation of the systems;

(2) the protocol to be followed and the criteria to be reviewed in the performance of inspections required under this section, including:

(A) the appropriate methods to document the age of tanks installed on or after July 1, 2017;

(B) the frequency of required tank inspections;

(C) requirements for the tagging or marking of tanks and tank fill pipes when tanks are determined to be noncompliant with the requirements of this section or the rules adopted by the Secretary under this section;

(3) an updated checklist to be used in the performance of inspections required under this section or the rules adopted by the Secretary under this section;

(4) training and certification requirements for tank inspectors; and

(5) the protocol to address tanks identified as noncompliant with the inspection criteria established by the rules adopted by the Secretary under this section.

(d) A fuel supplier shall inspect an aboveground storage tank in accordance with the requirements of this chapter and the rules adopted by the Secretary pursuant to subsection (c) of this section.

(e) The Secretary shall maintain a database of tanks that have been determined to be noncompliant with the requirements of this section or the rules adopted by the Secretary pursuant to subsection (c) of this section. The database shall be accessible to the public.

(f) No person shall deliver heating fuel to an aboveground storage tank which has been visibly designated as noncompliant with the requirements of this chapter.

(g) If the owner of an aboveground storage tank in a structure converts the type of fuel used for home heating purposes from fuel oil or kerosene to natural gas or propane, the owner shall have the aboveground storage tank used to store fuel oil or kerosene and any fill pipes retired from use and removed from the structure at the same time as the conversion. As used in this subsection, "structure" means any assembly of materials that is intended for occupancy or use by a person and that has at least three walls and a roof.

Sec. 2. 10 V.S.A. § 1941(g) is amended to read:

(g) The owner of a farm or residential heating fuel storage tank used for on-premises heating or an underground or aboveground heating fuel storage tank used for on-premises heating by a mobile home park resident, as defined in section 6201 of this title, who desires assistance to close, replace, or upgrade the tank may apply to the Secretary for such assistance. The financial assistance may be in the form of grants of up to: \$2,000.00 or the costs of closure, replacement, or upgrade, whichever is least for an aboveground storage tank located inside a structure; up to \$3,000.00 or the costs of closure, replacement, or upgrade, whichever is least for an aboveground storage tank located outside a structure; and up to \$4,000.00 or the costs of closure, replacement, or upgrade, whichever is least for an underground storage tank. As used in this subsection, "structure" means any assembly of materials that is intended for occupancy or use by a person and that has at least three walls and a roof. Grants shall be made only to the current property owners, except at mobile home parks where a grant may be awarded to a mobile home park resident. To be eligible to receive the grant, an environmental site assessment must be conducted by a qualified consultant during the tank closure, replacement, or upgrade if the tank is an underground heating fuel storage tank. In addition, if the closed tank is to be replaced with an underground heating fuel storage tank, the replacement tank and piping shall provide a level of environmental protection at least equivalent to that provided by a double wall tank and secondarily contained piping. Grants shall be awarded on a

priority basis to projects that will avoid the greatest environmental or health risks. The Secretary shall also give priority to applicants who are replacing their underground heating fuel tanks with aboveground heating fuel storage tanks that will be installed in accordance with the Secretary's recommended standards. The Secretary shall also give priority to lower income applicants. To be eligible to receive the grant, the owner must provide the previous year's financial information, and, if the replacement tank is an aboveground tank, must assure that any work to replace or upgrade a tank shall be done in accordance with industry standards (National Fire Protection Association, or NFPA, Code 31), as it existed on July 1, 2004, until another date or edition is specified by rule of the Secretary. The Secretary shall authorize only up to \$400,000.00 in assistance for underground and aboveground heating fuel tanks in any one fiscal year from the Heating Fuel Account for this purpose. The application must be accompanied by the following information:

- (1) proof of ownership, including information disclosing all owners of record of the property, except in the case where the applicant is a mobile home park resident;
- (2) for farm or residential aboveground heating fuel storage tank owners, a copy of the federal income tax return for the previous year;
- (3) identification of the contractor performing any heating fuel storage tank closure, replacement, or upgrade;
- (4) an estimated cost of tank closure, replacement, or upgrade;
- (5) the amount and type of assistance requested;
- (6) a schedule for the work;
- (7) description of surrounding area, including location of water supply wells, surface waters, and other sensitive receptors; and
- (8) such other information and assurances as the Secretary may require.

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

(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:

* * *

(8) 10 V.S.A. chapter 59, relating to underground storage tanks and aboveground storage tanks;

* * *

Sec. 4. EFFECTIVE DATES

This act shall take effect on July 1, 2016, except that 10 V.S.A. § 1929a(d)–(g) (aboveground storage tank inspection, database, delivery, and removal requirements) shall take effect on July 1, 2017.

(Committee Vote: 9-0-0)

H. 552

An act relating to threatened and endangered species

Rep. Deen of Westminster, 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. 10 V.S.A. § 5401 is amended to read:

§ 5401. DEFINITIONS

As used in this chapter:

- (1) “Agency” means the Agency of Natural Resources.
- (2) “Secretary” means the Secretary of Natural Resources.
- (3) “Species” ~~includes all subspecies of~~ means wildlife or wild plants and any subspecies or other group of wildlife or wild plants of the same species, the members of which may interbreed when mature.
- (4) “Wildlife” means any member of a nondomesticated species of the animal kingdom, whether reared in captivity or not, including, without limitation, any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and also including any part, product, egg, offspring, dead body, or part of the dead body of any such wildlife.
- (5) “Plant” means any member of the plant kingdom, including seeds, roots, and other parts thereof. As used in this chapter, plants shall include fungi.
- (6) “Endangered species” means a species listed ~~on the state endangered species list~~ as endangered under this chapter or ~~determined to be an “endangered species”~~ under the federal Endangered Species Act.
- (7) “Threatened species” means a species listed ~~on the State~~ as a threatened species ~~list~~ under this chapter or determined to be a “threatened species” under the federal Endangered Species Act.
- (8) “Endangered Species Act” and “federal Endangered Species Act” means the Endangered Species Act of 1973, Public Law 93-205, as amended.

(9) "Habitat" means the physical and biological environment in which a particular species of plant or animal lives.

(10) "Conserve," "conserving," and "conservation" mean to use and the use of all methods and procedures ~~both~~ for maintaining or increasing:

(A) the number of individuals within a population of a species;

(B) the number of populations of a species; and

(C) populations of wildlife or wild plants to the optimum carrying capacity of the habitat, ~~and for maintaining those numbers.~~

(11) "Optimum carrying capacity" for a species means a population level of that species which, in that habitat, can ~~indefinitely~~ sustainably coexist with healthy populations of all wildlife and wild plant species normally present.

(12) "Methods" and "procedures" means all activities associated with ~~scientific~~ natural resources management, including, ~~without limitation,~~ scientific research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplanting. The terms also include the periodic or continuous protection of species or populations, where appropriate, and the regulated taking of individuals of the species or population in extraordinary cases where population pressures within a habitat cannot be otherwise relieved.

(13) ~~"Possession" of a member of a species means the state of possessing~~ means holding, controlling, exporting, importing, processing, selling, offering to sell, delivering, carrying, transporting, or shipping by any means a member of ~~that~~ a species.

(14) ~~"Taking,"~~ "Take" or "taking":

(A) ~~with~~ With respect to wildlife means ~~"taking" as defined in section 4001 of this title, and~~ designated a threatened or endangered species, means:

(i) pursuing, shooting, hunting, killing, capturing, trapping, harming, snaring, and netting wildlife;

(ii) an act that creates a risk of injury to wildlife, whether or not the injury occurs, including harassing, wounding, or placing, setting, drawing, or using any net or other device used to take animals; or

(iii) attempting to engage in or assisting another to engage in an act set forth under subdivision (A)(i) or (ii) of this subdivision (14).

(B) with With respect to wild plants designated a threatened or endangered species, means uprooting, transplanting, gathering seeds or fruit, cutting, injuring, harming, or killing or any attempt to do the same or assisting another who is doing or is attempting to do the same.

(15) “Accepted silvicultural practices” means the accepted silvicultural practices defined by the Commissioner of Forests, Parks and Recreation, including the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont adopted by the Commissioner of Forests, Parks and Recreation.

(16) “Critical habitat” for a threatened species or endangered species means:

(A) a delineated location within the geographical area occupied by the species that:

(i) has the physical or biological features that are identifiable, concentrated, and decisive to the survival of a population of the species; and

(ii) is necessary for the conservation or recovery of the species; and

(iii) may require special management considerations or protection; or

(B) a delineated location outside the geographical area occupied by a species at the time it is listed under section 5402 of this title that:

(i)(I) was historically occupied by a species; or

(II) contains habitat that is hydrologically connected or directly adjacent to occupied habitat; and

(ii) contains habitat that is identifiable, concentrated, and decisive to the continued survival of a population of the species; and

(iii) is necessary for the conservation or recovery of the species.

(17) “Destroy or adversely impact” means, with respect to critical habitat, a direct or indirect activity that negatively affects the value of critical habitat for the survival, conservation, or recovery of a listed threatened or endangered species.

(18) “Farming” shall have the same meaning as used in subdivision 6001(22) of this title.

(19) “Forestry operations” means activities related to the management of forests, including a timber harvest; pruning; planting; reforestation; pest, disease, and invasive species control; wildlife habitat management; and

fertilization. “Forestry operation” includes the primary processing of forest products of commercial value on a parcel where the timber harvest occurs.

(20) “Harming,” as used in the definition of “take” or “taking” under subdivision (14) of this subsection, means:

(A) an act that kills or injures a threatened or endangered species; or

(B) the destruction or imperilment of habitat that kills or injures a threatened or endangered species by significantly impairing continued survival or essential behavioral patterns, including reproduction, feeding, and sheltering.

Sec. 2. 10 V.S.A. § 5402 is amended to read:

§ 5402. ENDANGERED AND THREATENED SPECIES LISTS

(a) The Secretary shall adopt by rule a ~~State-endangered~~ State endangered species list and a ~~State-threatened~~ State threatened species list. The listing for any species may apply to the whole State or to any part of the State and shall identify the species by its most recently accepted genus and species names and, if available, the common name.

(b) The Secretary shall determine a species to be endangered if it normally occurs in the State and its continued existence as ~~wildlife or a wild plant in the State~~ a sustainable component of the State’s wildlife or wild plants is in jeopardy.

(c) The Secretary shall determine a species to be threatened if:

(1) it is a sustainable component of the State’s wildlife or wild plants;

(2) it is reasonable to conclude based on available information that its numbers are significantly declining because of loss of habitat or human disturbance; and

(3) unless protected, it will become an endangered species.

(d) In determining whether a species is ~~endangered or threatened or endangered~~, the Secretary shall consider:

(1) the present or threatened destruction, degradation, fragmentation, modification, or curtailment of the range or habitat of the species;

(2) any killing, harming, or over-utilization of the species for commercial, sporting, scientific, educational, or other purposes;

(3) disease or predation affecting the species;

(4) the adequacy of existing regulation;

(5) actions relating to the species carried out or about to be carried out by any governmental agency or any other person who may affect the species; ~~and~~

(6) competition with other species, including nonnative invasive species;

(7) the decline in the population;

(8) cumulative impacts; and

(9) other natural or ~~man-made~~ human-made factors affecting the continued existence of the species.

(e) In determining whether a species is ~~endangered or threatened or~~ endangered or whether to delist a species, the Secretary shall:

(1) use the best scientific, commercial, and other data available;

(2) notify and consult with interested state or appropriate officials in Canada, appropriate State and federal agencies, other states having a common interest in the species, affected landowners, and any interested persons at least 30 days prior to commencement of rulemaking; and

(3) notify the ~~governor~~ appropriate officials and agencies of Quebec or any state contiguous to Vermont in which the species affected is known to occur.

Sec. 3. 10 V.S.A. § 5402a is added to read:

§ 5402a. CRITICAL HABITAT; LISTING

(a) The Secretary may, after the consultation required under subsection 5408(e) of this section, adopt or amend by rule a critical habitat designation list for threatened or endangered species. Critical habitat may be designated in any part of the State. The Secretary shall not be required to designate critical habitat for every State-listed threatened or endangered species. When the Secretary designates critical habitat, the Secretary shall identify the species for which the designation is made, including its most recently accepted genus and species names, and, if available, its common name.

(b) The Secretary shall designate only critical habitat that meets the definition of “critical habitat” under this chapter. In determining whether and where to designate critical habitat for a State-listed threatened or endangered species, the Secretary shall, after consultation with and consideration of recommendations of the Secretary of Agriculture, Food and Markets, the Secretary of Transportation, and the Commissioner of Forests, Parks and Recreation, consider the following:

(1) the current or historic use of the habitat by the listed species;

(2) the extent to which the habitat is decisive to the survival and recovery of the listed species, at any stage of its life cycle;

(3) the space necessary for individual and population growth of the listed species;

(4) food, water, air, light, minerals, or other nutritional or physiological requirements of the listed species;

(5) cover or shelter for the listed species;

(6) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; migration corridors; and overwintering;

(7) the present or threatened destruction, degradation, fragmentation, modification, or curtailment of the range or habitat of the listed species;

(8) the adequacy of existing regulation;

(9) actions relating to the listed species carried out or about to be carried out by any governmental agency or any other person who may affect the listed species;

(10) cumulative impacts; and

(11) natural or human-made factors affecting the continued existence of the listed species.

(c) In determining whether to designate critical habitat for a State-listed threatened or endangered species, the Secretary shall:

(1) use the best scientific, commercial, and other data available;

(2) notify and consult with appropriate officials in Canada, appropriate State and federal agencies, other states having a common interest in the species, affected landowners, and any interested persons at least 30 days prior to commencement of rulemaking; and

(3) notify the appropriate officials and agencies of Quebec or any state contiguous to Vermont in which the species affected is known to occur.

(d) Prior to initiating rulemaking under this section to designate critical habitat, the Secretary shall notify the owner of record of any land on which critical habitat is proposed for designation.

Sec. 4. 10 V.S.A. § 5403 is amended to read:

§ 5403. PROTECTION OF ENDANGERED AND THREATENED SPECIES

(a) Except as authorized under this chapter, a person shall not:

(1) take, possess, or transport wildlife or wild plants that are members of an endangered or a threatened or endangered species; or

(2) destroy or adversely impact critical habitat.

(b) Any person who takes a threatened or endangered species shall report the taking to the Secretary.

(c) The Secretary may, with advice of the Endangered Species Committee and after the consultation required under subsection 5408(e) of this section, adopt rules for the protection and, conservation, or recovery of endangered and threatened species. The rules may establish:

(1) application requirements for an individual permit or general permits issued under this section, including requirements that differ from the requirements of subsection 5408(h) of this title; and

(2) best management practices for general permits.

~~(e)~~(d) The Secretary may bring a civil an environmental enforcement action against any person who violates subsection (a) or (b) of this section or rules adopted under this chapter in accordance with chapters 201 and 211 of this title.

~~(e)~~(e) Instead of bringing a civil an environmental enforcement action for a violation of this chapter or rules adopted under this chapter, the Secretary may refer violations of this chapter to the Commissioner of Fish and Wildlife for criminal enforcement.

~~(e)~~(f) A In a criminal enforcement action, a person who knowingly violates a requirement of this chapter or a rule of the Secretary adopted under subsection (b)(c) of this section related to taking, possessing, transporting, buying, or selling a threatened or endangered species shall be fined not more than \$500.00 in accordance with section 4518 of this title, and the person shall pay restitution under section 4514 of this title.

~~(f)~~(g) Any person who violates subsection (a) or (b) of this section by knowingly injuring a member of a threatened or endangered species or knowingly destroying or adversely impacting critical habitat and who is subject to criminal prosecution may be required by the court to pay restitution for:

(1) actual costs and related expenses incurred in treating and caring for the injured plant or animal to the person incurring these expenses, including the costs of veterinarian services and Agency of Natural Resources staff time; or

(2) reasonable mitigation and restoration costs such as: species restoration plans; habitat protection; and enhancement, transplanting, cultivation, and propagation ~~for plants~~.

Sec. 5. 10 V.S.A. § 5404 is amended to read:

§ 5404. ENDANGERED SPECIES COMMITTEE

(a) A ~~Committee~~ committee on endangered species is created to be known as the “Endangered Species Committee,” and shall consist of nine members, including the Secretary of Agriculture, Food and Markets, the Commissioner of Fish and Wildlife, the Commissioner of Forests, Parks and Recreation, and six members appointed by the Governor from the public at large. Of the six public members, two shall be actively engaged in agricultural or silvicultural activities, two shall be knowledgeable concerning flora, and two shall be knowledgeable concerning fauna. Members appointed by the Governor shall be entitled to reimbursement for expenses incurred in the attendance of meetings, as approved by the Chair. The Chair of the Committee shall be elected from among and by the members each year. Members who are not employees of the State shall serve terms of three years, except that the Governor may make appointments for a lesser term in order to prevent more than two terms from expiring in any year.

(b) The Endangered Species Committee shall advise the Secretary on all matters relating to endangered and threatened species, including whether to alter the lists of endangered and threatened species ~~and~~, how to protect those species, and whether and where to designate critical habitat.

(c) The Agency of Natural Resources shall provide the Endangered Species Committee with necessary staff services.

Sec. 6. 10 V.S.A. § 5405 is amended to read:

§ 5405. CONSERVATION PROGRAMS

The Secretary, with the advice of the Endangered Species Committee, may establish conservation programs and establish recovery plans for the conservation or recovery of threatened or endangered species of wildlife or plants or for the conservation or recovery of critical habitat. The programs may include the purchase of land or aquatic habitat and the formation of contracts for the purpose of management of wildlife or wild plant refuge areas or for other purposes.

Sec. 7. 10 V.S.A. § 5406 is amended to read:

§ 5406. COOPERATION BY OTHER AGENCIES

All agencies of this State shall review programs administered by them which may relate to this chapter and shall, in consultation with the Secretary, utilize their authorities only in a manner which does not jeopardize the threatened or endangered species, critical habitat, or the outcomes of conservation or recovery programs established by this chapter or by the Secretary under ~~its~~ his or her authority.

Sec. 8. 10 V.S.A. § 5407 is amended to read:

§ 5407. ENFORCEMENT AUTHORITY TO SEIZE THREATENED OR ENDANGERED SPECIES

In addition to other methods of enforcement authorized by law, the Secretary may direct under this section that wildlife or wild plants ~~which~~ that were seized because of violation of this chapter be rehabilitated, released, replanted, or transferred to a zoological, botanical, educational or scientific institution, and that the costs of the transfer and staff time related to a violation may be charged to the violator. The Secretary, with the advice of the Endangered Species Committee, may adopt rules for the implementation of this section.

Sec. 9. 10 V.S.A. § 5408 is amended to read:

§ 5408. LIMITATIONS AUTHORIZED TAKINGS; INCIDENTAL TAKINGS; DESTRUCTION OF CRITICAL HABITAT

(a) Authorized taking. Notwithstanding any provision of this chapter, after obtaining the advice of the Endangered Species Committee, the Secretary may permit, under such terms and conditions as the Secretary may, ~~prescribe by rule, require as necessary to carry out the purposes of this chapter, the taking of a threatened or endangered species, the destruction or adverse impact of critical habitat, or any act otherwise prohibited by this chapter if done for any~~ of the following purposes:

- (1) scientific purposes;
- (2) to enhance the propagation or survival of a threatened or endangered species; economic hardship;
- (3) zoological exhibition;
- (4) educational purposes;
- (5) noncommercial cultural or ceremonial purposes; or
- (6) special purposes consistent with the purposes of the federal Endangered Species Act.

(b) Incidental taking. After obtaining the advice of the Endangered Species Committee, the Secretary may permit, under such terms and conditions as the Secretary require as necessary to carry out the purposes of this chapter, the incidental taking of a threatened or endangered species or the destruction or adverse impact of critical habitat if:

(1) the taking is necessary to conduct an otherwise lawful activity;

(2) the taking is attendant or secondary to, and not the purposes of, the lawful activity;

(3) the impact of the permitted incidental take is minimized; and

(4) the incidental taking will not impair the conservation or recovery of any endangered species or threatened species.

(c) Transport through State. Nothing in this chapter shall prevent a person who holds a proper permit from the federal government or any other state from transporting a member of ~~an endangered or a threatened or endangered~~ species from a point outside this State ~~to another point within or without this~~ through the State.

~~(e)~~(d) Possession. Nothing in this chapter shall prevent a person from possessing in this State wildlife or wild plants which are not determined to be “endangered” or “threatened” under the federal Endangered Species Act where the possessor is able to produce substantial evidence that the wildlife or wild plant was first taken or obtained in a place without violating the law of that place, provided that an importation permit may be required under section 4714 of this title or the rules of the Department of Fish and Wildlife.

~~(d)~~(e) Interference with agricultural or silvicultural practices. No rule adopted under this chapter shall cause undue interference with ~~normal agricultural or farming,~~ forestry operations, or accepted silvicultural practices. This section shall not be construed to exempt any person from the provisions of the ~~federal Endangered Species Act~~ requirements of this chapter. The Secretary shall not adopt rules that affect farming, forestry operations, or accepted silvicultural practices without first consulting the Secretary of Agriculture, Food and Markets and the Commissioner of Forests, Parks and Recreation.

(f) Consistency with State law. Nothing in this chapter shall be interpreted to limit or amend the definitions and applications of necessary habitat in chapter 151 of this title or in 30 V.S.A. chapter 5.

~~(e)~~(g) Effect on federal law. Nothing in this section permits a person to violate any provision of federal law concerning federally protected threatened or endangered species.

(h) Permit application. An applicant for a permit under this section shall submit an application to the Secretary that includes the following information:

(1) a description of the activities that could lead to a taking of a listed threatened or endangered species or the destruction or adverse impact of critical habitat;

(2) the steps that the applicant has or will take to avoid, minimize, and mitigate the impact to the relevant threatened or endangered species or critical habitat;

(3) a plan for ensuring that funding is available to conduct any required monitoring and mitigation, if applicable;

(4) a summary of the alternative actions to the taking or destruction of critical habitat that the applicant considered and the reasons that these alternatives were not selected, if applicable;

(5) the name or names and obligations and responsibilities of the person or persons that will be involved in the proposed taking or destruction of critical habitat; and

(6) any additional information that the Secretary may require.

~~(i)~~ (i) Permit fees.

(1) Fees to be charged to a person applying to take a threatened or endangered species under this section shall be:

(A) ~~To~~ to take for scientific purposes, to enhance the propagation or survival of the species, noncommercial cultural or ceremonial purposes, or for educational purposes or special purposes consistent with the federal Endangered Species Act, \$50.00;

(B) ~~To~~ to take for a zoological or botanical exhibition ~~or to lessen an economic hardship~~, \$250.00 for each listed ~~animal or plant~~ wildlife or wild plant taken up to a maximum of \$25,000.00 ~~or, if the Secretary determines that it is in the best interest of the species, the parties may agree to mitigation in lieu of a monetary fee; and~~

(C) for an incidental taking, \$250.00 for each listed wildlife or wild plant taken up to a maximum of \$25,000.00.

(2) The Secretary may require the implementation of mitigation strategies, and may collect mitigation funds, in addition to the permit fees, in order to mitigate the impacts of a taking or the destruction or adverse impact on critical habitat. Mitigation may include:

(A) a requirement to rectify the taking or adverse impact or to reduce the adverse impact over time;

(B) a requirement to manage or restore land within the area of the proposed activity or in an area outside the proposed area as habitat for the threatened or endangered species; or

(C) compensation, including payment of a fee into the Threatened and Endangered Species Fund for the uses of that Fund, provided that any payment is commensurate to the taking or adverse impact proposed.

(3) Fees ~~or~~ and mitigation payments collected under this subsection and interest on fees and mitigation payments shall be deposited in the Threatened and Endangered Species Fund ~~within the Fish and Wildlife Fund, which Fund is hereby created~~ and shall be used solely for expenditures of the Department of Fish and Wildlife related to threatened and endangered species. Expenditures may be made for monitoring, restoration, conservation, recovery, and the acquisition of property interests and other purposes consistent with this chapter. Where practical, the fees collected for takings shall be devoted to the conservation or recovery of the taken species or its habitat. Interest accrued on the Fund shall be credited to the Fund.

~~(g)~~(j) Permit term. A permit issued under this section shall be valid for the period of time specified in the permit, not to exceed five years. A permit issued under this section may be renewed upon application to the Secretary.

(k) Public notice. Prior to issuing a permit for an authorized or incidental taking and prior to the issuance or amendment of a general permit under this section, the Secretary shall provide for: public notice of no fewer than 30 days; opportunity for written comment; and opportunity to request a public informational hearing. The Secretary shall post permit applications, permit decisions, and the initial or amended general permits on the website of the Agency of Natural Resources. The Secretary also shall provide notice to interested persons who request notice of permit applications, permit decisions, and proposed general permits or proposed amendments to general permits.

(l) General permits.

(1) The Secretary may issue general permits for activities that will not affect the continued survival or recovery of a threatened or endangered species.

(2) A general permit issued under this chapter shall contain those terms and conditions necessary to ensure compliance with the provisions of this statute.

(3) These terms and conditions may include the implementation of best management practices and the adoption of specific mitigation measures and required surveying, monitoring, and reporting.

(4) The Secretary may issue a general permit to take a threatened or endangered species or destroy or adversely impact critical habitat only if an activity or class of activities satisfies one or more of the following criteria:

(A) the taking of a threatened or endangered species or the destruction or adverse impact of critical habitat is necessary to address an imminent risk to human health;

(B) a proposed taking of a threatened or endangered species or the destruction or adverse impact of critical habitat would enhance the overall long-term survival of the species; or

(C) the Secretary has adopted best management practices that are designed, when applied, to minimize to the greatest extent possible the taking of a threatened or endangered species or the destruction or adverse impact of critical habitat.

(5) On or before September 1, 2017, the Secretary shall issue a general permit for vegetation management and operational and maintenance activities conducted by a utility. Until the general permit has been issued, no critical habitat designation for wild plants shall be made in utility right of way. As used in this subdivision (5), "utility" means an electric company, telecommunication company, pipeline operator, or railroad company.

(6) Prior to issuing a general permit under this subsection, the Secretary shall:

(A) post a draft of the general permit on the Agency website;

(B) provide public notice of at least 30 days; and

(C) provide for written comments or a public hearing, or both.

(7) For applications for coverage under the terms of an issued general permit, the applicant shall provide notice on a form provided by the Secretary. The Secretary shall post notice of the application on the Agency website and shall provide an opportunity for written comment, regarding whether the application complies with the terms and conditions of the general permit, for ten days following receipt of the application.

(8) The Secretary may require any applicant for coverage under a general permit to submit additional information that the Secretary considers necessary and may refuse to approve coverage under the terms of a general permit until the information is furnished and evaluated.

(9) The Secretary may require any applicant for coverage under a general permit to seek an individual permit under this section if the applicant does not qualify for coverage.

(10) The Secretary may require a person operating under a general permit issued under this section to obtain an individual permit under this section if the person proposes to destroy or adversely impact critical habitat that was designated under section 5402a of this title after issuance of the general permit.

Sec. 10. 10 V.S.A. § 5410 is amended to read:

§ 5410. LOCATION CONFIDENTIAL

(a) ~~All information~~ The Secretary shall not disclose information regarding the specific location of threatened or endangered species sites shall be kept confidential in perpetuity except that the Secretary shall disclose this information regarding the location of the threatened or endangered species to:

(1) the owner of land upon which the species ~~has been~~ is located, ~~or to;~~

(2) a potential buyer of land upon which the species is located who has a bona fide contract to buy the land and applies to the Secretary for disclosure of threatened or endangered species information, ~~and to; or~~

(3) qualified individuals or organizations, public agencies and nonprofit organizations for scientific research or for preservation and planning purposes when the Secretary determines that the preservation of the species is not further endangered by the disclosure.

(b) When the Secretary issues a permit under this chapter to take a threatened or endangered species or destroy or adversely impact critical habitat and when the Secretary designates critical habitat by rule under section 5402a of this title, the Secretary shall disclose only the municipality and general location where the threatened or endangered species or designated critical habitat is located. When the Secretary designates critical habitat under section 5402a of this title, the Secretary shall notify the municipality in which the critical habitat is located and shall disclose the general location of the designated critical habitat.

Sec. 11. STATUTORY REVISION

The Office of Legislative Council, in its statutory revision capacity, is directed to renumber the subdivisions of 10 V.S.A. § 5401 in numerical order and to correct any cross references in statute to 10 V.S.A. § 5410 to reflect the renumbered subdivisions.

Sec. 12. FEE RECOMMENDATION; PERMIT TO DESTROY OR

ADVERSELY IMPACT CRITICAL HABITAT

The consolidated Executive Branch fee report and request to be submitted on or before the third Tuesday of January 2018 pursuant to 32 V.S.A. § 605 shall include a recommendation from the Agency of Natural Resources of a fee for a permit under 10 V.S.A. § 5408 to destroy or adversely impact critical habitat of a State-listed threatened or endangered species. The recommendation shall include whether the owner of property where critical habitat is designated under 10 V.S.A. § 5402a should be required to pay a fee for a permit to destroy or adversely impact critical habitat on his or her property.

Sec. 13. EFFECTIVE DATE

This act shall take effect on July 1, 2016.

(Committee Vote: 7-2-0)

H. 560

An act relating to traffic safety

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

* * * DUI; Ignition Interlock Devices * * *

Sec. 1. 23 V.S.A. § 1200 is amended to read:

§ 1200. DEFINITIONS

As used in this subchapter:

* * *

(9) “Ignition interlock restricted driver’s license” or “ignition interlock RDL” or “RDL” means a restricted license or privilege to operate a motor vehicle issued by the Commissioner allowing a person whose license or privilege to operate has been suspended or revoked for operating under the influence of intoxicating liquor or in excess of legal limits of alcohol concentration, or for refusing an enforcement officer’s reasonable request for an evidentiary test, to operate a motor vehicle, other than a commercial motor vehicle as defined in section 4103 of this title, installed with an approved ignition interlock device.

* * *

Sec. 2. 23 V.S.A. § 1213 is amended to read:

§ 1213. IGNITION INTERLOCK RESTRICTED DRIVER'S LICENSE;
PENALTIES

(a) First offense without death or serious bodily injury. A person whose license or privilege to operate is suspended for a first offense under this subchapter that did not result in death or serious bodily injury to another person shall be permitted to operate a motor vehicle, other than a commercial motor vehicle as defined in section 4103 of this title, if issued a valid ignition interlock RDL. The Commissioner shall issue an ignition interlock RDL ~~to a person eligible under section 1205(a)(1), 1205(a)(2), 1206(a), or 1216(a)(1) of this title upon to a person suspended for a first offense upon receipt of a \$125.00 application fee, and upon receipt and~~ of satisfactory proof of installation of an approved ignition interlock device in any motor vehicle to be operated; and of financial responsibility as provided in section 801 of this title; ~~and enrollment in an Alcohol and Driving Education Program. The RDL shall be valid after expiration of the applicable shortened period specified in section 1205(a)(1), 1205(a)(2), 1206(a), or 1216(a)(1) of this title.~~ A new ignition interlock RDL shall expire at midnight on the eve of the second birthday of the applicant following the date of issue, and may be renewed for one-year terms. The Commissioner shall send by first class mail an application for renewal of the RDL at least 30 days prior to the day renewal is required and shall impose the same conditions for renewal as are required for initial issuance of an ignition interlock RDL. The renewal fee shall be \$125.00.

(b) ~~Second~~ First offense involving death or SBI; second offense. ~~A person~~ Except for an offense under section 1216 of this subchapter or an offense arising solely from being under the influence of a drug other than alcohol, a person whose license or privilege to operate is suspended for a first offense involving death or serious bodily injury to another or a second offense under this subchapter shall be ~~permitted~~ required to operate ~~a motor vehicle, other than a commercial motor vehicle as defined in section 4103 of this title, if issued under~~ a valid ignition interlock RDL. ~~The Commissioner shall issue an ignition interlock RDL to a person eligible under section~~ for the relevant period prescribed in subsection 1205(m), 1206(b), or 1208(a), or 1216(a)(2) of this title prior to being eligible for reinstatement of his or her regular license, unless exempt under subdivision 1209a(a)(4) of this title. A person whose license is suspended under subdivision 1216(a)(2) of this title may elect to obtain an ignition interlock RDL. The Commissioner shall issue an ignition interlock RDL upon receipt of a \$125.00 application fee; and upon receipt of satisfactory proof of installation of an approved ignition interlock device in any motor vehicle to be operated; and of financial responsibility as provided in section 801 of this title; ~~and enrollment in an Alcohol and Driving~~

~~Rehabilitation Program. The RDL shall be valid after expiration of the applicable shortened period specified in section 1205(m), 1208(a), or 1216(a)(2) of this title. A new ignition interlock RDL shall expire at midnight on the eve of the second birthday of the applicant following the date of issue, and may be renewed for one-year terms. The Commissioner shall send by first class mail an application for renewal of the RDL at least 30 days prior to the day renewal is required and shall impose the same conditions for renewal as are required for initial issuance of an ignition interlock RDL. The renewal fee shall be \$125.00.~~

(c) ~~Third or subsequent offense. A person~~ Except for an offense under section 1216 of this subchapter or an offense arising solely from being under the influence of a drug other than alcohol, a person whose license or privilege to operate is suspended or revoked for a third or subsequent offense under this subchapter shall be ~~permitted~~ required to operate ~~a motor vehicle, other than a commercial motor vehicle as defined in section 4103 of this title, if issued under a valid ignition interlock RDL for the relevant period prescribed in subsection 1209a(b) of this title prior to being eligible for reinstatement or issuance of a regular license, unless exempt under subdivision 1209a(a)(4) of this title.~~ The Commissioner shall issue an ignition interlock RDL ~~to a person eligible under section 1205(a)(3), 1205(m), 1208(b), or 1216(a)(2) of this title upon receipt of a \$125.00 application fee, and upon receipt of satisfactory proof of installation of an approved ignition interlock device in any motor vehicle to be operated; and of financial responsibility as provided in section 801 of this title, and enrollment in an Alcohol and Driving Rehabilitation Program. The RDL shall be valid after expiration of the applicable shortened period specified in section 1205(a)(3), 1205(m), 1208(b), or 1216(a)(2) of this title.~~ A new ignition interlock RDL shall expire at midnight on the eve of the second birthday of the applicant following the date of issue, and may be renewed for one-year terms. The Commissioner shall send by first class mail an application for renewal of the RDL at least 30 days prior to the day renewal is required and shall impose the same conditions for renewal as are required for initial issuance of an ignition interlock RDL. The renewal fee shall be \$125.00.

(d) If a fine is to be imposed for a conviction of a violation of section 1201 of this title, upon receipt of proof of installation of an approved ignition interlock device, the Court may order that the fine of an indigent person conditionally be reduced by one-half to defray the costs of the ignition interlock device, subject to the person's ongoing operation under, and compliance with the terms of, a valid ignition interlock RDL as set forth in this section. In considering whether a person's fine should be reduced under this

subsection, the Court shall take into account any discount already provided by the device manufacturer or provider.

* * *

(f)(1) Prior to the issuance of an ignition interlock RDL under this section, the Commissioner shall notify the applicant ~~of the applicable period prior to eligibility for reinstatement under section 1209a or 1216 of this title, and that the reinstatement period~~ under section 1209a or 1216 of this title may be extended under this subsection (f) or subsections (g)–(h) of this section.

* * *

(i) Upon receipt of notice that the holder of an ignition interlock RDL has been ~~adjudicated~~ convicted of an offense under this title that would result in suspension, revocation, or recall of a license or privilege to operate, the Commissioner shall suspend, revoke, or recall the person's ignition interlock RDL for the same period that the license or privilege to operate would have been suspended, revoked, or recalled. The Commissioner may impose a reinstatement fee in accordance with section 675 of this title and require, prior to reinstatement, satisfactory proof of installation of an approved ignition interlock device; and of financial responsibility as provided in section 801 of this title, ~~and enrollment in or completion of an alcohol and driving education or rehabilitation program.~~

* * *

(l)(1) The Commissioner, in consultation with any individuals or entities the Commissioner deems appropriate, shall adopt rules and may enter into agreements to implement the provisions of this section. The Commissioner shall not approve a manufacturer of ignition interlock devices as a provider in this State unless the manufacturer agrees to reduce the cost of installing, leasing, and deinstalling the device by at least 50 percent for persons who furnish proof of receipt of Three Squares, Heating Assistance, or Reach Up benefits.

* * *

Sec. 3. 23 V.S.A. § 1209a is amended to read:

§ 1209a. CONDITIONS OF REINSTATEMENT; ALCOHOL AND DRIVING EDUCATION; SCREENING; THERAPY PROGRAMS

(a) Conditions of reinstatement. ~~No~~ A license or privilege to operate suspended or revoked under this subchapter, except a license suspended under section 1216 of this title, shall be reinstated ~~except~~ as follows:

(1) In the case of a first suspension, a license shall be reinstated only:

* * *

(C) ~~if the person elects to operate under an ignition interlock RDL, after:~~

~~(i) a period of nine months (plus any extension of this period arising from a violation of section 1213 of this title) if the person's license or privilege to operate is suspended after a refusal to consent to a law enforcement officer's reasonable request for an evidentiary test; or~~

~~(ii) a period of six months (~~

~~(i) after the end of the relevant suspension period specified in subsection 1205(a) or 1206(a) of this title or, if the person elects to operate under an ignition interlock RDL, after operating under the ignition interlock RDL for a period equivalent to the relevant suspension period specified in subsection 1205(a) or 1206(a) of this title plus any extension of this period arising from a violation of section 1213 of this title) in all other cases; or~~

~~(ii) in the case of a first suspension arising from an offense that resulted in serious bodily injury to or death of another person, after the person operates under an ignition interlock RDL for a period equivalent to the relevant suspension period specified in subsection 1206(b) of this title; and~~

(D) if the person has no pending criminal charges, civil citations, or unpaid fines or penalties for a violation under this chapter.

(2) In the case of a second suspension, a license shall not be reinstated until:

* * *

(C) ~~if the person elects to operate~~ after the person operates under an ignition interlock RDL, ~~after:~~

~~(i) a period of two years (plus any extension of this period arising from a violation of section 1213 of this title) if the person's license or privilege to operate is suspended after a refusal to consent to a law enforcement officer's reasonable request for an evidentiary test; or~~

~~(ii) a period of 18 months (~~ for a period equivalent to the relevant suspension period specified in subsection 1205(m) or 1208(a) of this title, plus any extension of this period arising from a violation of section 1213 of this title) in all other cases, except that this requirement shall not apply if the underlying offense arose solely from being under the influence of a drug other than alcohol; and

(D) the person has no pending criminal charges, civil citations, or unpaid fines or penalties for a violation under this chapter.

(3) In the case of a third or subsequent suspension or a revocation, a license shall not be reinstated until:

(A) the person has successfully completed an alcohol and driving rehabilitation program;

(B) the person has completed or shown substantial progress in completing a therapy program at the person's own expense agreed to by the person and the Driver Rehabilitation Program Director;

(C) the person has satisfied the requirements of subsection (b) of this section; and

~~(D) if the person elects to operate under an ignition interlock RDL, after:~~

~~(i) a period of four years (plus any extension of this period arising from a violation of section 1213 of this title) if the person's license or privilege to operate is suspended after a refusal to consent to a law enforcement officer's reasonable request for an evidentiary test; or~~

~~(ii) a period of three years (plus any extension of this period arising from a violation of section 1213 of this title) in all other cases; and~~

~~(E) the person has no pending criminal charges, civil citations, or unpaid fines or penalties for a violation under this chapter.~~

(4) The Commissioner shall waive a requirement to operate under an ignition interlock RDL prior to eligibility for reinstatement if the person furnishes sufficient proof as prescribed by the Commissioner that he or she is incapable of using an ignition interlock device because of a medical condition that will persist permanently or at least for the term of the suspension or, in the case of suspensions or revocations for life, for a period of at least three years.

(b) Abstinence.

(1) Notwithstanding any other provision of this subchapter, a person whose license or privilege to operate has been suspended or revoked for life under this subchapter may apply to the Driver Rehabilitation School Director and to the Commissioner for reinstatement of his or her driving privilege. The person shall have completed three years of total abstinence from consumption of alcohol or drugs, or both. The beginning date for the period of abstinence shall be no sooner than the effective date of the suspension or revocation from which the person is requesting reinstatement and shall not include any period during which the person is serving a sentence of incarceration to include furlough. The application shall include the applicant's authorization for a urinalysis examination to be conducted prior to reinstatement under this subdivision. The application to the Commissioner shall be accompanied by a

fee of \$500.00. The Commissioner shall have the discretion to waive the application fee if the Commissioner determines that payment of the fee would present a hardship to the applicant.

(2) If the Commissioner, or a medical review board convened by the Commissioner, is satisfied by a preponderance of the evidence that the applicant has abstained for the required number of years immediately preceding the application and hearing, has successfully completed a therapy program as required under this section, has operated under a valid ignition interlock RDL for at least three years following the suspension or revocation or, in the case of a suspension or revocation involving a refusal, for at least four years following the suspension or revocation, and the person appreciates that he or she cannot drink any amount of alcohol and drive safely, the person's license shall be reinstated immediately, subject to the condition that the person's suspension or revocation will be put back in effect in the event any further investigation reveals a return to the consumption of alcohol or drugs and to such additional conditions as the Commissioner may impose ~~and, if the person has not previously operated for three years under an ignition interlock RDL, subject to the additional condition that the person shall operate under an ignition interlock restricted driver's license for a period of at least one year following reinstatement under this subsection. However, the Commissioner may waive this one year requirement to operate under an ignition interlock restricted driver's license if the person furnishes proof as prescribed by the Commissioner that he or she is incapable of using an ignition interlock device because of a medical condition that will persist permanently or at least for one year.~~ The requirement to operate under an ignition interlock RDL shall not apply if the person is exempt under subdivision (a)(4) of this section or if all of the offenses that triggered the lifetime suspension or revocation arose solely from being under the influence of a drug other than alcohol.

(3) If after notice and hearing the Commissioner later finds that the person was violating the conditions of the person's reinstatement under this subsection, the person's operating license or privilege to operate shall be immediately suspended or revoked ~~for the period of the original suspension life.~~

(4) If the Commissioner finds that a person reinstated under this subsection was suspended pursuant to section 1205 of this title, or was convicted of a violation of section 1201 of this title, the person shall be conclusively presumed to be in violation of the conditions of his or her reinstatement.

(5) A person shall be eligible for reinstatement under this subsection only once following a suspension or revocation for life.

(6)(A) If an applicant for reinstatement under this subsection resides in a jurisdiction other than Vermont, the Commissioner may elect not to conduct an investigation. If the Commissioner elects not to conduct an investigation, he or she shall provide a letter to the applicant's jurisdiction of residence stating that Vermont does not object to the jurisdiction issuing the applicant a license if the applicant is ~~authorized~~ required to operate only vehicles equipped with an ignition interlock device for at least a three-year period and is required to complete any alcohol rehabilitation or treatment requirements of the licensing jurisdiction.

(B) If the applicant's jurisdiction of residence is prepared to issue or has issued a license in accordance with subdivision (A) of this subdivision (6) and the applicant satisfies the requirements of section 675 of this title, the Commissioner shall update relevant State and federal databases to reflect that the applicant's lifetime suspension or revocation in Vermont under chapter 13, subchapter 13 of this title has terminated.

* * *

Sec. 4. 23 V.S.A. § 1205 is amended to read:

§ 1205. CIVIL SUSPENSION; SUMMARY PROCEDURE

(a) Refusal; alcohol concentration above legal limits; suspension periods.

(1) Upon affidavit of a law enforcement officer that the officer had reasonable grounds to believe that the person was operating, attempting to operate, or in actual physical control of a vehicle in violation of section 1201 of this title and that the person refused to submit to a test, the Commissioner shall suspend the person's operating license, or nonresident operating privilege, or the privilege of an unlicensed operator to operate a vehicle for a period of ~~six~~ nine months and until the person complies with section 1209a of this title. However, a during this period, the person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title ~~after 30 days of this six month period unless the alleged offense involved a collision resulting in serious bodily injury or death to another.~~

(2) Upon affidavit of a law enforcement officer that the officer had reasonable grounds to believe that the person was operating, attempting to operate, or in actual physical control of a vehicle in violation of section 1201 of this title and that the person submitted to a test and the test results indicated that the person's alcohol concentration was above a limit specified in subsection 1201(a) of this title, at the time of operating, attempting to operate,

or being in actual physical control, the Commissioner shall suspend the person's operating license; or nonresident operating privilege; or the privilege of an unlicensed operator to operate a vehicle for a period of ~~90 days~~ six months and until the person complies with section 1209a of this title. However, ~~a~~ during this period, the person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title ~~after 30 days of this 90-day period unless the alleged offense involved a collision resulting in serious bodily injury or death to another.~~

(3) Upon affidavit of a law enforcement officer that the officer had reasonable grounds to believe that the person was operating, attempting to operate, or in actual physical control of a vehicle in violation of subdivision 1201(d)(2) of this title and that the person submitted to a test and the test results indicated that the person's alcohol concentration was 0.02 or more at the time of operating, attempting to operate, or being in actual physical control, the Commissioner shall suspend the person's operating license; or nonresident operating privilege; or the privilege of an unlicensed operator to operate a vehicle for life. However, during the suspension, a person may ~~operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title after one year of this lifetime suspension unless the alleged offense involved a collision resulting in serious bodily injury or death to another~~ operate a motor vehicle under the terms of an ignition interlock RDL issued under section 1213 of this title.

* * *

(m) Second and subsequent suspensions. For a second suspension under this subchapter, the period of suspension shall be 18 months and until the person complies with section 1209a of this title or, in the case of a suspension following refusal of an enforcement officer's reasonable request for an evidentiary test, the period of suspension shall be two years and until the person complies with section 1209a of this title. However, ~~a~~ the person may operate a motor vehicle during this period under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title ~~after 90 days of this 18-month period unless the alleged offense involved a collision resulting in serious bodily injury or death to another.~~ For a third or subsequent suspension under this subchapter, the period of suspension shall be life. However, ~~a person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title after one year of~~ during this lifetime suspension unless the alleged offense involved a collision resulting in serious bodily injury or death to another, the person may operate a motor vehicle under the terms of an ignition interlock RDL issued under section 1213 of this title.

* * *

Sec. 5. 23 V.S.A. § 1206 is amended to read:

§ 1206. SUSPENSION OF LICENSE FOR DRIVING WHILE UNDER INFLUENCE; FIRST CONVICTIONS

(a) First conviction—generally. Except as otherwise provided, upon conviction of a person for violating a provision of section 1201 of this title, or upon final determination of an appeal, the Court shall forward the conviction report forthwith to the Commissioner of Motor Vehicles. The Commissioner shall immediately suspend the person’s operating license, or nonresident operating privilege, or the privilege of an unlicensed operator to operate a vehicle for a period of ~~90 days~~ six months and until the defendant complies with section 1209a of this title or, in the case of a conviction following refusal of an enforcement officer’s reasonable request for an evidentiary test, the period of suspension shall be nine months and until the person complies with section 1209a of this title. ~~However, a person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title after 30 days of this 90 day period unless the offense involved a collision resulting in serious bodily injury or death to another.~~

(b) Extended suspension—fatality or serious bodily injury. In cases resulting in a fatality or a serious bodily injury to a person other than the defendant, the period of suspension shall be one year and until the defendant complies with section 1209a of this title.

(c) ~~Extended suspension—refusal; serious bodily injury.~~ Upon conviction of a person for violating a provision of subsection 1201(e) of this title involving a collision in which serious bodily injury resulted, or upon final determination of an appeal, the Court shall forward the conviction report forthwith to the Commissioner of Motor Vehicles. ~~The Commissioner shall immediately suspend the person’s operating license or nonresident operating privilege or the privilege of an unlicensed operator to operate a vehicle for a period of six months, and until the defendant complies with section 1209a of this title.~~ During a suspension under this section, the defendant may operate a motor vehicle under the terms of an ignition interlock RDL issued under section 1213 of this title.

Sec. 6. 23 V.S.A. § 1202(d) is amended to read:

(d) At the time a test is requested, the person shall be informed of the following statutory information:

(1) Vermont law authorizes a law enforcement officer to request a test to determine whether the person is under the influence of alcohol or other drug.

(2) If the officer's request is reasonable and testing is refused, the person's license or privilege to operate will be suspended for at least ~~six~~ nine months.

(3) If a test is taken and the results indicate that the person is under the influence of alcohol or other drug, the person will be subject to criminal charges and the person's license or privilege to operate will be suspended for at least ~~90 days~~ six months.

* * *

Sec. 7. 23 V.S.A. § 1208 is amended to read:

§ 1208. SUSPENSIONS FOR SUBSEQUENT CONVICTIONS

(a) Second conviction. Upon a second conviction of a person violating a provision of section 1201 of this title and upon final determination of an appeal, the Court shall forward the conviction report forthwith to the Commissioner of Motor Vehicles. The Commissioner shall immediately suspend the person's operating license, or nonresident operating privilege or the privilege of an unlicensed operator to operate a vehicle for 18 months and until the defendant complies with section 1209a of this title or, in the case of a conviction following refusal of an enforcement officer's reasonable request for an evidentiary test, for a period of two years and until the person complies with section 1209a of this title. However, ~~a~~ during the suspension period, the person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title after 90 days of this 18-month period unless the alleged offense involved a collision resulting in serious bodily injury or death to another.

(b) Third conviction. Upon a third or subsequent conviction of a person violating a provision of section 1201 of this title and upon final determination of any appeal, the Court shall forward the conviction report forthwith to the Commissioner of Motor Vehicles. The Commissioner shall immediately revoke the person's operating license, or nonresident operating privilege or the privilege of an unlicensed operator to operate a motor vehicle for life. However, ~~a person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title after one year of~~ during this lifetime suspension unless the alleged offense involved a collision resulting in serious bodily injury or death to another revocation, the person may operate a motor vehicle under the terms of an ignition interlock RDL issued under section 1213 of this title.

Sec. 8. 23 V.S.A. § 1216 is amended to read:

§ 1216. PERSONS UNDER 21; ALCOHOL CONCENTRATION OF 0.02 OR MORE

(a) A person under the age of 21 who operates, attempts to operate, or is in actual physical control of a vehicle on a highway when the person's alcohol concentration is 0.02 or more, commits a civil traffic violation subject to the jurisdiction of the Judicial Bureau and subject to the following sanctions:

(1) For a first violation, the person's license or privilege to operate shall be suspended for six months and until the person complies with subdivision 1209a(a)(1) of this title or, in the case of a refusal of an enforcement officer's reasonable request for an evidentiary test, for a period of nine months and until the person complies with section 1209a of this title. However, during this period, a person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title ~~after 30 days of this six month period unless the offense involved a collision resulting in serious bodily injury or death to another.~~

(2)(A) For a second or subsequent violation, the person's license or privilege to operate shall be suspended until the person complies with subdivision 1209a(a)(2) of this title and for the longer of the following periods:

(i) until the person reaches the age of 21 years of age; or for

(ii) one year, whichever is longer, and complies with subdivision 1209a(a)(2) of this title or, in the case of a refusal of an enforcement officer's reasonable request for an evidentiary test, for 15 months.

(B) However, during the suspension period, a person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title ~~after 90 days of the applicable suspension period unless the offense involved a collision resulting in serious bodily injury or death to another.~~

(b) A person's license or privilege to operate that has been suspended under this section shall not be reinstated until:

(1) the Commissioner has received satisfactory evidence that the person has complied with ~~section 1209a of this title and~~ an Alcohol and Driving Education Program approved by the Commissioner of Health and a therapy program if required, and that the provider of the a required therapy program has been paid in full;

(2) the person has no pending criminal charges, civil citations, or unpaid fines or penalties for a violation under this chapter; and

(3)(A) ~~for a first offense, after:~~

~~(i) a period of one year (plus any extension of this period arising from a violation of section 1213 of this title) if the person's license or privilege to operate is suspended after a refusal to consent to a law enforcement officer's reasonable request for an evidentiary test; or~~

~~(ii) a period of nine months (plus any extension of this period arising from a violation of section 1213 of this title) in all other cases; or~~

~~(B) for persons operating under an ignition interlock RDL for a second or subsequent offense, after:~~

~~(i) a period of two years (plus any extension of this period arising from a violation of section 1213 of this title) or until the person is 21, whichever is longer, if the person's license or privilege to operate is suspended after a refusal to consent to a law enforcement officer's reasonable request for an evidentiary test; or~~

~~(ii) a period of 18 months (plus any extension of this period arising from a violation of section 1213 of this title) or until the person is 21, whichever is longer, in all other cases after the end of the relevant suspension period specified in subsection (a) of this section or, if the person elects to operate under an ignition interlock RDL, after operating under the ignition interlock RDL for a period equivalent to the relevant suspension period specified in subsection (a) of this section plus any extension of this period arising from a violation of section 1213 of this title.~~

* * *

* * * DUI; Civil Suspensions * * *

Sec. 9. 23 V.S.A. § 1205 is amended to read:

§ 1205. CIVIL SUSPENSION; SUMMARY PROCEDURE

* * *

(f) Review by Superior Court. Within seven days following receipt of a notice of intention to suspend and of suspension, a ~~person~~ defendant may ~~make~~ a request ~~for~~ a hearing before the Superior Court by mailing or delivering the form provided with the notice. The request shall be mailed or delivered to the Commissioner of Motor Vehicles, who shall then notify the Criminal Division of the Superior Court that a hearing has been requested and provide the State's Attorney with a copy of the notice.

(g) Preliminary hearing. The preliminary hearing shall be held within 21 days of the alleged offense. Unless impracticable or continued for good cause shown, the date of the preliminary hearing shall be the same as the date of the first appearance in any criminal case resulting from the same incident for

which the person received a citation to appear in court. The preliminary hearing shall be held in accordance with procedures prescribed by the Supreme Court. At or before the preliminary hearing, the judicial officer shall determine whether the affidavit or affidavits filed by the State provide a sufficient factual basis under subsection (a) of this section for the civil suspension matter to proceed. At the preliminary hearing, if the defendant requests a hearing on the merits, the court shall set the date of the final hearing in accordance with subsection (h) of this section.

(h) Final hearing.

(1) If the defendant requests a hearing on the merits, the ~~Court shall schedule a final hearing on the merits to~~ hearing shall be held ~~within no later than~~ within no later than 21 days ~~of following~~ the date of the preliminary hearing. ~~In no event may a final hearing occur more than 42 days after the date of the alleged offense without the consent of the defendant or for good cause shown. The final hearing may only be continued by~~ except if this period is extended with the consent of the defendant or for good cause shown. The issues at the final hearing shall be limited to the following specifically enumerated issues:

(A) Whether the law enforcement officer had reasonable grounds to believe the person was operating, attempting to operate, or in actual physical control of a vehicle in violation of section 1201 of this title.

(B) Whether at the time of the request for the evidentiary test the officer informed the person of the person's rights and the consequences of taking and refusing the test substantially as set out in subsection 1202(d) of this title.

(C) Whether the person refused to permit the test.

(D) Whether the test was taken and the test results indicated that the person's alcohol concentration was above a legal limit specified in subsection 1201(a) or (d) of this title, at the time of operating, attempting to operate, or being in actual physical control of a vehicle in violation of section 1201 of this title, whether the testing methods used were valid and reliable, and whether the test results were accurate and accurately evaluated. Evidence that the test was taken and evaluated in compliance with rules adopted by the Department of Public Safety shall be prima facie evidence that the testing methods used were valid and reliable and that the test results are accurate and were accurately evaluated.

(E) Whether the requirements of section 1202 of this title were complied with.

(2) No less than seven days before the final hearing, and subject to the requirements of Vermont Rule of Civil Procedure 11, the defendant shall provide to the State and file with the Court ~~a list of the issues (limited to the issues set forth in this subsection)~~ that the defendant intends to raise an answer to the notice of intent to suspend setting forth the issues raised by the defendant, limited to the issues set forth in this subsection, and a brief statement of the facts and law upon which the defendant intends to rely at the final hearing. Only evidence that is relevant to an issue listed by the defendant may be raised by the defendant at the final hearing. The defendant shall not be permitted to raise any other evidence at the final hearing, and all other evidence shall be inadmissible.

* * *

(n) Presumption. In a proceeding under this section;

(1) if at any time within two hours of operating, attempting to operate, or being in actual physical control of a vehicle a person had an alcohol concentration ~~of~~ at or above a legal limit specified in subsection 1201(a) or (d) of this title, it shall be a rebuttable presumption that the person's alcohol concentration was above the applicable limit at the time of operating, attempting to operate, or being in actual physical control;

(2) if a person operates, attempts to operate, or is in actual physical control of a vehicle in the presence of a law enforcement officer and is taken into custody in connection with such operation, attempted operation, or actual physical control, and while in the continuous custody of the officer at any time had an alcohol concentration at or above a legal limit specified in subsection 1201(a) or (d) of this title, it shall be a rebuttable presumption that the person's alcohol concentration was above the applicable limit at the time of operating, attempting to operate, or being in actual physical control.

* * *

(u) In any proceeding under this section;

(1) for cause shown, a party's chemist may be allowed to testify by telephone in lieu of a personal appearance;

(2) a party's chemist shall be allowed to testify by videoconference in lieu of a personal appearance, provided that videoconferencing shall be at the party's own expense and by the party's own arrangement.

Sec. 10. 23 V.S.A. § 1204 is amended to read:

§ 1204. PERMISSIVE INFERENCES

(a) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by a person while operating, attempting to operate or in actual physical control of a vehicle on a highway, the person's alcohol concentration shall give rise to the following permissive inferences:

* * *

(3) If the person's alcohol concentration at any time within two hours of the alleged offense was ~~0.10 or more~~, at or above the applicable legal limit specified in subsection 1201(a) or (d) of this title, it shall be a permissive inference that the person was under the influence of intoxicating liquor in violation of subdivision 1201(a)(2) or (3) of this title.

(b) The foregoing provisions shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of intoxicating liquor, nor shall they be construed as requiring that evidence of the amount of alcohol in the person's blood, breath, urine, or saliva must be presented.

* * * DUI Penalties * * *

Sec. 11. 23 V.S.A. § 1210 is amended to read:

§ 1210. PENALTIES

* * *

(b) First offense. A person who violates section 1201 of this title may be fined not more than ~~\$750.00~~, \$1,000.00 or imprisoned for not more than two years, or both.

(c) Second offense. A person convicted of violating section 1201 of this title who has been convicted of another violation of that section shall be fined not more than ~~\$1,500.00~~ \$2,000.00 or imprisoned not more than two years, or both. At least 200 hours of community service shall be performed, or 60 consecutive hours of the sentence of imprisonment shall be served and may not be suspended or deferred or served as a supervised sentence, except that credit for a sentence of imprisonment may be received for time served in a residential alcohol facility pursuant to sentence if the program is successfully completed.

(d) Third offense. A person convicted of violating section 1201 of this title who has previously been convicted two times of a violation of that section shall be fined not more than ~~\$2,500.00~~ \$3,000.00 or imprisoned not more than five years, or both. At least 96 consecutive hours of the sentence of imprisonment shall be served and may not be suspended or deferred or served as a supervised sentence, except that credit for a sentence of imprisonment may be received for time served in a residential alcohol facility pursuant to sentence

if the program is successfully completed. The Court may impose a sentence that does not include a term of imprisonment or that does not require that the 96 hours of imprisonment be served consecutively only if the Court makes written findings on the record that such a sentence will serve the interests of justice and public safety.

(e)(1) Fourth or subsequent offense. A person convicted of violating section 1201 of this title who has previously been convicted three ~~or more~~ times of a violation of that section shall be fined not more than ~~\$5,000.00~~ \$4,000.00 for a fourth offense or imprisoned not more than 10 years, or both. A person convicted of violating section 1201 of this title who has previously been convicted four or more times of a violation of that section shall be fined not more than the sum of \$5,000.00 plus an additional \$1,000.00 for each prior conviction that exceeds four priors or imprisoned not more than 10 years, or both. At least 192 consecutive hours of the sentence of imprisonment shall be served and may not be suspended or deferred or served as a supervised sentence, except that credit for a sentence of imprisonment may be received for time served in a residential alcohol treatment facility pursuant to sentence if the program is successfully completed. The Court shall not impose a sentence that does not include a term of imprisonment unless the Court makes written findings on the record that there are compelling reasons why such a sentence will serve the interests of justice and public safety.

* * *

* * * Alcohol Screening Devices * * *

Sec. 12. 7 V.S.A. § 501 is amended to read:

§ 501. UNLAWFUL SALE OF INTOXICATING LIQUORS; CIVIL
ACTION FOR DAMAGES

* * *

(e) Evidence. In an action brought under this section, evidence of responsible actions taken or not taken is admissible, if otherwise relevant. Responsible actions may include, but are not limited to, instruction of servers as to laws governing the sale of alcoholic beverages, training of servers regarding intervention techniques, admonishment to patrons or guests concerning laws regarding the consumption of intoxicating liquor, making available an alcohol screening device, and inquiry under the methods provided by law as to the age or degree of intoxication of the persons involved.

* * *

* * * Alcohol Screening Devices; Study * * *

Sec. 13. ALCOHOL SCREENING DEVICES; STUDY

The Commissioner of Liquor Control or designee, in consultation with the Commissioner of Health or designee, shall study whether and how the State should promote the availability and use of alcohol screening devices in the State, and whether making such devices available on the premises of liquor licensees and to individuals will promote public safety. On or before January 15, 2017, the Commissioner shall submit a written report of his or her findings and any proposed recommendations for legislation to the House and Senate Committees on Judiciary, the House Committee on General, Housing and Military Affairs, and the Senate Committee on Economic Development, Housing and General Affairs.

* * * Serious Bodily Injury; Definition * * *

Sec. 14. 23 V.S.A. § 4 is amended to read:

§ 4. DEFINITIONS

Except as may be otherwise provided herein, and unless the context otherwise requires in statutes relating to motor vehicles and enforcement of the law regulating vehicles, as provided in this title and 20 V.S.A. part 5, the following definitions shall apply:

* * *

(84) “Serious bodily injury” has the meaning set forth in 13 V.S.A. § 1021.

* * * Negligent Operation of a Motor Vehicle; Penalties * * *

Sec. 15. 23 V.S.A. § 1091 is amended to read:

§ 1091. NEGLIGENT OPERATION; GROSSLY NEGLIGENT OPERATION

(a) Negligent operation.

(1) A person who operates a motor vehicle on a public highway in a negligent manner shall be guilty of negligent operation.

(2) The standard for a conviction for negligent operation in violation of this subsection shall be ordinary negligence, examining whether the person breached a duty to exercise ordinary care.

(3) A person who violates this subsection shall be imprisoned not more than one year or fined not more than \$1,000.00, or both. If the person has been previously convicted of a violation of this subsection, the person shall be

imprisoned not more than two years or fined not more than \$3,000.00, or both. If serious bodily injury to or death of any person other than the operator results, the operator shall be subject to imprisonment for not more than two years or to a fine of not more than \$3,000.00, or both. If serious bodily injury or death results to more than one person other than the operator, the operator may be convicted of a separate violation of this subdivision for each decedent or person injured.

(b) Grossly negligent operation.

(1) A person who operates a motor vehicle on a public highway in a grossly negligent manner shall be guilty of grossly negligent operation.

(2) The standard for a conviction for grossly negligent operation in violation of this subsection shall be gross negligence, examining whether the person engaged in conduct which involved a gross deviation from the care that a reasonable person would have exercised in that situation.

(3) A person who violates this subsection shall be imprisoned not more than two years or fined not more than \$5,000.00, or both. If the person has previously been convicted of a violation of this section, the person shall be imprisoned not more than four years or fined not more than \$10,000.00, or both. ~~If serious bodily injury as defined in 13 V.S.A. § 1021 to~~ or death of any person other than the operator results, the ~~person~~ operator shall be imprisoned for not more than 15 years or fined not more than \$15,000.00, or both. If serious bodily injury or death results to more than one person other than the operator, the operator may be convicted of a separate violation of this subdivision for each decedent or person injured.

(c) The provisions of this section do not limit or restrict the prosecution for manslaughter.

* * *

* * * Passing Vulnerable Users; Violations * * *

Sec. 16. 23 V.S.A. § 1033 is amended to read:

§ 1033. PASSING MOTOR VEHICLES AND VULNERABLE USERS

* * *

(c) If serious bodily injury to or death of any person other than the operator results from the operator's violation of subsection (b) of this section, the operator shall be subject to imprisonment for not more than two years or a fine of not more than \$3,000.00, or both. The provisions of this section do not limit prosecution under section 1091 of this chapter or for any other crime.

* * * Effective Date; Transition Provision * * *

Sec. 17. EFFECTIVE DATE AND APPLICABILITY TO PENDING DUI MATTERS

(a) This act shall take effect on July 1, 2016.

(b) The requirement to operate under an ignition interlock RDL as a condition for eligibility for reinstatement for first DUI offenses involving death or serious bodily and for second or subsequent DUI offenses, created under Secs. 2 and 3, amending 23 V.S.A. §§ 1213(b), 1213(c), and 1209a, shall apply only in connection with a first DUI offense involving death or serious bodily injury or a second or subsequent DUI offense that occurs on or after the effective date of this act.

(Committee Vote: 10-0-1)

H. 562

An act relating to professions and occupations regulated by the Office of Professional Regulation and to the review of professional regulation

Rep. Evans of Essex, for the Committee on **Government Operations**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

* * * Professional Regulation Review * * *

Sec. 1. 26 V.S.A. chapter 57 is amended to read:

CHAPTER 57. REVIEW OF ~~LICENSING STATUTES, BOARDS, AND COMMISSIONS~~ REGULATORY LAWS

§ 3101. POLICY AND PURPOSE

(a) It is the policy of the ~~state~~ State of Vermont that regulation be imposed upon a profession or occupation solely for the purpose of protecting the public. The ~~legislature~~ General Assembly believes that all individuals should be permitted to enter into a profession or occupation unless there is a demonstrated need for the ~~state~~ State to protect the interests of the public by restricting entry into the profession or occupation.

(b) If such a need is identified, the form of regulation adopted by the ~~state~~ State shall be the least restrictive form of regulation necessary to protect the public interest. If regulation is imposed, the profession or occupation may be subject to ~~periodic~~ review by the ~~legislature~~ Office of Professional Regulation and the General Assembly to ~~insure~~ ensure the continuing need for and appropriateness of such regulation.

§ 3101a. DEFINITIONS

~~The definitions contained in this section shall apply throughout~~ As used in this chapter, unless the context clearly requires otherwise:

(1) “Certification” means a voluntary process by which a statutory regulatory entity grants to ~~an individual,~~ a person who has met certain prerequisite qualifications, the right to assume or to use the title of the profession or occupation, or the right to assume or use the term “certified” in conjunction with the title. Use of the title or the term “certified,” as the case may be, by a person who is not certified is unlawful.

(2) “Licensing” and “licensure” mean a process by which a statutory regulatory entity grants to ~~an individual,~~ a person who has met certain prerequisite qualifications, the right to perform prescribed professional ~~and~~ or occupational tasks and to use the title of the profession or occupation. Practice without a license is unlawful.

(3) “License” means an individual, nontransferable authorization to carry on an activity based on qualifications such as:

(A) satisfactory completion of or graduation from an accredited or approved educational or training program; ~~and~~ or

(B) acceptable performance on a qualifying examination or series of examinations.

(4) “Office” means the Office of Professional Regulation.

(5) “Practitioner” means ~~an individual~~ a person who is actively engaged in a specified profession or occupation.

~~(5)~~(6) “Public member” means an individual who has no material financial interest in the profession or occupation being regulated other than as a consumer.

~~(6)~~(7) “Registration” means a process ~~which requires~~ requiring that, prior to rendering services, ~~all practitioners~~ a practitioner formally notify a regulatory entity of ~~their~~ his, her, or its intent to engage in the profession or occupation. Notification may include the name and address of the practitioner, the location of the activity to be performed, and a description of the service to be provided.

(8) “Regulatory entity” means the statutory entity responsible for regulating a profession or occupation, such as a board or an agency of the State.

~~(7)~~(9) “Regulatory law” ~~as used in section 3104 of this title,~~ means any law in this State that requires a person engaged in a profession or occupation to

be registered, certified, or licensed under this title or 4 V.S.A. chapter 23 or that otherwise regulates the operation of that profession or occupation.

§ 3102. PERIODIC REVIEW REQUIREMENT

~~(a) Each licensing law enumerated below in subsection (b) of this section, each board related thereto, and the activities resulting shall be subject to review, at least once, in the manner provided in section 3104 of this title and on the basis of the criteria in section 3105 of this title.~~

~~(b) The following laws are subject to review:~~

- ~~(1) Chapter 15 of this title on electricians;~~
- ~~(2) Chapter 39 of this title on plumbers and plumbing;~~
- ~~(3) Chapter 28 of this title on nursing;~~
- ~~(4) Chapter 10 of this title on chiropractic;~~
- ~~(5) Chapter 6 of this title on barbers;~~
- ~~(6) Chapter 6 of this title on cosmeticians and hairdressers;~~
- ~~(7) Chapter 23 of this title on medicine and surgery;~~
- ~~(8) Chapter 33 of this title on osteopathic physicians and surgeons;~~
- ~~(9) Chapter 13 of this title on dentists and dental hygienists;~~
- ~~(10) 18 V.S.A. chapter 46 on nursing home administrators;~~
- ~~(11) Chapter 17 of this title on embalmers;~~
- ~~(12) Chapter 21 of this title on funeral directors;~~
- ~~(13) Chapter 44 of this title on veterinary science;~~
- ~~(14) Chapter 1 of this title on accountants;~~
- ~~(15) Chapter 59 of this title on private detectives;~~
- ~~(16) Chapter 55 of this title on psychologists;~~
- ~~(17) Chapter 36 of this title on pharmacy;~~
- ~~(18) Chapter 51 of this title on radiological technologists;~~
- ~~(19) Chapter 41 of this title on real estate brokers and salesmen;~~
- ~~(20) Chapter 20 of this title on engineering;~~
- ~~(21) Chapter 3 of this title on architects;~~
- ~~(22) Chapter 45 of this title on land surveyors;~~
- ~~(23) Chapter 31 of this title on physicians' assistants;~~

- ~~(24) Chapter 7 of this title on podiatry;~~
- ~~(25) 4 V.S.A. chapter 23 on attorneys;~~
- ~~(26) Chapter 47 of this title on opticians;~~
- ~~(27) Chapter 65 of this title on clinical mental health counselors;~~
- ~~(28) Chapter 67 of this title on hearing aid dispensers;~~
- ~~(29) Chapter 79 of this title on tattooists;~~
- ~~(30) Chapter 81 of this title on naturopathic physicians;~~
- ~~(31) Chapter 83 of this title on athletic trainers;~~
- ~~(32) Chapter 87 of this title on audiologists and speech language pathologists.~~

~~(e) Any new law to regulate another profession or occupation shall be based on the relevant criteria and standards in section 3105 of this title. [Repealed.]~~

§ 3104. PROCESS FOR REVIEW OF REGULATORY LAWS

~~(a) Either house of the general assembly may designate, by resolution, The Office may review a regulatory law or an issue that affects professions and occupations generally to be reviewed by the legislative council staff that is within its jurisdiction, and shall review any regulatory law within or outside its jurisdiction upon the request of the House or Senate Committee on Government Operations. The staff Office shall base its review on the criteria and standards set forth in section 3105 of this title chapter.~~

~~(b) The review ~~may~~ shall also include the following inquiries in the discretion of the Office or in response to a Committee request:~~

~~(1) the extent to which ~~the board's~~ a regulatory entity's actions have been in the public interest and consistent with legislative intent;~~

~~(2) the extent to which the ~~board's~~ rules are complete, concise, and easy to understand profession's historical performance, including the actual history of complaints and disciplinary actions in Vermont, indicates that the costs of regulation are justified by the realized benefits to the public;~~

~~(3) the extent to which the ~~board's~~ standards and procedures are fair and reasonable and accurately measure an applicant's qualifications scope of the existing regulatory scheme for the profession is commensurate to the risk of harm to the public;~~

(4) the extent to which the profession's education, training, and examination requirements for a license or certification are consistent with the public interest;

~~(5) the way in which the board receives, investigates, and resolves complaints from the public~~ the extent to which a regulatory entity's resolutions of complaints and disciplinary actions have been effective to protect the public;

~~(5)(6) the extent to which the board~~ a regulatory entity has sought ideas from the public and from those it regulates, concerning reasonable ways to improve the service of the ~~board~~ entity and the profession or occupation regulated;

~~(6)(7) the extent to which the board~~ a regulatory entity gives adequate public notice of its hearings and meetings and encourages public participation;

~~(7)(8) whether the board~~ a regulatory entity makes efficient and effective use of its funds; and meets its responsibilities; and

~~(8)(9) whether the board~~ a regulatory entity has sufficient funding to carry out its mandate.

(c)(1) ~~The legislative council staff~~ Office shall give adequate notice to the public, the ~~board~~ applicable regulatory entity, and the appropriate professional societies that it is reviewing a particular regulatory law and board, as applicable, that regulatory entity. Notice to the ~~board~~ regulatory entity and the professional societies shall be in writing.

(2) ~~All~~ The regulatory entity shall provide to the Office the information required under described in section 3107 of this title chapter and available data reasonably requested the Office requests for purposes of the review ~~shall be provided by the boards.~~

(3) The ~~staff~~ Office shall seek comments and information from the public and from members of the profession or occupation. It also shall give the ~~board~~ regulatory entity a chance to present its position and to respond to any matters raised in the review.

(4) The ~~staff~~ Office, upon its request, shall have assistance from the ~~department of finance and management~~ Department of Finance and Management, the ~~auditor of accounts~~ Auditor of Accounts, the ~~attorney general, the director of the office of professional regulation~~ Attorney General, the ~~joint fiscal committee~~ Joint Fiscal Committee, or any other ~~state~~ State agency.

(d) ~~The legislative council staff~~ Office shall file a separate written report for each review with the ~~speaker of the house and president of the senate and with the chairman of the appropriate house or senate committee as provided in~~

~~subsection (f) of this section~~ House and Senate Committees on Government Operations and the applicable regulatory entity. The reports shall contain:

- (1) findings, alternative courses of action, and recommendations;
- (2) a copy of the ~~board's~~ regulatory entity's administrative rules; and
- (3) appropriate legislative proposals.

~~(e) The legislative council staff shall send a copy of the report to the board affected, and shall make copies available for public inspection. [Repealed.]~~

~~(f) The house and senate committees on government operations shall be responsible for overseeing the preparation of reports by the legislative council staff under this chapter. [Repealed.]~~

~~(g) After considering a report each committee shall send its findings and recommendations, including proposals for legislation, if any, to the house or to the senate, as appropriate. Any proposed licensing law shall be drafted according to a uniform format recommended in the comprehensive plan. [Repealed.]~~

§ 3105. CRITERIA AND STANDARDS

(a) A profession or occupation shall be regulated by the State only when:

(1) it can be demonstrated that the unregulated practice of the profession or occupation can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is recognizable and not remote or speculative;

(2) the public can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and

(3) the public cannot be effectively protected by other means.

(b) After evaluating the criteria in subsection (a) of this section and considering governmental and societal costs and benefits, if the ~~Legislature~~ General Assembly finds that it is necessary to regulate a profession or occupation, the least restrictive method of regulation shall be imposed, consistent with the public interest and this section:

(1) if existing common law and statutory civil remedies and criminal sanctions are insufficient to reduce or eliminate existing harm, regulation should occur through enactment of stronger civil remedies and criminal sanctions;

(2) if a professional or occupational service involves a threat to the public and the service is performed primarily through business entities or

facilities that are not regulated, the business entity or the facility should be regulated rather than its employee practitioners;

(3) if the threat to the public health, safety, or welfare, including economic welfare, is relatively small, regulation should be through a system of registration;

(4) if the consumer may have a substantial interest in relying on the qualifications of the practitioner, regulation should be through a system of certification; or

(5) if it is apparent that the public cannot be adequately protected by any other means, a system of licensure should be imposed.

(c) Any of the issues set forth in subsections (a) and (b) of this section and section 3107 of this ~~title~~ chapter may be considered in terms of their application to professions or occupations generally.

(d) Prior to review under this chapter and consideration by the General Assembly of any bill to regulate a profession or occupation and upon the request of the House or Senate Committee on Government Operations, the ~~Office of Professional Regulation~~ shall make, in writing, a preliminary assessment of whether any particular request for regulation meets the criteria set forth in subsection (a) of this section. The Office shall report its preliminary assessment to the appropriate House or Senate Committee on Government Operations. ~~The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection.~~

(e) After the review of a proposal to regulate a profession, the ~~Office of Professional Regulation~~ may decline to conduct an analysis and evaluation of the proposed regulation if it finds that:

(1) the proposed regulatory scheme appears to regulate fewer than 250 individuals; and

(2) the Office previously conducted an analysis and evaluation of the proposed regulation of the same profession or occupation, and no new information has been submitted that would cause the Office to alter or modify the recommendations made in its earlier report on ~~the~~ that proposed regulation ~~of the profession.~~

§ 3106. DIRECTOR OF THE OFFICE OF PROFESSIONAL REGULATION; ANNUAL REPORT

(a) Annually, prior to the commencement of each legislative session, the Director of the Office ~~of Professional Regulation~~ shall prepare a concise report on the activities of all boards and advisor professions under his or her jurisdiction. ~~Prior to the commencement of each legislative session, the~~

~~Director shall prepare a report for publication on the Office's website containing~~ The report shall include his or her assessments, conclusions, and recommendations with proposals for legislation, if any, to the Speaker of the House and to the Chairpersons of the House and Senate Committees on Government Operations and the chairpersons of the boards regarding those boards and advisor professions.

(b) ~~The Office~~ Director shall publish the report on the Office's website and shall also provide written copies of the report to the House and Senate Committees on Government Operations.

(c) The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this section.

§ 3107. INFORMATION REQUIRED

~~Prior to review under this chapter and prior to consideration by the legislature~~ General Assembly of any bill ~~which~~ that proposes to regulate a profession or occupation, the profession or occupation being reviewed or seeking regulation shall explain each of the following factors, in writing, to the extent requested by the ~~appropriate house or senate committees on government operations~~ House or Senate Committee on Government Operations:

(1) Why regulation is necessary, including:

(A) the nature of the potential harm or threat to the public if the profession or occupation is not regulated;

(B) specific examples of the harm or threat identified in subdivision (1)(A) of this section;

(C) the extent to which consumers will benefit from a method of regulation ~~which~~ that permits identification of competent practitioners, indicating typical employers, if any, of practitioners;

(2) The extent to which practitioners are autonomous, as indicated by:

(A) the degree to which the profession or occupation requires the use of independent judgment, and the skill or experience required in making such judgment;

(B) the degree to which practitioners are supervised;

(3) The efforts that have been made to address the concerns that give rise to the need for regulation, including:

(A) voluntary efforts, if any, by members of the profession or occupation to:

(i) establish a code of ethics;

(ii) help resolve disputes between practitioners and consumers;

(iii) establish requirements for continuing education.

(B) recourse to and the extent of use of existing law;

(4) Why the alternatives to licensure specified in this subdivision would not be adequate to protect the public interest:

(A) stronger civil remedies or criminal sanctions;

(B) regulation of the business entity or facility providing the service rather than the employee practitioners;

(C) regulation of the program or service rather than the individual practitioners;

(D) registration of all practitioners;

(E) certification of practitioners;

(F) other alternatives;

(5) The benefit to the public if regulation is granted, including:

(A) how regulation will result in reduction or elimination of the harms or threats identified under subdivision (1) of this section;

(B) the extent to which the public can be confident that a practitioner is competent:

(i) whether the registration, certification, or licensure will carry an expiration date;

(ii) whether renewal will be based only upon payment of a fee, or whether renewal will involve reexamination, peer review, or other enforcement;

(iii) the standards for registration, certification, or licensure as compared with the standards of other jurisdictions;

(iv) the nature and duration of the educational requirement, if any, including, ~~but not limited to,~~ whether ~~such~~ the educational ~~program~~ requirement includes a substantial amount of supervised field experience; whether educational programs exist in this ~~state~~ State; whether there will be an experience requirement; whether the experience must be acquired under a registered, certified, or licensed practitioner; whether there are alternative routes of entry or methods of satisfying the eligibility requirements and qualifications; whether all applicants will be required to pass an examination; and, if an examination is required, by whom it will be developed and how the costs of development will be met;

(6) The form and powers of the regulatory entity, including:

(A) whether the regulatory entity is or would be a board composed of members of the profession or occupation and public members, or a ~~state~~ State agency, or both, and, if appropriate, their respective responsibilities in administering the system of registration, certification, or licensure;

(B) the composition of the board, if any, and the number of public members, if any;

(C) the powers and duties of the ~~board or state agency~~ regulatory entity regarding examinations;

(D) the system for receiving complaints and taking disciplinary action against practitioners;

(7) The extent to which regulation might harm the public, including:

(A) whether regulation will restrict entry into the profession or occupation, including:

(i) whether the standards are the least restrictive necessary to ~~insure~~ ensure safe and effective performance; and

(ii) whether persons who are registered, certified, or licensed in a another jurisdiction ~~which~~ that the ~~board or agency~~ regulatory entity believes has requirements that are substantially equivalent to those of this ~~state~~ State will be eligible for endorsement or some form of reciprocity;

(B) whether there are similar professions or occupations ~~which~~ that should be included, or portions of the profession or occupation ~~which~~ that should be excluded from regulation;

(8) How the standards of the profession or occupation will be maintained, including:

(A) whether effective quality assurance standards exist in the profession or occupation, such as legal requirements associated with specific programs that define or enforce standards, or a code of ethics; and

(B) how the proposed form of regulation will assure quality, including:

(i) the extent to which a code of ethics, if any, will be adopted; and

(ii) the grounds for suspension, revocation, or refusal to renew registration, certification, or licensure;

(9) A profile of the practitioners in this ~~state~~ State, including a list of associations, organizations, and other groups representing the practitioners and including an estimate of the number of practitioners in each group.

(10) The effect that registration, certification, or licensure will have on the costs of the services to the public.

* * * Alcohol and Drug Abuse Counselors * * *

Sec. 2. 3 V.S.A. § 122 is amended to read:

§ 122. OFFICE OF PROFESSIONAL REGULATION

An Office of Professional Regulation is created within the Office of the Secretary of State. The Office shall have a Director who shall be appointed by the Secretary of State and shall be an exempt employee. The following boards or professions are attached to the Office of Professional Regulation:

* * *

(45) Alcohol and drug abuse counselors.

Sec. 3. 18 V.S.A. § 4806 is amended to read:
§ 4806. DIVISION OF ALCOHOL AND DRUG ABUSE PROGRAMS

(a) The Division of Alcohol and Drug Abuse Programs shall plan, operate, and evaluate a consistent, effective program of substance abuse programs. All duties, responsibilities, and authority of the Division shall be carried out and exercised by and within the Department of Health.

(b) The Division shall be responsible for the following services:

- (1) prevention and intervention;
- (2) ~~licensure of alcohol and drug counselors;~~ [Repealed.]
- (3) project CRASH schools; and
- (4) alcohol and drug treatment.

* * *

~~(e) Under subdivision (b)(4) of this section, the Commissioner of Health may contract with the Secretary of State for provision of adjudicative services of one or more administrative law officers and other investigative, legal, and administrative services related to licensure and discipline of alcohol and drug counselors. [Repealed.]~~

Sec. 4. 26 V.S.A. chapter 62 is amended to read:

CHAPTER 62. ALCOHOL AND DRUG ABUSE COUNSELORS

§ 3231. DEFINITIONS

As used in this chapter:

(1) “Alcohol and drug abuse counselor” means a person who engages in the practice of alcohol and drug abuse counseling for compensation.

(2) ~~“Commissioner” means the Commissioner of Health~~ “Director” means the Director of the Office of Professional Regulation.

(3) ~~“Deputy Commissioner” means the Deputy Commissioner of the Division of Alcohol and Drug Abuse Programs~~ “Office” means the Office of Professional Regulation.

(4) ~~“Disciplinary action” means any action taken by the administrative law officer appointed pursuant to 3 V.S.A. § 129(j) against a licensee or applicant based on a finding of unprofessional conduct by the licensee or applicant. “Disciplinary action” includes issuance of warnings and all sanctions, including denial, suspension, revocation, limitation, or restriction of licenses and other similar limitations. [Repealed.]~~

(5) “Practice of alcohol and drug abuse counseling” means the application of methods, including psychotherapy, ~~which~~ that assist an individual or group to develop an understanding of alcohol and drug abuse dependency problems and to define goals and plan actions reflecting the individual’s or group’s interests, abilities, and needs as affected by alcohol and drug abuse dependency problems and comorbid conditions.

(6) “Supervision” means the oversight of a person for the purposes of teaching, training, or clinical review by a ~~professional in the same area of specialized practice~~ licensed alcohol and drug abuse counselor or a qualified supervisor as determined by the Director by rule.

§ 3232. PROHIBITION; PENALTIES

(a) ~~No~~ A person shall not perform either of the following acts:

(1) practice or attempt to practice alcohol and drug abuse counseling without a valid license issued in accordance with this chapter, except as otherwise provided in section 3233 of this ~~title~~ chapter; or

(2) use in connection with the person’s name any letters, words, or insignia indicating or implying that the person is an alcohol and drug abuse counselor, unless the person is licensed or certified in accordance with this chapter.

(b) A person who violates any of the provisions of this section shall be subject to the penalties provided in 3 V.S.A. § 127~~(e)~~.

§ 3233. EXEMPTIONS

The provisions of subdivision 3232(a)(1) of this chapter, relating to the practice of alcohol and drug abuse counseling, shall not apply to:

(1) the activities and services of a rabbi, priest, minister, Christian Science practitioner, or clergy of any religious denomination or sect when engaging in activities that are within the scope of the performance of the person's regular or specialized ministerial duties and for which no separate charge is made, or when these activities are performed, with or without charge, for or under the auspices or sponsorship, individually or in conjunction with others, of an established and legally recognizable church, denomination, or sect and when the person rendering services remains accountable to the established authority of that church, denomination, or sect;

(2) the activities and services of a person licensed, certified, or registered under other laws of this State while acting within the scope of his or her profession or occupation, provided the person does not hold himself or herself out to the public as possessing a license issued pursuant to this chapter;

(3) the activities and services of a student intern or trainee in alcohol and drug abuse counseling who is pursuing a course of study in an accredited institution of higher education or a training course approved by the Director, provided these activities are performed under supervision of and constitute a part of an approved course of study;

(4) the activities and services of ~~approved alcohol and drug abuse counselors~~ an individual certified under this chapter who is working in a preferred provider program under the supervision of a licensed alcohol and drug abuse counselor; or

(5) a person acting as a member of a voluntary group of individuals who offer peer support to each other in recovering from an addiction.

§ 3234. COORDINATION OF PRACTICE ACTS

Notwithstanding any provision of law to the contrary, a person may practice psychotherapy when acting within the scope of a license or certification granted under this chapter, provided he or she does not hold himself or herself out as a practitioner of a profession for which he or she is not licensed or certified.

§ 3235. ~~DEPUTY COMMISSIONER~~ DIRECTOR; DUTIES

(a) ~~The Deputy Commissioner~~ In addition to the authority granted under 3 V.S.A. chapter 5, the Director shall:

(1) provide general information to applicants for licensure ~~as alcohol and drug abuse counselors~~ or certification under this chapter;

- (2) administer fees collected under this chapter;
 - (3) administer examinations refer complaints and disciplinary matters to an administrative law officer established under 3 V.S.A. § 129(j);
 - (4) explain appeal procedures to licensees, certified individuals, and applicants for licensure or certification under this chapter; and
 - (5) receive applications for licensure or certification under this chapter; issue and renew licenses or certifications; and revoke, suspend, reinstate, or condition licenses or certifications as ordered by an administrative law officer; and
 - ~~(6) contract with the Office of Professional Regulation to adopt and explain complaint procedures to the public, manage case processing, investigate complaints, and refer adjudicatory proceedings to an administrative law officer.~~
- (b) ~~The Commissioner of Health, with the advice of the Deputy Commissioner, Director may adopt rules necessary to perform the Deputy Commissioner's Director's duties under this section, including rules:~~
- (1) Specifying acceptable master's degree requirements.
 - (2) Setting standards for certifying apprentice addiction professionals and alcohol and drug abuse counselors.
 - (3) Requiring completion and documentation of not more than 40 hours of acceptable continuing education every two years as a condition for license or certification renewal.
 - (4) Requiring licensed alcohol and drug abuse counselors to disclose to each client the licensee's professional qualifications and experience, those actions that constitute unprofessional conduct, the method for filing a complaint or making a consumer inquiry, and provisions relating to the manner in which the information shall be displayed and signed by both the licensee and the client. The rules may include provisions for applying or modifying these requirements in cases involving clients of preferred providers, institutionalized clients, minors, and adults under the supervision of a guardian.
 - (5) Regarding ethical standards for individuals licensed or certified under this chapter.
 - (6) Regarding display of license or certification.
 - (7) Regarding reinstatement of a license or certification which has lapsed for more than five years.

(8) Regarding supervised practice toward licensure or certification.

§ 3235a. ADVISOR APPOINTEES

(a) The Secretary of State shall appoint three individuals licensed under this chapter to serve as advisors in matters relating to alcohol and drug abuse counselors. Advisors shall be appointed as set forth in 3 V.S.A. § 129b. Two of the initial appointments may be for less than a full term.

(b) Appointees shall not have less than three years' licensed experience as an alcohol and drug abuse counselor in Vermont.

(c) The Director shall seek the advice of the advisors appointed under this section in carrying out the provisions of this chapter.

§ 3236. LICENSED ALCOHOL AND DRUG ABUSE COUNSELOR ELIGIBILITY

(a) To be eligible for licensure as an alcohol and drug abuse counselor, an applicant shall:

(1) have received a master's degree or doctorate in a human services field from an accredited educational institution, including a degree in counseling, social work, psychology, or in an allied mental health field, or a master's degree or higher in a health care profession regulated under this title or Title 33, after having successfully completed a course of study with course work, including theories of human development, diagnostic and counseling techniques, and professional ethics, and which includes a supervised clinical practicum; and

(2)(A) ~~have been awarded an approved counselor credential from the Division of Alcohol and Drug Abuse Programs in accordance with rules adopted by the Commissioner~~ hold or be qualified to hold a current alcohol and drug counselor certification from the Office; or

(B) hold an International Certification and Reciprocity Consortium certification from another U.S. or Canadian jurisdiction or a U.S. or Canadian national certification organization approved by the Director;

(3) successfully pass the examination approved by the Director; and

(4) complete 2,000 hours of supervised practice as set forth in rule.

(b) A person who is engaged in supervised practice toward licensure who is not within the preferred provider network shall be registered on the roster of nonlicensed and noncertified psychotherapists.

§ 3236a. CERTIFICATION OF APPRENTICE ADDICTION PROFESSIONALS AND ALCOHOL AND DRUG ABUSE COUNSELORS

(a) The Director may certify an individual who has met requirements set by the Director by rule as:

- (1) an apprentice addiction professional; or
- (2) an alcohol and drug abuse counselor.

(b) The Director may seek cooperation with the International Certification and Reciprocity Consortium or other recognized alcohol and drug abuse provider credentialing organizations as a resource for examinations and rulemaking.

§ 3236b. LICENSURE OR CERTIFICATION BY ENDORSEMENT

The Director may issue a license or certification to an individual under this chapter if the individual holds a license or certification from a U.S. or Canadian jurisdiction that the Director finds has requirements for licensure or certification that are substantially equivalent to those required under this chapter.

§ 3237. APPLICATION

~~An individual may apply for a license under this chapter by filing, with the Deputy Commissioner, an application provided by the Deputy Commissioner. The application shall be accompanied by the required fees and evidence of eligibility. [Repealed.]~~

§ 3238. BIENNIAL RENEWALS

(a) Licenses and certifications shall be renewed every two years on a schedule set by the Office upon:

(1) payment of the required fee, ~~provided the person applying for renewal completes; and~~

(2) documentation that the applicant has completed at least 40 hours of continuing education, approved by the Deputy Commissioner, during the preceding two-year period. The Deputy Commissioner shall establish, by rule, guidelines and criteria for continuing education credit ~~Director.~~

(b) Biennially, ~~the Deputy Commissioner shall forward a renewal form to each license holder. Upon receipt of the completed form and the renewal fee, the Deputy Commissioner shall issue a new license. [Repealed.]~~

(c) Any application for ~~renewal~~ reinstatement of a license ~~which~~ or certification that has expired shall be accompanied by the ~~renewal fee and a~~

~~reinstatement fee~~ appropriate fees. A person shall not be required to pay renewal fees for years during which the license or certifications was lapsed.

~~(d) The Commissioner of Health may, after notice and opportunity for hearing, revoke a person's right to renew a license if the license has lapsed for five or more years. [Repealed.]~~

§ 3239. UNPROFESSIONAL CONDUCT

The following conduct and the conduct set forth in 3 V.S.A. § 129a, by a person authorized to provide alcohol and drug abuse services under this chapter or an applicant for licensure or certification, constitutes unprofessional conduct:

(1) violation of any provision of this chapter or rule adopted under this chapter;

(2) failing to use a complete title in professional activity;

(3) conduct which evidences moral unfitness to practice alcohol and drug abuse counseling;

(4) negligent, incompetent, or wrongful conduct in the practice of alcohol and drug abuse counseling; or

(5) harassing, intimidating, or abusing a client; ~~or~~

~~(6) agreeing with any other person or organization or subscribing to any code of ethics or organizational bylaws when the intent or primary effect of that agreement, code, or bylaw is to restrict or limit the flow of information concerning alleged or suspected unprofessional conduct to the Director.~~

§ 3240. REGULATORY FEE FUND

~~(a) An Alcohol and Drug Counselor Regulatory Fee Fund is created. All counselor licensing and examination fees received by the Division shall be deposited into the Fund and used to offset the costs incurred by the Division for these purposes and for the costs of investigations and disciplinary proceedings.~~

~~(b) To ensure that revenues derived by the Division are adequate to offset the cost of regulation, the Commissioner of Health and the Deputy Commissioner shall review fees from time to time and present proposed fee changes to the General Assembly. [Repealed.]~~

§ 3241. FEES

In addition to the fees otherwise authorized by law, the ~~Deputy Commissioner~~ Director may charge the ~~following~~ fees:

~~(1) Late renewal penalty, \$25.00 for a renewal submitted less than 30 days late. Thereafter, the Deputy Commissioner may increase the late renewal penalty by \$5.00 for every additional month or fraction of a month, provided that the total penalty for a late renewal shall not exceed \$100.00.~~

~~(2) Reinstatement of revoked or suspended license, \$20.00.~~

~~(3) Replacement of license, \$20.00.~~

~~(4) Verification of license, \$20.00.~~

~~(5) An examination fee established by the Deputy Commissioner, which shall be no greater than the costs associated with examinations.~~

~~(6) Licenses granted under rules adopted pursuant to 3 V.S.A. § 129(a)(10), \$20.00.~~

~~(7) Application for registration, \$75.00.~~

~~(8) Application for licensure or certification, \$100.00.~~

~~(9) Biennial renewal, \$135.00.~~

~~(10) Limited temporary license or work permit, \$50.00 for professions regulated by the Director as set forth in 3 V.S.A. § 125.~~

* * *

Sec. 5. TRANSITIONAL PROVISION; CURRENT CERTIFICATION

Notwithstanding the provisions of 26 V.S.A. § 3236a(a) set forth in Sec. 4 of this act, an individual currently certified by the Vermont Alcohol and Drug Abuse Certification Board as an apprentice addiction professional or an alcohol and drug abuse counselor may renew his or her certification as if previously granted to him or her by the Director of the Office of Professional Regulation pursuant to rules adopted by the Director.

Sec. 6. DIRECTOR OF THE OFFICE OF PROFESSIONAL REGULATION; REQUIRED RULEMAKING

The Director of the Office of Professional Regulation may adopt any rules necessary to implement the provisions of Secs. 4 and 5 of this act, prior to the effective date of those sections.

* * * Naturopathic Physicians * * *

Sec. 7. 2012 Acts and Resolves No. 116, Sec. 64(e), as amended by 2015 Acts and Resolves No. 38, Sec. 42, is amended to read:

Sec. 42. 2012 Acts and Resolves No. 116, Sec. 64(e) (transitional provisions) is amended to read:

(e) Formulary sunset; transition to examination.

(1) Subsection (c) of this section (formulary authorization) shall be repealed on July 1, ~~2016~~ 2017.

(2) Any naturopathic physician who is authorized to prescribe, dispense, and administer any prescription medicines under subsection (c) of this section shall have until July 1, ~~2016~~ 2017 to successfully complete the naturopathic pharmacology examination set forth in 26 V.S.A. § 4125(d) in order to be able to continue to prescribe, dispense, and administer any prescription medicines.

* * * Potable Water Supply and Wastewater System Designers and Pollution Abatement Facility Operators * * *

Sec. 8. 10 V.S.A. § 1263 is amended to read:

§ 1263. DISCHARGE PERMITS

* * *

(d) A discharge permit shall:

(1) ~~specify~~ Specify the manner, nature, volume, and frequency of the discharge permitted and contain terms and conditions consistent with subsection (c) of this section;

(2) ~~require~~ Require proper operation and maintenance of any pollution abatement facility necessary in the treatment or processing of the waste by qualified personnel in accordance with standards established by the ~~secretary~~ Secretary and the Director of the Office of Professional Regulation. The ~~secretary~~ Secretary may require ~~operators to be certified under a program established by the secretary~~ that a pollution abatement facility be operated by persons licensed under 26 V.S.A. chapter 97 and may prescribe the class of license required. The ~~secretary~~ Secretary may require a laboratory quality assurance sample program to ~~insure~~ ensure qualifications of laboratory analysts;

(3) ~~contain~~ Contain an operation, management, and emergency response plan when required under section 1278 of this title and additional conditions, requirements, and restrictions as the ~~secretary~~ Secretary deems necessary to preserve and protect the quality of the receiving waters, including ~~but not limited to~~ requirements concerning recording, reporting, monitoring, and inspection of the operation and maintenance of waste treatment facilities and waste collection systems; and

(4) ~~be~~ Be valid for the period of time specified therein, not to exceed five years.

* * *

Sec. 9. 10 V.S.A. § 1975 is amended to read:

§ 1975. DESIGNER LICENSES

(a) The ~~secretary~~ Director of the Office of Professional Regulation, after due consultation with the Secretary, shall establish and implement a process to license and periodically renew the licenses of designers of potable water supplies or wastewater systems, establish different classes of licensing for different potable water supplies and wastewater systems, and allow individuals to be licensed in various categories.

(b) ~~No~~ A person shall not design a potable water supply or wastewater system that requires a permit under this chapter without first obtaining a designer license from the ~~secretary~~ Director of the Office of Professional Regulation, except a professional engineer who is licensed in Vermont shall be deemed to have a valid designer license under this chapter, provided that:

(1) the engineer is practicing within the scope of his or her engineering specialty; and

(2) the engineer:

(A) to design a soil-based wastewater system, has satisfactorily completed a college-level soils identification course with specific instruction in the areas of soils morphology, genesis, texture, permeability, color, and redoximorphic features; ~~or~~

(B) has passed a soils identification test administered by the ~~secretary~~ Secretary; or

(C) retains one or more licensed designers who have taken the course specified in this subdivision or passed the soils identification test, whenever performing work regulated under this chapter.

~~(c) No person shall review or act on permit applications for a potable water supply or wastewater system that he or she designed or installed. [Repealed.]~~

(d) The ~~secretary~~ Secretary or the Director of the Office of Professional Regulation may review, on a random basis, or in response to a complaint, or on his or her own motion, the testing procedures employed by a licensed designer, the systems designed by a licensed designer, the designs approved or recommended for approval by a licensed designer, and any work associated with the performance of these tasks.

~~(e) After a hearing conducted under chapter 25 of Title 3, the secretary may suspend, revoke, or impose conditions on a designer license, except for one held by a professional engineer. This proceeding may be initiated on the secretary's own motion or upon a written request which contains facts or~~

~~reasons supporting the request for imposing conditions, for suspension, or for revocation. Cause for imposing conditions, suspension, or revocation shall be conduct specified under 3 V.S.A. § 129a as constituting unprofessional conduct by a licensee. [Repealed.]~~

(f) If a person who signs a design or installation certification submitted under this chapter certifies a design, installation, or related design or installation information and, as a result of the person's failure to exercise reasonable professional judgment, submits design or installation information that is untrue or incorrect, or submits a design or installs a wastewater system or potable water supply that does not comply with the rules adopted under this chapter, the person who signed the certification may be ~~subject to penalties~~ disciplined by the Director of the Office of Professional Regulation and be required to take all actions to remediate the affected project in accordance with the provisions of chapters 201 and 211 of this title.

* * *

Sec. 10. 3 V.S.A. § 122 is amended to read:

§ 122. OFFICE OF PROFESSIONAL REGULATION

An Office of Professional Regulation is created within the Office of the Secretary of State. The Office shall have a Director who shall be appointed by the Secretary of State and shall be an exempt employee. The following boards or professions are attached to the Office of Professional Regulation:

* * *

(45) Potable water supply and wastewater system designers

(46) Pollution abatement facility operators

Sec. 11. 26 V.S.A. chapter 97 is added to read:

CHAPTER 97. POTABLE WATER SUPPLY AND WASTEWATER SYSTEM DESIGNERS

Subchapter 1. General Provisions

§ 5001. PURPOSE AND EFFECT

In order to safeguard the life and health of the people of this State, a person, other than a professional engineer exempted under this chapter, shall not design a potable water supply or wastewater system that requires a permit or designer's certification or license under the laws of this State unless currently licensed under this chapter.

§ 5002. DEFINITIONS

As used in this chapter:

(1) “Director” means the Director of the Office of Professional Regulation.

(2) “License” means a current authorization granted by the Director permitting the practice of potable water supply or wastewater system design.

(3) “Potable water supply or wastewater system designer” or “designer” means a person who is licensed under this chapter to engage in the practice of potable water supply or wastewater system design.

(4) “Practice of potable water supply or wastewater system design” or “design” means planning the physical and operational characteristics of a potable water supply or wastewater system that requires a permit or designer’s certification or license under the laws of this State:

§ 5003. PROHIBITIONS; OFFENSES

(a) It shall be a violation of this chapter for any person, including any corporation, association, or individual, to:

(1) sell or fraudulently obtain or furnish any design degree, diploma, certificate of registration, license, or any other related document or record or to aid or abet therein;

(2) practice design under cover of any degree, diploma, registration, license, or related document or record illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation;

(3) practice design unless duly registered and currently licensed or otherwise authorized to do so under the provisions of this chapter;

(4) represent himself or herself as being licensed or otherwise authorized by this State to practice design or use in connection with a name any words, letters, signs, or figures that imply that a person is a licensed designer when not licensed or otherwise authorized under this chapter;

(5) practice design during the time a license or authorization issued under this chapter is suspended or revoked;

(6) employ an unlicensed or unauthorized person to practice as a licensed designer; or

(7) practice or employ a licensed designer to practice beyond the scope of his or her practice prescribed by rule.

(b) Any person violating this section shall be subject to the penalties provided in 3 V.S.A. § 127.

§ 5004. EXCEPTIONS

This chapter does not prohibit:

(1) the furnishing of assistance in the case of an emergency or disaster;

(2) the practice of design by a person employed by the U.S. government or any bureau, division, or agency thereof while in the discharge of his or her official federal duties; or

(3) the practice of any other occupation or profession by a person duly licensed or otherwise authorized under the laws of this State.

§ 5005. QUALIFIED PROFESSIONAL ENGINEERS EXEMPT

A licensed professional engineer may practice design without a license under this chapter if he or she satisfies the criteria set forth in 10 V.S.A. § 1975(b).

Subchapter 2. Administration

§ 5011. DUTIES OF THE DIRECTOR

(a) The Director shall:

(1) provide general information to applicants for licensure as designers;

(2) receive applications for licensure, administer or approve examinations, and provide licenses to applicants qualified under this chapter;

(3) administer fees as established by law;

(4) refer all disciplinary matters to an administrative law officer;

(5) renew, revoke, and reinstate licenses as ordered by an administrative law officer; and

(6) explain appeal procedures to licensed designers and to applicants, and complaint procedures to the public.

(b) The Director shall adopt rules necessary to perform his or her duties under this section after due consultation with the Secretary of Natural Resources and Commissioner of Environmental Conservation. These rules may establish grades, types, classes, or subcategories of licenses corresponding to prescribed scopes of practice.

§ 5012. ADVISOR APPOINTEES

(a)(1) The Secretary of State shall appoint three persons to be advisors to the Secretary, two of which shall be designers licensed under this chapter and

one of which shall be a representative of the Agency of Natural Resources. Advisors shall be appointed for five-year staggered terms to serve at the Secretary's pleasure as advisors in matters relating to design. Two of the initial appointments may be for a term of fewer than five years.

(2) A designer appointee shall have not fewer than five years' experience as a licensed designer immediately preceding appointment; shall be licensed as a designer in Vermont; and shall be actively engaged in the practice of design in this State during incumbency.

(3) The Agency of Natural Resources appointee shall be involved in the permitting program established under 10 V.S.A. chapter 64.

(b) The Director shall seek the advice of the advisor appointees in carrying out the provisions of this chapter.

Subchapter 3. Licenses

§ 5021. ELIGIBILITY FOR LICENSURE

(a) To be eligible for licensure as a designer, an applicant shall be at least 18 years of age; able to read and write the English language; hold a high school diploma, General Equivalency Diploma (GED), or equivalent; and demonstrate such specific education, training, experience, and examination performance as the Director may by rule require to hold the class of license sought.

(b) The Director may waive examination for an applicant licensed or certified in good standing by a foreign jurisdiction found by the Director to enforce equivalent standards to obtain the class of license sought in this State. The applicant's previous job description and experience in the design field may be considered.

§ 5022. LICENSE RENEWAL

(a)(1) A license shall be renewed every two years upon application, payment of the required fee, and proof of compliance with such continuing education or periodic reexamination requirements as the Director may by rule prescribe. Failure to comply with the provisions of this section shall result in suspension of all privileges granted to the licensee, beginning on the expiration date of the license.

(2) A license that has lapsed shall be renewed upon payment of the biennial renewal fee and the late renewal penalty.

(b) The Director may adopt rules necessary for the protection of the public to assure the Director that an applicant whose license has lapsed or who has not worked for more than three years as a licensed designer is professionally

qualified for license renewal. Conditions imposed under this subsection shall be in addition to the requirements of subsection (a) of this section.

§ 5023. APPLICATIONS

Applications for licensure and license renewal shall be on forms provided by the Director. Each application shall contain a statement under oath showing the applicant's education, experience, and other pertinent information and shall be accompanied by the required fee.

§ 5024. LICENSURE GENERALLY

The Director shall issue a license or renew a license, upon payment of the fees required under this chapter, to an applicant or licensee who has satisfactorily met all the requirements of this chapter.

§ 5025. FEES

Applicants and persons regulated under this chapter shall pay those fees set forth in 3 V.S.A. § 125(b).

§ 5026. UNPROFESSIONAL CONDUCT

(a) Unprofessional conduct means the following conduct and the conduct set forth in 3 V.S.A. § 129a committed by a licensee, an applicant, or a person who later becomes an applicant:

(1) has made or caused to be made a false, fraudulent, or forged statement or representation in procuring or attempting to procure registration or renew a license to practice as a licensed designer;

(2) whether or not committed in this State, has been convicted of a crime related to water system design or installation or a felony which evinces an unfitness to practice design;

(3) is unable to practice design competently by reason of any cause;

(4) has willfully or repeatedly violated or caused the violation of any of the provisions of this chapter, the terms of a permit, the Vermont On-Site Wastewater and Potable Water Supply Regulations, or the Vermont Water Quality Standards;

(5) is habitually intemperate or is addicted to the use of habit-forming drugs;

(6) has a mental, emotional, or physical disability, the nature of which interferes with the ability to practice design competently;

(7) engages in conduct of a character likely to deceive, defraud, or harm the public;

(8) has reviewed or acted on permit applications for a potable water supply or wastewater system that he or she designed or installed.

(b) A person shall not be liable in a civil action for damages resulting from the good faith reporting of information to the Director or the Office of Professional Regulation about alleged incompetent, unprofessional, or unlawful conduct of a licensed designer.

Sec. 12. TRANSITIONAL PROVISIONS

(a) The five years' experience required by 26 V.S.A. § 5012(a)(2) (advisor appointees; qualifications of appointees) set forth in Sec. 11 of this act may include experience while licensed pursuant to subchapter 7 of the Agency of Natural Resources Wastewater System and Potable Water Supply Rules, and an initial advisor appointee may be in the process of applying for licensure from the Office of Professional Regulation if he or she otherwise meets the requirements for licensure as an licensed designer and the other requirements of 26 V.S.A. § 5012(a)(2).

(b) Pending adoption by the Director of administrative rules governing licensed designers, the Director may license designers consistent with subchapter 7 of the Agency of Natural Resources Wastewater System and Potable Water Supply Rules.

(c) A person holding a design license from the Agency of Natural Resources may obtain an equivalent license from the Office of Professional Regulation at no charge, valid through the expiration date assigned by the Agency, and thereafter renewable on a biennial schedule established by the Office.

Sec. 13. 26 V.S.A. chapter 99 is added to read:

CHAPTER 99. POLLUTION ABATEMENT FACILITY OPERATORS

Subchapter 1. General Provisions

§ 5101. PURPOSE AND EFFECT

In order to safeguard the life and health of the people of this State, a person shall not practice or offer to practice pollution abatement facility operation unless currently licensed under this chapter.

§ 5102. DEFINITIONS

As used in this chapter:

(1) "Director" means the Director of the Office of Professional Regulation.

(2) “License” means a current authorization granted by the Director permitting the practice of pollution abatement facility operation.

(3) “Permit,” when used as a noun, means an authorization by the Agency of Natural Resources to operate a facility regulated under 10 V.S.A. § 1263.

(4) “Practice of pollution abatement facility operation” means the operation and maintenance of a facility regulated under 10 V.S.A. § 1263 by a person required by the terms of a permit to hold particular credentials, including those of an “operator,” “assistant chief operator,” or “chief operator.”

(5) “Pollution abatement facility operator” means a person who is licensed under this chapter, or pursuant to rules developed pursuant to this chapter, to engage in the practice of pollution abatement facility operation consistent with a permit.

§ 5103. PROHIBITIONS; OFFENSES

(a) It shall be a violation of this chapter for any person, including any corporation, association, or individual, to:

(1) sell or fraudulently obtain or furnish any pollution abatement facility operation degree, diploma, certificate of registration, license, or any other related document or record or to aid or abet therein;

(2) practice or knowingly permit the practice of pollution abatement facility operation under cover of any degree, diploma, registration, license, or related document or record illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation;

(3) practice or permit the practice of pollution abatement facility operation other than by a person duly registered and currently licensed or otherwise authorized to do so under the provisions of this chapter;

(4) represent himself or herself as being licensed or otherwise authorized by this State to practice pollution abatement facility operation or use in connection with a name any words, letters, signs, or figures that imply that a person is a pollution abatement facility operator when not licensed or otherwise authorized under this chapter;

(5) practice pollution abatement facility operation during the time a license or authorization issued under this chapter is suspended or revoked; or

(6) employ an unlicensed or unauthorized person to practice as a pollution abatement facility operator.

(b) Any person violating this section shall be subject to the penalties provided in 3 V.S.A. § 127(c).

§ 5104. EXCEPTIONS

This chapter does not prohibit:

(1) the furnishing of assistance in the case of an emergency or disaster; or

(2) a person not licensed under this chapter from working under the direct or indirect supervision of a pollution abatement facility operator, where such employment is consistent with the terms, conditions, and intent of a facility's permit.

Subchapter 2. Administration

§ 5111. DUTIES OF THE DIRECTOR

(a) The Director shall:

(1) provide general information to applicants for licensure as pollution abatement facility operators;

(2) receive applications for licensure, administer or approve examinations and training programs, and provide licenses to applicants qualified under this chapter;

(3) administer fees as established by law;

(4) refer all disciplinary matters to an administrative law officer;

(5) renew, revoke, and reinstate licenses as ordered by an administrative law officer; and

(6) explain appeal procedures to licensed pollution abatement facility operators and to applicants, and complaint procedures to the public.

(b) The Director shall adopt rules necessary to perform his or her duties under this section after due consultation with the Secretary of Natural Resources. These rules may establish grades, types, classes, or subcategories of licenses corresponding to facilities of distinct types and complexity.

§ 5112. ADVISOR APPOINTEES

(a)(1) The Secretary of State shall appoint three persons to be advisors to the Secretary, two of which shall be pollution abatement facility operators and one of which shall be a representative of the Agency of Natural Resources. Advisors shall be appointed for five-year staggered terms to serve at the Secretary's pleasure as advisors in matters relating to operation. Two of the initial appointments may be for a term of fewer than five years.

(2) A pollution abatement facility operator appointee shall have not fewer than five years' experience as a pollution abatement facility operator

immediately preceding appointment, shall be licensed as a pollution abatement facility operator in Vermont, and shall be actively engaged in the practice of pollution abatement facility operation in this State during incumbency.

(3) An appointee representing the Agency of Natural Resources shall be involved in the administration of the permitting program established under 10 V.S.A. § 1263.

(b) The Director shall seek the advice of the advisor appointees in carrying out the provisions of this chapter.

Subchapter 3. Licenses

§ 5121. ELIGIBILITY FOR LICENSURE

(a) To be eligible for licensure as a pollution abatement facility operator, an applicant shall be at least 18 years of age; be able to read and write the English language; hold a high school diploma, General Equivalency Diploma (GED), or equivalent; and demonstrate such specific education, training, experience, and examination performance as the Director may by rule require to hold the class of license sought.

(b) The Director may waive examination for an applicant licensed or certified in good standing by a foreign jurisdiction found by the Director to enforce equivalent standards to obtain the class of license sought in this State. The applicant's previous job description and experience in the pollution abatement field may be considered.

§ 5122. LICENSE RENEWAL

(a)(1) A license shall be renewed every two years upon application, payment of the required fee, and proof of compliance with such continuing education or periodic reexamination requirements as the Director may by rule prescribe. Failure to comply with the provisions of this section shall result in suspension of all privileges granted to the licensee, beginning on the expiration date of the license.

(2) A license that has lapsed shall be renewed upon payment of the biennial renewal fee and the late renewal penalty.

(b) The Director may adopt rules necessary for the protection of the public to assure the Director that an applicant whose license has lapsed or who has not worked for more than three years as a pollution abatement facility operator is professionally qualified for license renewal. Conditions imposed under this subsection shall be in addition to the requirements of subsection (a) of this section.

§ 5123. APPLICATIONS

Applications for licensure and license renewal shall be on forms provided by the Director. Each application shall contain a statement under oath showing the applicant's education, experience, and other pertinent information and shall be accompanied by the required fee.

§ 5124. LICENSURE GENERALLY

The Director shall issue a license or renew a license upon payment of the fees required under this chapter to an applicant or licensee who has satisfactorily met all the requirements of this chapter.

§ 5125. FEES

Applicants and persons regulated under this chapter shall pay those fees set forth in 3 V.S.A. § 125(b).

§ 5126. UNPROFESSIONAL CONDUCT

(a) Unprofessional conduct means the following conduct and the conduct set forth in 3 V.S.A. § 129a committed by a licensee, an applicant, or a person who later becomes an applicant:

(1) has made or caused to be made a false, fraudulent, or forged statement or representation in procuring or attempting to procure registration or renew a license to practice as a water treatment facility operator;

(2) whether or not committed in this State, has been convicted of a crime related to pollution abatement or environmental compliance or a felony which evinces an unfitness to practice water treatment facility operation;

(3) is unable to practice pollution abatement facility operation competently by reason of any cause;

(4) has willfully or repeatedly violated or caused the violation of any of the provisions of this chapter, the terms of a permit, the Vermont Water Pollution Control Permit Regulations, or the Vermont Water Quality Standards;

(5) is habitually intemperate or is addicted to the use of habit-forming drugs;

(6) has a mental, emotional, or physical disability, the nature of which interferes with the ability to practice pollution abatement facility operation competently;

(7) engages in conduct of a character likely to deceive, defraud, or harm the public;

(8) fails to display prominently his or her pollution abatement facility operator license in the office of a facility at which he or she performs licensed activities; or

(9) unreasonably fails to ensure proper operations of the facility.

(b) A person shall not be liable in a civil action for damages resulting from the good faith reporting of information to the Director or the Office of Professional Regulation about alleged incompetent, unprofessional, or unlawful conduct of a pollution abatement facility operator or facility, corporation, or municipal corporation employing such person.

Sec. 14. TRANSITIONAL PROVISIONS

(a) Notwithstanding the provision of 26 V.S.A. § 5112(a)(2) (advisor appointees; qualifications of appointees) that requires an appointee to be licensed as a pollution abatement facility operator in Vermont, an initial advisor appointee may be in the process of applying for licensure if he or she otherwise meets the requirements for licensure as a wastewater treatment facility operator and the other requirements of 26 V.S.A. § 5112(a)(2).

(b) Pending adoption by the Director of administrative rules governing pollution abatement facility operators, the Director may license individuals to operate pollution abatement facilities consistent with the Agency of Natural Resources Wastewater Treatment Facility Operator Certification Rule.

(c) A person holding an active certificate from the Agency of Natural Resources as an operator, assistant chief operator, or chief operator may obtain an equivalent license from the Office of Professional Regulation at no charge, valid through the expiration date assigned by the Agency, and thereafter renewable on a biennial schedule established by the Office.

Sec. 15. CREATION OF NEW POSITION WITHIN THE OFFICE OF PROFESSIONAL REGULATION

(a) To support the administration of new professional regulation licenses created in Secs. 11 and 13 of this act, there is created within the Secretary of State's Office of Professional Regulation one (1) Licensing Board Specialist.

(b) Any funding necessary to support the positions created under subsection (a) of this section shall be derived from the Office's Professional Regulatory Fee Fund, with no General Fund dollars.

* * * Board of Dental Examiners * * *

Sec. 16. 26 V.S.A. § 581 is amended to read:

§ 581. CREATION; QUALIFICATIONS

* * *

(c) ~~No A member of the board may~~ Board shall not be an officer or serve on a committee of his or her respective state or local professional dental, dental hygiene, or dental assisting organization, ~~nor shall any member of the board be on the faculty of a school of dentistry, dental hygiene, or dental assisting.~~

* * * Social Workers * * *

Sec. 17. 26 V.S.A. § 3202 is amended to read:

§ 3202. PROHIBITION; OFFENSES

* * *

(c) A State agency or a subdivision or contractor thereof shall not use or permit the use of the title “social worker” other than in relation to an employee holding a bachelor’s, master’s, or doctoral degree from an accredited school or program of social work.

* * * Effective Dates * * *

Sec. 18. EFFECTIVE DATES

This act shall take effect on July 1, 2016, except Sec. 17 which shall take effect on July 1, 2017.

(Committee Vote: 10-0-1)

H. 595

An act relating to potable water supplies from surface waters

Rep. Krebs of South Hero, 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. 10 V.S.A. § 1978(a) is amended to read:

(a) The Secretary shall adopt rules, in accordance with 3 V.S.A. chapter 25, necessary for the administration of this chapter. These rules shall include the following:

* * *

(15) Provisions authorizing the use by a residential dwelling of surface water as a source of a potable water supply permitted under this chapter.

Sec. 2. 10 V.S.A. § 1981 is added to read:

§ 1981. SURFACE WATER SOURCE; POTABLE WATER SUPPLY

The Secretary shall approve the use of a surface water as the source of a potable water supply under this chapter if the following conditions are satisfied:

(1) the building or structure using the surface water as a source is a single-family residence occupied by the owner of record;

(2) only one single-family residence shall be served by a potable water supply using a surface water as a source;

(3) a single-family residence with a potable water supply using a surface water as a source shall not be used as the site of a home occupation that employs persons other than family members and is visited by the public in a manner or duration that would presume the need for use of a potable water supply;

(4) a professional engineer shall design the potable water supply using a surface water as a source, including a treatment system for the surface water;

(5) only surface waters that meet criteria adopted by the Secretary by rule are eligible as the source of a potable water supply permitted under this chapter; and

(6) the applicant or permit holder complies with the other relevant rules adopted under section 1978 of this chapter.

Sec. 3. SURFACE WATER SOURCE; RULEMAKING

The Secretary shall adopt rules to implement 10 V.S.A. § 1981 on or before July 1, 2017.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

(Committee Vote: 8-1-0)

H. 610

An act relating to clarifying the Clean Water State Revolving Fund and Water Pollution Control Grant Programs

Rep. Browning of Arlington, for the Committee on **Corrections & Institutions**, 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 55 is redesignated to read:

**CHAPTER 55. AID TO MUNICIPALITIES FOR WATER SUPPLY;
~~AND WATER POLLUTION ABATEMENT AND
SEWER SEPARATION CONTROL~~**

Sec. 2. 10 V.S.A. § 1251 is amended to read:

§ 1251. DEFINITIONS

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

* * *

(18) “Pollution abatement facilities” means municipal sewage treatment plants, pumping stations, interceptor and outfall sewers, and attendant facilities as prescribed by the Department to abate pollution of the waters of the State.

Sec. 3. 10 V.S.A. § 1259(j) is amended to read:

(j) No person shall discharge waste from hydraulic fracturing, as that term is defined in 29 V.S.A. § 503, into or from a pollution abatement facility, as that term is defined in section ~~1574~~ 1251 of this title.

Sec. 4. 10 V.S.A. § 1278 is amended to read:

§ 1278. OPERATION, MANAGEMENT, AND EMERGENCY RESPONSE PLANS FOR POLLUTION ABATEMENT FACILITIES

(a) Findings. The ~~general assembly~~ General Assembly finds that the ~~state~~ State shall protect Vermont’s lakes, rivers, and streams from pollution by implementing programs to prevent sewage spills to Vermont waters and by requiring emergency planning to limit the damage from spills which do occur. In addition, the ~~general assembly~~ General Assembly finds it to be cost-effective and generally beneficial to the environment to continue ~~state~~ State efforts to ensure energy efficiency in the operation of treatment facilities.

(b) Planning requirement. Effective July 1, 2007, the ~~secretary of natural resources~~ Secretary of Natural Resources shall as part of a permit issued under section 1263 of this title, require a pollution abatement facility, as that term is defined in section ~~1574~~ 1251 of this title, to prepare and implement an operation, management, and emergency response plan for those portions of each pollution abatement facility that include the treatment facility, the sewage pumping stations, and the sewer line stream crossing.

(c) Collection system planning. As of July 1, 2010, the ~~secretary of natural resources~~ Secretary of Natural Resources, as part of a permit issued under section 1263 of this title, shall require a pollution abatement facility, as that term is defined in section ~~1574~~ 1251 of this title, to prepare and implement an operation, management, and emergency response plan for that portion of each pollution abatement facility that includes the sewage collection systems. The requirement to develop a plan under this subsection shall be included in a

permit issued under section 1263 of this title, and a plan developed under this subsection shall be subject to public review and inspection.

* * *

Sec. 5. 10 V.S.A. § 1571 is amended to read:

§ 1571. DEFINITIONS

As used in this chapter:

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

(2) “Board” means the Natural Resources Board.

(3) ~~“Combined sewer separation facilities” means sewers, pipe lines, pumps, structures and attendant facilities necessary to convey liquid wastes in such a manner that industrial wastes, domestic sewage, or both, are conveyed separately from storm water, and may include storm water treatment facilities. [Repealed.]~~

(4) “Department” means the Department of Environmental Conservation.

(5) “Municipality” means a municipality as defined in 1 V.S.A. § 126.

(6) ~~“Pollution Water pollution abatement and control facilities” means municipal sewage treatment plants, pumping stations, interceptor and outfall sewers, and attendant facilities as prescribed by the Department to abate pollution of the waters of the State such equipment, conveyances, and structural or nonstructural facilities owned or operated by a municipality that are needed for and appurtenant to the prevention, management, treatment, storage, or disposal of stormwater, sewage, or waste, including a wastewater treatment facility, combined sewer separation facilities, an indirect discharge system, a wastewater system, flood resiliency work related to a structural facility, or a groundwater protection project.~~

(7) ~~“Potable water supply facilities” means municipal water sources, water treatment plants, structures, pipe lines, storage facilities, pumps and attendant facilities necessary to develop a source of water, and to treat and convey it in proper quantity and quality for public use within a municipality. [Repealed.]~~

* * *

(9) ~~“Disadvantaged municipality” means a municipality or the served area of a municipality which:~~

~~(A) Has a median household income below the State average median household income as determined by the Secretary, and which after construction~~

~~of the proposed water supply improvements will have an annual household user cost greater than one percent of the median household income as determined by the Secretary; or~~

~~(B) Has a median household income equal to or greater than the State average median household income as determined by the Secretary, and which after construction of the proposed water supply improvements will have an annual household user cost greater than 2.5 percent of the median household income as determined by the Secretary. [Repealed.]~~

* * *

(11) “Sewage” shall have the same meaning as used in 24 V.S.A. § 3501.

(12) “Stormwater” shall have the same meaning as stormwater runoff in section 1264 of this title.

(13) “Waste” shall have the same meaning as used in section 1251 of this title.

Sec. 6. 10 V.S.A. § 1572 is amended to read:

§ 1572. COORDINATED PLAN REVIEW

~~The department is designated the principal agency of the state to review and approve potable water supply projects funded under this chapter. The department of health and any other state agency with a statutory responsibility to review such projects shall within 30 days of receipt of documents for review, advise the department of their comments, which the department shall resolve into a single state position to be transmitted to the applicant. Reviews of projects pursuant to chapter 151 of this title shall be exempt from the coordinated plan of review required by this section. [Repealed.]~~

Sec. 7. 10 V.S.A. § 1591 is amended to read:

§ 1591. PLANNING

~~(a) Planning advance. A municipality or a combination of two or more municipalities desiring an advance of funds for the development of engineering plans for potable water supply facilities or improvements, or for water pollution abatement facilities or improvements, or for combined sewer separation facilities, as the case may be, may apply to the department for an advance under this chapter. Engineering plans may include source exploration, surveys, reports, designs, plans, specifications or other engineering services necessary in preparation for construction of the types of facilities referred to in this section.~~

~~(b) The department, with the approval of the secretary, may use up to ten percent of the funds provided under this chapter to undertake regional engineering planning and process research. Funds approved for regional engineering planning may be awarded directly to a lead municipality and administered in accordance with this chapter. [Repealed.]~~

Sec. 8. 10 V.S.A. § 1592 is amended to read:

§ 1592. APPLICATION

~~The application shall be supported by data covering:~~

- ~~(1) A description of the project;~~
- ~~(2) A description of the engineering service to be performed;~~
- ~~(3) An explanation of the need for the project;~~
- ~~(4) An estimate of the cost of the project;~~
- ~~(5) The amount of advance requested;~~
- ~~(6) A schedule for project implementation;~~
- ~~(7) Such other information and assurances as the department may require. [Repealed.]~~

Sec. 9. 10 V.S.A. § 1593 is amended to read:

§ 1593. AWARD OF ADVANCE

~~(a) The department may award an advance in an amount determined by the department to be suitable for the engineering planning under standards established by the department:~~

~~(1) For planning of potable water supply facilities, when it finds the same to be necessary in order to preserve or enhance the quality of water provided to the inhabitants of the municipality, or to alleviate an adverse public health condition, or to allow for orderly development and growth of the municipality, except that no funds may be awarded until the department determines that the applicant has complied with the provisions of section 1676a of this title, unless such funds are solely for the purpose of determining the effect of the proposed project on agriculture;~~

~~(2) For planning of pollution abatement facilities, in order to enable a municipality to comply with water quality standards established under chapter 47 of this title;~~

~~(3) For the planning of combined sewer separation facilities, when it finds the same to be necessary to allow improvement of the quality of the~~

~~receiving water in order that increased legitimate water uses and recreational potential in the best interest of the public can be realized.~~

~~(b) The department shall award an advance for planning under this section only when it finds:~~

~~(1) That the cost of the project is reasonable for its intended purpose; and~~

~~(2) That local funds are not readily available for the planning, and funds are not readily available through other established planning and design programs. [Repealed.]~~

Sec. 10. 10 V.S.A. § 1594 is amended to read:

§ 1594. PAYMENT OF AWARDS

~~On receipt of the engineering planning documents and their approval by the department, the department shall certify the award to the commissioner of finance and management who shall issue his or her warrant for payment thereof from the construction grant funds available to the department. The department may direct the commissioner of finance and management to issue his or her warrant for partial payments of the award upon receipt and approval of portions of the total engineering work to be performed under the advance, together with recipient's certification that costs for which reimbursement has been requested have been incurred and paid by the recipient municipality. The recipient shall provide supporting evidence of payment upon the request of the department. Partial payments shall be made not more frequently than monthly. Interest costs incurred in local short term borrowing of the planning advance shall be reimbursed as part of the planning advance. [Repealed.]~~

Sec. 11. 10 V.S.A. § 1595 is amended to read:

§ 1595. REPAYMENT OF ADVANCES

~~Advances under this subchapter shall be repaid when construction of the facilities or any portion thereof is undertaken. Where a construction grant is made by the department for the project, the amount of the outstanding advances shall be retained from the first payment of the grant funds. In other instances, if repayment is not made within 60 days upon demand by the department, the sum shall bear interest at the rate of 12 percent per annum from the date payment is demanded by the department to the date of payment by the municipality. The department may approve proportional repayment when construction is initiated on a small portion of the planned project. [Repealed.]~~

Sec. 12. 10 V.S.A. chapter 55, subchapter 3 is redesignated to read:

Subchapter 3. Construction Grants ~~in Aid~~

Sec. 13. 10 V.S.A. § 1621 is amended to read:

§ 1621. FINANCIAL ASSISTANCE

A municipality ~~which~~ that desires ~~state~~ State financial assistance for construction, improvement, or expansion of ~~potable water supply facilities,~~ water pollution abatement and control facilities, ~~or combined sewer separation facilities,~~ may make application to the ~~department~~ Department in accordance with this subchapter.

Sec. 14. 10 V.S.A. § 1622 is amended to read:

§ 1622. ELIGIBLE PROJECTS

~~For purposes of~~ As used in this subchapter, eligible project costs for water pollution abatement and control facilities projects shall include:

(1) ~~In the case of potable water supply projects receiving grants under subsection 1624(a) of this title, the costs of development of water sources, treatment facilities, pumping and storage facilities, the main transmission system to the center of the population area, and attendant facilities determined necessary by the department, an approved grant allowance to defray all or a portion of the engineering costs, and up to a \$3,000.00 grant allowance for administrative and legal costs relating to the project, but shall exclude all costs of land and easements required for the project and legal and administrative costs incident thereto. For a potable water supply project receiving a loan under subsection 1624(b) of this title, the total project cost as determined by the secretary consistent with federal law~~ equipment, conveyances, and structural or nonstructural facilities needed for and appurtenant to the prevention, management, treatment, storage, or disposal of sewage, waste, or stormwater, and the associated costs necessary to construct the improvements, including costs to acquire land for the project.

(2)(A) ~~In the case of water pollution abatement projects, the cost of sewage treatment plants, outfall sewers, interceptor sewers, pumping or lift stations, overflow control structures and attendant facilities determined necessary by the department and such other sewers necessary for federal aid requirements, an approved grant allowance to defray all or a portion of the engineering costs, and up to a \$3,000.00 grant allowance for administrative and legal costs relating to the project, but shall exclude all costs of land and easements required for the project and legal and administrative costs incident thereto which are not eligible for federal assistance~~

~~(B) In the case of water pollution abatement projects utilizing innovative or alternative processes or techniques and determined eligible for federal grants under section 201(g)(5) of P.L. 92-500, and its subsequent amendment, the cost of building, acquisition, alteration, remodeling, improvement or extension of treatment works, an approved grant allowance to defray all or a portion of the engineering costs, and up to a \$3,000.00 grant allowance for administrative and legal costs relating to the project, but shall exclude all costs of land and easements required for the project and legal and administrative costs incident thereto which are not eligible for federal assistance.~~

~~(C) In the case of water pollution abatement projects utilizing privately owned treatment works serving one or more residences or small commercial establishments, and determined eligible for federal grant assistance under section 201(h) of P.L. 92-500, and its subsequent amendment, the cost of building, acquisition, and alteration of facilities, an approved grant allowance to defray all or a portion of the engineering costs, and up to a \$3,000.00 grant allowance for administrative and legal costs relating to the project, but shall exclude all costs of land and easements required for the project and legal and administrative costs incident thereto which are not eligible for federal assistance.~~

~~(3) In the case of combined sewer separation projects, the cost of combined sewer separation facilities, storm water treatment facilities, and attendant facilities determined necessary by the department, an approved grant allowance to defray all or a portion of the engineering costs, and up to a \$3,000.00 grant allowance for administrative and legal costs relating to the project, but shall exclude all costs of land and easements required for the project and legal and administrative costs incident thereto.~~

~~(4) All water pollution abatement projects shall be in conformance with the provisions of chapter 151 of this title.~~

Sec. 15. 10 V.S.A. § 1623 is amended to read:

§ 1623. APPLICATION

A municipality ~~which that~~ has voted funds in a specific amount to construct a water pollution abatement and control facility as described in section 1622 of this title, at a meeting duly warned for that purpose, which desires to avail itself of state State aid funds under this subchapter, shall apply for such funds in writing to the department Department in a manner prescribed by the department Department. ~~Municipalities whose water pollution abatement facilities have been previously constructed and which meet the permit~~

~~requirements established under chapter 47 of this title may make application for state aid funds without further vote of the municipality:~~

~~(1) if the local share of the project costs are formally authorized by the municipal officials from funds available to them, or~~

~~(2) if the project is to construct facilities to remove phosphorus to a level of 1 milligram per liter,~~

~~(3) and provided the project meets all other requirements of the department.~~

Sec. 16. 10 V.S.A. § 1624 is amended to read:

§ 1624. ~~FINANCIAL ASSISTANCE WITH WATER SUPPLY PROJECTS~~

~~(a) Grants. The secretary may award a municipality a state grant for a potable water supply facility of up to 35 percent of its total eligible project cost, when the municipality contributes at least ten percent of the total eligible costs, for which purpose the municipality may use federal funds obtained from other programs, and when the secretary finds that:~~

~~(1) the project is necessary, and the proposed type, size and estimated cost of the project are suitable for its intended purpose;~~

~~(2) at least one half of the property owners of the new area of the municipality to be served by the project have contracted to connect to the water system and pay for service at rates which the legislative body of the municipality determines to be adequate to cover the anticipated operating and maintenance costs including debt services;~~

~~(3) the proposed rate and fee schedule provide for reasonable contributions by all persons in the municipality benefited by the project; and~~

~~(4) the municipality has voted bonds for the project prior to April 5, 1997 in anticipation of the receipt of a construction grant authorized under this subsection.~~

~~(b) Loans.~~

~~(1) The secretary may certify to the Vermont municipal bond bank established by 24 V.S.A. § 4571 the award of a loan to a municipality to assist with a potable water supply facility project, when the secretary finds that:~~

~~(A) the project is necessary;~~

~~(B) the proposed type, size, and estimated cost of the project are suitable for its intended purpose; and~~

~~(C) — the municipality will have the technical, financial, and managerial ability to operate the facility in compliance with federal and state law.~~

~~(2) The certification by the secretary shall specify the interest rate, and indicate which of the following loan conditions concerning construction loans apply:~~

~~(A) The term shall not exceed 20 years, and the annual interest rate, plus administrative fee, shall be no more than three percent or less than zero percent, except that when the applicant municipality is disadvantaged as defined by subdivision 1571(9) of this title, the term shall not exceed 30 years. When the applicant municipality is disadvantaged as defined in subdivision 1571(9)(A) of this title, the annual interest rate, plus administrative fee, shall be no less than minus three percent.~~

~~(B) In no instance shall the annual interest rate, plus administrative fee, be less than necessary to achieve an annual household user cost equal to one percent of the median household income of the applicant municipality or served area, taking into account:~~

~~(i) debt retirement of the project, including any monies a municipality may borrow to match federal funds available to the drinking water state revolving fund pursuant to subsection (d) of this section;~~

~~(ii) prior drinking water projects; and~~

~~(iii) estimated annual operation and maintenance costs as determined by the secretary.~~

~~(3) A municipal legislative body may execute a loan agreement under this subsection, provided the loan is authorized by municipal voters and secured by the full faith and credit of the municipality.~~

~~(4) A loan shall be issued and administered pursuant to chapter 120 of Title 24.~~

~~(5) Loans shall be available to the extent funds are available and according to priorities established by the secretary.~~

~~(6) For purposes of this subsection, the secretary shall determine the median household income of a municipality from the most recent federal census data available when the priority list used for funding the project was approved, or at the option of an applicant municipality, based on the recommendation of an independent contractor hired by the municipality and approved by the secretary. The determination of the secretary shall be final. The cost of an independent contractor may be included in the total cost of a project. When using federal census data to determine the median household~~

~~income of a municipality, the census data shall be adjusted for inflation beginning in the second year of availability by increasing it four percent per year.~~

~~(7) Loans awarded for the purpose of refinancing old debt shall be for a term of no more than 20 years and at an interest rate set by the state treasurer at no less than zero percent and no more than 80 percent of the average rate on marketable obligations of the state, except that municipalities or private water system owners which qualify for loan awards under 24 V.S.A. § 4770 and which incurred debt and initiated construction after April 5, 1997 may receive loans at interest rates and terms pursuant to subdivision (b)(2)(A) of this section.~~

~~(8) Loans awarded for the purpose of conducting feasibility studies and preparation of engineering plans and designs shall be for a term of no more than five years at an interest rate of zero percent.~~

~~(9) Loans awarded for the purpose of purchasing land or conservation easements to protect public water sources shall be for a term of no more than 20 years at an annual interest rate of three percent.~~

~~(10) The secretary may forgive up to \$25,000.00 of a loan from the Vermont environmental protection agency (EPA) drinking water state revolving fund to municipalities for improvements to public school water systems following substantial completion of the project. The secretary shall establish amounts, eligibility, policies, and procedures for loan forgiveness in the annual state intended use plan (IUP) with public review and comment prior to finalization and submission to the EPA.~~

~~(11) Subject to the interest rate and administrative fee limitations of subdivision (b)(2) of this section, the secretary may designate projects as United States Department of Agriculture Rural Development Vermont EPA drinking water state revolving fund jointly funded projects, and reduce the Vermont EPA revolving fund interest rate, plus administrative fee, in order to make the total loan cost of the joint loan to the municipality equivalent to the total loan cost of a separately funded Vermont EPA revolving loan for the same project.~~

~~(c)(1) Zebra mussel control. The department may award supplemental financial aid for the construction of zebra mussel control measures, upon finding that the proposed project is necessary. The supplemental aid shall be awarded in such a manner that the total financial burden of a water system, including zebra mussel controls, shall not exceed, in the first year after receiving the supplemental aid, an annual cost to a typical household of 1.5 percent of median household income for the project area as determined by~~

~~the department. The estimate of such cost shall include all awards of aid under subsections (a) and (b) of this section, all other aid available to the applicant, and the estimated new and existing capital debt retirement and annual operating costs of the system. Awards of supplemental aid may, in accordance with the eligibility limitations of subdivision 1622(1) of this title, consist of:~~

~~(A) a loan under chapter 120 of Title 24 with an interest rate sufficient to assure that annual user costs do not exceed 1.5 percent of the median household income; or~~

~~(B) a grant for up to, but not exceeding, the total capital cost of the proposed project, in order to assure as closely as possible that annual household user costs do not exceed 1.5 percent of the median household income for the project area.~~

~~(2) In awarding financial assistance under this section, the department shall determine the existing and proposed annual user cost in accordance with procedures or rules adopted under chapter 25 of Title 3.~~

~~(d) Municipal match of federal revolving funds.~~

~~(1) A municipality may choose to provide the state money necessary to match federal monies available to the drinking water state revolving fund established by 24 V.S.A. § 4753(a)(3), and thereby become eligible to receive a loan from the revolving fund in the amount of the total cost of a water facility project approved under this section. Such a loan from the revolving fund, for up to the total project cost, shall be approved by municipal voters and secured by the full faith and credit of the municipality or anticipated revenues from municipal water charges.~~

~~(2) The amount of such a municipal match of federal funds shall be equal to one sixth of the total project cost, which shall constitute a sum in addition to the amount of a loan for the total project cost to be received by the municipality from the revolving fund. A municipality is authorized to borrow monies needed for the match amount, from sources other than the revolving fund, which shall be approved by municipal voters and secured by the full faith and credit of the municipality or anticipated revenues from municipal water charges, or a municipality may use other funds or tax revenues available to it for this purpose.~~

~~(e) Upon request of the owner of a privately owned public water system, a municipality shall apply for and support an application for a community development block grant to receive use of state State and federal funds; provided:~~

~~(1) the private water system owner agrees to pay all administrative and legal costs incurred by the municipality in pursuit of the grant;~~

~~(2) the municipality finds that the project to be supported by the grant is consistent with applicable local and regional plans, and local ordinances or other local enactments;~~

~~(3) the private water system owner, to the extent practicable, undertakes the administration of logistical and legal work necessary to prepare the application materials; and~~

~~(4) the private water system owner agrees to hold the municipality harmless from any claims of liability arising from the grant application or project.~~

~~(f) The secretary may use federal funds to award grants to municipalities to complete studies, or for start up costs associated with the physical and operational consolidation of public water systems or the interconnection of public water systems. The secretary shall establish amounts, eligibility, priorities, policies, and procedures in the annual state intended use plan (IUP). [Repealed.]~~

Sec. 17. 10 V.S.A. § 1624a is amended to read:

~~§ 1624a. AWARDS FOR POLLUTION ABATEMENT PROJECTS FOR COMBINED SEWER OVERFLOWS~~

~~(a) When the Department finds that a proposed water pollution abatement project not covered under section 1625 of this title is necessary, that the proposed type, kind, quality, size, and estimated cost of the project, including operation cost and sewage disposal charges, are suitable for abatement of pollution, and that the project or the prescribed project phases are necessary to meet the intent of the water quality classifications established by the Secretary or by statute under chapter 47 of this title, the Department may award State financial assistance to the project. These projects may include ancillary work determined by the Secretary to be necessary to attain the water quality goals.~~

~~(b) The assistance shall consist of:~~

~~(1) A grant of 25 percent of the eligible project cost.~~

~~(2) A loan from the Vermont Environmental Protection Agency (EPA) Pollution Control Revolving Fund or the Vermont Pollution Control Revolving Fund of 50 percent of the eligible project cost. No interest shall be charged. In a certificate to the Vermont Municipal Bond Bank, the Secretary shall recommend the term, repayment schedule, and other terms and conditions of the loan.~~

~~(c) Notwithstanding the percentages of assistance provided for in subsection (b) of this section, when a municipality is certified by the Secretary of Commerce and Community Development to be within a designated job development zone, the grant to the municipality shall be 50 percent of eligible project costs and the loan shall be 25 percent of eligible project costs.~~

~~(d) Grants and loans under this section may be made from State and federal sources, as determined by the Secretary.~~

~~(e) A loan agreement may be entered into by action of the legislative body of the municipality, using procedures specified by applicable general or special enabling authority, following:~~

~~(1) authorization by the electorate of issuance of bonds in the amount of 25 percent of project costs, unless the municipality has determined to use some other method of financing its share of project cost; and~~

~~(2) authorization by the electorate of indebtedness in the amount of the loan under this section.~~

~~(f) A loan agreement may include provisions for deferred repayment if the electorate has authorized the future issuance of bonds to make a final repayment of the loan, and the authorization specifies whether the bond agreements will pledge the full faith and credit of the municipality or sufficient revenues from municipal sewage disposal charges.~~

~~(1) Except as provided in subdivision (2) of this subsection, loan repayments shall be according to the following schedule:~~

~~(A) 0.50 percent in the first year and increasing thereafter at 0.50 percent per year through the ninth year; and~~

~~(B) 5.0 percent in the 10th year through the 19th year; and~~

~~(C) the remainder in the 20th year.~~

~~(2) Notwithstanding subdivision (1) of this subsection, a municipality shall be entitled to loan repayment under this subdivision if repayment would produce municipal sewer rates in the municipality which exceed 150 percent of the current State average rate for a family of four. For purposes of this calculation, the municipality's sewer rates shall be deemed to include operating costs, payments on the municipality's water pollution control debt, and repayment of five percent of the principal of the loan under this section. The following shall be minimum repayments under this subdivision:~~

~~(A) 0.25 percent per year in the first through the tenth year, dating from the issuance of the certification of completion of the project;~~

~~(B) 0.50 percent in the 11th year and increasing thereafter at 0.50 percent per year through the 19th year; and~~

~~(C) the remainder in the 20th year.~~

~~(3) When a loan is issued with deferred repayment provisions pursuant to authorization of the electorate under this section for the future issuance of bonds, upon maturity of the loan, if other sources of revenue are available, the legislative body of the municipality may elect not to issue bonds to make the final payment on the loan. The term of these bonds, if issued, shall not exceed 20 years. As authorized in the initial vote, these bonds may be secured by a pledge of the full faith and credit of the municipality or by sufficient revenues from municipal sewage disposal charges.~~

~~(g) State financial assistance under this section shall be made to the extent that funds are available and according to a system of priorities established by the Secretary. In establishing this system, priority shall be given to pollution abatement and not to the support of demand growth, and to projects discharging into or near lakes on January 1, 1988.~~

~~(h) Notwithstanding subsection (b) of this section, a loan awarded from the Vermont Environmental Protection Agency Pollution Control Revolving Loan Fund for a combined sewer overflow abatement project may be for up to 100 percent of the eligible project cost if:~~

~~(1) the project is included on a priority list; and~~

~~(2) the project is capitalized, at least in part, with a Federal Clean Water State Revolving Fund grant that includes loan forgiveness provisions. [Repealed.]~~

Sec. 18. 10 V.S.A. § 1625 is amended to read:

§ 1625. ~~AWARDS FOR POLLUTION ABATEMENT PROJECTS TO ABATE DRY WEATHER SEWAGE FLOWS~~

~~(a) When the Department finds that a proposed water pollution abatement project is necessary to maintain water quality standards during dry weather sewage flows, and that the proposed type, kind, quality, size, and estimated cost, including operation cost and sewage disposal charges, of the project are suitable for abatement of pollution, and the project or the prescribed project phases are necessary to meet the intent of the water quality classifications established by the Secretary or by statute under chapter 47 of this title, the Department may award to municipalities a State assistance grant of up to 25 percent of the eligible project cost, provided that in no case shall the total of the State and federal grants exceed 90 percent of the eligible project costs:~~

~~(1) except that the 90 percent limitation shall not apply when the municipality provides, as their local share, federal funds allocated to them for the purpose of matching other federal grant programs having a matching requirement; and~~

~~(2) except that the total of State and federal grants issued under P.L. 92-500 section 202(a)(2) may equal up to 95 percent of the eligible costs for innovative or alternative wastewater treatment processes and techniques.~~

~~(b) In carrying out the purposes of this subchapter, the Department shall define the purpose and scope of an eligible project, including a determination of the area to be served, type of treatment, effluent limitations, eligible construction costs, cost accounting procedures and methods and other such project construction, operation and fiscal elements necessary to meet federal aid requirements. The Department shall, as a part of the administration of this grant program, encourage municipalities to undertake capital development planning and to establish water and sewer charges along public utility concepts.~~

~~(c) Any municipality having proceeded with construction of facilities with a State grant of 25 percent since July 1, 1984 shall be eligible for an increase in the State grant to a total of 35 percent of the eligible project costs.~~

~~(d) The Department may award a State assistance grant of up to 50 percent of the eligible costs of an approved pollution abatement project or a portion thereof not eligible for federal financial assistance in a municipality that is certified by the Secretary of Commerce and Community Development to be within the designated job development zone. To achieve the objectives of chapter 29, subchapter 2 of this title, the eligibility and priority provisions of this chapter do not apply to municipalities within a designated job development zone.~~

~~(e) [Repealed.] [Repealed.]~~

Sec. 19. 10 V.S.A. § 1626a is amended to read:

§ 1626a. ~~AWARDS FOR WASTEWATER TREATMENT PLANTS WITH A CAPACITY OF 250,000 GALLONS OR MORE PER DAY~~

~~(a) Definitions. For the purpose of this section:~~

~~(1) "Septage" means the product of an individual or a group septic tank, which is removed from the tank for further processing and disposal.~~

~~(2) "Sludge" means the intermediate product of a municipal wastewater treatment plant which receives further processing by the same plant in a manner similar to the processing of septage by the plant.~~

~~(3) The project or plant “cost” means the cost of the enlargement or new construction of a wastewater treatment plant which the commissioner of environmental conservation finds is eligible for financial assistance under this section.~~

~~(b) Loan eligibility. The proposed enlargement or new construction of a wastewater treatment plant with a total design hydraulic capacity of 250,000 or more gallons per day shall be eligible for a loan for 100 percent of the total project cost, as provided by chapter 120 of Title 24, if the commissioner of environmental conservation finds that:~~

~~(1) the proposed plant capacity is necessary to accommodate anticipated municipal growth; and that~~

~~(2) the proposed plant capacity will be sufficient to receive, treat and dispose of septage in a quantity equivalent to the ratio of 2,000 gallons or more of such septage per day for each 1,000,000 gallons per day of plant design hydraulic capacity. However, this condition shall not be required if the commissioner finds that such septage treatment capacity by the plant is not needed within the region of the state in which the plant is or will be located.~~

~~(c) Additional state assistance eligibility.~~

~~(1) Grants. A proposed wastewater treatment plant which is eligible for a loan under subsection (b) of this section, and a wastewater treatment plant with a design hydraulic capacity of 250,000 or more gallons per day which is being refurbished, shall in addition be eligible for a grant of up to 50 percent of the cost of that portion of the plant to be used to treat septage, or septage and sludge in combination, if the commissioner of environmental conservation finds that the proposed plant capacity will be sufficient to receive, treat and dispose of septage alone in a quantity equivalent to the ratio of 4,000 gallons or more of such septage per day for each 1,000,000 gallons per day of plant design hydraulic capacity. The portion of the plant used for processing septage, or septage and sludge in combination, shall include facilities for receiving septage and for the storage, treatment, transfer, and disposal of both septage and sludge.~~

~~(2) Loans. A proposed wastewater treatment plant which is eligible for a grant under this subsection may receive an interest free loan for the remaining amount of the total project cost, from revolving funds established by chapter 120 of Title 24.~~

~~(d) Conditions of additional state assistance. The additional state assistance provided by subsection (c) of this section shall be awarded under the following conditions:~~

~~(1) To be eligible for additional assistance, a proposed plant shall be consistent with any solid waste implementation plan adopted pursuant to 24 V.S.A. § 2202a, or chapter 117 of Title 24, which is approved by the secretary of natural resources and which addresses septage and sludge management. However, the commissioner of environmental conservation shall not withhold additional assistance because of an absence of an adopted or approved solid waste implementation plan.~~

~~(2) Plants eligible for additional assistance shall receive increased funding priority in accordance with rules adopted by the secretary.~~

~~(3) A plant receiving additional assistance shall, for the useful life of the facility, maintain its additional processing capacity for use only in receiving and processing septage. Such septage shall be accepted from any Vermont municipality, and shall not be restricted to specific municipalities. The rate or rates charged for acceptance by the plant of septage from sources other than the users for whom the plant is designed primarily to serve, shall be equal to the rate or rates charged the primary users, and shall not subsidize the primary users. The agency shall include these requirements in any permit issued for the construction and operation of the plant, and the requirements shall be enforceable in the manner prescribed for that permit.~~

~~(4) Project costs eligible for additional assistance shall include the cost of: land used for the direct disposal of septage and sludge; facilities to receive, store, treat, transfer and dispose of septage and sludge; and facilities to compost or pelletize or otherwise process septage and sludge.~~

~~(5) When other state or federal assistance is awarded to a plant eligible for additional assistance under this section, such other assistance shall reduce, first, the loan amount awarded under this section, and secondly, the grant amount awarded under this section. [Repealed.]~~

Sec. 20. 10 V.S.A. § 1626b is added to read:

§ 1626b. MUNICIPAL WATER POLLUTION CONTROL GRANTS

(a) Projects. The Secretary may award State assistance grants to municipalities for water pollution abatement and control facilities.

(b) Application. The Secretary shall prescribe the form of application to apply for a grant under this section. The application shall include:

- (1) a description of the project;
- (2) a schedule for project implementation;
- (3) an estimate of the project cost;

(4) the information necessary for the Secretary to determine the grant amount using the criteria described in section 1628 of this title;

(5) whether the project requires a permit under chapter 151 of this title; and

(6) any other information that the Secretary deems necessary to implement this section.

(c) Grant award. The Secretary shall make grant awards pursuant to the project priority system adopted under section 1628 of this title in an amount not to exceed 35 percent of eligible project costs. The Secretary shall not award a grant under this section until the applicant provides a permit or jurisdictional opinion that a permit is not required, issued pursuant to chapter 151 of this title.

(d) Payment of awards. Payment of awards shall be made pursuant to section 1627 of this title.

Sec. 21. 10 V.S.A. § 1628 is amended to read:

§ 1628. PRIORITIES

The Department shall make grant awards under this chapter to eligible municipal water pollution abatement and control projects on the basis of ~~urgency of~~ need as determined according to a system of priorities adopted by rule by the 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 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 for the period in which the award is made~~ require consideration of criteria, including:

(1) whether a project is grant or loan eligible;

(2) the condition of the waters affected by the project and whether the waters are:

(A) not in compliance with the Vermont Water Quality Standards; or

(B) have a total maximum daily load (TMDL);

(3) whether the project will address water quality issues identified in a basin plan;

(4) whether the project will abate or control pollution that is causing or may cause a threat to public health;

(5) whether the project will address an emergency situation affecting or constituting a threat to the environment or the public health, safety, or welfare;

(6) if the project repairs or replaces existing infrastructure, the condition and integrity of such infrastructure;

(7) whether the project incorporates principles of environmental resiliency or sustainability, including energy efficiency, which reduce the environmental impacts of the project or a water pollution abatement and control facility;

(8) the fiscal integrity and sustainability of the project, including whether the project is a cost-effective alternative, when compared to other alternatives;

(9) whether the project serves a designated center;

(10) affordability factors for the municipality or municipalities in which the project is located, including:

(A) median household income;

(B) unemployment rate; and

(C) population trends; and

(11) if the project removes a pollutant for which the water or waters affected by the project are impaired, the cost-effectiveness of the project at removing that pollutant.

Sec. 22. 10 V.S.A. § 1630 is amended to read:

§ 1630. ~~REGULATIONS~~ RULES

The ~~department~~ Department with the approval of the ~~secretary~~ Secretary shall adopt ~~regulations~~ rules consistent with this subchapter as it finds necessary for proper administration of the subchapter.

Sec. 23. 10 V.S.A. § 1632 is amended to read:

§ 1632. STATE ADMINISTRATIVE DEPARTMENTS

For the purpose of constructing or substantially improving a water pollution abatement and control facility ~~or potable water supply facility~~ any state State administrative department as authorized in Title 3 shall be deemed a municipality under section 1623 of this title; and subject to the terms and conditions applicable to municipalities; provided, however, that a State administrative department deemed a municipality shall only receive State

assistance under this chapter if the Department has a surplus of funds at the end of each fiscal year after all municipal grant applicants have received committed funds.

Sec. 24. 24 V.S.A. § 4751 is amended to read:

§ 4751. DECLARATION OF POLICY

It is hereby declared to be in the public interest to foster and promote timely expenditures by municipalities for water supply systems, water pollution abatement and control facilities, and solid waste management, each of which is declared to be an essential governmental function when undertaken and implemented by a municipality. It is also declared to be in the public interest to promote expenditures for certain existing privately owned public water systems and certain privately owned wastewater and public and potable water supply systems to bring those systems into compliance with federal and state State standards and to protect public health and the environment.

Sec. 25. 24 V.S.A. § 4752 is amended to read:

§ 4752. DEFINITIONS

For the purposes of As used in this chapter:

* * *

(3) “Municipality” means any city, town, village, town school district, incorporated school district, union school district, or other school district, fire district, consolidated sewer district, consolidated water district, solid waste district, or statewide or regional water quality utility, or mechanism organized under laws of the State.

* * *

(6) “Noncommunity water system” ~~means a noncommunity water system as that term is defined~~ shall have the same meaning as in 10 V.S.A. § 1671.

(7) “Privately owned water system” means any water system ~~which that~~ is not owned or operated by a municipality.

(8) “Community water system” ~~means a public community water system as that term is defined~~ shall have the same meaning as in 10 V.S.A. § 1671.

(9) “Public water system supply systems” means a public water system as that term is defined in 10 V.S.A. § 1671, except for bottled water facilities and for-profit noncommunity systems, which includes water systems, water treatment plants, structures, pipe lines, storage facilities, pumps, and attendant

facilities necessary to develop a source of water, and to treat and convey it in proper quantity and quality.

(10) “Privately owned wastewater system” means a privately owned wastewater conveyance, treatment, and disposal system or elements thereof which is privately owned and system, which handles receives primarily domestic type wastes.

(11) “Water pollution abatement and control facilities” means such equipment, conveyances, and structural or nonstructural facilities owned or operated by a municipality that are needed for and appurtenant to the prevention, management, treatment, storage, or disposal of stormwater, sewage, or waste, including a wastewater treatment facility, combined sewer separation facilities, an indirect discharge system, a wastewater system, flood resiliency work related to a structural facility, or a groundwater protection project.

(12) “Disadvantaged municipality” means a municipality or the served area of a municipality which:

(A) has a median household income below the State average median household income as determined by the Secretary and which, after construction of the proposed water supply improvements, will have an annual household user cost greater than one percent of the median household income as determined by the Secretary; or

(B) has a median household income equal to or greater than the State average median household income as determined by the Secretary and which, after construction of the proposed water supply improvements, will have an annual household user cost greater than 2.5 percent of the median household income as determined by the Secretary.

(13) “Potable water supply facilities” means municipal water sources, water treatment plants, structures, pipe lines, storage facilities, pumps and attendant facilities necessary to develop a source of water and to treat and convey it in proper quantity and quality for public use within a municipality.

(14) “Sewage” shall have the same meaning as used in section 3501 of this chapter.

(15) “Stormwater” shall have the same meaning as stormwater runoff in section 1264 of this title.

(16) “Waste” shall have the same meaning as used in 10 V.S.A. § 1251.

Sec. 26. 24 V.S.A. § 4753 is amended to read:

§ 4753. REVOLVING LOAN FUNDS; AUTHORITY TO SPEND; REPORT

(a) There is hereby established a series of special funds to be known as:

(1) The Vermont Environmental Protection Agency (EPA) Pollution Control Revolving Fund, which shall be used, consistent with federal law, to provide loans to municipalities, and State agencies, and the Vermont Housing Finance Agency for planning sewage systems and sewage treatment or disposal plants as defined in subdivisions 3501(6) and 3601(3) of this title, for constructing publicly owned sewage systems and sewage treatment or disposal plants as defined in subdivisions 3501(6) and 3601(3) of this title, for planning or construction of certain privately owned wastewater systems, and construction of water pollution abatement and control facilities, including acquisitions of project-related easements, land, options to purchase land, and temporary or permanent rights-of-way, and for implementing related management programs.

(2) The Vermont Pollution Control Revolving Fund, which shall be used to provide loans to municipalities, and State agencies, and the Vermont Housing Finance Agency for planning and construction of water pollution abatement and control facilities, for constructing publicly owned pollution control facilities, and for constructing certain privately owned wastewater systems and potable water supply systems including acquisitions of project-related easements, land, options to purchase land, and temporary or permanent rights-of-way.

(3) The Vermont Environmental Protection Agency (EPA) Drinking Water State Revolving Fund, which shall be used to provide loans to municipalities and certain privately owned water systems for:

(A) planning, designing, constructing, repairing, or improving a public water system supply systems, including acquisitions of project-related easements, land, options to purchase land, and temporary or permanent rights-of-way, in order to comply with State and federal standards and protect public health and the environment; and

(B) implementing related management programs.

(4) The Vermont Solid Waste Revolving Fund, which shall be used to provide loans to municipalities (including union municipal districts formed under ~~subchapter 3~~ of chapter 121, subchapter 3 of this title) for planning solid waste handling and disposal facilities as enumerated in section 2203a of this title, and for constructing publicly owned solid waste handling and disposal facilities as enumerated in section 2203a of this title.

(5) The Vermont Drinking Water Planning Loan Fund, which shall be used to provide loans to municipalities and privately owned, nonprofit community water systems, with populations of less than 10,000, for

conducting feasibility studies and for the preparation of preliminary engineering planning studies and final engineering plans and specifications for improvements to public water supply systems in order to comply with State and federal standards and to protect public health. The Secretary may forgive up to \$50,000.00 of the unpaid balance of a loan made from the Vermont Drinking Water Planning Loan Fund to municipalities after project construction is substantially completed or upon approval of a plan. The Secretary shall establish amounts, eligibility, policies, and procedures for loan forgiveness in the annual State ~~Intended Use Plan~~ intended use plan (IUP), as required by the Safe Drinking Water Act, 42 U.S.C. § 300f et seq., with public review and comment prior to finalization and submission to the U.S. Environmental Protection Agency.

(6) The Vermont Drinking Water Source Protection Fund, which shall be used to provide loans to municipalities for purchasing land or conservation easements in order to protect public water sources and ensure compliance with State and federal drinking water regulations.

(7) The Vermont Drinking Water Emergency Use Fund, which shall be within the control of the Secretary. Disbursements from the Fund may be made by the Secretary for costs required to undertake the following emergency actions that the Secretary considers necessary to protect public health:

(A) collecting and analyzing samples of drinking water;

(B) hiring contractors to perform or cause to be performed infrastructure repairs of a public water ~~system~~ supply systems;

(C) hiring certified operators to perform operational activities at a public water ~~system~~ supply systems; and

(D) providing or causing to be provided bottled or bulk water for a public water ~~system~~ supply systems due to problems with quality or quantity, or both.

(8) [Repealed.]

(9) The Vermont Drinking Water Revolving Loan Fund, which shall be used to provide loans to a municipality for the design, land acquisition, if necessary, and construction of a potable water supply when a household in the municipality has been disconnected involuntarily from a public water supply system for reasons other than nonpayment of fees.

(10) The Vermont Wastewater and Potable Water Revolving Loan Fund, which shall be used to provide loans to individuals, in accordance with section 4763b of this title, for the design and construction of repairs to or replacement of wastewater systems and potable water supplies when the

wastewater system or potable water supply is a failed system or supply as defined in 10 V.S.A. § 1972. The amount of \$275,000.00 from the fees collected pursuant to 3 V.S.A. § 2822(j)(4) shall be deposited on an annual basis into this Fund.

(b) Each of such funds shall be established and held separate and apart from any other funds or monies of the State and shall be used and administered exclusively for the purpose of this chapter with the exception of transferring funds from the Vermont Drinking Water Planning Loan Fund and the Vermont Drinking Water Source Protection Fund to the Vermont Environmental Protection Agency (EPA) Drinking Water State Revolving Fund, and from the Vermont Pollution Control Revolving Fund to the Vermont Environmental Protection Agency (EPA) Pollution Control Revolving Fund, when authorized by the Secretary. These funds shall be administered by the Bond Bank on behalf of the State, except that: the Vermont EPA Drinking Water State Revolving Fund shall be administered by VEDA concerning loans to privately owned water systems under ~~subdivision~~ subdivisions (a)(3) and (5) of this section; and the Vermont Wastewater and Potable Water Revolving Loan Fund may be administered by a community development financial institution, as that term is defined in 12 U.S.C. § 4702, that is contracted with by the State for the purpose of providing loans to individuals for failed wastewater systems and potable water supplies under subdivision (a)(10) of this section. The funds shall be invested in the same manner as permitted for investment of funds belonging to the State or held in the Treasury. The funds shall consist of the following:

(1) such sums as may be appropriated or transferred thereto from time to time by the General Assembly, the State Emergency Board, or the Joint Fiscal Committee during such times as the General Assembly is not in session;

(2) principal and interest received from the repayment of loans made from each of such funds;

(3) capitalization grants and awards made to the State by the United States of America for any of the purposes for which such funds have been established;

(4) interest earned from the investment of fund balances;

(5) private gifts, bequests, and donations made to the State for any of the purposes for which such funds have been established; and

(6) other funds from any public or private source intended for use for any of the purposes for which such funds have been established.

(c) In addition to the purposes established in subsection (a) of this section, the various loan funds created herein may be used for one or more of the purposes established in section 4757 of this title.

~~(d) Funds from the Vermont Environmental Protection Agency Pollution Control Fund and the Vermont Pollution Control Revolving Fund, established by subdivisions (a)(1) and (2) of this section, may be awarded for:~~

~~(1) the refurbishment or construction of a new or an enlarged wastewater treatment plant with a resulting total capacity of 250,000 gallons or more per day in accordance with the provisions of this chapter and 10 V.S.A. § 1626a; or~~

~~(2) the construction of stormwater management facilities as specifically or generally described in Vermont's Nonpoint Source Management Plan, and which are necessary to remedy or prevent pollution of waters of the State, provided, in any year in which the federal grant for the Fund established in subdivision (a)(1) of this section does not exceed the amount available to the State in the 2002 federal appropriation, no more than 30 percent of that year's federal and State appropriations to that Fund shall be used for the purpose outlined in this subdivision. [Repealed.]~~

(e) The Secretary may bring an action under this subsection or other available State and federal laws against the owner or permittee of the public water system ~~system~~ supply systems to seek reimbursement to the Vermont Drinking Water Emergency Use Fund for all disbursements from the Fund made pursuant to subdivision (a)(7) of this section. To the extent compatible with the urgency of the situation, the Secretary shall provide an opportunity for the responsible water system owner or permittee to undertake the necessary actions under the direction of the Secretary prior to making disbursements.

Sec. 27. 24 V.S.A. § 4753a is amended to read:

§ 4753a. AWARDS FROM REVOLVING LOAN FUNDS

(a) Pollution control. The General Assembly shall approve all categories of awards made from the special funds established by section 4753 of this title for water pollution abatement and facility construction, in order to assure that such awards conform with State policy on water quality and pollution abatement, and with the State policy that municipal entities shall receive first priority in the award of public monies for such construction, including monies returned to the revolving funds from previous awards. To facilitate this legislative oversight, the Secretary of Natural Resources shall annually ~~no later than~~ on or before January 15 report to the House Committee on Corrections and Institutions, the Senate Committee on Institutions, and the House and Senate Committees on Natural Resources and Energy on all awards made from the

relevant special funds during the prior and current fiscal years, and shall report on and seek legislative approval of all the types of projects for which awards are proposed to be made from the relevant special funds during the current or any subsequent fiscal year. Where feasible, the specific projects shall be listed. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection.

~~(b) Water supply. The Secretary of Natural Resources shall no later than January 15, 2000 recommend to the House Committee on Corrections and Institutions, the Senate Committee on Institutions, and the House and Senate Committees on Natural Resources and Energy a procedure for reporting to and seeking the concurrence of the Legislature with regard to the special funds established by section 4753 of this title for water supply facility construction. [Repealed.]~~

(c) [Repealed.]

(d) Loan forgiveness; pollution control. Notwithstanding any other provision of law regarding loan forgiveness, upon the award of a loan from the Vermont Environmental Protection Agency Pollution Control Revolving Fund (CWSRF), the Secretary of Natural Resources, in a manner that is consistent with federal grant provisions, may ~~forgive up to 50 percent of a loan if the award is made for a project on a priority list and the project is capitalized, at least in part, from funds derived from a federal CWSRF capitalization grant that includes provisions authorizing loan forgiveness. Such loan forgiveness shall be based on the loan value, but funds to be forgiven shall only consist of federal funds, except where the loan is used as a match to other federal grants requiring nonfederal funds as a match~~ provide loan forgiveness.

(e) Loan forgiveness; drinking water.

(1) Notwithstanding any other provision of law regarding loan forgiveness, upon the award of a loan from the Vermont Environmental Protection Agency Drinking Water State Revolving Fund (DWSRF), the Secretary of Natural Resources, in a manner that is consistent with federal grant provisions, may ~~forgive up to 100 percent of a loan if the award is made for a project on the priority list and the project is capitalized, at least in part, from funds derived from a federal DWSRF capitalization grant that includes provisions authorizing loan forgiveness. Such loan forgiveness shall be based on the loan value, but funds to be forgiven shall only consist of federal funds, except where the loan is used as a match to other federal grants requiring nonfederal funds as a match~~ provide loan forgiveness.

(2) Notwithstanding any other provision of law regarding loan forgiveness, upon the award of a loan from the Vermont Drinking Water State

Revolving Loan Fund, the Secretary of Natural Resources may provide loan forgiveness for preliminary engineering and final design costs when a municipality undertakes such engineering on behalf of a household that has been disconnected involuntarily from a public water supply system for reasons other than nonpayment of fees, provided it is not the same municipality that is disconnecting the household.

(f) Loan forgiveness standard. The Secretary shall establish standards, policies, and procedures as necessary for implementing subsections (d) and (e) of this section for allocating the funds among projects and for revising standard priority lists in order to comply with requirements associated with federal capitalization grant agreements.

Sec. 28. 24 V.S.A. § 4754 is amended to read:

§ 4754. LOAN APPLICATION

A municipality may apply for a loan, the proceeds of which shall be used to acquire, design, plan, construct, enlarge, repair or improve a ~~publicly owned sewage system, sewage treatment or disposal plant, publicly owned water pollution abatement and pollution control facility, water supply, water system, public water supply systems as defined in section 4752(9) of this title, or a~~ solid waste handling and disposal facility, or certain ~~privately owned~~ privately owned wastewater systems as described in section 4763 of this title, or to implement a related management program. In addition, the loan proceeds shall be used to pay the outstanding balance of any engineering planning advances made to the municipal applicant under ~~this chapter 55 of Title 10~~ and determined by the ~~secretary of the agency of natural resources~~ Secretary to be due and payable following construction of the improvements to be financed by the proceeds of the loan. The ~~bond bank~~ Bond Bank may prescribe any form of application or procedure required of a municipality for a loan hereunder. Such application shall include such information as the ~~bond bank~~ Bond Bank shall deem necessary for the purpose of implementing this chapter.

Sec. 29. 24 V.S.A. § 4755 is amended to read:

§ 4755. LOAN; LOAN AGREEMENTS; GENERAL PROVISIONS

(a) Except as provided by subsection (c) of this section, the Bond Bank may make loans to a municipality on behalf of the State for one or more of the purposes set forth in section 4754 of this chapter. Each of such loans shall be made subject to the following conditions and limitations:

(1) ~~no~~ No loan shall be made for any purpose permitted under this chapter other than from the revolving fund in which the same purpose is included.

(2) ~~the~~ The total amount of loan out of a particular revolving fund shall not exceed the balance of that fund;

(3) ~~the~~ The loan shall be evidenced by a municipal bond, payable by the municipality over a term not to exceed 30 years or the projected useful life of the project, ~~which ever~~ whichever is less, except:

(A) there shall be no deferral of payment, ~~unless authorized by 10 V.S.A. § 1624a;~~

(B) the term of the loan shall not exceed 20 years when required by ~~10 V.S.A. § 1624(b)~~ section 4763c of this title; and

(C) the loan may be evidenced by any other permitted debt instrument payable as permitted by chapter 53 of this title;

(4) ~~notwithstanding~~ Notwithstanding any other provisions of law, municipal legislative bodies may execute notes and incur debt on behalf of municipalities;

(A) with voter approval at a duly warned meeting, for amounts less than \$75,000.00; or

(B) ~~increase by increasing~~ increase by increasing previously approved bond authorizations by up to \$75,000.00 to cover unanticipated project costs; ~~and~~.

(5) ~~the~~ The rate of interest charged for the loans made to municipalities under this chapter, or the manner of determining the same, shall be established from time to time by the State Treasurer after consultation with the Secretary ~~of the Agency~~ taking into consideration the current average rate on outstanding marketable obligations of the State as of the last day of the preceding month. The rate of interest shall be no less than zero percent ~~nor more than 80 percent of the average rate on marketable obligations of the State~~ and no more than the market interest rate, as determined by the Bond Bank, except as provided in section 4763c of this title. ~~Effective July 1, 1999, an~~ An administrative fee of no more than two percent shall be charged for the loans made to municipalities under this chapter from the Clean Water State Revolving Fund. ~~Effective July 1, 2001, an administrative fee of no more than two percent may be charged for loans made to municipalities under this chapter from~~ and the Vermont Environmental Protection Agency Drinking Water State Revolving Fund. The Secretary shall establish the method used to determine such administrative fee. Fee proceeds shall be deposited into a nonlapsing account and be held separately from the funds established pursuant to section 4753 of this title. ~~Moneys~~ Monies from such account shall be used to pay the costs of administering each of the funds established by subsection 4753(a) of this title, and any excess shall be transferred to the appropriate account established by

subsection 4753(a) of this title. ~~Notwithstanding all other requirements of this subdivision, the interest rate charged for municipal water supply projects shall be established by the Secretary pursuant to 10 V.S.A. § 1624.~~

(b) Loans made to a municipality by the Bond Bank on behalf of the State under this chapter shall be evidenced by and made in accordance with the terms and conditions specified in a loan agreement to be executed by the Bond Bank on behalf of the State and the municipality. The loan agreement shall specify the terms and conditions of loan repayment by the municipality, as well as the terms, conditions, and estimated schedule of disbursement of loan proceeds. Disbursement of loan proceeds shall be based upon certification of the loan recipient showing that costs for which reimbursement is requested have been incurred and paid by the recipient. The recipient shall provide supporting evidence of payment upon the request of the ~~department~~ Department. Partial payments of loan proceeds shall be made not more frequently than monthly. Interest costs incurred in local short-term borrowing of the loan amount shall be reimbursed as part of the loan. The loan agreement shall state the term and interest rate of the loan, the scheduling of loan repayments, and such other terms and conditions as shall be deemed necessary by the Bond Bank.

(c) The Vermont Economic Development Authority shall make loans on behalf of the ~~state~~ State when the loan recipient is a privately owned public water system. Such loans shall be issued and administered pursuant to subchapter 3 of this chapter.

~~(d) The Secretary of Natural Resources shall by January 15, 2003 submit a comprehensive report to the House Committees on Corrections and Institutions and on Natural Resources and Senate Committees on Institutions and on Natural Resources and Energy on the use by the state and by municipalities of the two percent administrative fee authorized by subdivision (a)(4) of this section. [Repealed.]~~

(e) For the purposes of this chapter, a State administrative department as authorized in Title 3 shall be deemed a municipality and subject to the terms and conditions applicable to municipalities; provided, however, that a State administrative department deemed a municipality shall only receive State assistance under this chapter if the Department has a surplus of funds at the end of each fiscal year after all municipal loan applicants have received committed funds.

Sec. 30. 24 V.S.A. § 4758 is amended to read:

§ 4758. LOAN PRIORITIES

(a) Periodically, and at least annually, the ~~secretary~~ Secretary shall prepare and certify to the ~~bond bank~~ Bond Bank a project priority list of those municipalities whose publicly owned projects, or privately owned wastewater systems, are eligible for financing or assistance under this chapter. In determining financing availability for ~~wastewater projects~~ water pollution abatement and control facilities under this chapter, the ~~secretary of the agency having jurisdiction~~ Secretary shall apply the following criteria:

~~(1) the probable public benefit to be gained or preserved by the project to be financed;~~

~~(2) the long term costs and the resulting benefits to be derived from the project. In determining benefits, induced growth from a project that is not consistent with a town, city, or village plan, duly adopted under chapter 117 of this title, will not be considered;~~

~~(3) the cost of comparable credit or financing alternatives available to the municipality;~~

~~(4) the existence of immediate public health, safety and welfare factors, and compliance therewith;~~

~~(5) the existence of an emergency constituting a threat to public health, safety and welfare; and~~

~~(6) the current area and population to be served by the proposed project adopted pursuant to 10 V.S.A. § 1628.~~

(b) ~~In determining financing availability for stormwater projects under this chapter, the secretary of the agency having jurisdiction shall apply the following criteria:~~

~~(1) that the project is specifically or generally described in Vermont's nonpoint source management plan;~~

~~(2) that the project will remedy or prevent the impairment of waters, and the severity of that existing or prevented impairment; and~~

~~(3) that the project is consistent with the applicable basin plan for the waters affected by the project. [Repealed.]~~

Sec. 31. 24 V.S.A. § 4763c is added to read:

§ 4763c. LOANS FOR PUBLIC WATER SUPPLY SYSTEMS

(a) The Secretary may certify to the Vermont Municipal Bond Bank established by section 4571 of this title the award of a loan to a municipality to assist with a public water supply system project, when the Secretary finds that:

(1) the project is necessary;

(2) the proposed type, size, and estimated cost of the project are suitable for its intended purpose; and

(3) the municipality will have the technical, financial, and managerial ability to operate the facility in compliance with federal and State law.

(b) The certification by the Secretary shall specify the interest rate, and indicate which of the following loan conditions concerning construction loans apply:

(1) The term shall not exceed 20 years, and the annual interest rate, plus the administrative fee, shall be no more than three percent or less than zero percent, except that when the applicant municipality is disadvantaged as defined by subdivision 4752(12) of this title, the term shall not exceed 30 years. When the applicant municipality is disadvantaged as defined in subdivision 4752(12), the annual interest rate, plus the administrative fee, shall be no less than minus three percent.

(2) In no instance shall the annual interest rate, plus the administrative fee, be less than necessary to achieve an annual household user cost equal to one percent of the median household income of the applicant municipality or served area, taking into account:

(A) debt retirement of the project, including any monies a municipality may borrow to match federal funds available to the Vermont EPA Drinking Water State Revolving Fund pursuant to section 4763d of this title;

(B) prior drinking water projects; and

(C) estimated annual operation and maintenance costs as determined by the Secretary.

(c) A municipal legislative body may execute a loan agreement under this subsection provided the loan is authorized by municipal voters and secured by the full faith and credit of the municipality.

(d) A loan shall be issued and administered pursuant to this chapter.

(e) Loans shall be available to the extent funds are available and according to priorities established by the Secretary.

(f) For purposes of this section, the Secretary shall determine the median household income of a municipality from the most recent federal census data

available when the priority list used for funding the project was approved, or at the option of an applicant municipality, based on the recommendation of an independent contractor hired by the municipality and approved by the Secretary. The determination of the Secretary shall be final. The cost of an independent contractor may be included in the total cost of a project.

(g) Loans awarded for the purpose of refinancing old debt shall be for a term of no more than 20 years and at an interest rate set by the State Treasurer at no less than zero percent and no more than the market interest rate, as determined by the Bond Bank, except that municipalities or private water system owners that qualify for loan awards under section 4770 of this title and that incurred debt and initiated construction after April 5, 1997 may receive loans at interest rates and terms pursuant to subdivision (b)(2)(A) of this section.

(h) Loans awarded for the purpose of conducting feasibility studies and preparation of engineering plans and designs shall be for a term of no more than five years at an interest rate of zero percent.

(i) Loans awarded for the purpose of purchasing land or conservation easements to protect public water sources shall be for a term of no more than 20 years at an annual interest rate of three percent.

(j) The Secretary may forgive up to \$25,000.00 of a loan from the Vermont Environmental Protection Agency (EPA) Drinking Water State Revolving Fund to municipalities for improvements to public school water systems following substantial completion of the project. The Secretary shall establish amounts, eligibility, policies, and procedures for loan forgiveness in the annual State intended use plan (IUP), as required by the Safe Drinking Water Act, 42 U.S.C. § 300f et seq., with public review and comment prior to finalization and submission to the EPA.

(k) Subject to the interest rate and administrative fee limitations of subsection (b) of this section, the Secretary may designate projects as U.S. Department of Agriculture Rural Development-Vermont EPA Drinking Water State Revolving Fund jointly funded projects, and reduce the Vermont EPA revolving fund interest rate, plus administrative fee, in order to make the total loan cost of the joint loan to the municipality equivalent to the total loan cost of a separately funded Vermont EPA revolving loan for the same project.

Sec. 32. 24 V.S.A. § 4763d is added to read:

§ 4763d. MUNICIPAL MATCH OF FEDERAL REVOLVING FUNDS

(a) A municipality may choose to provide the State money necessary to match federal monies available to the Vermont EPA Drinking Water State

Revolving Fund established by subdivision 4753(a)(3) of this title, and thereby become eligible to receive a loan from the Revolving Fund in the amount of the total cost of a water facility project approved under this section. Such a loan from the Revolving Fund, for up to the total project cost, shall be approved by municipal voters and secured by the full faith and credit of the municipality or anticipated revenues from municipal water charges.

(b) The amount of such a municipal match of federal funds shall be equal to one-sixth of the total project cost, which shall constitute a sum in addition to the amount of a loan for the total project cost to be received by the municipality from the Revolving Fund. A municipality is authorized to borrow monies needed for the match amount, from sources other than the Revolving Fund, which shall be approved by municipal voters and secured by the full faith and credit of the municipality or anticipated revenues from municipal water charges, or a municipality may use other funds or tax revenues available to it for this purpose.

(c) Upon request of the owner of a privately owned public water system, a municipality may apply for and support an application for a community development block grant to receive use of State and federal funds, provided:

(1) the private water system owner agrees to pay all administrative and legal costs incurred by the municipality in pursuit of the grant;

(2) the municipality finds that the project to be supported by the grant is consistent with applicable local and regional plans, and local ordinances or other local enactments;

(3) the private water system owner, to the extent practicable, undertakes the administration of logistical and legal work necessary to prepare the application materials; and

(4) the private water system owner agrees to hold the municipality harmless from any claims of liability arising from the grant application or project.

(d) The Secretary may use federal funds to award grants to municipalities to complete studies, or for start-up costs associated with the physical and operational consolidation of public water systems or the interconnection of public water systems. The Secretary shall establish amounts, eligibility, priorities, policies, and procedures in the annual State intended use plan (IUP), as required by the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.

Sec. 33. 24 V.S.A. § 4764 is added to read:

§ 4764. PLANNING

(a) Engineering planning advance. A municipality or a combination of two or more municipalities desiring an advance of funds for engineering planning for public water supply systems, as defined in subdivision 4752(9) of this title, or improvements, or for water pollution abatement and control facilities or improvements, may apply to the Department for an advance under this chapter. As used in this subsection, “engineering planning” may include source exploration, surveys, reports, designs, plans, specifications, or other engineering services necessary in preparation for construction of the types of systems or facilities referred to in this section.

(b) Regional engineering planning. The Department, with the approval of the Secretary, may use up to ten percent of the total capital appropriation for construction grants to undertake regional engineering planning and process research. Funds approved for regional engineering planning may be awarded directly to a lead municipality and administered in accordance with this chapter.

(c) Funding. In each fiscal year, the Department may use up to 30 percent of the total capital appropriation for construction grants provided under 10 V.S.A. chapter 55 to award engineering planning advances.

Sec. 34. 24 V.S.A. § 4765 is added to read:

§ 4765. APPLICATION

The application shall be supported by data covering:

- (1) a description of the project;
- (2) a description of the engineering service to be performed;
- (3) an explanation of the need for the project;
- (4) an estimate of the cost of the project;
- (5) the amount of advance requested;
- (6) a schedule for project implementation;
- (7) such other information and assurances as the Department may require.

Sec. 35. 24 V.S.A. § 4766 is added to read:

§ 4766. AWARD OF ADVANCE

(a) The Department may award an engineering planning advance, as defined in section 4764 of this title, in an amount determined by standards established by the Department, and pursuant to the following:

(1) for public water supply systems, as defined in subdivision 4752(9) of this title, when it finds the same to be necessary in order to preserve or enhance the quality of water provided to the inhabitants of the municipality, or to alleviate an adverse public health condition, or to allow for orderly development and growth of the municipality, except that no funds may be awarded until the Department determines that the applicant has complied with the provisions of 10 V.S.A. § 1676a, unless such funds are solely for the purpose of determining the effect of the proposed project on agriculture; or

(2) for planning of water pollution abatement and control facilities, in order to enable a municipality to comply with water quality standards established under 10 V.S.A. chapter 47.

(b) The Department shall award an advance for engineering planning under this section only when it finds:

(1) that the cost of the project is reasonable for its intended purpose; and

(2) that local funds are not readily available.

Sec. 36. 24 V.S.A. § 4767 is added to read:

§ 4767. PAYMENT OF AWARDS

On receipt of the engineering planning documents and their approval by the Department, the Department shall certify the award to the Commissioner of Finance and Management who shall issue his or her warrant for payment of the award from the construction grant funds available to the Department. The Department may direct the Commissioner of Finance and Management to issue his or her warrant for partial payments of the award upon receipt and approval of portions of the total engineering work to be performed under the advance, together with the recipient's certification that costs for which reimbursement has been requested have been incurred and paid by the recipient municipality. The recipient shall provide supporting evidence of payment upon the request of the Department. Partial payments shall be made not more frequently than monthly. Interest costs incurred in local short-term borrowing of the engineering planning advance shall be reimbursed as part of the advance.

Sec. 37. 24 V.S.A. § 4768 is added to read:

§ 4768. REPAYMENT OF ADVANCES

Advances under this subchapter shall be repaid when construction of the facilities or any portion thereof is undertaken. Where a construction grant or loan is authorized by the Department for the project, the amount of the outstanding advances shall be retained from the initial payments of the grant or loan funds. In other instances, if repayment is not made within 60 days upon demand by the Department, the sum shall bear interest at the rate of 12 percent per annum from the date payment is demanded by the Department to the date of payment by the municipality. The Department may approve proportional repayment when construction is initiated on a small portion of the planned project.

Sec. 38. REPORT ON LOANS TO PRIVATE ENTITIES FOR WATER POLLUTION ABATEMENT AND CONTROL FACILITIES AND PUBLIC WATER SUPPLY SYSTEMS

(a) On or before December 15, 2016, the Secretary of Natural Resources shall submit to the House Committees on Corrections and Institutions, on Fish, Wildlife and Water Resources, and on Commerce and Economic Development and the Senate Committee on Institutions a report regarding whether and how to provide loans under 24 V.S.A. chapter 120 to private entities for water pollution abatement and control facilities, and public water supply systems.

(b) The report shall include:

(1) an assessment of the total funds available from the State for grants and loans to municipalities and the total funds available from the State for loans to private entities to improve water quality;

(2) an estimate of the costs to municipalities over the next 10 years of complying with State and federal water quality and water supply requirements, including any necessary improvements to water pollution abatement and control facilities or public water supply systems;

(3) an estimate of the likely demand by municipalities in the next 10 years for grants and loans for municipal compliance with State and federal water quality and water supply requirements;

(4) a recommendation of whether to authorize loans under 24 V.S.A. chapter 120 to private entities for water pollution abatement and control facilities or public water supply systems;

(A) if the Secretary recommends that private entities should not receive loans under 24 V.S.A. chapter 120 for water pollution abatement and control facilities or public water supply systems, the basis for the recommendation;

(B) if the Secretary recommends that private entities should be authorized to receive loans under 24 V.S.A. chapter 120 for water pollution abatement and control facilities or public water supply systems:

(i) the basis for the recommendation;

(ii) how loans to municipal projects would retain priority over private entities in eligibility;

(iii) whether loans to private entities should be limited to certain types of water pollution abatement and control facilities or public water supply systems projects, including whether:

(I) loans for correcting sewage problems should only be authorized to private residences or development with failed systems, as that term is defined in 10 V.S.A. § 1972; and

(II) loans to private entities for stormwater management should be limited to situations when stormwater runoff contributes to combined sewer overflow issues in a municipality and the State or the municipality lacks regulatory authority to require the private entity to implement stormwater controls;

(iv) which financial institution or institutions should administer the loans; and

(v) recommendations on loan eligibility requirements, conditions of loan agreements, and other provisions necessary to administer loans to private entities.

Sec. 39. TRANSITION; WATER POLLUTION ABATEMENT CONTROL FACILITIES

(a) Notwithstanding any conflict with this act, the Department is authorized to continue to award assistance under the Municipal Pollution Control Priority System Rule, adopted August 1, 2014, until new rules are adopted to implement this act pursuant to 10 V.S.A. § 1628. Until such new rules are adopted, the Department shall award grants pursuant to subsection (b) of this section.

(b) When the Department finds that a proposed water pollution abatement and control facility is necessary to maintain or achieve compliance with the Vermont Water Quality Standards; that the proposed type, kind, quality, size, and estimated cost of the project, including operation cost and sewage disposal charges, are suitable for abatement of pollution; and that the project or the prescribed project phases are necessary to meet the intent of the water quality classifications established by the Secretary or by statute under 10 V.S.A.

chapter 47, the Department may award State financial assistance to the project as follows:

(1) Combined sewer separation facilities and combined sewer overflow abatement projects shall be eligible for a grant of 25 percent of the eligible project costs.

(2) Projects to abate dry weather sewage flows shall be eligible for a grant of up to 25 percent of the eligible project costs, except that any municipality having proceeded with construction of facilities with a State grant of 25 percent since July 1, 1984 shall be eligible for an increase in the State grant to a total of 35 percent of the eligible project costs.

(3) A project to construct, enlarge, or refurbish a wastewater treatment plant with a design hydraulic capacity of 250,000 or more gallons per day shall be eligible for a grant of up to 50 percent of the cost of that portion of the plant used to treat septage, or septage and sludge in combination, if the Commissioner of Environmental Conservation finds that the proposed plant capacity will be sufficient to receive, treat, and dispose of septage alone in a quantity equivalent to the ratio of 4,000 gallons or more of such septage per day for each 1,000,000 gallons per day of plant design hydraulic capacity. The portion of the plant used for processing septage, or septage and sludge in combination, shall include facilities for receiving septage and for the storage, treatment, transfer, and disposal of both septage and sludge.

Sec. 40. EFFECTIVE DATE

This act shall take effect on passage.

(Committee Vote: 10-0-1)

H. 620

An act relating to health insurance and Medicaid coverage for contraceptives

Rep. Morris of Bennington, for the Committee on **Health Care**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 8 V.S.A. § 4099c is amended to read:

§ 4099c. REPRODUCTIVE HEALTH EQUITY IN HEALTH INSURANCE COVERAGE

(a) As used in this section, “health insurance plan” means any individual or group health insurance policy, any hospital or medical service corporation or health maintenance organization subscriber contract, or any other health benefit plan offered, issued, or renewed for any person in this state State by a

health insurer, as defined by 18 V.S.A. § 9402. The term shall not include benefit plans providing coverage for specific disease or other limited benefit coverage.

(b) A health insurance plan shall provide coverage for outpatient contraceptive services including sterilizations, and shall provide coverage for the purchase of all prescription contraceptives and prescription contraceptive devices approved by the federal Food and Drug Administration, except that a health insurance plan that does not provide coverage of prescription drugs is not required to provide coverage of prescription contraceptives and prescription contraceptive devices. A health insurance plan providing coverage required under this section shall not establish any rate, term or condition that places a greater financial burden on an insured or beneficiary for access to contraceptive services, prescription contraceptives and prescription contraceptive devices than for access to treatment, prescriptions or devices for any other health condition.

~~(b) As used in this section, “health insurance plan” means any individual or group health insurance policy, any hospital or medical service corporation or health maintenance organization subscriber contract, or any other health benefit plan offered, issued, or renewed for any person in this state State by a health insurer, as defined by 18 V.S.A. § 9402. The term shall not include benefit plans providing coverage for specific disease or other limited benefit coverage.~~

(c) A health insurance plan shall provide coverage without any deductible, coinsurance, co-payment, or other cost-sharing requirement for at least one drug, device, or other product within each method of contraception for women identified by the U.S. Food and Drug Administration (FDA) and prescribed by an insured’s health care provider.

(1) The coverage provided pursuant to this subsection shall include patient education and counseling by the patient’s health care provider regarding the appropriate use of the contraceptive method prescribed.

(2)(A) If there is a therapeutic equivalent of a drug, device, or other product for an FDA-approved contraceptive method, a health insurance plan may provide coverage for more than one drug, device, or other product and may impose cost-sharing requirements as long as at least one drug, device, or other product for that method is available without cost-sharing.

(B) If an insured’s health care provider recommends a particular service or FDA-approved drug, device, or other product for the insured based on a determination of medical necessity, the health insurance plan shall defer to the provider’s determination and judgment and shall provide coverage

without cost-sharing for the drug, device, or product prescribed by the provider for the insured.

(d) A health insurance plan shall provide coverage for voluntary sterilization procedures for men and women without any deductible, coinsurance, co-payment, or other cost-sharing requirement, except to the extent that such coverage would disqualify a high-deductible health plan from eligibility for a health savings account pursuant to 26 U.S.C. § 223.

(e) A health insurance plan shall provide coverage without any deductible, coinsurance, co-payment, or other cost-sharing requirement for clinical services associated with providing the drugs, devices, products, and procedures covered under this section and related follow-up services, including management of side effects, counseling for continued adherence, and device insertion and removal.

(f)(1) A health insurance plan shall provide coverage for a supply of contraceptives intended to last over a 12-month duration, which may be furnished or dispensed all at once or over the course of the 12 months at the discretion of the health care provider. The health insurance plan shall reimburse a health care provider or dispensing entity per unit for furnishing or dispensing a supply of contraceptives intended to last for 12 months.

(2) This subsection shall apply to Medicaid and any other public health care assistance program offered or administered by the State or by any subdivision or instrumentality of the State.

(g) Benefits provided to an insured under this section shall be the same for the insured's covered spouse and other covered dependents.

Sec. 2. VALUE-BASED PAYMENTS FOR LONG-ACTING REVERSIBLE CONTRACEPTIVES

The Department of Vermont Health Access shall establish and implement value-based payments to health care providers for the insertion and removal of long-acting reversible contraceptives. The payments shall reflect the high efficacy rate of long-acting reversible contraceptives in reducing unintended pregnancies and the correlating decrease in costs to the State as a result of fewer unintended pregnancies. The payments shall create parity between the fees for insertion and removal of long-acting reversible contraceptives and those for oral contraceptives.

Sec. 3. APPROPRIATION

The sum of \$1.00 is appropriated to the Department of Vermont Health Access from the General Fund in fiscal year for purposes of increasing

reimbursement rates for long-acting reversible contraceptives pursuant to Sec. 2 of this act.

EFFECTIVE DATES

(a) Sec. 3 (appropriation) and this section shall take effect on July 1, 2016.

(b) Sec. 1 shall take effect on October 1, 2016 and shall apply to Medicaid on that date and shall apply to health insurance plans on or after October 1, 2016 on such date as a health insurer issues, offers, or renews the health insurance plan, but in no event later than October 1, 2017.

(c) Sec. 2 (long-acting reversible contraceptives; payments) shall take effect on October 1, 2016.

(Committee Vote: 9-0-2)

H. 623

An act relating to compassionate release and parole eligibility

Rep. Fields of Bennington, for the Committee on **Corrections & Institutions**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 28 V.S.A. § 501 is amended to read:

§ 501. ELIGIBILITY FOR PAROLE CONSIDERATION

(a) An inmate who is serving a sentence of imprisonment shall be eligible for parole ~~consideration~~ as follows:

(1) If the inmate's sentence has no minimum term or a zero minimum term, the inmate shall be eligible for parole consideration within 12 months after commitment to a correctional facility.

(2) If the inmate's sentence has a minimum term, the inmate shall be eligible for parole consideration after the inmate has served the minimum term of the sentence.

(3) Notwithstanding subsection 502a(a) of this title, if the inmate is 55 years of age or older but under 65 years of age, and has served ten years but not served the minimum of the sentence, the inmate shall be eligible for parole consideration, unless the inmate has programming requirements that have not been fulfilled.

(4) Notwithstanding subsection 502a(a) of this title, if the inmate is 65 years of age or older, and has served five years but not served the minimum of the sentence, the inmate shall be eligible for parole consideration, unless the inmate has programming requirements that have not been fulfilled.

Sec. 2. 28 V.S.A. § 502a is amended to read:

§ 502a. RELEASE ON PAROLE

(a) No inmate serving a sentence with a minimum term shall be released on parole until the inmate has served the minimum term of the sentence, less any reductions for good behavior.

(b) An inmate shall be released on parole by the written order of the Parole Board if the Board determines:

(1) the inmate is eligible for parole;

(2) there is a reasonable probability that the inmate can be released without detriment to the community or to the inmate; and

(3) the inmate is willing and capable of fulfilling the obligations of a law-abiding citizen.

(c) A parole shall be ordered only for the best interest of the community and of the inmate, and shall not be regarded as an award of clemency, a reduction of sentence, or a conditional pardon.

(d) Notwithstanding subsection (a) of this section, or any other provision of law to the contrary, any inmate who is serving a sentence, including an inmate who has not yet served the minimum term of the sentence, who is diagnosed as having a terminal or ~~debilitating~~ serious medical condition so as to render the inmate unlikely to be physically capable of presenting a danger to society, may be released on medical parole to a hospital, hospice, other licensed inpatient facility, or suitable housing accommodation as specified by the parole board. Provided the inmate has authorized the release of his or her personal health information, the ~~The~~ Department shall promptly notify the parole board upon receipt of medical information of an inmate's diagnosis of a terminal or ~~debilitating~~ serious medical condition.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2016.

and that after passage the title of the bill be amended to read: “An act relating to parole eligibility”

(Committee Vote: 11-0-0)

H. 690

An act relating to the practice of acupuncture by physicians and osteopaths

Rep. Bancroft of Westford, for the Committee on **Health Care**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 26 V.S.A. § 3402 is amended to read:

§ 3402. PROHIBITIONS; OFFENSES; EXEMPTIONS

(a) Except as provided in section 3412 of this title, ~~no~~ a person shall not practice acupuncture unless he or she is licensed in accordance with the provisions of this chapter.

(b)(1) ~~No~~ A person shall not use in connection with the person's name any letters, words, or insignia indicating or implying that the person is an acupuncturist unless the person is licensed in accordance with this chapter.

(2) The only title a licensed acupuncturist may use in reference to that license is "licensed acupuncturist" or its abbreviation, as "Lic. Ac."

(c) A person who violates any of the provisions of subsection (a) or (b) of this section shall be subject to the penalties provided in 3 V.S.A. § 127(e).

(d) Nothing in subsection (a) of this section shall prevent a student from performing acupuncture under the supervision of a competent licensed acupuncturist instructor:

(1) within a school or a college or an acupuncture department of a college or university that is licensed by the Vermont Agency of Education or certified by the Accreditation Commission for Acupuncture and Oriental Medicine; ~~or~~

(2) as a student in a Director-approved apprenticeship; or

(3) as an intern in any hospital.

(e) Nothing in subsection (a) of this section shall prevent a person who is licensed or certified as an acupuncturist in another state or Canadian province from practicing acupuncture for no more than five days in a calendar year as part of a health care professional educational seminar or program in Vermont, if the educational seminar or program is directly supervised by a Vermont-licensed health care professional whose scope of practice includes acupuncture.

(f) The provisions of this chapter shall not apply to the following persons acting within the scope of his or her professional practice:

- (1) a person licensed to practice medicine under chapter 23 of this title;
- (2) a person licensed to practice osteopathic medicine under chapter 33 of this title; or
- (3) a person licensed as a physician assistant under chapter 31 of this title.

Sec. 2. 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 the practice of acupuncture by physicians, osteopaths, and physician assistants”

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

H. 730

An act relating to Medicaid rates for home- and community-based services and home-delivered meals as a reimbursable covered service

Rep. Haas of Rochester, for the Committee on **Human Services**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. CHOICES FOR CARE; HOME-DELIVERED MEALS

(a) The Secretary of Human Services shall request approval from the Centers for Medicare and Medicaid Services for an amendment to Vermont’s Global Commitment to Health waiver that allows home-delivered meals to be a reimbursable covered service under the Choices for Care program when the meals:

- (1) are part of a participant’s service plan of care; and
- (2) meet the Vermont’s area agencies on aging’s nutrition requirements in accordance with the Older Americans Act, 42 U.S.C. §§ 3001–30058ff.

(b) Participants of the Choices for Care program receiving home-delivered meals pursuant to a service plan of care shall not have their personal care hours reduced as a result of receiving home-delivered meals.

Sec. 2. 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 home-delivered meals as a reimbursable covered service”

(**Committee Vote: 8-3-0**)

H. 743

An act relating to fair and impartial policing

Rep. Grad of Moretown, 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. 20 V.S.A. § 2358 is amended to read:

§ 2358. MINIMUM TRAINING STANDARDS; DEFINITIONS

* * *

(e)(1) The criteria for all minimum training standards under this section shall include anti-bias training approved by the Vermont Criminal Justice Training Council and training on the State, county, or municipal law enforcement agency's fair and impartial policing policy, adopted pursuant to subdivision 2366(a) of this title.

(2) On or before December 31, 2018, law enforcement officers shall receive a minimum of four hours of training as required by this subsection and shall receive a refresher course every two years in a program approved by the Vermont Criminal Justice Training Council in order to remain certified.

(3) A list of officers who have completed the fair and impartial policing training and the dates of the completion shall be public and posted on the Vermont Criminal Justice Training Council's website.

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

§ 2366. LAW ENFORCEMENT AGENCIES; FAIR AND IMPARTIAL
POLICING POLICY; RACE DATA COLLECTION

~~(a)(1) Except as provided in subdivision (2) of this subsection, on or before September 1, 2014, every State, local, county, and municipal law enforcement agency, and every constable who exercises law enforcement authority pursuant to 24 V.S.A. § 1936a and who is trained in compliance with section 2358 of this title, shall adopt a fair and impartial policing policy. The policy shall contain substantially the same elements of either the current Vermont State Police fair and impartial policing policy or the most current model policy issued by the Office of the Attorney General.~~

~~(2) On or before January 1, 2016, the Criminal Justice Training Council, in consultation with stakeholders, including the Vermont League of Cities and Towns, the Vermont Human Rights Commission, and Migrant Justice, shall adopt create a model fair and impartial policing policy. On or before July 1, 2016, every State, local, county, and municipal law enforcement agency,~~

and every constable who exercises law enforcement authority pursuant to 24 V.S.A. § 1936a and who is trained in compliance with section 2358 of this title, shall adopt a fair and impartial policing policy that includes, at a minimum, the elements of the Criminal Justice Training Council model policy.

(b) If a law enforcement agency or constable that is required to adopt a policy pursuant to subsection (a) of this section fails to do so on or before ~~September 1, 2014~~ July 1, 2016, that agency or constable shall be deemed to have adopted, and shall follow and enforce, the model policy issued by the ~~Office of the Attorney General~~ Criminal Justice Training Council.

(c) On or before September 15, 2014, and annually thereafter as part of their annual training report to the Council, every State, ~~local~~, county, and municipal law enforcement agency, and every constable who exercises law enforcement authority pursuant to 24 V.S.A. § 1936a and who is trained in compliance with section 2358 of this title, shall report to the Council whether the agency or officer has adopted a fair and impartial policing policy in accordance with subsections (a) and (b) of this section ~~and which policy has been adopted~~. The Criminal Justice Training Council shall determine, as part of the Council's annual certification of training requirements, if current officers have received training on fair and impartial policing as required by 20 V.S.A. § 2358(e).

(d) On or before October 15, 2014, and annually thereafter on April 1, the Criminal Justice Training Council shall report to the House and Senate Committees on Judiciary which departments and officers have adopted a fair and impartial policing policy, ~~which policy has been adopted~~, and whether officers have received training on fair and impartial policing.

(e)(1) On or before September 1, 2014, every State, ~~local~~, county, and municipal law enforcement agency shall collect roadside stop data consisting of the following:

- (A) the age, gender, and race of the driver;
- (B) the reason for the stop;
- (C) the type of search conducted, if any;
- (D) the evidence located, if any; and
- (E) the outcome of the stop, including whether:
 - (i) a written warning was issued;
 - (ii) a citation for a civil violation was issued;
 - (iii) a citation or arrest for a misdemeanor or a felony occurred; or

(iv) no subsequent action was taken.

(2) Law enforcement agencies shall work with the Criminal Justice Training Council and the Crime Research Group of Vermont with the goals of collecting uniform data, adopting uniform storage methods and periods, and ensuring that data can be analyzed. Roadside stop data, as well as reports and analysis of roadside stop data, shall be public.

(3) On or before September 1, 2016 and annually thereafter, law enforcement agencies shall provide the data collected under this subsection to the Crime Research Group of Vermont or, in the event the Crime Research Group of Vermont is unable to continue receiving data under this section, to the Criminal Justice Training Council. Law enforcement agencies shall provide the data collected under this subsection in an electronic format specified by the receiving agency,

(4) The data provided pursuant to subdivision (3) of this subsection shall be posted electronically in a manner that is analyzable and accessible to the public on the receiving agency's website.

(5) On or before April 1, 2017, and annually thereafter, the Criminal Justice Training Council shall report to the House and Senate Committees on Judiciary on the departments and officers that have and have not provided the data required by subdivision (3) of this subsection. The list of officers, agencies, or departments that have and have not provided the data in accordance with subdivision (3) of this subsection shall be public.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

(Committee Vote: 10-0-1)

H. 769

An act relating to strategies to reduce the incarcerated population

Rep. Batchelor of Derby, for the Committee on **Corrections & Institutions**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 28 V.S.A. § 105 is amended to read:

§ 105. CASELOAD CAPACITY

(a) Corrections officers designated to work exclusively with offenders in the community who are 21 years of age ~~and~~ or younger shall have caseloads of no more than 25 youths.

(b) The department shall review the severity of offenses and assess the risk to reoffend of all offenders older than 21 years of age under its jurisdiction in the community and assign one of the following levels of supervision to each offender:

(1) Risk management supervision, which shall mean supervision at a level of intensity that includes case planning and measures to reduce risk of reoffense.

(2) Response supervision, which shall mean monitoring of the offender's compliance with conditions of probation or parole, including staff responding to violation behavior, and, as appropriate, use of the automated monitoring system.

~~(3) Administrative supervision, which shall mean monitoring of the offender's address and compliance with the law.~~

* * *

(d) The ~~department~~ Department shall establish the following caseload ranges for offender profiles:

(1) All ~~listed~~ offenders requiring serving a sentence for a listed crime as defined in 13 V.S.A. § 5301 who require risk management shall be supervised at no more than 45 offenders per corrections officer.

(2) All nonlisted offenders requiring risk management shall be supervised at no more than 60 offenders per corrections officer.

(3) All offenders requiring response supervision ~~shall~~ may be supervised ~~at no more than 150 offenders per corrections officer.~~

~~(4) All offenders requiring administrative supervision may be supervised on caseloads consistent with the capacity of automated status-reporting monitoring systems as established by the department~~ Department.

~~(5)~~(4) When there is a mixed profile caseload in which a single corrections officer supervises offenders with different supervision levels and at least one-third of the offenders require a more intensive supervision demand than the other offenders, the caseload shall be supervised at the lowest level of offender-to-staff ratio.

Sec. 2. 28 V.S.A. § 205 is amended to read:

§ 205. PROBATION

(a)(1) After passing sentence, a court may suspend all or part of the sentence and place the person so sentenced in the care and custody of the

Commissioner upon such conditions and for such time as it may prescribe in accordance with law or until further order of court.

(2) The term of probation for misdemeanors shall be for a specific term not to exceed two years unless the Court, in its sole discretion, specifically finds that the interests of justice require a longer or an indefinite period of probation.

(3)(A) The term of probation for nonviolent felonies shall not exceed four years or the statutory maximum term of imprisonment for the offense, whichever is less, unless the Court, in its sole discretion, specifically finds that the interests of justice require a longer or an indefinite period of probation.

(B) As used in this subdivision, “nonviolent felonies” means an offense which is not:

(i) a listed crime as defined in 13 V.S.A. § 5301(7); or

(ii) an offense involving sexual exploitation of children in violation of 13 V.S.A. chapter 64.

(4) Nothing in this subsection shall prevent the Court from terminating the period of probation and discharging a person pursuant to section 251 of this title.

(5) The probation officer of a person on probation for a specific term shall review the person’s case file during probation and, not less than 45 days prior to the expiration of the probation term, may file a petition with the Court requesting the Court to extend the period of probation for a specific term not to exceed one year in order to provide the person the opportunity to complete programming consistent with special conditions of probation. A hearing on the petition for an extension of probation under this subsection shall comply with the procedures set forth in Rule 32.1 of the Vermont Rules of Criminal Procedure.

(b) The victim of a listed crime as defined in 13 V.S.A. § 5301(7) for which the offender has been placed on probation shall have the right to request, and receive from the Department of ~~Corrections~~ information regarding the offender’s general compliance with the specific conditions of probation. Nothing in this section shall require the Department of ~~Corrections~~ to disclose any confidential information revealed by the offender in connection with participation in a treatment program.

(c)(1) Unless the Court in its discretion finds that the interests of justice require additional standard and special conditions of probation, when the Court orders a specific term of probation for a qualifying offense, the offender shall be placed on administrative probation, ~~which means that the only conditions of~~

. After sentencing, the Department may supervise a nonviolent misdemeanor offender on administrative probation, provided that the offender poses a low risk of reoffense and such placement would not compromise victim or public safety. The only conditions of administrative probation shall be that the probationer:

(A) register with the Department of Corrections' probation and parole office in his or her district;

(B) notify the probation officer of his or her current address each month;

(C) within 72 hours, notify the Department of Corrections if probable cause is found for a criminal offense during the term of probation; and

(D) not be convicted of a criminal offense during the term of probation.

(2) As used in this subsection, ~~“qualifying offense”~~ “nonviolent misdemeanor” means:

~~(A) Unlawful mischief under 13 V.S.A. § 3701.~~

~~(B) Retail theft under 13 V.S.A. §§ 2575 and 2577.~~

~~(C) Operating after suspension or revocation of license under 23 V.S.A. § 674(a).~~

~~(D) Bad checks under 13 V.S.A. § 2022.~~

~~(E) Theft of services under 13 V.S.A. § 2582.~~

~~(F) Disorderly conduct under 13 V.S.A. § 1026, unless the original charge was a listed offense as defined in 13 V.S.A. § 5301(7).~~

~~(G) Theft of rented property under 13 V.S.A. § 2591.~~

~~(H) Operation without consent of owner under 23 V.S.A. § 1094(a).~~

~~(I) Petit larceny under 13 V.S.A. § 2502.~~

~~(J) Negligent operation of a motor vehicle under 23 V.S.A. § 1091(a).~~

~~(K) False reports to law enforcement under 13 V.S.A. § 1754.~~

~~(L) Setting fires under 13 V.S.A. § 508.~~

~~(M) A first offense of a minor's misrepresenting age, procuring, possessing, or consuming liquors under 7 V.S.A. § 657.~~

~~(N) Simple assault by mutual consent under 13 V.S.A. § 1023(b) unless the original charge was a listed offense as defined in 13 V.S.A. § 5301(7).~~

~~(O) Unlawful trespass under 13 V.S.A. § 3705(a).~~

~~(P) A first offense of possession under 18 V.S.A. § 4230(a)(1).~~

a misdemeanor offense which is not a listed crime as defined in 13 V.S.A. § 5301(7) or an offense involving sexual exploitation of children in violation of 13 V.S.A. chapter 64 or 13 V.S.A. § 1030.

(3) Nothing in this subsection shall prohibit a court from requiring participation in the restorative justice program established in chapter 12 of this title.

Sec. 3. 28 V.S.A. § 808 is amended to read:

§ 808. FURLOUGHS GRANTED TO OFFENDERS

(a) The Department may extend the limits of the place of confinement of an offender at any correctional facility if the offender agrees to comply with such conditions of supervision the Department, in its sole discretion, deems appropriate for that offender's furlough. The Department may authorize furlough for any of the following reasons:

- (1) To visit a critically ill relative.
- (2) To attend the funeral of a relative.
- (3) To obtain medical services.
- (4) To contact prospective employers.
- (5) To secure a suitable residence for use upon discharge.

(6) To continue the process of reintegration initiated in a correctional facility. The offender may be placed in a program of conditional reentry status by the Department upon the offender's completion of the minimum term of sentence. While on conditional reentry status, the offender shall be required to participate in programs and activities that hold the offender accountable to victims and the community pursuant to section 2a of this title.

(b) An offender granted a furlough pursuant to this section may be accompanied by an employee of the Department, in the discretion of the Commissioner, during the period of the offender's furlough. The Department may use electronic monitoring equipment such as global position monitoring, automated voice recognition telephone equipment, and transdermal alcohol monitoring equipment to enable more effective or efficient supervision of individuals placed on furlough.

(c) The extension of the limits of the place of confinement authorized by this section shall in no way be interpreted as a probation or parole of the offender, but shall constitute solely a permitted extension of the limits of the place of confinement for offenders committed to the custody of the Commissioner.

(d) When any enforcement officer, as defined in 23 V.S.A. § 4, employee of the Department, or correctional officer responsible for supervising an offender believes the offender is in violation of any verbal or written condition of the furlough, the officer or employee may immediately lodge the offender at a correctional facility or orally or in writing deputize any law enforcement officer or agency to arrest and lodge the offender at such a facility. The officer or employee shall subsequently document the reason for taking such action.

(e) The Commissioner may place on medical furlough any offender who is serving a sentence, including an offender who has not yet served the minimum term of the sentence, who is diagnosed with a terminal or debilitating condition so as to render the offender unlikely to be physically capable of presenting a danger to society. The Commissioner shall develop a policy regarding the application for, standards for eligibility of, and supervision of persons on medical furlough. The offender may be released to a hospital, hospice, other licensed inpatient facility, or other housing accommodation deemed suitable by the Commissioner.

(f) While appropriate community housing is an important consideration in release of offenders, the Department shall not use lack of housing as the sole factor in denying furlough to offenders who have served at least their minimum sentence for a nonviolent misdemeanor or nonviolent felony provided that public safety and the best interests of the offender will be served by reentering the community on furlough. The Department shall adopt rules to implement this subsection.

(g) Subsections (b)–(f) of this section shall also apply to sections 808a ~~and~~, 808b, 808c, and 808e of this title.

Sec. 4. 28 V.S.A. § 808a is amended to read;

§ 808a. TREATMENT FURLOUGH

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

(b) Provided the approval of the sentencing judge is first obtained, the Department may place on treatment furlough an offender who has not yet served the minimum term of the sentence, who, in the Department's determination, needs residential treatment services not available in a correctional facility. The services may include treatment for substance abuse or personal violence or any other condition that the Department has determined should be addressed in order to reduce the offender's risk to reoffend or cause harm to himself or herself or to others in the facility. The offender shall be released only to a hospital or residential treatment facility that provides services to the general population. The State's share of the cost of placement in such a facility, net of any private or federal participation, shall be paid pursuant to memoranda of agreement between and within State agencies reflective of their shared responsibilities to maximize the efficient and effective use of State resources. In the event that a memorandum of agreement cannot be reached, the Secretary of Administration shall make a final determination as to the manner in which costs will be allocated.

~~(e)~~(b)(1) Except as provided in subdivision (2) of this subsection, the Department, in its own discretion, may place on treatment furlough an offender who has not yet served the minimum term of his or her sentence for an eligible misdemeanor as defined in section 808d of this title if the Department has made a determination based upon a risk assessment that the offender poses a low risk to public safety or victim safety and that employing an alternative to incarceration to hold the offender accountable is likely to reduce the risk of recidivism.

(2) Driving under the influence of alcohol or drugs, second offense, as defined in 23 V.S.A. §§ 1201 and 1210(c) and boating under the influence of alcohol or drugs, second offense, as defined in 23 V.S.A. § 3323 shall be considered eligible misdemeanors for the sole purpose of subdivision (1) of this subsection.

Sec. 5. 28 V.S.A. § 808e is added to read:

§ 808e. PREAPPROVED FURLOUGH

(a) When recommended by the Department, the court may sentence an offender to serve a term of imprisonment, but place the offender on preapproved furlough to participate in programs in the community administered by the Department that reduce the offender's risk to reoffend.

(b) An offender who meets program requirements may be sentenced to preapproved furlough to participate in a program that provides reparation to the community in the form of supervised work activity.

Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2016.

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

H. 789

An act relating to forest integrity and municipal and regional planning

Rep. Sheldon of Middlebury, 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. 24 V.S.A. § 4302 is amended to read:

§ 4302. PURPOSE; GOALS

* * *

(c) In addition, this chapter shall be used to further the following specific goals:

(1) To plan development so as to maintain the historic settlement pattern of compact village and urban centers separated by rural countryside.

(A) Intensive residential development should be encouraged primarily in areas related to community centers, and strip development along highways should be discouraged.

(B) Economic growth should be encouraged in locally designated growth areas, employed to revitalize existing village and urban centers, or both, and should be encouraged in growth centers designated under chapter 76A of this title.

(C) Public investments, including the construction or expansion of infrastructure, should reinforce the general character and planned growth patterns of the area.

(D) Development should be undertaken in accordance with smart growth principles as defined in subdivision 2791(13) of this title.

(2) To provide a strong and diverse economy that provides satisfying and rewarding job opportunities and that maintains high environmental standards, and to expand economic opportunities in areas with high unemployment or low per capita incomes.

(3) To broaden access to educational and vocational training opportunities sufficient to ensure the full realization of the abilities of all Vermonters.

(4) To provide for safe, convenient, economic, and energy efficient transportation systems that respect the integrity of the natural environment, including public transit options and paths for pedestrians and bicyclers.

~~(A)~~ Highways, air, rail, and other means of transportation should be mutually supportive, balanced, and integrated.

(5) To identify, protect, and preserve important natural and historic features of the Vermont landscape, including:

(A) significant natural and fragile areas;

(B) outstanding water resources, including lakes, rivers, aquifers, shorelands, and wetlands;

(C) significant scenic roads, waterways, and views;

(D) important historic structures, sites, or districts, archaeological sites, and archaeologically sensitive areas.

(6) To maintain and improve the quality of air, water, wildlife, forests, and other land resources.

(A) Vermont's air, water, wildlife, mineral, and land resources should be planned for use and development according to the principles set forth in 10 V.S.A. § 6086(a).

(B) Vermont's water quality should be maintained and improved according to the policies and actions developed in the basin plans established by the Secretary of Natural Resources under 10 V.S.A. § 1253.

(C) Vermont's forestlands should be managed so as to maintain and improve forest blocks and habitat connectors.

* * *

(9) To encourage and strengthen agricultural and forest industries.

(A) Strategies to protect long-term viability of agricultural and ~~forest lands~~ forestlands should be encouraged and should include maintaining low overall density.

(B) The manufacture and marketing of value-added agricultural and forest products should be encouraged.

(C) The use of locally-grown food and forest products should be encouraged.

(D) Sound forest and agricultural management practices should be encouraged.

(E) Public investment should be planned so as to minimize development pressure on agricultural and forest land.

* * *

Sec. 2. 24 V.S.A. § 4303 is amended to read:

§ 4303. DEFINITIONS

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

* * *

(10) “Land development” means the division of a parcel into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure, or of any mining, excavation, or landfill, and any change in the use of any building or other structure, or land, or extension of use of land.

* * *

(34) “Forest block” means a contiguous area of forest in any stage of succession and not currently developed for nonforest use. A forest block may include recreational trails, wetlands or other natural features that do not themselves possess tree cover, and uses exempt from regulation under subsection 4413(d) of this title.

(35) “Forest fragmentation” means the division or conversion of a forest block by land development other than by a recreational trail or a use exempt from regulation under subsection 4413(d) of this title.

(36) “Habitat connector” means land or water, or both, that links patches of wildlife habitat within a landscape, allowing the movement, migration, and dispersal of animals and plants and the functioning of ecological processes. A habitat connector may include recreational trails.

(37) “Recreational trail” means a corridor that is not paved and that is used for hiking, walking, bicycling, cross-country skiing, snowmobiling, all-terrain vehicle riding, horseback riding, and other similar recreational activity.

Sec. 3. 24 V.S.A. § 4348a is amended to read:

§ 4348a. ELEMENTS OF A REGIONAL PLAN

(a) A regional plan shall be consistent with the goals established in section 4302 of this title and shall include the following:

(1) A statement of basic policies of the region to guide the future growth and development of land and of public services and facilities, and to protect the environment.

(2) A land use element, which shall consist of a map and statement of present and prospective land uses, that:

(A) ~~indicating~~ Indicates those areas proposed for forests, recreation, agriculture (using the agricultural lands identification process established in 6 V.S.A. § 8), residence, commerce, industry, public, and semi-public uses, open spaces, areas reserved for flood plain, and areas identified by the State, regional planning commissions, or municipalities, ~~which that~~ require special consideration for aquifer protection; for wetland protection; for the maintenance of forest blocks, wildlife habitat, and habitat connectors; or for other conservation purposes;

(B) ~~indicating~~ Indicates those areas within the region that are likely candidates for designation under sections 2793 (downtown development districts), 2793a (village centers), 2793b (new town centers), and 2793c (growth centers) of this title;

(C) ~~indicating~~ Indicates locations proposed for developments with a potential for regional impact, as determined by the regional planning commission, including flood control projects, surface water supply projects, industrial parks, office parks, shopping centers and shopping malls, airports, tourist attractions, recreational facilities, private schools, public or private colleges, and residential developments or subdivisions;

(D) ~~setting~~ Sets forth the present and prospective location, amount, intensity, and character of such land uses and the appropriate timing or sequence of land development activities in relation to the provision of necessary community facilities and services;

(E) ~~indicating~~ Indicates those areas that have the potential to sustain agriculture and recommendations for maintaining them which may include transfer of development rights, acquisition of development rights, or farmer assistance programs;

(F) Indicates those areas that are important as forest blocks and habitat connectors and plans for land development in those areas to minimize forest fragmentation and promote the health, viability, and ecological function of forests. A plan may include specific policies to encourage the active management of those areas for wildlife habitat, water quality, timber production, recreation, or other values or functions identified by the regional planning commission.

* * *

(b) The various elements and statements shall be correlated with the land use element and with each other. The maps called for by this section may be incorporated on one or more maps, and may be referred to in each separate statement called for by this section.

Sec. 4. 24 V.S.A. § 4382 is amended to read:

§ 4382. THE PLAN FOR A MUNICIPALITY

(a) A plan for a municipality may be consistent with the goals established in section 4302 of this title and compatible with approved plans of other municipalities in the region and with the regional plan and shall include the following:

(1) A statement of objectives, policies, and programs of the municipality to guide the future growth and development of land, public services, and facilities, and to protect the environment.

(2) A land use plan:

~~(A) consisting of, which shall consist of~~ a map and statement of present and prospective land uses, that:

~~(A) indicating~~ Indicates those areas proposed for forests, recreation, agriculture (using the agricultural lands identification process established in 6 V.S.A. § 8), residence, commerce, industry, public, and semi-public uses, and open spaces, areas reserved for flood plain, and areas identified by the State, the regional planning commission or the municipality that require special consideration for aquifer protection; for wetland protection; for the maintenance of forest blocks, wildlife habitat, and habitat connectors; or for other conservation purposes;

~~(B) setting~~ Sets forth the present and prospective location, amount, intensity, and character of such land uses and the appropriate timing or sequence of land development activities in relation to the provision of necessary community facilities and service;

~~(C) identifying~~ Identifies those areas, if any, proposed for designation under chapter 76A of this title, together with, for each area proposed for designation, an explanation of how the designation would further the plan's goals and the goals of section 4302 of this title, and how the area meets the requirements for the type of designation to be sought.

~~(D)~~ Indicates those areas that are important as forest blocks and habitat connectors and plans for land development in those areas to minimize forest fragmentation and promote the health, viability, and ecological function

of forests. A plan may include specific policies to encourage the active management of those areas for wildlife habitat, water quality, timber production, recreation, or other values or functions identified by the municipality.

* * *

Sec. 5. STUDY AND REPORT; LAND USE REGULATION; FOREST INTEGRITY

(a) Creation. There is created a Study Committee on Land Use Regulation and Forest Integrity to study potential revisions to 10 V.S.A. chapter 151 (Act 250) and to 24 V.S.A. chapter 117, subchapter 7 (bylaws) to protect contiguous areas of forestland from fragmentation and promote habitat connectivity between forestlands.

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

(1) a current member of the House of Representatives appointed by the Speaker of the House;

(2) a current member of the Senate appointed by the Committee on Committees;

(3) a current officer of a municipality, appointed by the Vermont League of Cities and Town;

(4) a representative of the Vermont Association of Planning and Development Agencies, appointed by the Association;

(5) the Commissioner of Housing and Community Development or designee;

(6) the Chair of the Natural Resources Board or designee;

(7) the Commissioner of Forests, Parks and Recreation or designee;

(8) a representative of the Vermont Forest Roundtable through the Vermont Natural Resources Council; and

(9) a representative of the Vermont Working Lands Enterprise Board established under 6 V.S.A. § 4606, appointed by that Board.

(c) Powers and duties. The Committee shall study potential revisions to Act 250 and 24 V.S.A. chapter 117, subchapter 7 (bylaws) to protect contiguous areas of forestland from fragmentation and promote habitat connectivity between forestlands. This study shall include the following:

(1) review of the relevant provisions of Act 250 and 24 V.S.A. chapter 117 as they exist on passage of this act;

(2) development and review of options to revise Act 250 and the bylaw provisions of chapter 117 to protect forestland from fragmentation and promote habitat connectivity;

(3) evaluation of the impact of those options on land use;

(4) a recommendation on whether to make such revisions and the reason for the recommendation and, if the recommendation is affirmative, the revisions that the Committee suggests be made; and

(5) review of the definitions added by Sec. 2 of this act to 24 V.S.A. § 4303 and the amendments made by Secs. 3 and 4 of this act to 24 V.S.A. §§ 4348a and 4382, a recommendation on whether to make revisions to these provisions and the reasons for the recommendation and, if the recommendation is affirmative, the revisions that the Committee suggests be made.

(d) Assistance. For purposes of scheduling meetings, preparing its recommendation on whether to make statutory revisions, and preparing any recommended legislation, the Committee shall have the assistance of the Office of Legislative Council. The Committee also shall be entitled to the technical and professional assistance of the Departments of Housing and Community Development and of Forests, Parks and Recreation and of the Natural Resources Board.

(e) Report. On or before July 1, 2017, the Committee shall submit its written recommendation and any proposed legislation to the House Committee on Fish, Wildlife and Water Resources and the House and Senate Committees on Natural Resources and Energy.

(f) Meetings.

(1) The Office of Legislative Council shall call the first meeting of the Committee to occur on or before July 15, 2016.

(2) The Committee shall select a chair from among its legislative members at the first meeting.

(3) A majority of the membership shall constitute a quorum.

(g) Reimbursement.

(1) For attendance at meetings during adjournment of the General Assembly, legislative members of the Committee shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for no more than four meetings.

(2) Other members of the Committee who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance shall be entitled to per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010 for no more than four meetings.

Sec. 6. EFFECTIVE DATES

(a) This section and Sec. 5 (study and report) shall take effect on passage.

(b) Secs. 1 (purpose; goals) and 2 (definitions) shall take effect on July 1, 2016.

(c) Secs. 3 (elements of a regional plan) and 4 (plan for municipality) shall take effect on January 1, 2018.

(Committee Vote: 9-0-0)

H. 805

An act relating to employment rights for members of the National Guard and Reserve Components of the U.S. Armed Forces

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

Sec. 1. 21 V.S.A. § 491 is amended to read:

§ 491. ABSENCE ON MILITARY SERVICE AND TRAINING;

EMPLOYMENT AND REEMPLOYMENT RIGHTS

(a) Any duly qualified member of the ~~“reserve components of the armed forces,”~~ Reserve Components of the U.S. Armed Forces, of the ~~ready reserve~~ Ready Reserve, or an organized unit of the ~~national guard~~ Vermont National Guard or the National Guard of another state shall upon request be entitled to leaves of absence for a total of 15 days in any calendar year for the purpose of engaging in military drill, training, or other temporary duty under military authority. A leave of absence shall be with or without pay as determined by the employer. Upon completion of the military drill, training, or other temporary duty under military authority, a permanent employee shall be reinstated in that position with the same status, pay, and seniority, including seniority that accrued during the period of absence.

* * *

(c) An employer shall not discriminate in employment against any person because a person has taken any of the following actions:

(1) ~~Enforcement~~ enforcement of a provision of this ~~subsection~~ subchapter or federal law-;

(2) ~~Testified~~ testified or made a statement in connection with any proceeding under this ~~subsection~~ subchapter or under federal law-;

(3) ~~Assisted~~ assisted or participated in any investigation under this ~~subsection~~ subchapter or federal law-; or

(4) ~~Exercised~~ exercised any right provided by this ~~subsection~~ subchapter or under federal law.

Sec. 2. 21 V.S.A. § 492 is amended to read:

§ 492. RIGHTS AND BENEFITS

* * *

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

(2) If a member of the Vermont National Guard is called to State active duty for more than 30 days, or if a member of the National Guard of another state who is a Vermont employee is called to state active duty for more than 30 days, the member may continue his or her civilian health insurance. For a member whose employer chooses not to continue regular contributions toward premiums and cost-sharing during the period of the member's State active duty in excess of 30 days, the State of Vermont shall be responsible for paying the employer's share of the premium and cost-sharing.

* * *

Sec. 3. 21 V.S.A. § 493 is amended to read:

§ 493. ENFORCEMENT

(a) If any employer fails to comply with any of the provisions of this subchapter, the employee may bring an action ~~at law for damages for noncompliance, or apply to the superior court for equitable relief as may be just and proper under the circumstances~~ in the Civil Division of the Superior Court seeking compensatory and punitive damages or equitable relief,

including restraint of prohibited acts, restitution of wages or other benefits, reinstatement, costs, reasonable attorney's fees, and other appropriate relief.

* * *

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2016.

(Committee Vote: 7-0-1)

H. 812

An act relating to consumer protections for accountable care organizations

Rep. Donahue of Northfield, for the Committee on **Health Care**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. ALL-PAYER MODEL; MEDICARE AGREEMENT

The Green Mountain Care Board and the Agency of Administration shall only enter into an agreement with the Centers for Medicare and Medicaid Services to waive provisions under Title XVIII (Medicare) of the Social Security Act if the agreement:

(1) is consistent with the principles of health care reform expressed in 18 V.S.A. § 9371, to the extent permitted under Section 1115A of the Social Security Act and approved by the federal government;

(2) preserves the consumer protections set forth in Title XVIII of the Social Security Act, including not reducing Medicare covered services, not increasing Medicare patient cost sharing, and not altering Medicare appeals processes;

(3) allows providers to choose whether to participate in accountable care organizations, to the extent permitted under federal law;

(4) allows Medicare patients to choose their providers;

(5) includes outcome measures for population health; and

(6) continues to provide payments from Medicare directly to health care providers or accountable care organizations without conversion, appropriation, or aggregation by the State of Vermont.

Sec. 2. 18 V.S.A. chapter 227 is added to read:

CHAPTER 227. ALL-PAYER MODEL

§ 9551. ALL-PAYER MODEL

In order to implement a value-based payment model allowing participating health care providers to be paid by Medicaid, Medicare, and commercial insurance using a common methodology that may include population-based payments, the Green Mountain Care Board and Agency of Administration shall ensure that the model:

(1) maintains consistency with the principles established in section 9371 of this title;

(2) continues to provide payments from Medicare directly to health care providers or accountable care organizations without conversion, appropriation, or aggregation by the State of Vermont;

(3) maximizes alignment between Medicare, Medicaid, and commercial payers to the extent permitted under federal law and waivers from federal law, including:

(A) what is included in the calculation of the total cost of care;

(B) attribution and payment mechanisms;

(C) patient protections;

(D) care management mechanisms; and

(E) provider reimbursement processes;

(4) strengthens and invests in primary care;

(5) incorporates social determinants of health;

(6) adheres to federal and State laws on parity of mental health and substance abuse treatment, integrates mental health and substance abuse treatment systems into the overall health care system, and does not manage mental health or substance abuse care separately from other health care;

(7) includes a process for integration of community-based providers, including home health agencies, mental health agencies, development disability service providers, emergency medical service providers, and area agencies on aging, and their funding streams, into a transformed, fully integrated health care system;

(8) continues to prioritize the use, where appropriate, of existing local and regional collaboratives of community health providers that develop integrated health care initiatives to address regional needs and evaluate best practices for replication and return on investment;

(9) pursues an integrated approach to data collection, analysis, exchange, and reporting to simplify communication across providers and drive quality improvement and access to care;

(10) allows providers to choose whether to participate in accountable care organizations, to the extent permitted under federal law;

(11) evaluates access to care, quality of care, patient outcomes, and social determinants of health;

(12) requires processes and protocols for shared decision making between the patient and his or her health care providers that take into account a patient's unique needs, preferences, values, and priorities, including use of decision support tools and shared decision-making methods with which the patient may assess the merits of various treatment options in the context of his or her values and convictions, and by providing patients access to their medical records and to clinical knowledge so that they may make informed choices about their care;

(13) supports coordination of patients' care and care transitions through the use of technology, with patient consent, such as sharing electronic summary records across providers and using telemedicine, home telemonitoring, and other enabling technologies; and

(14) ensures, in consultation with the Office of the Health Care Advocate, that robust patient grievance and appeal protections are available.

* * * Oversight of Accountable Care Organizations * * *

Sec. 3. 18 V.S.A. § 9373 is amended to read:

§ 9373. DEFINITIONS

As used in this chapter:

* * *

(16) "Accountable care organization" and "ACO" means an organization of health care providers that has a formal legal structure, is identified by a federal Taxpayer Identification Number, and agrees to be accountable for the quality, cost, and overall care of the patients assigned to it.

Sec. 4. 18 V.S.A. § 9375(b) is amended to read:

(b) The Board shall have the following duties:

* * *

(13) Adopt by rule pursuant to 3 V.S.A. chapter 25 standards for accountable care organizations, including reporting requirements, patient protections, solvency and ability to assume financial risk, and other matters the Board deems necessary and appropriate to the operation and evaluation of accountable care organizations pursuant to this chapter.

Sec. 5. 18 V.S.A. § 9382 is added to read:

§ 9382. OVERSIGHT OF ACCOUNTABLE CARE ORGANIZATIONS

(a) In order to be eligible to receive payments from Medicaid or commercial insurance through any payment reform program or initiative, including an all-payer model, each accountable care organization with 10,000 or more attributed lives in Vermont shall obtain and maintain certification from the Green Mountain Care Board. The Board shall adopt rules pursuant to 3 V.S.A. chapter 25 to establish standards and processes for certifying accountable care organizations, which may include consideration of acceptance of accreditation by the National Committee for Quality Assurance or another national accreditation organization for any of the criteria set forth in this section. In order to certify an ACO to operate in this State, the Board shall ensure that the following criteria are met:

(1) the ACO's governance, leadership, and management structure is transparent, reasonably and equitably represents the ACO's participating providers and its patients, and includes a consumer advisory board and other processes for inviting and considering consumer input;

(2) the ACO has established appropriate mechanisms to provide, manage, and coordinate high-quality health care services for its patients, including incorporating the Blueprint for Health, coordinating services for complex high-need patients, and providing access to health care providers who are not participants in the ACO;

(3) the ACO has established appropriate mechanisms to receive and distribute payments to its participating health care providers;

(4) the ACO has established appropriate mechanisms and criteria for accepting health care providers to participate in the ACO that prevent unreasonable discrimination and are related to the needs of the ACO and the patient population served;

(5) the ACO has established mechanisms to promote evidence-based health care, patient engagement, coordination of care, use of electronic health records, and other enabling technologies to promote integrated, efficient, and effective health care services;

(6) the ACO has the capacity for meaningful participation in health information exchanges;

(7) the ACO has performance standards and measures to evaluate the quality and utilization of care delivered by its participating health care providers;

(8) the ACO does not place any restrictions on the information its participating health care providers may provide to patients about their health or decisions regarding their health;

(9) the ACO's participating health care providers engage their patients in shared decision making to ensure their awareness and understanding of their treatment options and the related risks and benefits of each;

(10) the ACO has an accessible mechanism for explaining how ACOs work; provides contact information for the Office of the Health Care Advocate; maintains a consumer telephone line for complaints and grievances from attributed patients; responds and makes best efforts to resolve complaints and grievance from attributed patients, including providing assistance in identifying appropriate rights under a patient's health plan; and share deidentified complaint and grievance information with the Office of the Health Care Advocate at least twice annually;

(11) the ACO collaborates with providers not included in its financial model, including home- and community-based providers and dental health providers;

(12) the ACO does not interfere with patients' choice of their own health care providers under their health plan, regardless of whether a provider is participating in the ACO; does not reduce covered services; and does not increase patient cost sharing;

(13) meetings of the ACO's governing body include a public session which all business that is not confidential or proprietary is conducted and members of the public are provided an opportunity to comment; and

(14) the impact of the ACO's establishment and operation does not diminish access to any health care service for the population and area it serves.

(b)(1) The Green Mountain Care Board shall adopt rules pursuant to 3 V.S.A. chapter 25 to establish standards and processes for reviewing, modifying, and approving ACO budgets. In its review, the Board shall review and consider:

(A) information regarding utilization of the health care services delivered by health care providers participating in with the ACO;

(B) the goals and recommendations of the health resource allocation plan created in chapter 221 of this title;

(C) the expenditure analysis for the previous year and the proposed expenditure analysis for the year under review;

(D) the character, competence, fiscal responsibility, and soundness of the ACO and its principals;

(E) any reports from professional review organizations;

(F) the ACO's efforts to prevent duplication of high-quality services being provided efficiently and effectively by existing community-based providers in the same geographic area;

(G) the extent to which the ACO provides incentives for systemic health care investments to strengthen primary care, including strategies for recruiting additional primary care providers, providing resources to expand capacity in existing primary care practices, and reducing the administrative burden of reporting requirements for providers while balancing the need to have sufficient measures to evaluate adequately the quality of and access to care;

(H) the extent to which the ACO provides incentives for systemic health care investments in social determinants of health, such as developing support capacities that prevent hospital admissions and readmissions, reduce length of hospital stays, improve population health outcomes, and improve the solvency of and address the financial risk to community-based providers that are participating providers of an accountable care organization;

(I) public comment on all aspects of the ACO's costs and use and on the ACO's proposed budget;

(J) information gathered from meetings with the ACO to review and discuss its proposed budget for the forthcoming fiscal year;

(K) information on the ACO's administrative costs, as defined by the Board; and

(L) the effect, if any, of Medicaid reimbursement rates on the rates for other payers.

(2) The Office of the Health Care Advocate shall have the right to intervene in any ACO budget review under this subsection. As an intervenor, the Office of the Health Care Advocate shall receive copies of all materials in the record and may:

(A) ask questions of any participant in the Board's ACO budget review;

(B) submit written comments for the Board's consideration; and

(C) provide testimony in any hearing held in connection with the Board's ACO budget review.

(c) The Board's rules shall include requirements for submission of information and data by ACOs and their participating providers as needed to evaluate an ACO's success. They may also establish standards as appropriate to promote an ACO's ability to participate in applicable federal programs for ACOs.

(d) All information required to be filed by an ACO pursuant to this section or to rules adopted pursuant to this section shall be made available to the public upon request, provided that individual patients or health care providers shall not be directly or indirectly identifiable.

(e) To the extent required to avoid federal antitrust violations, the Board shall supervise the participation of health care professionals, health care facilities, and other persons operating or participating in an accountable care organization. The Board shall ensure that its certification and oversight processes constitute sufficient State supervision over these entities to comply with federal antitrust provisions and shall refer to the Attorney General for appropriate action the activities of any individual or entity that the Board determines, after notice and an opportunity to be heard, may be in violation of State or federal antitrust laws without a countervailing benefit of improving patient care, improving access to health care, increasing efficiency, or reducing costs by modifying payment methods.

* * * Rulemaking * * *

Sec. 6. GREEN MOUNTAIN CARE BOARD; RULEMAKING

On or before January 1, 2018, the Green Mountain Care Board shall adopt rules governing the oversight of accountable care organizations pursuant to 18 V.S.A. § 9382. On or before January 15, 2017, the Board shall provide an update on its rulemaking process and its vision for implementing the rules to the House Committee on Health Care and the Senate Committees on Health and Welfare and on Finance.

Sec. 7. DENIAL OF SERVICE; RULEMAKING

The Department of Financial Regulation and the Department of Vermont Health Access shall ensure that their rules protect against wrongful denial of services under an insured's or Medicaid beneficiary's health benefit plan for an insured or Medicaid beneficiary attributed to an accountable care organization. The Departments may amend their rules as necessary to ensure that the grievance and appeals processes in Medicaid and commercial health benefit plans are appropriate to an accountable care organization structure.

* * * Implementation Provisions * * *

Sec. 8. TRANSITION; IMPLEMENTATION

(a) Prior to January 1, 2018, if the Green Mountain Care Board and the Agency of Administration pursue development and implementation of an all-payer model, they shall develop and implement the model in a manner that works toward meeting the criteria established in 18 V.S.A. § 9551. Through its authority over payment reform pilot projects under 18 V.S.A. § 9377, the Board shall also oversee the development and operation of accountable care organizations in order to encourage them to achieve compliance with the criteria established in 18 V.S.A. § 9382(a) and to establish budgets that reflect the criteria set forth in 18 V.S.A. § 9382(b).

(b) On or before January 1, 2018, the Board shall begin certifying accountable care organizations that meet the criteria established in 18 V.S.A. § 9382(a) and shall only approve accountable care organization budgets after review and consideration of the criteria set forth in 18 V.S.A. § 9382(b). If the Green Mountain Care Board and the Agency of Administration pursue development and implementation of an all-payer model, then on and after January 1, 2018 they shall implement the all-payer model in accordance with 18 V.S.A. § 9551.

* * * Effective Date * * *

Sec. 9. EFFECTIVE DATES

(a) Secs. 1 (Medicare waiver), 6–7 (rulemaking), and 8 (transition; implementation) and this section shall take effect on passage.

(b) Secs. 2 (all-payer model) and 3–5 (ACOs) shall take effect on January 1, 2018.

and that after passage the title of the bill be amended to read: “An act relating to implementing an all-payer model and oversight of accountable care organizations”

(Committee Vote: 11-0-0)

H. 818

An act relating to stalking

Rep. Grad of Moretown, 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. FINDINGS

The General Assembly finds the following:

- (1) Stalking is a serious problem in Vermont and nationwide.
- (2) Stalking involves severe intrusions on the victim's personal privacy and autonomy.
- (3) Stalking causes a long-lasting impact on the victim's quality of life and creates risks to the security and safety of the victim and others even in the absence of express threats of physical harm.
- (4) Stalking conduct often becomes increasingly violent over time.
- (5) There is a strong connection between stalking and domestic violence and sexual assault.

Sec. 2. 12 V.S.A. § 5131 is amended to read:

§ 5131. DEFINITIONS

As used in this chapter:

~~(1)(A) "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~~ two or more acts over a period of time, in which a person follows, monitors, surveils, threatens, or makes threats about another person, or interferes with another person's property. This definition shall apply to acts conducted by the person directly or indirectly, and by any action, method, device, or means. Constitutionally protected activity is not included within the meaning of "course of conduct."

(B) As used in subdivision (A) of this subdivision (1), threaten shall not be construed to require an express or overt threat.

~~(2) "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 fear of unlawful sexual conduct, unlawful restraint, bodily injury, or death. [Repealed.]~~

~~(3) "Lying in wait" means hiding or being concealed for the purpose of attacking or harming another person.~~

~~(4)~~ “Nonphysical contact” includes telephone calls, mail, e-mail, social media commentary or comment, or other electronic communication, fax, and written notes.

(4) “Reasonable person” means a reasonable person in the victim’s circumstances.

(5) “Sexually assaulted the plaintiff” means that the defendant engaged in conduct that meets elements of lewd and lascivious conduct as defined in 13 V.S.A. § 2601, lewd and lascivious conduct with a child as defined in 13 V.S.A. § 2602, sexual assault as defined in 13 V.S.A. § 3252, aggravated sexual assault as defined in 13 V.S.A. § 3253, use of a child in a sexual performance as defined in 13 V.S.A. § 2822, or consenting to a sexual performance as defined in 13 V.S.A. § 2823 and that the plaintiff was the victim of the offense.

(6) “Stalk” means to engage purposefully in a course of conduct ~~which consists of following or lying in wait for a person, or threatening behavior~~ directed at a specific person ~~or a member of the person’s family, and:~~

~~(A) serves no legitimate purpose; and~~

~~(B) that the person engaging in the conduct knows or should know~~ would cause a reasonable person to:

(A) fear for his or her safety or the safety of a family member; or

~~(B) would cause a reasonable person~~ suffer substantial emotional distress as evidenced by:

(i) a fear of unlawful sexual conduct, unlawful restraint, bodily injury, or death; or

(ii) significant modifications in the person’s actions or routines, including moving from an established residence, changes to established daily routes to and from work that cause a serious disruption in the person’s life, changes to the person’s employment or work schedule, or the loss of a job or time from work.

(7) “Stay away” means to refrain from knowingly:

(A) initiating or maintaining a physical presence near the plaintiff;

(B) engaging in nonphysical contact with the plaintiff directly or indirectly; or

(C) engaging in nonphysical contact with the plaintiff through third parties who may or may not know of the order.

~~(8) "Threatening behavior" means acts which would cause a reasonable person to fear unlawful sexual conduct, unlawful restraint, bodily injury, or death, including verbal threats, written, telephonic, or other electronically communicated threats, vandalism, or physical contact without consent. [Repealed.]~~

Sec. 2. 12 V.S.A. § 5133 is amended to read:

§ 5133. REQUESTS FOR AN ORDER AGAINST STALKING OR SEXUAL ASSAULT

(a) A person, other than a family or household member as defined in 15 V.S.A. § 1101(2), may seek an order against stalking or sexual assault on behalf of ~~him~~ him- or herself or his or her children by filing a complaint under this chapter. A minor 16 years of age or older may file a complaint under this chapter seeking relief on his or her own behalf. The plaintiff shall submit an affidavit in support of the order.

(b) Except as provided in section 5134 of this title, the court shall grant the order only after notice to the defendant and a hearing. The plaintiff shall have the burden of proving by a preponderance of the evidence that the defendant stalked or sexually assaulted the plaintiff.

(c) In a hearing under this chapter, neither opinion evidence of nor evidence of the reputation of the plaintiff's sexual conduct shall be admitted. Evidence of prior sexual conduct of the plaintiff shall not be admitted; provided, however, where it bears on the credibility of the plaintiff or it is material to a fact at issue and its probative value outweighs its private character, the court may admit any of the following:

(1) ~~Evidence~~ evidence of the plaintiff's past sexual conduct with the defendant;

(2) ~~Evidence~~ evidence of specific instances of the plaintiff's sexual conduct showing the source of origin of semen, pregnancy, or disease; or

(3) ~~Evidence~~ evidence of specific instances of the plaintiff's past false allegations of violations of 13 V.S.A. chapter 59 or 72.

~~(d)(1)~~ If the court finds by a preponderance of evidence that the defendant has stalked or sexually assaulted the plaintiff, or has been convicted of stalking or sexually assaulting the plaintiff, the court shall order the defendant to stay away from the plaintiff or the plaintiff's children, or both, and may make any other ~~such~~ order it deems necessary to protect the plaintiff or the plaintiff's children, or both.

~~(2) If the court finds by a preponderance of evidence that the defendant has sexually assaulted the plaintiff and there is a danger of the defendant~~

~~further harming the plaintiff, the court shall order the defendant to stay away from the plaintiff or the plaintiff's children, or both, and may make any other such order it deems necessary to protect the plaintiff or the plaintiff's children, or both. The court may consider the defendant's past conduct as relevant evidence of future harm.~~

(e) Relief shall be granted for a fixed period, at the expiration of which time the court may extend any order, upon motion of the plaintiff, for such additional time as it deems necessary to protect the plaintiff or the plaintiff's children, or both. It is not necessary for the court to find that the defendant stalked or sexually assaulted the plaintiff during the pendency of the order to extend the terms of the order. The court may modify its order at any subsequent time upon motion by either party and a showing of a substantial change in circumstance.

* * *

Sec. 3. 13 V.S.A. § 1021 is amended to read:

§ 1021. DEFINITIONS

(a) ~~For the purpose of~~ As used in this chapter:

* * *

~~(4) "Course~~ (b) As used in this subchapter, "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."

Sec. 4. 13 V.S.A. chapter 19, subchapter 7 is amended to read:

Subchapter 7. Stalking

§ 1061. DEFINITIONS

As used in this subchapter:

(1)(A) ~~"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) ~~"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.~~

~~(3) “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, including verbal threats, written, telephonic, or other electronically communicated threats, vandalism, or physical contact without consent. “Course of conduct” means two or more acts over a period of time, however short, in which a person follows, monitors, surveils, threatens, or makes threats about another person, or interferes with another person’s property. This definition shall apply to acts conducted by the person directly or indirectly, and by any action, method, device, or means. Constitutionally protected activity is not included within the meaning of “course of conduct.”~~

(B) As used in subdivision (A) of this subdivision (1), threaten shall not be construed to require an express or overt threat.

~~(4) “Lying in wait” means hiding or being concealed for the purpose of attacking or harming another person.~~

(2) “Emotional distress” means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

(3) “Reasonable person” means a reasonable person in the victim’s circumstances.

(4) “Stalk” means to engage purposefully in a course of conduct directed at a specific person that the person engaging in the conduct knows or should know would cause a reasonable person to fear for his or her safety or the safety of another or would cause a reasonable person substantial emotional distress.

§ 1062. STALKING

Any person who intentionally stalks another person shall be imprisoned not more than two years or fined not more than \$5,000.00, or both.

§ 1063. AGGRAVATED STALKING

(a) A person commits the crime of aggravated stalking if the person intentionally stalks another person, and:

(1) such conduct violates a court order that prohibits stalking and is in effect at the time of the offense; ~~or~~

(2) has been previously convicted of stalking or aggravated stalking; ~~or~~

(3) has been previously convicted of an offense an element of which involves an act of violence against the same person; ~~or~~

(4) the person being stalked is under ~~the age of~~ 16 years of age; or

(5) had a deadly weapon, as defined in section 1021 of this title, in his or her possession while engaged in the act of stalking.

(b) A person who commits the crime of aggravated stalking shall be imprisoned not more than five years or be fined not more than \$25,000.00, or both.

(c) Conduct constituting the offense of aggravated stalking shall be considered a violent act for the purposes of determining bail.

§ 1064. DEFENSES

In a prosecution under this subchapter, it shall not be a defense that the defendant was not provided actual notice that the course of conduct was unwanted.

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2016.

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

H. 853

An act relating to setting the nonresidential property tax rate, the property dollar equivalent yield, and the income dollar equivalent yield for fiscal year 2017, and other education changes.

(**Rep. Ancel of Calais** will speak for the Committee on **Ways & Means.**)

H. 853

An act relating to setting the nonresidential property tax rate, the property dollar equivalent yield, and the income dollar equivalent yield for fiscal year 2017, and other education changes

Rep. Sharpe of Bristol, for the Committee on **Education**, recommends the bill be amended as follows:

First: In Sec. 4, in the second sentence before the words “direct cost” by striking out the word “associated” and inserting in lieu thereof the word “related”

Second: In Sec. 5, in subsection (e), in the first sentence before the words “direct cost” by striking out the word “associated” and inserting in lieu thereof the word “related”

Third: In Sec. 6, in subsection (d), in the first sentence before the words “direct cost” by striking out the word “associated” and inserting in lieu thereof the word “related”

Fourth: By inserting a Sec. 6a to read as follows:

Sec. 6a. 32 V.S.A. § 5402b is amended to read:

§ 5402b. STATEWIDE EDUCATION TAX YIELDS;

RECOMMENDATION OF THE COMMISSIONER

(a) Annually, no later than December 1, the Commissioner of Taxes, after consultation with the Secretary of Education, the Secretary of Administration, and the Joint Fiscal Office, shall calculate and recommend a property dollar equivalent yield, an income dollar equivalent yield, and a nonresidential property tax rate for the following fiscal year. In making these calculations, the Commissioner shall reference the Education Fund Outlook, described in subsection (c) of this section, and shall assume:

(1) the homestead base tax rate in subdivision 5402(a)(2) of this title is \$1.00 per \$100.00 of equalized education property value;

(2) the applicable percentage in subdivision 6066(a)(2) of this title is 2.0;

(3) the statutory reserves under 16 V.S.A. § 4026 and this section were maintained at five percent; and

(4) the percentage change in the median education tax bill applied to nonresidential property, the percentage change in the median education tax bill of homestead property, and the percentage change in the median education tax bill for taxpayers who claim an adjustment under subsection 6066(a) of this title are equal.

(b) For each fiscal year, the General Assembly shall set a property dollar equivalent yield and an income dollar equivalent yield, consistent with the definitions in this chapter.

(c) Annually, on or before December 1, the Joint Fiscal Office shall prepare and publish an official, annotated copy of the Education Fund Outlook. The Emergency Board shall review the Outlook at its meetings. As used in this section, "Education Fund Outlook" means the projected revenues and expenses associated with the Education Fund for the following fiscal year, including projections of the unfunded education mandate amount, both as estimated in section 305b of this title, and as appropriated under section 4025 of this title.

Fifth: By striking out Sec. 7 in its entirety and inserting in lieu thereof the following:

Sec. 7. TRANSFER OF DEBT OF MERGED DISTRICTS

(a) Notwithstanding any other provision of law, in the process of forming a union school district under 16 V.S.A. chapter 11, a study committee report under 16 V.S.A. § 706b may provide terms for transferring, either in whole or part, the liability for any indebtedness held by a merging district, from the merging district to the town or towns within the merging district.

(b) As used in this section, a union school district established under 16 V.S.A. chapter 11 includes a school district voluntarily created pursuant to 2015 Acts and Resolves No. 46, Sec. 6 or 7, or a regional education district, or any other district eligible to receive incentives pursuant to 2010 Acts and Resolves No. 153, as amended by 2012 Acts and Resolves No. 156 and 2013 Acts and Resolves No. 56.

Sixth: By adding a Sec. 9a to read as follows:

Sec. 9a. REPORT ON THE IMPACT OF H.846 OF 2016

(a) On or before November 15, 2016, the Joint Fiscal Office, with the assistance of the Office of Legislative Council and the Department of Taxes, shall issue a report analyzing the impact of H.846 of 2016, an act related to making changes to the calculation of the statewide education property tax. The analysis shall be based on the statutory language presented to the House Committee on Education on March 11, 2016. The report shall be delivered to the Senate Committees on Finance and on Education and the House Committees on Ways and Means and on Education.

(b) The report shall address:

(1) the impact of the proposed changes on education spending growth, both at the district level and the State level;

(2) the impact of the proposed changes on school districts by spending levels, size, location, and operating structure;

(3) the impact on homestead tax rates, income sensitivity percentages, and nonresidential tax rates across the State;

(4) the impact of the proposed changes on the Education Fund balance;

(5) the funding stability of the proposed changes based on variable economic conditions;

(6) any transition issues created by the proposed changes; and

(7) any related issues identified by the Joint Fiscal Office.

Seventh: By adding a Sec. 9b to read as follows:

Sec. 9b. REPORT ON THE IMPACT OF H.656 OF 2016

(a) On or before November 15, 2016, the Joint Fiscal Office, with the assistance of the Office of Legislative Council and the Department of Taxes, shall issue a report analyzing the impact of H.656 of 2016, an act relating to creating an education tax that is adjusted by income for all taxpayers. The report shall be delivered to the Senate Committees on Finance and on Education and the House Committees on Ways and Means and on Education.

(b) The report shall address:

(1) the impact of the proposed changes on current groups of taxpayers, including taxpayers who pay an education property tax based on property value, those who pay based on income, and renters;

(2) the impact of imposing a cap, of various amounts, on the total amount of taxes paid by a taxpayer under the proposal, but at least including an analysis of a cap of \$25,000.00;

(3) the impact of the proposed changes on towns and the State, including administrative issues resulting from the proposed changes;

(4) how the proposed changes to current definition of housesite impact taxpayers at different levels of income and different levels of property values and how the changes would affect property owners with different configurations of property ownership;

(5) any transition issues created by the proposed changes;

(6) the impact of the proposed changes on taxpayer confidentiality; and

(7) any related issues identified by the Joint Fiscal Office.

Eighth: By striking out Sec. 10 (effective dates) in its entirety and inserting in lieu thereof the following:

Sec. 10. EFFECTIVE DATES

This act shall take effect on July 1, 2016, except for:

(1) Sec. 3 (excess spending) which shall take effect on July 1, 2019 and apply to excess spending calculations for fiscal year 2020 and after; and

(2) Sec. 8 (data collection) which shall take effect on July 1, 2019.

(Committee Vote: 10-0-1)

Favorable

H. 580

An act relating to conservation easements

Rep. Sullivan of Burlington, for the Committee on **Natural Resources & Energy**, recommends the bill ought to pass.

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

H. 640

An act relating to expenses for the repair of town cemeteries

Rep. Gonzalez of Winooski, for the Committee on **General, Housing & Military Affairs**, recommends the bill ought to pass.

(**Committee Vote: 7-0-1**)

H. 824

An act relating to the adoption of occupational safety and health rules and standards

Rep. Walz of Barre City, for the Committee on **General, Housing & Military Affairs**, recommends the bill ought to pass.

(**Committee Vote: 7-0-1**)

For Informational Purposes

CROSS OVER DATES

The Rules Committee established the following Crossover deadlines:

(1) All **Senate/House** bills must be reported out of the last committee of reference (including the Committees on Appropriations and Finance/Ways and Means, except as provided below in (2) and the exceptions listed below) on or before **Friday, March 11, 2016**, and filed with the Secretary/Clerk so they may be placed on the Calendar for Notice the next legislative day.

(2) All **Senate/House** bills referred pursuant to Senate Rule 31 or House Rule 35(a) to the Committees on Appropriations and Finance/Ways and Means must be reported out by the last of those committees on or before **Friday, March 18, 2016**, and filed with the Secretary/Clerk so they may be placed on the Calendar for Notice the next legislative day

This provision shall not apply to the following measures:

- (1) The transportation capital bill;
- (2) The capital construction bill
- (3) The general appropriations bill (“The Big Bill”);

- (4) The pay bill;
- (5) The fees bill.