

Journal of the Senate

THURSDAY, MAY 5, 2016

The Senate was called to order by the President *pro tempore*.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the House No. 70

A message was received from the House of Representatives by Mr. Jeremy Weiss, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has considered the report of the Committee of Conference upon the disagreeing votes of the two Houses on Senate bill of the following title:

S. 224. An act relating to warranty obligations of equipment dealers and suppliers.

And has adopted the same on its part.

The House has considered Senate proposal of amendment to House bill of the following title:

H. 878. An act relating to capital construction and State bonding budget adjustment.

And has severally concurred therein with a further proposal of amendment thereto, in the adoption of which the concurrence of the Senate is requested.

Message from the House No. 71

A message was received from the House of Representatives by Mr. Jeremy Weiss, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed a House bill of the following title:

H. 888. An act relating to compensation for certain State employees.

In the passage of which the concurrence of the Senate is requested.

The House has considered bills originating in the Senate of the following title:

S. 198. An act relating to the Government Accountability Committee and the annual report on the State's population-level outcomes.

And has passed the same in concurrence.

The House has considered bills originating in the Senate of the following titles:

S. 14. An act relating to single dose, child-resistant packaging and labeling of marijuana-infused edible or potable products sold by a registered dispensary.

S. 169. An act relating to the Rozo McLaughlin Farm-to-School Program.

S. 245. An act relating to notice to patients of new health care provider affiliations.

And has passed the same in concurrence with proposals of amendment in the adoption of which the concurrence of the Senate is requested.

The House has adopted joint resolution of the following title:

J.R.H. 27. Joint resolution requesting federal action to alleviate the national student loan debt crisis.

In the adoption of which the concurrence of the Senate is requested.

Pursuant to the request of the Senate for a Committee of Conference upon the disagreeing votes of the two Houses on Senate bill of the following title:

S. 10. An act relating to the State DNA database.

The Speaker has appointed as members of such committee on the part of the House:

Rep. Burditt of West Rutland
Rep. Grad of Moretown
Rep. Jewett of Ripton.

Pursuant to the request of the Senate for a Committee of Conference upon the disagreeing votes of the two Houses on Senate bill of the following title:

S. 154. An act relating to enhanced penalties for assaulting an employee of the Family Services Division of the Department for Children and Families and to criminal threatening.

The Speaker has appointed as members of such committee on the part of the House:

Rep. Grad of Moretown
Rep. Rachelson of Burlington
Rep. Conquest of Newbury.

Pursuant to the request of the Senate for a Committee of Conference upon the disagreeing votes of the two Houses on Senate bill of the following title:

S. 215. An act relating to the regulation of vision insurance plans.

The Speaker has appointed as members of such committee on the part of the House:

Rep. Poirier of Barre City
Rep. Buxton of Tunbridge
Rep. Gage of Rutland City.

Pursuant to the request of the Senate for a Committee of Conference upon the disagreeing votes of the two Houses on House bill of the following title:

H. 876. An act relating to the transportation capital program and miscellaneous changes to transportation-related law.

The Speaker has appointed as members of such committee on the part of the House:

Rep. Brennan of Colchester
Rep. Corcoran of Bennington
Rep. Burke of Brattleboro.

The House has considered Senate proposal of amendment to House bill entitled:

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.

And has refused to concur therein and asks for a Committee of Conference upon the disagreeing votes of the two Houses;

The Speaker appointed as members of such Committee on the part of the House:

Rep. Sharpe of Bristol
Rep. Greshin of Warren
Rep. Condon of Colchester.

The House has considered the report of the Committee of Conference upon the disagreeing votes of the two Houses on Senate bill of the following title:

S. 114. An act relating to the Open Meeting Law.

And has adopted the same on its part.

The House has considered Senate proposal of amendment to House bill of the following title:

H. 858. An act relating to miscellaneous criminal procedure amendments.

And has severally concurred therein with a further proposal of amendment thereto, in the adoption of which the concurrence of the Senate is requested.

The House has considered Senate proposal of amendment to the following House bill:

H. 518. An act relating to the membership of the Clean Water Fund Board.

And has severally concurred therein.

The Governor has informed the House that on May 3, 2016, he approved and signed a bill originating in the House of the following title:

H. 261. An act relating to criminal record inquiries by an employer.

The Governor has informed the House that on May 4, 2016, he approved and signed bills originating in the House of the following titles:

H. 135. An act relating to enabling the Vermont Department of Health to reach an agreement with the Nuclear Regulatory Commission regarding authority over regulation and licensing of radioactive material.

H. 539. An act relating to establishment of a Pollinator Protection Committee.

H. 640. An act relating to expenses for the repair of town cemeteries.

H. 674. An act relating to public notice of wastewater discharges.

H. 824. An act relating to the adoption of occupational safety and health rules and standards.

Message from the House No. 72

A message was received from the House of Representatives by Mr. Jeremy Weiss, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has adopted joint resolution of the following title:

J.R.H. 28. Joint resolution supporting the posthumous awarding of the Congressional Medal of Honor to Civil War Brigadier General George Jerrison Stannard.

In the adoption of which the concurrence of the Senate is requested.

Message from the House No. 73

A message was received from the House of Representatives by Mr. Jeremy Weiss, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has considered Senate proposal of amendment to House proposal of amendment to Senate bill entitled:

S. 230. An act relating to improving the siting of energy projects.

And has refused to concur therein and asks for a Committee of Conference upon the disagreeing votes of the two Houses.

The Speaker appointed as members of such Committee on the part of the House:

Rep. Ram of Burlington
Rep. Klein of East Montpelier
Rep. Hebert of Vernon.

The House has considered Senate proposal of amendment to House bill entitled:

H. 533. An act relating to victim notification.

And has refused to concur therein and asks for a Committee of Conference upon the disagreeing votes of the two Houses;

The Speaker appointed as members of such Committee on the part of the House:

Rep. Grad of Moretown
Rep. Jewett of Ripton
Rep. Burditt of West Rutland.

The House has considered Senate proposal of amendment to House bill entitled:

H. 869. An act relating to judicial organization and operations.

And has refused to concur therein and asks for a Committee of Conference upon the disagreeing votes of the two Houses;

The Speaker appointed as members of such Committee on the part of the House:

Rep. Lalonde of South Burlington
Rep. Strong of Albany
Rep. Grad of Moretown.

The House has considered the report of the Committee of Conference upon the disagreeing votes of the two Houses on Senate bill of the following title:

S. 10. An act relating to the State DNA database.

And has adopted the same on its part.

The House has considered the report of the Committee of Conference upon the disagreeing votes of the two Houses on Senate bill of the following title:

S. 154. An act relating to enhanced penalties for assaulting an employee of the Family Services Division of the Department for Children and Families and to criminal threatening.

And has adopted the same on its part.

Rules Suspended; Third Reading Ordered; Rules Suspended; Bill Passed in Concurrence; Bill Messaged

H. 880.

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

An act relating to approval of the adoption and codification of the charter of the Town of Bridport.

Was taken up for immediate consideration.

Senator Pollina, for the Committee on Government Operations, to which the bill was referred, reported that the bill ought to pass in concurrence.

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

Thereupon, on motion of Senator Baruth, the rules were suspended and the bill was placed on all remaining stages of its passage in concurrence forthwith.

Thereupon, the bill was read the third time and passed in concurrence.

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

**Rules Suspended; Third Reading Ordered; Rules Suspended; Bill Passed
in Concurrence; Bill Messaged**

H. 881.

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

An act relating to approval of the adoption and codification of the charter of the Town of Charlotte.

Was taken up for immediate consideration.

Senator Bray, for the Committee on Government Operations, to which the bill was referred, reported that the bill ought to pass in concurrence.

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

Thereupon, on motion of Senator Baruth, the rules were suspended and the bill was placed on all remaining stages of its passage in concurrence forthwith.

Thereupon, the bill was read the third time and passed in concurrence.

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

**Rules Suspended; Third Reading Ordered; Rules Suspended; Bill Passed
in Concurrence; Bill Messaged**

H. 884.

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

An act relating to approval of amendments to the charter of the City of Barre.

Was taken up for immediate consideration.

Senator Pollina, for the Committee on Government Operations, to which the bill was referred, reported that the bill ought to pass in concurrence.

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

Thereupon, on motion of Senator Baruth, the rules were suspended and the bill was placed on all remaining stages of its passage in concurrence forthwith.

Thereupon, the bill was read the third time and passed in concurrence.

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

**Rules Suspended; Third Reading Ordered; Rules Suspended; Bill Passed
in Concurrence; Bill Messaged**

H. 886.

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

An act relating to approval of amendments to the charter of the Town of Brattleboro.

Was taken up for immediate consideration.

Senator White, for the Committee on Government Operations, to which the bill was referred, reported that the bill ought to pass in concurrence.

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

Thereupon, on motion of Senator Baruth, the rules were suspended and the bill was placed on all remaining stages of its passage in concurrence forthwith.

Thereupon, the bill was read the third time and passed in concurrence.

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

**Rules Suspended; Third Reading Ordered; Rules Suspended; Bill Passed
in Concurrence; Bill Messaged**

H. 883.

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

An act relating to approval of amendments to the charter of the City of Winooski.

Was taken up for immediate consideration.

Senator Collamore, for the Committee on Government Operations, to which the bill was referred, reported that the bill ought to pass in concurrence.

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

Thereupon, on motion of Senator Baruth, the rules were suspended and the bill was placed on all remaining stages of its passage in concurrence forthwith.

Thereupon, the bill was read the third time and passed in concurrence.

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

**Rules Suspended; Third Reading Ordered; Rules Suspended; Bill Passed
in Concurrence; Bill Messaged**

H. 887.

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

An act relating to approval of amendments to the charter of the Village of Barton.

Was taken up for immediate consideration.

Senator Benning, for the Committee on Government Operations, to which the bill was referred, reported that the bill ought to pass in concurrence.

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

Thereupon, on motion of Senator Baruth, the rules were suspended and the bill was placed on all remaining stages of its passage in concurrence forthwith.

Thereupon, the bill was read the third time and passed in concurrence.

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

Bill Passed in Concurrence; Bill Messaged

H. 885.

House bill of the following title was read the third time and passed in concurrence:

An act relating to approval of amendments to the charter of the Town of Shelburne.

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

**Rules Suspended; Third Reading Ordered; Rules Suspended; Bill Passed
in Concurrence; Bill Messaged**

H. 882.

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

An act relating to approval of amendments to the charter of the City of Burlington.

Reported that the bill ought to pass in concurrence.

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

Thereupon, on motion of Senator Baruth, the rules were suspended and the bill was placed on all remaining stages of its passage in concurrence forthwith.

Thereupon, the bill was read the third time and passed in concurrence.

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

President Assumes the Chair

House Bill Recommitted

H. 306.

Senate bill entitled:

An act relating to unemployment compensation.

Was taken up.

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Finance?, on motion of Senator Ashe, the bill was recommitted to the Committee on Finance.

Rules Suspended; Report of Committee of Conference Accepted and Adopted on the Part of the Senate

S. 224.

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

An act relating to warranty obligations of equipment dealers and suppliers.

Was taken up for immediate consideration.

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

To the Senate and House of Representatives:

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

S. 224. An act relating to warranty obligations of equipment dealers and suppliers.

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

Sec. 1. FINDINGS AND INTENT

(a) The General Assembly finds:

(1) Vermont has long relied on economic activity relating to working farms and forestland in the State. These working lands, and the people who work the land, are part of the State's cultural and ecological heritage, and Vermont has made major policy and budget commitments in recent years in support of working lands enterprises. Farm and forest enterprises need a robust system of infrastructure to support their economic and ecological activities, and that infrastructure requires a strong economic base consisting of dealers, manufacturers, and repair facilities. Initiatives to help strengthen farm and forest working lands infrastructure are in the best interest of the State.

(2) Snowmobiles and all-terrain vehicles have a significant economic impact in the State, including the distribution and sale of these vehicles, use by residents, ski areas, and emergency responders, as well as tourists that come to enjoy riding snowmobiles and all-terrain vehicles in Vermont. It is in the best interest of the State to ensure that Vermont consumers who want to purchase snowmobiles and all-terrain vehicles have access to a competitive marketplace and a strong network of dealers, suppliers, and repair facilities in the State.

(3) The distribution and sale of equipment, snowmobiles, and all-terrain vehicles within this State vitally affects the general economy of the State and the public interest and the public welfare, and in order to promote the public interest and the public welfare, and in the exercise of its police power, it is necessary to regulate equipment, snowmobile, and all-terrain vehicle suppliers and their representatives, and to regulate dealer agreements issued by suppliers who are doing business in this State, in order to protect and preserve the investments and properties of the citizens of this State.

(4) There continues to exist a disparity in bargaining power between equipment, snowmobile, and all-terrain vehicle suppliers and the independent dealer network. This disparity in bargaining power enables equipment, snowmobile, and all-terrain vehicle suppliers to compel dealers to execute dealer agreements, related contracts, and addenda that contain terms and conditions that would not routinely be agreed to by the equipment, snowmobile, and all-terrain vehicle dealer if this disparity did not exist. It therefore is in the public interest to enact legislation to prevent unfair or arbitrary treatment of equipment, snowmobile, and all-terrain vehicle dealers by equipment, snowmobile, and all-terrain vehicle suppliers. It is also in the public interest that Vermont consumers, municipalities, businesses, and others that purchase equipment, snowmobiles, and all-terrain vehicles in Vermont have access to a robust independent dealer network to obtain competitive

prices when purchasing these items and to obtain warranty, recall, or other repair work.

(b) It is the intent of the General Assembly that this act be liberally construed in order to achieve its purposes.

Sec. 2. 9 V.S.A. chapter 107 is amended to read:

CHAPTER 107. EQUIPMENT AND MACHINERY DEALERSHIPS

§ 4071. DEFINITIONS

As used in this chapter:

(1) “Current net price” means the price listed in the supplier’s price list or ~~catalog~~ catalogue in effect at the time the dealer agreement is terminated, less any applicable discounts allowed.

(2)(A) “Dealer” means a person, ~~corporation, or partnership~~ primarily engaged in the business of retail sales of ~~farm and utility tractors, farm implements, farm machinery, forestry equipment, industrial equipment, utility equipment, yard and garden equipment, attachments, accessories, and repair parts~~ inventory. ~~Provided however, “dealer” shall~~

(B) “Dealer” does not include a “single line dealer,” a person primarily engaged in the retail sale and service of industrial, forestry, and construction equipment. ~~“Single line dealer” means a person, partnership or corporation who:~~

~~(A)(i) has purchased 75 percent or more of the dealer’s total new product~~ his or her new inventory from a single supplier; and

~~(B)(ii) has a total annual average sales volume for the previous three years in excess of \$15~~ \$100 million for the entire territory for which the dealer is responsible.

(3) “Dealer agreement” means a written or oral ~~contract or~~ agreement between a dealer and a ~~wholesaler, manufacturer, or distributor~~ supplier by which the supplier gives the dealer ~~is granted~~ the right to sell or distribute goods or services or to use a trade name, trademark, service mark, logotype, or advertising or other commercial symbol.

(4) “Inventory” means ~~farm, utility, forestry, or industrial equipment, implements, machinery, yard and garden equipment, attachments, or repair parts. These terms do not include heavy construction equipment.~~

(A) “Inventory” means:

(i) farm, utility, forestry, yard and garden, or industrial:

(I) tractors;

- (II) equipment;
- (III) implements;
- (IV) machinery;
- (V) attachments;
- (VI) accessories; and
- (VII) repair parts;

(ii) snowmobiles, as defined in 23 V.S.A. § 3201(5), and snowmobile implements, attachments, garments, accessories, and repair parts; and

(iii) all-terrain vehicles, as defined in 23 V.S.A. § 3801(1), and all-terrain vehicle implements, attachments, garments, accessories, and repair parts.

(B) "Inventory" does not include heavy construction equipment.

(5) "Net cost" means the price the dealer paid the supplier for the inventory, less all applicable discounts allowed, plus the amount the dealer paid for freight costs from the supplier's location to the dealer's location. In the event of termination of a dealer agreement by the supplier, "net cost" shall include the reasonable cost of assembly or disassembly performed by a dealer.

(6) "Supplier" means a wholesaler, manufacturer, or distributor of inventory ~~as defined in this chapter~~ who enters into a dealer agreement with a dealer.

(7) "Termination" of a dealer agreement means the cancellation, nonrenewal, or noncontinuance of the agreement.

~~§ 4072. NOTICE OF TERMINATION OF DEALER AGREEMENTS~~

~~(a) Notwithstanding any agreement to the contrary, prior to the termination of a dealer agreement, a supplier shall notify the dealer of the termination not less than 120 days prior to the effective date of the termination. No supplier may terminate, cancel, or fail to renew a dealership agreement without cause. "Cause" means failure by an equipment dealer to comply with the requirements imposed upon the equipment dealer by the dealer agreement, provided the requirements are not substantially different from those requirements imposed upon other similarly situated equipment dealers in this State.~~

~~(b) The supplier may immediately terminate the agreement at any time upon the occurrence of any of the following events which in addition to the~~

~~above definition of cause, are also cause for termination, cancellation, or failure to renew a dealership agreement:~~

~~(1) the filing of a petition for bankruptcy or for receivership either by or against the dealer;~~

~~(2) the making by the dealer of an intentional and material misrepresentation as to the dealer's financial status;~~

~~(3) any default by the dealer under a chattel mortgage or other security agreement between the dealer and the supplier;~~

~~(4) the commencement of voluntary or involuntary dissolution or liquidation of the dealer if the dealer is a partnership or corporation;~~

~~(5) a change or additions in location of the dealer's place of business as provided in the agreement without the prior written approval of the supplier; or~~

~~(6) withdrawal of an individual proprietor, partner, major shareholder, the involuntary termination of the manager of the dealership, or a substantial reduction in the interest of a partner or major shareholder without the prior written consent of the supplier.~~

~~(e) Unless there is an agreement to the contrary, a dealer who intends to terminate a dealer agreement with a supplier shall notify the supplier of that intent not less than 120 days prior to the effective date of termination.~~

~~(d) Notification required by this section shall be in writing and shall be made by certified mail or by personal delivery and shall contain:~~

~~(1) a statement of intention to terminate the dealer agreement;~~

~~(2) a statement of the reasons for the termination; and~~

~~(3) the date on which the termination shall be effective.~~

TERMINATION OF DEALER AGREEMENT

(a) Requirements for notice.

(1) A person shall provide a notice required in this section by certified mail or by personal delivery.

(2) A notice shall be in writing and shall include:

(A) a statement of intent to terminate the dealer agreement;

(B) a statement of the reasons for the termination, including specific reference to one or more requirements of the dealer agreement that serve as the basis for termination, if applicable; and

(C) the effective date of termination.

(b) Termination by a supplier for cause.

(1) In this subsection, "cause" means the failure of a dealer to meet one or more requirements of a dealer agreement, provided that the requirement is reasonable, justifiable, and substantially the same as requirements imposed on similarly situated dealers in this State.

(2) A supplier shall not terminate a dealer agreement except for cause.

(3) To terminate a dealer agreement for cause, a supplier shall deliver a notice of termination to the dealer at least 120 days before the effective date of termination.

(4) A dealer has 60 days from the date it receives a notice of termination to meet the requirements of the dealer agreement specified in the notice.

(5) If a dealer meets the requirements of the dealer agreement specified in the notice within the 60-day period, the dealer agreement does not terminate pursuant to the notice of termination.

(c) Termination by a supplier for failure to meet reasonable marketing or market penetration requirements.

(1) Notwithstanding subsection (b) of this section, a supplier shall not terminate a dealer agreement for failure to meet reasonable marketing or market penetration requirements except as provided in this subsection.

(2) A supplier shall deliver an initial notice of termination to the dealer at least 24 months before the effective date of termination.

(3) After providing an initial notice, the supplier shall work with the dealer in good faith to meet the reasonable marketing or market penetration requirements specified in the notice, including reasonable efforts to provide the dealer with adequate inventory and marketing programs that are substantially the same as those provided to dealers in this State or region, whichever is more appropriate under the circumstances.

(4) If the dealer fails to meet reasonable marketing or market penetration requirements specified in the notice by the end of the 24-month period, the supplier may terminate the dealer agreement by providing a final notice of termination not less than 90 days prior to the effective date of the termination.

(5) If a dealer meets the reasonable marketing or market penetration requirements within the 24-month period, the dealer agreement shall not terminate.

(d) Termination by a supplier upon a specified event. Notwithstanding subsection (b) of this section, a supplier may terminate immediately a dealer agreement if one of the following events occurs:

(1) A person files a petition for bankruptcy or for receivership on behalf of or against the dealer.

(2) The dealer makes an intentional and material misrepresentation regarding his or her financial status.

(3) The dealer defaults on a chattel mortgage or other security agreement between the dealer and the supplier.

(4) A person commences the voluntary or involuntary dissolution or liquidation of a dealer organized as a business entity.

(5) Without the prior written consent of the supplier:

(A) The dealer changes the business location specified in the dealer agreement or adds an additional dealership of the supplier's same brand.

(B) An individual proprietor, partner, or major shareholder withdraws from, or substantially reduces his or her interest in, the dealer.

(6) The dealer fails to operate in the normal course of business for eight consecutive business days, unless the failure to operate is caused by an emergency or other circumstances beyond the dealer's control.

(7) The dealer abandons the business.

(8) The dealer pleads guilty to or is convicted of a felony that is substantially related to the qualifications, function, or duties of the dealer.

(e) Termination by a dealer. Unless a provision of a dealer agreement provides otherwise, a dealer may terminate the dealer agreement by providing a notice of termination to the supplier at least 120 days before the effective date of termination.

* * *

§ 4074. REPURCHASE TERMS

(a)(1) Within 90 days from receipt of the written request of the dealer, a supplier under the duty to repurchase inventory pursuant to section 4073 of this title may examine any books or records of the dealer to verify the eligibility of any item for repurchase.

(2) Except as otherwise provided in this chapter, the supplier shall repurchase from the dealer the following items that the dealer previously purchased from the supplier, or other qualified vendor approved by the supplier, that are in the possession of the dealer on the date of termination of the dealer agreement:

(A) all inventory previously purchased from the supplier in possession of the dealer on the date of termination of the dealer agreement; and

(B) required signage, special tools, books, manuals, supplies, data processing equipment, and software ~~previously purchased from the supplier or other qualified vendor approved by the supplier in the possession of the dealer on the date of termination of the dealer agreement.~~

(b) The supplier shall pay the dealer:

(1) 100 percent of the net cost of all new, ~~and~~ undamaged, and complete ~~farm and utility tractors, utility equipment, forestry equipment, industrial equipment, farm implements, farm machinery, yard and garden equipment, attachments, and accessories~~ inventory, other than repair parts, purchased from the supplier within the 30-month period preceding the date of termination, less a reasonable allowance for deterioration attributable to weather ~~conditions~~ exposure at the dealer's location.

(2) ~~90~~ 100 percent of the current net prices of all new and undamaged repair parts.

(3) ~~85~~ 95 percent of the current net prices of all new and undamaged superseded repair parts.

(4) ~~85~~ 95 percent of the latest available published net price of all new and undamaged noncurrent repair parts.

(5) Either the fair market value, or the supplier shall assume the lease responsibilities of, any specific data processing hardware that the supplier required the dealer to purchase to satisfy the reasonable requirements of the dealer agreement, including computer systems equipment and software required and approved by the supplier to communicate with the supplier.

(6) ~~Repurchase at~~ 75 percent of the net cost of specialized repair tools, signage, books, and supplies previously purchased, pursuant to requirements of the supplier and held by the dealer on the date of termination. ~~Specialized repair tools must be unique to the supplier's product line and must be complete and in usable condition.~~

(7) ~~Repurchase at average~~ Average as-is value shown in current industry guides, for dealer-owned rental fleet financed by the supplier or its finance subsidiary, provided the equipment was purchased from the supplier within 30 months of the date of termination.

(c) The party that initiates the termination of the dealer agreement shall pay the cost of the return, handling, packing, and loading of the inventory. If the termination is initiated by the supplier, the supplier shall reimburse the dealer five percent of the net parts return credited to the dealer as compensation for picking, handling, packing, and shipping the parts returned to the supplier.

(d) Payment to the dealer required under this section shall be made by the supplier not later than 45 days after receipt of the inventory by the supplier. A penalty shall be assessed in the amount of daily interest at the current New York prime rate plus three percent of any outstanding balance over the required 45 days. The supplier shall be entitled to apply any payment required under this section to be made to the dealer as a setoff against any amount owed by the dealer to the supplier.

§ 4075. EXCEPTIONS TO REPURCHASE REQUIREMENT

The provisions of this chapter shall not require a supplier to repurchase from a dealer:

(1) a repair part with a limited storage life or otherwise subject to physical or structural deterioration, including gaskets or batteries;

(2) a single repair part normally priced and sold in a set of two or more items;

(3) a repair part that, because of its condition, cannot be marketed as a new part without repackaging or reconditioning by the supplier or manufacturer;

(4) any inventory that the dealer elects to retain;

(5) any inventory ordered by the dealer after receipt of notice of termination of the dealer agreement by either the dealer or supplier; ~~or~~

(6) any inventory that was acquired by the dealer from a source other than the supplier unless the source was approved by the supplier;

(7) a specialized repair tool that is not unique to the supplier's product line, or that is over 10 years old, incomplete, or in unusable condition;

(8) a part identified by the supplier as nonreturnable at the time of the dealer's order; or

(9) supplies that are not unique to the supplier's product line, or that are over three years old, incomplete, or in unusable condition.

* * *

§ 4077a. ~~PROHIBITED ACTS~~

~~No supplier shall:~~

~~(1) coerce any dealer to accept delivery of any equipment, parts, or accessories therefor, which such dealer has not voluntarily ordered, except that a supplier may require a dealer to accept delivery of equipment, parts or accessories that are necessary to maintain equipment generally sold in the dealer's area of responsibility, and a supplier may require a dealer to accept~~

~~delivery of safety-related equipment, parts, or accessories pertinent to equipment generally sold in the dealer's area of responsibility;~~

~~(2) condition the sale of any equipment on a requirement that the dealer also purchase any other goods or services, but nothing contained in this chapter shall prevent the supplier from requiring the dealer to purchase all parts reasonably necessary to maintain the quality of operation in the field of any equipment used in the trade area;~~

~~(3) coerce any dealer into a refusal to purchase the equipment manufactured by another supplier; or~~

~~(4) discriminate in the prices charged for equipment of like grade and quality sold by the supplier to similarly situated dealers, but nothing contained in this chapter shall prevent differentials which make only due allowance for a difference in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such equipment is sold or delivered by the supplier.~~

PROHIBITED ACTS

(a)(1) A supplier shall not coerce or attempt to coerce a dealer to accept delivery of inventory that the dealer has not voluntarily ordered.

(2) A supplier may require a dealer to accept delivery of inventory that is:

(A) necessary to maintain inventory in a quantity, and of the model range, generally sold in the dealer's geographic area of responsibility; or

(B) safety-related and pertinent to inventory generally sold in the dealer's geographic area of responsibility.

(b) A supplier shall not condition the sale of inventory on a requirement that the dealer also purchase any other goods or services, provided that a supplier may require a dealer to purchase parts reasonably necessary to maintain inventory used in the dealer's geographic area of responsibility.

(c)(1) A supplier shall not prevent, coerce, or attempt to coerce a dealer from investing in, or entering into an agreement for the sale of, a competing product line or make of inventory.

(2) A supplier shall not require, coerce, or attempt to coerce a dealer to provide a separate facility or personnel for a competing product line or make of inventory.

(3) Subdivisions (1)–(2) of this subsection do not apply unless a dealer:

(A) maintains a reasonable line of credit for each product line or make of inventory;

(B) maintains the principal management of the dealer; and

(C) remains in substantial compliance with the supplier's reasonable facility requirements, which shall not include a requirement to provide a separate facility or personnel for a competing product line or make of inventory.

(d) A supplier shall not discriminate in the prices it charges for inventory of like grade and quality it sells to similarly situated dealers, provided that a supplier may use differentials that allow for a difference in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which the supplier sells or delivers the inventory.

(e) A supplier shall not change the geographic area of responsibility specified in a dealer agreement without good cause, which for purposes of this subsection includes the dealer's market penetration within the assigned geographic area of responsibility and changes in the inventory warranty registration pattern in the area surrounding the dealer's geographic area of responsibility.

§ 4078. WARRANTY OBLIGATIONS

(a) A supplier shall:

(1) specify in writing a dealer's reasonable obligation to perform warranty service on the supplier's inventory;

(2) provide the dealer a schedule of reasonable compensation for warranty service, including amounts for diagnostic work, parts, labor, and the time allowance for the performance of warranty service; and

(3) compensate the dealer pursuant to the schedule of compensation for the warranty service the supplier requires it to perform.

(b) Time allowances for the diagnosis and performance of warranty service shall be reasonable and adequate for the service to be performed by a dealer that is equipped to complete the requirements of the warranty service.

(c) The hourly rate paid to a dealer shall not be less than the rate the dealer charges to customers for nonwarranty service.

(d) A supplier shall compensate a dealer for parts used to fulfill warranty and recall obligations at a rate not less than the price the dealer actually paid the supplier for the parts plus 20 percent, plus freight and handling if charged by the supplier.

(e) The wholesale price on which a dealer's markup reimbursement is based for any parts used in a recall or campaign shall not be less than the

highest wholesale price listed in the supplier's wholesale price catalogue within six months prior to the start of the recall or campaign.

(f)(1) Whenever a supplier and a dealer enter into an agreement providing consumer warranties, the supplier shall pay any warranty claim made for warranty parts and service within 30 days after its receipt and approval.

(2) The supplier shall approve or disapprove a warranty claim within 30 days after its receipt.

(3) If a claim is not specifically disapproved in writing within 30 days after its receipt, it shall be deemed to be approved and payment shall be made by the supplier within 30 days after its receipt.

(g) A supplier violates this section if it:

(1) fails to perform its warranty obligations;

(2) fails to include in written notices of factory recalls to machinery owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of such defects; or

(3) fails to compensate a dealer for repairs required by a recall.

(h) A supplier shall not:

(1) impose an unreasonable requirement in the process a dealer must follow to file a warranty claim; or

(2) impose a surcharge or fee to recover the additional costs the supplier incurs from complying with the provisions of this section.

§ 4079. REMEDIES

(a) A person damaged as a result of a violation of this chapter may bring an action against the violator in a Vermont court of competent jurisdiction for damages, together with the actual costs of the action, including reasonable attorney's fees, injunctive relief against unlawful termination, ~~cancellation, nonrenewal,~~ or substantial change of competitive circumstances, and such other relief as the ~~Court~~ court deems appropriate.

(b) A provision in a dealer agreement that purports to deny access to the procedures, forums, or remedies provided by the laws of this State is void and unenforceable.

(c) ~~Nothing contained in this chapter may prohibit~~ Notwithstanding subsection (b) of this section, a dealer agreement may include a provision for binding arbitration of disputes ~~in an agreement.~~ Any arbitration shall be consistent with the provisions of this chapter and 12 V.S.A. chapter 192, and

the place of any arbitration shall be in the county in which the dealer's principal place of business is maintained in this State.

* * *

Sec. 3. APPLICABILITY TO EXISTING DEALER AGREEMENTS

Notwithstanding 1 V.S.A. § 214, for a dealer agreement, as defined in 9 V.S.A. § 4071, that is in effect on or before July 1, 2016, the provisions of this act shall apply on July 1, 2016.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2016.

ANN E. CUMMINGS

PHILIP E. BARUTH

WILLIAM T. DOYLE

Committee on the part of the Senate

WARREN F. KITZMILLER

FRED K. BASER

STEPHEN A. CARR

Committee on the part of the House

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

Adjournment

On motion of Senator Campbell, the Senate adjourned until twelve o'clock and thirty minutes in the afternoon.

Afternoon

The Senate was called to order by the President.

Senate Resolutions Adopted

Senate resolution of the following title was offered, read and adopted, and is as follows:

By Senators Ashe, Ayer, Balint, Baruth, Benning, Bray, Campbell, Champion, Collamore, Cummings, Degree, Doyle, Flory, Kitchel, Lyons, MacDonald, Mazza, McCormack, Mullin, Nitka, Pollina, Riehle, Rodgers, Sears, Sirotkin, Starr, Westman, White, and Zuckerman,

S.R. 28. Senate resolution honoring Senate Office Assistant Extraordinaire Roxanna T. Quero on her decision to walk away from the Senate Office.

Whereas, Roxanna T. Quero, universally known as Roxy, has graced the Senate office with her presence since 1988, when she assumed the role of office assistant, and

Whereas, Roxy was well known in the State House before assuming her position in the Senate having been married to her late husband, Raymond—who for many years provided exemplary State House security as Ray the Cop, and

Whereas, Roxy is the mother of two daughters and two sons and is the grandmother of seven grandchildren, and

Whereas, since she joined the Senate staff, Roxy's friendly smile and pleasant personality have been a welcomed constant in the Senate's operations, no matter how contentious the debate on the floor, and

Whereas, Roxy's duties in the Senate are crucial to a sometimes fast-paced and hectic office and include creating all messages to the House, answering countless telephone calls, scheduling clergy, and resupplying the always-hungry photocopier, and

Whereas, she is always there for anything her co-workers need or ask of her, and

Whereas, Roxy has become well known for her prodigious supply of candy, which senators, lobbyists, pages and visitors always have appreciated, and

Whereas, the Senate office staff has become a family and Roxy has been a huge part of that family and will be sorely missed, and

Whereas, we all know Roxy will not just go home and sit around as she has a wonderful camp on East Long Pond in Woodbury, and enjoys spending time there mowing the lawn, scraping and painting the steps, kayaking up and down the lake, or enjoying a cold beverage on the front porch, and

Whereas, Roxy is an avid skier and belongs to the 70+ ski club, and it is likely, she will be on the slopes while we are here next year, and

Whereas, after 28 years, Roxy is concluding her legislative staff career when the Senate gavel falls in 2016 signaling adjournment sine die, *now therefore be it*

Resolved by the Senate:

That the Senate honors Roxanna T. Quero on her superb public service as the Senate's office assistant, *and be it further*

Resolved: That the Secretary of Senate be directed to send a copy of this resolution to Roxanna T. Quero in Montpelier

Pages Honored

In appreciation of their many services to the members of the General Assembly, the President recognized the following-named pages who are completing their services today and presented them with letters of appreciation.

Eliza Cleary of Plainfield
Trey Crego of Newfane
Emily Croes of Stowe
Joseph Dingledine of Randolph
Cassidy Frost of Williston
Cenia Lowry of Burlington
Josephine Moulton of Barre
Casey Sibia of West Dover
Samuel Thompson of Milton
Hanne Williams of Fayston

**Message from the Governor
Appointments Referred**

A message was received from the Governor, by Susan Allen, Secretary of Civil and Military Affairs, submitting the following appointments, which were referred to committees as indicated:

Sessions, Hannah of Salisbury - Member of the Vermont Housing and Conservation Board, - from April 16, 2016, to January 31, 2019.

To the Committee on Economic Development, Housing and General Affairs.

Committees of Conference Appointed**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.

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

Senator Cummings
Senator MacDonald
Senator Lyons

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

H. 869.

An act relating to judicial organization and operations.

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

Senator Sears
Senator Campbell
Senator Benning

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

Joint House Resolutions Referred

Joint House resolutions of the following titles were severally read the first time and referred:

J.R.H. 27.

Joint resolution requesting federal action to alleviate the national student loan debt crisis.

Whereas, a Wall Street Journal article, updated on August 21, 2015, reported that as of July 2015 nearly seven million Americans were in default on their federal student loans, meaning they had not made a payment in at least 360 days, and

Whereas, this number equals approximately 17 percent of all federal student loan borrowers, and the number rose six percent, or 400,000 more borrowers, than the year previously, and

Whereas, the Federal Reserve Bank of New York's Consumer Credit Panel has reported that in the decade from 2005 to 2015 total student loan debt tripled and rose to \$1.19 trillion, and

Whereas, those in default are often individuals who attended for-profit colleges, are members of a minority group, and never graduated, and

Whereas, overall, one informed estimate is that 27 million borrowers are either in default or some other form of loan repayment delinquency, and

Whereas, Congress enacted the Bipartisan Student Loan Certainty Act of 2013 (Pub.L 113-28), establishing a fixed interest rate for federal student loan programs with caps ranging from 8.25–10.5 percent depending on the specific program, but the rates are challenging for the student borrowers, and

Whereas, although the rates for 2015–2016 are slightly lower than for the prior academic year, they still remain high at 4.29 percent for direct subsidized and unsubsidized undergraduate student loans, and the graduate and

professional federal student loan interest rates in the Direct PLUS Loans program are nearly seven percent, and

Whereas, although experts differ on the extent, there is a general consensus that in some years the federal government has made a profit on federal student loans even as numerous borrowers have struggled to make repayments, and

Whereas, while the Obama administration has established popular plans that cap repayments at 10–15 percent of discretionary income, these programs tend to attract graduates of professional or graduate schools and not those who earned only a bachelor’s degree or never finished college, and

Whereas, unlike many other forms of consumer debt, 11 U.S.C. § 523(a)(8) of the federal bankruptcy code, with limited exceptions, prohibits using bankruptcy as a method for student loan debt relief, and

Whereas, proposals for free or reduced tuition at public colleges and restructuring the system of higher education financing may be useful for future students, but they do not solve the problems of those millions of Americans struggling to repay their existing student loans, especially those for whom a college education did not secure a sound economic future, and

Whereas, when a federal student loan borrower completes all of the requirements of an income-based student loan repayment program, and as a consequence of meeting these requirements, the remaining balance of his or her student loan is forgiven, the forgiven amount is treated as taxable income with often severe consequences to the borrower, and

Whereas, the current federal student loan program has inadequate loan counseling services available for borrowers at critical times, including when they are trying to determine which loans to choose, how much to borrow, how to repay when leaving school, and how to repay when encountering financial hardships, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly requests that Congress amend the federal bankruptcy code to eliminate the prohibition on relief from federal or private student loan debt through the federal bankruptcy system and to eliminate the unfair income tax consequences for borrowers who complete loan forgiveness programs, and be it further

Resolved: That the U.S. Department of Education is requested to devise new loan counseling programs to provide students with debt literacy information and loan repayment options prior to borrowing, upon graduation or otherwise leaving college, and throughout the duration of their loans, and new debt relief programs that effectively address the problems that individuals with low income are encountering in repaying their student loans, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to U.S. Secretary of Education John King and to the Vermont Congressional Delegation.

To the Committee on Education.

J.R.H. 28.

Joint resolution supporting the posthumous awarding of the Congressional Medal of Honor to Civil War Brigadier General George Jerrison Stannard.

Whereas, Civil War Brigadier General George Jerrison Stannard, a native of Georgia, Vermont, commanded the Second Vermont Brigade, and

Whereas, the Second Vermont Brigade (Stannard's Brigade), untested in battle, reached Gettysburg on July 1, 1863 at the end of the first day's fighting, and

Whereas, Stannard's Brigade fought ably late on the battle's second day, helping to stabilize the threatened Union line, and earning it a place at the front of the Union line on Cemetery Ridge, and

Whereas, on the battle's final day, in perhaps the most memorable Confederate maneuver of the Civil War that became known as Pickett's Charge, the Confederate troops approached the Union line, but they suddenly shifted their direction northward, leaving no enemy troops in front of the Vermonters, and

Whereas, General Stannard recognized this unexpected opportunity and ordered the Brigade's 13th and 16th regiments to "change front forward on first company," sending 900 Vermonters in a great wheeling motion to the front of the Union lines, and

Whereas, Stannard's men hit the exposed right flank of Pickett's Charge in an attack the Confederates did not expect, inflicting hundreds of casualties, and

Whereas, Major Abner Doubleday, commanding the Army of the Potomac's I Corps, in which the Vermonters served, commented that General Stannard's strategy helped to ensure, if not guarantee, the Union's victory at Gettysburg, and

Whereas, Confederate General Robert E. Lee's Army of Northern Virginia was dealt a blow from which it never fully recovered, and

Whereas, General George Stannard was severely wounded three times during the Civil War: while commanding Vermont regiments at Gettysburg, at Cold Harbor in the Union attack on June 10, 1864, and at Fort Harrison on September 30, 1864 where he lost an arm during hostilities, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly supports, based on his illustrious record of military leadership, the posthumous awarding of the Congressional Medal of Honor to Civil War Brigadier General George Jerrison Stannard, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Vermont Congressional Delegation and the George Stannard House Committee in Milton.

To the Committee on Government Operations.

Bill Referred

House bill of the following title was read the first time and referred:

H. 888. An act relating to compensation for certain State employees.

Was taken up and pursuant to Temporary Rule 44A was referred to the Committee on Rules.

Proposal of Amendment; Third Reading Ordered

H. 562.

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

An act relating to professions and occupations regulated by the Office of Professional Regulation and to the review of professional regulation.

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

* * * 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.~~

~~(c) 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)(1) 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, any legislative committees of jurisdiction for the underlying field of regulation, and the applicable regulatory entity. The reports shall contain:

~~(1)(A)~~ (A) findings, alternative courses of action, and recommendations;

~~(2)(B)~~ (B) a copy of the ~~board's~~ regulatory entity's administrative rules;
and

~~(3)(C)~~ (C) appropriate legislative proposals.

(2)(A) If the review is in regard to a regulatory law outside its jurisdiction, the Office shall submit the report in conjunction with the agency with jurisdiction over the licensing of the relevant profession.

(B) In the event the Office and the agency with jurisdiction do not agree to any aspects of the report, the report shall incorporate separate responses of the Office and that agency.

~~(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) ~~N~~ 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:

* * *

(4) the activities and services of ~~approved alcohol and drug abuse counselors~~ an individual certified under this chapter who ~~are~~ is working in a preferred provider program under the supervision of a licensed alcohol and drug abuse counselor; or

* * *

§ 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 certification 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:

* * *

(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:

(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:

* * *

(46) Potable water supply and wastewater system designers

(47) 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. 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 position 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.

* * * Land Surveyors * * *

Sec. 18. 27 V.S.A. § 1403 is amended to read:

§ 1403. COMPOSITION OF SURVEY PLATS

(a) Plats filed in accordance with this chapter shall be on sheets 11 inches by 17 inches or 18 inches by 24 inches in size or 24 inches by 36 inches if the town or city has appropriate storage facilities as determined by the town or city clerk.

(b) Plats filed in accordance with this chapter shall also conform with the following ~~further~~ requirements:

(1) Each survey plat shall contain an inset locus map clearly indicating the location of the land depicted and a legend of symbols used.

(2) All lettering and data shall be clearly legible.

(3) Plat scale ratios shall be sufficient to allow all pertinent survey data to be shown, and each plat shall contain a graphic scale graduated in units of measure used in the body of the plat.

(4) Each plat sheet shall have a minimum one-half inch margin, except the binder side, which shall have a minimum one and one-half inch margin.

(5) Each plat sheet shall contain a title area in the lower right-hand corner of the sheet stating the location of the land, scale expressed in engineering units, date of compilation, the name of the record owner as of that date, the land surveyor's certification as outlined in 26 V.S.A. § 2596, and a certification that the plat conforms with requirements of this section. These certifications shall be accompanied by the responsible land surveyor's seal, name and number, and signature.

(6) Each survey plat shall contain a graphical indication of the reference meridian used on the survey plat and a statement describing the basis of bearings referenced on the survey plat.

(7) When the plat sheet is produced by a reproduction process, the process shall be identified and certified to by the producer in the margin of the plat sheet. Original plat sheets shall be so identified and certified to by the same process.

(8) The recordable plat materials shall be composed in one of the following processes:

(A) fixed-line photographic process on stable base polyester film; or

(B) pigment ink on stable base polyester film or linen tracing cloth.

(c) Survey plats prepared and dated before July 1, 1992, shall be exempt from the requirements of subdivisions ~~(b)(2)-(7)~~ (b)(1)-(6) and (8) of this section, but shall comply with requirements in State law in effect when the plats were prepared and dated.

(d) Survey plats prepared and dated before any statutory regulation of land plats shall comply with ~~subsections~~ subsection (a) and ~~subdivisions (b)(1) and (b)(8)~~ subdivision (b)(7) of this section.

(e) Any survey plat exempted by subsection (c) or (d) of this section and revised after July 1, 1992, shall meet all the requirements of ~~sections 1401-1406~~ of this title chapter.

Sec. 19. 27 V.S.A. § 1404 is amended to read:

§ 1404. ~~EXCEPTIONS~~ EXEMPTIONS

(a) Survey plats prepared and filed by municipal and State government agencies shall be exempt from subdivision 1403(b)(5) of this ~~title~~ chapter. Each plat sheet filed under this exemption shall contain a title area in the lower right-hand corner of the sheet stating the location of the land, the scale expressed in engineering units, and the date of compilation. Highway plats or plans filed under this exemption shall also include right-of-way detail sheets and a title sheet.

(b) Survey plats prepared and filed in accordance with 24 V.S.A. § 4463 shall be exempt from subdivision 1403(b)(5) of this ~~title~~ chapter. Survey plats or plans filed under this exemption shall contain a title area, the location of the land, and scale expressed in engineering units. In addition, they shall include inscriptions and data required by zoning and planning boards.

(c) Survey plats prepared and filed in accordance with chapter 15 of this title shall be exempt from subdivision ~~1403(b)(6)~~ 1403(b)(5) of this ~~title~~ chapter. Each plat sheet filed under this exemption shall contain a title area stating the location of the land, the scale expressed in engineering or architectural units, and the date of compilation.

* * * Professional Regulation Report * * *

Sec. 20. FINDINGS AND PURPOSE

(a) Findings.

(1) The General Assembly finds that multiple State agencies regulate a variety of professions and occupations. This includes the Office of Professional Regulation, which is focused primarily on licensing administration and enforcement and which regulates approximately 60,000 licensees across 46 professions. It also includes other State agencies that have other functions as their primary focus, with professional regulation as an ancillary aspect of their duties.

(2) The General Assembly further finds that the State should review the organization of professional regulation in the State to determine whether the regulation of certain professions and occupations should be transferred to the Office of Professional Regulation in order to allow State government to operate in a more effective and efficient manner.

(3) The General Assembly further finds that the State should review the makeup and supervision of professional regulatory entities in the State to determine whether they comply with antitrust law in light of recent U.S. Supreme Court precedent.

(b) Purpose. The purpose of Sec. 2 of this act is to provide the General Assembly and the Office of Professional Regulation with comprehensive information regarding the organizational structures of and the resources that are necessary for other State agencies in regulating the professions and occupations under their jurisdiction. This information will help the General Assembly determine whether the regulation of certain professions and occupations should be transferred to the Office. The purpose is also to provide the General Assembly and the Office of the Attorney General with information regarding the makeup and supervision of the professional regulatory entities in the State to ensure compliance with antitrust law.

Sec. 21. PROFESSIONAL REGULATION REPORT

On or before December 15, 2016, each of the agencies and departments set forth in subdivision (1) of this section shall provide a written report to the Senate and House Committees on Government Operations, and provide a copy of that report to the Office of Professional Regulation. The report shall contain the information set forth in subdivision (2) of this section for each of the professions or occupations listed in subdivision (1) that are regulated by that agency or department or by a professional regulatory entity under the jurisdiction of the agency or department. On or before July 1, 2016, the Secretary of Administration shall prepare a form that the agencies and departments shall use to file this report, and the Secretary shall assist the agencies and departments as necessary in completing the report.

(1) Agencies and departments required to report; listed professions and occupations.

(A) Agency of Agriculture, Food and Markets:

- (i) dairy technicians;
- (ii) pesticide applicators;
- (iii) weighmasters; and
- (iv) weights and measures repairers.

(B) Agency of Education: educators.

(C) Agency of Human Services:

- (i) child care center workers; and
- (ii) child care home providers.

(D) Agency of Natural Resources:

- (i) water system operators; and
- (ii) well drillers.

(E) Department of Health:

- (i) physicians;
- (ii) physician assistants;
- (iii) anesthesiologist assistants;
- (iv) podiatrists;
- (v) radiologist assistants;
- (vi) emergency medical personnel;
- (vii) asbestos abatement professionals; and
- (viii) lead abatement professionals.

(F) Department of Liquor Control:

- (i) sellers;
- (ii) manufacturers;
- (iii) distributors; and
- (iv) any other professionals who may be regulated by the Department.

(G) Department of Public Safety:

- (i) electricians;
- (ii) plumbers;
- (iii) elevator inspectors;
- (iv) elevator mechanics;
- (v) lift mechanics;
- (vi) commissioned boiler inspectors;
- (vii) chemical suppression;
- (viii) chimney sweeps;
- (ix) fire alarm inspectors;
- (x) fire sprinkler system designers;
- (xi) fire sprinkler system installers;
- (xii) oil burner installers;
- (xiii) propane gas installers;
- (xiv) natural gas installers;

- (xv) precious metal dealers;
- (xvi) emergency generator installers;
- (xvii) polygraph examiners; and
- (xviii) explosive blasters.

(2) Information required to be reported.

- (A) Agency or department name.
- (B) Regulation type (license, certification, or registration).
- (C) Number of persons regulated.
- (D) Legal basis for regulation, including:
 - (i) statutory authority;
 - (ii) administrative rules; and
 - (iii) agency or department policies.
- (E) Purpose of regulation.
- (F) A description of stakeholders in the regulation, including:
 - (i) those subject to regulation;
 - (ii) State entities;
 - (iii) consumers or clients;
 - (iv) employers;
 - (v) the public; and
 - (vi) any other applicable persons.
- (G) A description of the governance structure, such as:
 - (i) a board or commission;
 - (ii) an agency or division head;
 - (iii) a panel; or
 - (iv) a hearing officer.
- (H) A description of the decision makers:
 - (i) who set application requirements and practice standards;
 - (ii) who make decisions on applicants, enforcement, and discipline; and

(iii) specifying whether any decision maker is an active participant in the profession being regulated or, if the decision maker has taken a hiatus from the profession, whether the decision maker plans to return to the profession.

(I) Qualifications for regulation, including:

(i) examination;

(ii) education; and

(iii) experience.

(J) A description of the application process, including:

(i) receiving applications;

(ii) reviewing applications;

(iii) rejecting applications;

(iv) appealing application rejections;

(v) issuing licenses, certifications, or registrations; and

(vi) the average time to process licenses.

(K) The duration of the license, certification, or registration.

(L) A description of the renewal process and requirements.

(M) Citation of the standards of practice or codes of conduct for persons regulated set forth in:

(i) statute;

(ii) rule;

(iii) policy; or

(iv) another location.

(N) A description of the enforcement process, including:

(i) complaints;

(ii) investigations;

(iii) prosecutions;

(iv) hearings;

(v) discipline;

(vi) follow-up or monitoring; and

(vii) the average time to process complaints and cases.

(O) A description of any inspection process.

(P) A description of any systems, such as information technology systems, that are used to enable licensing, certification, or registration, renewal, enforcement, and inspection.

(Q) Staff members:

(i) number of full-time staff;

(ii) number of part-time staff;

(iii) job titles; and

(iv) duties.

(R) Budget:

(i) annual expenses;

(ii) annual revenues;

(iii) fees:

(I) the amount charged;

(II) how fee amounts are determined and set;

(III) the authority to establish those fees; and

(IV) how revenues from fees are used, indicating the specific uses if those revenues are used for purposes other than regulating the profession.

(iv) General Fund or special fund deposits; and

(v) appropriations from the General Fund.

(S) A description and the qualifications of any supervisor responsible for the oversight of the agency's or department's professional regulatory entity and whether that supervisor has the ability to veto or modify any decision by that professional regulatory entity.

(T) Any other information the agency or department believes is relevant for the purpose of this report.

* * * Licensure by the Office of Professional Regulation
and the Agency of Education * * *

Sec. 22. 16 V.S.A. § 1696 is amended to read:

§ 1696. LICENSING

* * *

(g) Dual licensure. The Secretary and the Office of Professional Regulation shall jointly create a process for facilitating the issuance of professional licenses from both offices to the individuals seeking them.

Sec. 23. 3 V.S.A. § 123 is amended to read:

§ 123. DUTIES OF OFFICE

* * *

(h) The Office and the Secretary of Education shall jointly create a process for facilitating the issuance of professional licenses from both offices to the individuals seeking them.

* * * Effective Dates * * *

Sec. 24. EFFECTIVE DATES

This act shall take effect on July 1, 2016, except:

(1) this section and Secs. 20 (findings and purpose) and 21 (professional regulation report) shall take effect on passage;

(2) Secs. 2-5 (regarding alcohol and drug abuse counselors) shall take effect on September 1, 2016;

(3) Secs. 8-14 (regarding potable water supply and wastewater system designers and pollution abatement facility operators) shall take effect on January 1, 2017; and

(4) Sec. 17, 26 V.S.A. § 3202 (social workers; prohibition) shall take effect on July 1, 2017.

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

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

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

First: In Sec. 1, 26 V.S.A. chapter 57, in § 3104 (process for review of regulatory laws), in subsection (a), after the first sentence, by inserting a second sentence to read: Notwithstanding any provisions of this section to the contrary, the Office shall not review regulatory laws within the jurisdiction of the Agency of Education.

Second: By adding a new section to be Sec. 14a to read:

Sec. 14a. 3 V.S.A. § 2822 is amended to read:

§ 2822. BUDGET AND REPORT; POWERS

* * *

(j) In accordance with subsection (i) of this section, the following fees are established for permits, licenses, certifications, approvals, registrations, orders, and other actions taken by the Agency of Natural Resources.

* * *

~~(14) For certification of sewage treatment plant operators issued under 10 V.S.A. chapter 47:~~

- | | |
|--------------------------------------|----------------------------------|
| (A) original application: | \$125.00. |
| (B) renewal application: | \$125.00. [Repealed.] |

* * *

~~(21) For class A and B designer licenses issued under 10 V.S.A. § 1975:~~

- | | |
|--------------------------------------|------------------------------|
| (A) Class A: | |
| (i) original application | \$150.00. |
| (ii) renewal application | \$50.00 per year. |
| (iii) provisional license | \$50.00. |
| (B) Class B: | |
| (i) original application | \$75.00. |
| (ii) renewal application | \$50.00 per year. |
| (iii) provisional license | \$50.00. |

~~(C) Renewal late fee. The following fees shall be charged in addition to the renewal fees established in subdivisions (A) and (B) of this subdivision (21):~~

- | | |
|---|---------------------|
| (i) application received within 30 days after expiration of license: | \$25.00. |
| (ii) application received 31 days or later after expiration of license: | \$50.00. |
| (iii) application received two years or more after expiration of license shall be considered a new application for the designer license. | |

- | | |
|---|---------------------------------|
| (D) Potable water supply exam fee: | \$50.00. [Repealed.] |
|---|---------------------------------|

* * *

Third: In Sec. 21 (professional regulation report), in subdivision (1), by striking out subdivision (B) (Agency of Education) in its entirety and inserting in lieu thereof the following:

(B) [Deleted.]

Fourth: By striking out in their entirety Secs. 22 (16 V.S.A. § 1696) and 23 (3 V.S.A. § 123) and their accompanying reader assistance heading and inserting in lieu thereof the following:

Secs. 22–23. [Deleted.]

Fifth: In Sec. 24 (effective dates), in subdivision (3), at the beginning of the subdivision, by striking out “Secs. 8–14” and inserting in lieu thereof Secs. 8–14a

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

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of proposal of amendment of the Committee on Government Operations was amended as recommended by the Committee on Finance.

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

House Proposal of Amendment Not Concurred In; Committee of Conference Requested; Committee of Conference Appointed; Bill Messaged

S. 155.

House proposal of amendment to Senate bill entitled:

An act relating to privacy protection.

Was taken up.

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

* * * Protected Health Information * * *

Sec. 1. 18 V.S.A. chapter 42B is added to read:

CHAPTER 42B. HEALTH CARE PRIVACY

§ 1881. DISCLOSURE OF PROTECTED HEALTH INFORMATION PROHIBITED

(a) As used in this section:

(1) “Covered entity” shall have the same meaning as in 45 C.F.R. § 160.103.

(2) “Protected health information” shall have the same meaning as in 45 C.F.R. § 160.103.

(b) A covered entity shall not disclose protected health information unless the disclosure is permitted under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

* * * Drones * * *

Sec. 2. 20 V.S.A. part 11 is added to read:

PART 11. DRONES

CHAPTER 205. DRONES

§ 4621. DEFINITIONS

As used in this chapter:

(1) “Drone” means a powered aerial vehicle that does not carry a human operator and is able to fly autonomously or to be piloted remotely.

(2) “Law enforcement agency” means:

(A) the Vermont State Police;

(B) a municipal police department;

(C) a sheriff’s department;

(D) the Office of the Attorney General;

(E) a State’s Attorney’s office;

(F) the Capitol Police Department;

(G) the Department of Liquor Control;

(H) the Department of Fish and Wildlife;

(I) the Department of Motor Vehicles;

(J) a State investigator; or

(K) a person or entity acting on behalf of an agency listed in this subdivision (2).

§ 4622. LAW ENFORCEMENT USE OF DRONES

(a) Except as provided in subsection (c) of this section, a law enforcement agency shall not use a drone or information acquired through the use of a drone for the purpose of investigating, detecting, or prosecuting crime.

(b)(1) A law enforcement agency shall not use a drone to gather or retain data on private citizens peacefully exercising their constitutional rights of free speech and assembly.

(2) This subsection shall not be construed to prohibit a law enforcement agency from using a drone:

(A) for observational, public safety purposes that do not involve gathering or retaining data; or

(B) pursuant to a warrant obtained under Rule 41 of the Vermont Rules of Criminal Procedure.

(c) A law enforcement agency may use a drone and may disclose or receive information acquired through the operation of a drone if the drone is operated:

(1) for a purpose other than the investigation, detection, or prosecution of crime, including search and rescue operations and aerial photography for the assessment of accidents, forest fires and other fire scenes, flood stages, and storm damage; or

(2) pursuant to:

(A) a warrant obtained under Rule 41 of the Vermont Rules of Criminal Procedure; or

(B) a judicially recognized exception to the warrant requirement.

(d)(1) When a drone is used pursuant to subsection (c) of this section, the drone shall be operated in a manner intended to collect data only on the target of the surveillance and to avoid data collection on any other person, home, or area.

(2) Facial recognition or any other biometric matching technology shall not be used on any data that a drone collects on any person, home, or area other than the target of the surveillance.

(e) Information or evidence gathered in violation of this section shall be inadmissible in any judicial or administrative proceeding.

§ 4623. USE OF DRONES; FEDERAL AVIATION ADMINISTRATION REQUIREMENTS

(a) Any use of drones by any person, including a law enforcement agency, shall comply with all applicable Federal Aviation Administration requirements and guidelines.

(b) It is the intent of the General Assembly that any person who uses a model aircraft as defined in the Federal Aviation Administration Modernization and Reform Act of 2012 shall operate the aircraft according to the guidelines of community-based organizations such as the Academy of Model Aeronautics National Model Aircraft Safety Code.

§ 4624. REPORTS

(a) On or before September 1 of each year, any law enforcement agency that has used a drone within the previous 12 months shall report the following information to the Department of Public Safety:

(1) The number of times the agency used a drone within the previous 12 months. For each use of a drone, the agency shall report the type of incident involved, the nature of the information collected, and the rationale for deployment of the drone.

(2) The number of criminal investigations aided and arrests made through use of information gained by the use of drones within the previous 12 months, including a description of how the drone aided each investigation or arrest.

(3) The number of times a drone collected data on any person, home, or area other than the target of the surveillance within the previous 12 months and the type of data collected in each instance.

(4) The cost of the agency's drone program and the program's source of funding.

(b) On or before December 1 of each year that information is collected under subsection (a) of this section, the Department of Public Safety shall report the information to the House and Senate Committees on Judiciary and on Government Operations.

Sec. 3. 13 V.S.A. § 4018 is added to read:

§ 4018. DRONES

(a) No person shall equip a drone with a dangerous or deadly weapon or fire a projectile from a drone. A person who violates this section shall be imprisoned not more than one year or fined not more than \$1,000.00, or both.

(b) As used in this section:

(1) “Drone” shall have the same meaning as in 20 V.S.A. § 4621.

(2) “Dangerous or deadly weapon” shall have the same meaning as in section 4016 of this title.

Sec. 4. REPORT; AGENCY OF TRANSPORTATION AVIATION PROGRAM

On or before December 15, 2016, the Aviation Program within the Agency of Transportation shall report to the Senate and House Committees on Judiciary any recommendations or proposals it determines are necessary for the regulation of drones pursuant to 20 V.S.A. § 4623.

* * * Vermont Electronic Communication Privacy Act * * *

Sec. 5. 13 V.S.A. chapter 232 is added to read:

CHAPTER 232. VERMONT ELECTRONIC COMMUNICATION
PRIVACY ACT

§ 8101. DEFINITIONS

As used in this chapter:

(1) “Electronic communication” means the transfer of signs, signals, writings, images, sounds, data, or intelligence of any nature in whole or in part by a wire, a radio, electromagnetic, photoelectric, or photo-optical system.

(2) “Electronic communication service” means a service that provides to its subscribers or users the ability to send or receive electronic communications, including a service that acts as an intermediary in the transmission of electronic communications, or stores protected user information.

(3) “Electronic device” means a device that stores, generates, or transmits information in electronic form.

(4) “Government entity” means a department or agency of the State or a political subdivision thereof, or an individual acting for or on behalf of the State or a political subdivision thereof.

(5) “Law enforcement officer” means:

(A) a law enforcement officer certified at Level II or Level III pursuant to 20 V.S.A. § 2358;

(B) the Attorney General;

(C) an assistant attorney general;

(D) a State’s Attorney; or

(E) a deputy State's attorney

(6) "Lawful user" means a person or entity who lawfully subscribes to or uses an electronic communication service, whether or not a fee is charged.

(7) "Protected user information" means electronic communication content, including the subject line of e-mails, cellular tower-based location data, GPS or GPS-derived location data, the contents of files entrusted by a user to an electronic communication service pursuant to a contractual relationship for the storage of the files whether or not a fee is charged, data memorializing the content of information accessed or viewed by a user, and any other data for which a reasonable expectation of privacy exists.

(8) "Service provider" means a person or entity offering an electronic communication service.

(9) "Specific consent" means consent provided directly to the government entity seeking information, including when the government entity is the addressee or intended recipient or a member of the intended audience of an electronic communication. Specific consent does not require that the originator of a communication have actual knowledge that an addressee, intended recipient, or member of the specific audience is a government entity.

(10) "Subscriber information" means the name, names of additional account users, account number, billing address, physical address, e-mail address, telephone number, payment method, record of services used, and record of duration of service provided or kept by a service provider regarding a user or account.

§ 8102. LIMITATIONS ON COMPELLED PRODUCTION OF ELECTRONIC INFORMATION

(a) Except as provided in this section, a law enforcement officer shall not compel the production of or access to protected user information from a service provider.

(b) A law enforcement officer may compel the production of or access to protected user information from a service provider:

(1) pursuant to a warrant;

(2) pursuant to a judicially recognized exception to the warrant requirement;

(3) with the specific consent of a lawful user of the electronic communication service;

(4) if a law enforcement officer, in good faith, believes that an emergency involving danger of death or serious bodily injury to any person requires access to the electronic device information without delay; or

(5) except where prohibited by State or federal law, if the device is seized from an inmate's possession or found in an area of a correctional facility, jail, or lock-up under the jurisdiction of the Department of Corrections, a sheriff, or a court to which inmates have access and the device is not in the possession of an individual and the device is not known or believed to be in the possession of an authorized visitor.

(c) A law enforcement officer may compel the production of or access to information kept by a service provider other than protected user information:

(1) pursuant to a subpoena issued by a judicial officer, who shall issue the subpoena upon a finding that:

(A) there is reasonable cause to believe that an offense has been committed; and

(B) the information sought is relevant to the offense or appears reasonably calculated to lead to discovery of evidence of the alleged offense;

(2) pursuant to a subpoena issued by a grand jury;

(3) pursuant to a court order issued by a judicial officer upon a finding that the information sought is reasonably related to a pending investigation or pending case; or

(4) for any of the reasons listed in subdivisions (b)(1)–(3) of this section.

(d) A warrant issued for protected user information shall comply with the following requirements:

(1) The warrant shall describe with particularity the information to be seized by specifying the time periods covered and, as appropriate and reasonable, the target individuals or accounts, the applications or services covered, and the types of information sought.

(2)(A) The warrant shall require that any information obtained through execution of the warrant that is unrelated to the warrant's objective not be subject to further review, use, or disclosure without a court order.

(B) A court shall issue an order for review, use, or disclosure of information obtained pursuant to subdivision (A) of this subdivision (2) if it finds there is probable cause to believe that:

(i) the information is relevant to an active investigation;

(ii) the information constitutes evidence of a criminal offense; or

(iii) review, use, or disclosure of the information is required by State or federal law.

(e) A warrant or subpoena directed to a service provider shall be accompanied by an order requiring the service provider to verify the authenticity of electronic information that it produces by providing an affidavit that complies with the requirements of Rule 902(11) or 902(12) of the Vermont Rules of Evidence.

(f) A service provider may voluntarily disclose information other than protected user information when that disclosure is not otherwise prohibited by State or federal law.

(g) If a law enforcement officer receives information voluntarily provided pursuant to subsection (f) of this section, the officer shall destroy the information within 90 days unless any of the following circumstances apply:

(1) A law enforcement officer has or obtains the specific consent of the sender or recipient of the electronic communications about which information was disclosed.

(2) A law enforcement officer obtains a court order authorizing the retention of the information. A court shall issue a retention order upon a finding that the conditions justifying the initial voluntary disclosure persist. The order shall authorize the retention of the information only for as long as:

(A) the conditions justifying the initial voluntary disclosure persist; or

(B) there is probable cause to believe that the information constitutes evidence of the commission of a crime.

(3) A law enforcement officer reasonably believes that the information relates to an investigation into child exploitation and the information is retained as part of a multiagency database used in the investigation of similar offenses and related crimes.

(h) If a law enforcement officer obtains electronic information without a warrant under subdivision (b)(4) of this section because of an emergency involving danger of death or serious bodily injury to a person that requires access to the electronic information without delay, the officer shall, within five days after obtaining the information, apply for a warrant or order authorizing obtaining the electronic information or a motion seeking approval of the emergency disclosures. The application or motion shall set forth the facts giving rise to the emergency and shall, if applicable, include a request supported by a sworn affidavit for an order delaying notification under subdivision 8103(b)(1) of this section. The court shall promptly rule on the

application or motion. If the court finds that the facts did not give rise to an emergency or denies the motion or application on any other ground, the court shall order the immediate destruction of all information obtained, and immediate notification pursuant to subsection 8103(a) if this title if it has not already been provided.

(i) This section does not limit the existing authority of a law enforcement officer to use legal process to do any of the following:

(1) require an originator, addressee, or intended recipient of an electronic communication to disclose any protected user information associated with that communication;

(2) require an entity that provides electronic communications services to its officers, directors, employees, or agents for the purpose of carrying out their duties to disclose protected user information associated with an electronic communication to or from an officer, director, employee, or agent of the entity; or

(3) require a service provider to provide subscriber information.

(j) A service provider shall not be subject to civil or criminal liability for producing or providing access to information in good faith reliance on the provisions of this section. This subsection shall not apply to gross negligence, recklessness, or intentional misconduct by the service provider.

§ 8103. RETURNS AND SERVICE

(a) Returns.

(1) If a warrant issued pursuant to section 8102 of this title is executed or electronic information is obtained in an emergency under subdivision 8102(b)(4) of this title, a return shall be made within 90 days. Upon certification by a law enforcement officer, an attorney for the State, or any other person authorized by law that an investigation related to the warrant or the emergency is ongoing, a judicial officer may extend the 90-day period for making the return for an additional period that the judicial officer deems reasonable.

(2) A return made pursuant to this subsection shall identify:

(A) the date the response was received from the service provider;

(B) the quantity of information or data provided; and

(C) the type of information or data provided.

(b) Service.

(1) At the time the return is made, the law enforcement officer who executed the warrant under section 8102 of this section or obtained electronic information under subdivision 8102(b)(4) of this section shall serve a copy of the warrant on the subscriber to the service provider, if known. Service need not be made upon any person against whom criminal charges have been filed related to the execution of the warrant or to the obtaining of electronic information under subdivision 8102(b)(4) of this section.

(2) Upon certification by a law enforcement officer, an attorney for the State, or any other person authorized by law that an investigation related to the warrant is ongoing, a judicial officer may extend the time for serving the return for an additional period that the judicial officer deems reasonable.

(3) Service pursuant to this subsection may be accomplished by:

(A) delivering a copy to the known person;

(B) leaving a copy at the person's residence or usual place of abode with an individual of suitable age and discretion who resides at that location;

(C) delivering a copy by reliable electronic means; or

(D) mailing a copy to the person's last known address.

(c) Except as otherwise provided in this section, nothing in this chapter shall prohibit or limit a service provider or any other party from disclosing information about any request or demand for electronic information.

§ 8104. EXCLUSIVE REMEDIES FOR A VIOLATION OF THIS CHAPTER

(a) A defendant in a trial, hearing, or proceeding may move to suppress electronic information obtained or retained in violation of the U.S. Constitution, the Vermont Constitution, or this chapter.

(b) A defendant in a trial, hearing, or proceeding shall not move to suppress electronic information on the ground that Vermont lacks personal jurisdiction over a service provider, or on the ground that the constitutional or statutory privacy rights of an individual other than the defendant were violated.

(c) A service provider who receives a subpoena issued pursuant to this chapter may file a motion to quash the subpoena. The motion shall be filed in the court that issued the subpoena before the expiration of the time period for production of the information. The court shall hear and decide the motion as soon as practicable. Consent to additional time to comply with process under section 806 of this title does not extend the date by which a service provider shall seek relief under this subsection.

§ 8105. EXECUTION OF WARRANT FOR INFORMATION KEPT BY SERVICE PROVIDER

A warrant issued under this chapter may be addressed to any Vermont law enforcement officer. The officer shall serve the warrant upon the service provider, the service provider's registered agent, or, if the service provider has no registered agent in the State, upon the Office of Secretary of State in accordance with 12 V.S.A. §§ 851–858. If the service provider consents, the warrant may be served via U.S. mail, courier service, express delivery service, facsimile, electronic mail, an Internet-based portal maintained by the service provider, or other reliable electronic means. The physical presence of the law enforcement officer at the place of service or at the service provider's repository of data shall not be required.

§ 8106. SERVICE PROVIDER'S RESPONSE TO WARRANT

(a) The service provider shall produce the items listed in the warrant within 30 days unless the court orders a shorter period for good cause shown, in which case the court may order the service provider to produce the items listed in the warrant within 72 hours. The items shall be produced in a manner and format that permits them to be searched by the law enforcement officer.

(b) This section shall not be construed to limit the authority of a law enforcement officer under existing law to search personally for and locate items or data on the premises of a Vermont service provider.

(c) As used in this section, "good cause" includes an investigation into a homicide, kidnapping, unlawful restraint, custodial interference, felony punishable by life imprisonment, or offense related to child exploitation.

§ 8107. CRIMINAL PROCESS ISSUED BY VERMONT COURT; RECIPROCITY

(a) Criminal process, including subpoenas, search warrants, and other court orders issued pursuant to this chapter, may be served and executed upon any service provider within or outside the State, provided the service provider has contact with Vermont sufficient to support personal jurisdiction over it by this State. Notwithstanding any other provision in this chapter, only a service provider may challenge legal process, or the admissibility of evidence obtained pursuant to it, on the ground that Vermont lacks personal jurisdiction over it.

(b) This section shall not be construed to limit the authority of a court to issue criminal process under any other provision of law.

(c) A service provider incorporated, domiciled, or with a principal place of business in Vermont that has been properly served with criminal process issued by a court of competent jurisdiction in another state, commonwealth, territory,

or political subdivision thereof shall comply with the legal process as though it had been issued by a court of competent jurisdiction in this State.

§ 8108. REAL TIME INTERCEPTION OF INFORMATION PROHIBITED

A law enforcement officer shall not use a device which via radio or other electromagnetic wireless signal intercepts in real time from a user's device a transmission of communication content, real time cellular tower-derived location information, or real time GPS-derived location information, except for purposes of locating and apprehending a fugitive for whom an arrest warrant has been issued. This section shall not be construed to prevent a law enforcement officer from obtaining information from an electronic communication service as otherwise permitted by law.

* * * Automated License Plate Recognition Systems * * *

Sec. 6. EXTENSION OF SUNSET

2013 Acts and Resolves No. 69, Sec. 3, as amended by 2015 Acts and Resolves No. 32, Sec. 1, is further amended to read:

Sec. 3. EFFECTIVE DATE AND SUNSET

* * *

(b) Secs. 1–2 of this act, 23 V.S.A. §§ 1607 and 1608, shall be repealed on July 1, ~~2016~~ 2019.

Sec. 7. ANALYSIS OF ALPR SYSTEM-RELATED COSTS AND BENEFITS

(a) On or before January 15, 2017, the Department of Public Safety, in consultation with the Joint Fiscal Office, shall:

(1) Estimate the total annualized fixed and variable costs associated with all automated license plate recognition (ALPR) systems used by law enforcement officers in Vermont, including capital, operating, maintenance, personnel, training, and other costs. The estimate shall include a breakdown of costs by category.

(2) Estimate the total annualized fixed and variable costs associated with any planned increase in the number of ALPR systems used by law enforcement officers in Vermont and with any planned increase in the intensity of use of existing ALPR systems, including capital, operating, maintenance, personnel, training, and other costs. The estimate shall include a breakdown of costs by category.

(3) Conduct a cost-benefit analysis of the existing and planned use of ALPR systems in Vermont, and an analysis of how these costs and benefits compare with other enforcement tools that require investment of Department resources.

(b) On or before January 15, 2017, the Department of Public Safety shall submit a written report to the House and Senate Committees on Judiciary and on Transportation of the estimates and analysis required under subsection (a) of this section.

(c) If the Department of Motor Vehicles establishes or designates an independent server to store data captured by ALPRs before January 15, 2017, it shall conduct the analysis required under subsection (a) of this section in consultation with the Joint Fiscal Office and submit a report in accordance with subsection (b) of this section.

Sec. 8. 23 V.S.A. § 1607 is amended to read:

§ 1607. AUTOMATED LICENSE PLATE RECOGNITION SYSTEMS

(a) Definitions. As used in this section:

(1) “Active data” is distinct from historical data as defined in subdivision (3) of this subsection and means data uploaded to individual automated license plate recognition system units before operation as well as data gathered during the operation of an ALPR system. Any data collected by an ALPR system in accordance with this section shall be considered collected for a legitimate law enforcement purpose.

(2) “Automated license plate recognition system” or “ALPR system” means a system of one or more mobile or fixed high-speed cameras combined with computer algorithms to convert images of registration plates into computer-readable data.

(3) “Historical data” means any data collected by an ALPR system and stored on the statewide ALPR server operated by the Vermont Justice Information Sharing System of the Department of Public Safety. Any data collected by an ALPR system in accordance with this section shall be considered collected for a legitimate law enforcement purpose.

(4) “Law enforcement officer” means a State Police officer, municipal police officer, motor vehicle inspector, Capitol Police officer, constable, sheriff, or deputy sheriff certified by the Vermont Criminal Justice Training Council as ~~having satisfactorily completed the approved training programs required to meet the minimum training standards applicable to that person a~~ level II or level III law enforcement officer under 20 V.S.A. § 2358.

(5) “Legitimate law enforcement purpose” applies to access to active or historical data and means investigation, detection, analysis, or enforcement of a crime, traffic violation, or parking violation or of a commercial motor vehicle violation or defense against the same, or operation of AMBER alerts or missing or endangered person searches.

(6) “Vermont ~~Information and Analysis~~ Technology Center Analyst” means any sworn or civilian employee who through his or her employment with the Vermont ~~Information and Analysis~~ Technology Center (~~VTIAC~~) (VTC) has access to secure databases that support law enforcement investigations.

(b) Operation. A Vermont law enforcement officer shall be certified in ALPR operation by the Vermont Criminal Justice Training Council in order to operate an ALPR system.

(c) ALPR use and data access; confidentiality.

(1)(A) Deployment of ALPR equipment by Vermont law enforcement agencies is intended to provide access to law enforcement reports of wanted or stolen vehicles and wanted persons and to further other legitimate law enforcement purposes. Use of ALPR systems by law enforcement officers and access to active data are restricted to legitimate law enforcement purposes.

(B) Active ~~ALPR~~ data may be accessed by a law enforcement officer operating the ALPR system only if he or she has a legitimate law enforcement purpose for the data. Entry of any data into the system other than data collected by the ALPR system itself must be approved by a supervisor and shall have a legitimate law enforcement purpose.

(C)(i) Requests to ~~review~~ access active data within seven days or less of the data’s creation shall be in writing and include the name of the requester, the law enforcement agency the requester is employed by, if any, and the law enforcement agency’s Originating Agency Identifier (ORI) number. The request shall describe the legitimate law enforcement purpose. The written request and the outcome of the request shall be transmitted to ~~VTIAC~~ VTC and retained by ~~VTIAC~~ VTC for not less than three years.

~~(ii)~~ In each department operating an ALPR system, access to active data shall be limited to designated personnel who have been provided account access by the department to conduct authorized ALPR stored data queries. ~~Access to active data shall be restricted to data collected within the past seven days.~~

(ii) After seven days from the creation of active data, the data may only be disclosed pursuant to a warrant or if relevant to a person’s defense against a criminal charge.

(2)(A) A ~~VTHAC~~ VTC analyst shall transmit historical data only to a Vermont or out-of-state law enforcement officer or person who has a legitimate law enforcement purpose for the data. A law enforcement officer or other person to whom historical data are transmitted may use such data only for a legitimate law enforcement purpose. Entry of any data onto the statewide ALPR server other than data collected by an ALPR system itself must be approved by a supervisor and shall have a legitimate law enforcement purpose.

(B) Requests for historical data, whether from Vermont or out-of-state law enforcement officers; or other persons, within seven days or less of the data's creation shall be made in writing to ~~an analyst at VTHAC~~ a VTC analyst. The request shall include the name of the requester, the law enforcement agency the requester is employed by, if any, and the law enforcement agency's ORI number. The request shall describe the legitimate law enforcement purpose. ~~VTHAC~~ VTC shall retain all requests and shall record in writing the outcome of the request and any information that was provided to the requester or, if applicable, why a request was denied or not fulfilled. ~~VTHAC~~ VTC shall retain the information described in this subdivision (c)(2)(B) for no fewer than three years.

(C) After seven days from the creation of licence plate data that become historical data, the data may only be disclosed pursuant to a warrant or if relevant to a person's defense against a criminal charge.

(d) Retention.

(1) Any ALPR information gathered by a Vermont law enforcement agency shall be sent to the Department of Public Safety to be retained pursuant to the requirements of subdivision (2) of this subsection. The Department of Public Safety shall maintain the ALPR storage system for Vermont law enforcement agencies.

(2) Except as provided in this subsection and section 1608 of this title, information gathered by a law enforcement officer through use of an ALPR system shall only be retained for 18 months after the date it was obtained. When the permitted 18-month period for retention of the information has expired, the Department of Public Safety and any local law enforcement agency with custody of the information shall destroy it and cause to have destroyed any copies or backups made of the original data. Data may be retained beyond the 18-month period pursuant to a preservation ~~request made or disclosure~~ order issued under Section 1608 of this title or pursuant to a warrant issued under Rule 41 of the Vermont or Federal Rules of Criminal Procedure.

(e) Oversight; rulemaking.

(1) The Department of Public Safety shall establish a review process to ensure that information obtained through use of ALPR systems is used only for the purposes permitted by this section. The Department shall report the results of this review annually on or before January 15 to the Senate and House Committees on Judiciary and on Transportation. The report shall contain the following information based on prior calendar year data:

(A) the total number of ALPR units being operated in the State and the number of units submitting data to the statewide ALPR database;

(B) ~~the total number of ALPR readings each agency submitted, and the total number of all such readings submitted,~~ to the statewide ALPR database;

(C) the 18-month cumulative number of ALPR readings being housed on the statewide ALPR database as of the end of the calendar year;

(D) the total number of requests made to ~~VTIAC~~ VTC for ~~ALPR~~ historical data;

~~(E),~~ the ~~total~~ number of these requests that resulted in release of information from the statewide ALPR database, and the total number of warrants that resulted in the release of historical data;

~~(F)~~(E) the total number of out-of-state requests; ~~and~~

~~(G)~~ to VTC for historical data, the ~~total~~ number of out-of-state requests that resulted in release of information from the statewide ALPR database, and the total number of warrants from out of state that resulted in the release of historical data;

(F) the total number of alerts generated on ALPR systems operated by law enforcement officers in the State by a match between an ALPR reading and a plate number on an alert database and the number of these alerts that resulted in an enforcement action;

(G) the total number of criminal, missing person, and commercial motor vehicle investigations and enforcement actions to which active data contributed, and a summary of the nature of these investigations and enforcement actions;

(H) the total number of criminal, missing person, and commercial motor vehicle investigations and enforcement actions to which historical data contributed, and a summary of the nature of these investigations and enforcement actions; and

(I) the total annualized fixed and variable costs associated with all ALPR systems used by Vermont law enforcement agencies and an estimate of the total of such costs per unit.

(2) ~~The~~ Before January 1, 2018, the Department of Public Safety ~~may~~ shall adopt rules to implement this section.

Sec. 9. 23 V.S.A. § 1608 is amended to read:

§ 1608. PRESERVATION OF DATA

(a) Preservation request.

(1) A law enforcement agency or the Department of Motor Vehicles or other person with a legitimate law enforcement purpose may apply to the Criminal Division of the Superior Court for an extension of up to 90 days of the 18-month retention period established under subdivision 1607(d)(2) of this title if the agency or Department offers specific and articulable facts showing that there are reasonable grounds to believe that the captured plate data are relevant and material to an ongoing criminal or missing persons investigation or to a pending court or Judicial Bureau proceeding involving enforcement of a crime or of a commercial motor vehicle violation. Requests for additional 90-day extensions or for longer periods may be made to the Superior Court subject to the same standards applicable to an initial extension request under this subdivision.

(2) A governmental entity making a preservation request under this section shall submit an affidavit stating:

(A) the particular camera or cameras for which captured plate data must be preserved or the particular license plate for which captured plate data must be preserved; and

(B) the date or dates and time frames for which captured plate data must be preserved.

(b) Captured plate data shall be destroyed on the schedule specified in section 1607 of this title if the preservation request is denied or 14 days after the denial, whichever is later.

* * * Information Related to Use of Ignition Interlock Devices * * *

Sec. 10. 23 V.S.A. § 1213 is amended to read:

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

* * *

(m)(1) Images and other individually identifiable information in the custody of a public agency related to the use of an ignition interlock device is exempt from public inspection and copying under the Public Records Act and shall not be disclosed except:

(A) pursuant to a warrant;

(B) if a law enforcement officer, in good faith, believes that an emergency involving danger of death or serious bodily injury to any person requires access to the information without delay; or

(C) in connection with enforcement proceedings under this section or rules adopted pursuant to this section.

(2) Images or information disclosed in violation of this subsection shall be inadmissible in any judicial or administrative proceeding.

* * * Administrative Procedure Act; Code of Administrative Rules * * *

Sec. 11. 3 V.S.A. § 847 is amended to read:

§ 847. AVAILABILITY OF ADOPTED RULES; RULES BY SECRETARY OF STATE

(a) The Secretary of State shall keep open to public inspection a permanent register of rules. The Secretary also shall publish a code of administrative rules that contains the rules adopted under this chapter. The requirement to publish a code shall be considered satisfied if a commercial publisher offers such a code in print at a competitive price and at no charge online.

(b) The Secretary of State shall publish not less than quarterly a bulletin setting forth the text of all rules filed since the immediately preceding publication and any objections filed under subsection 842(b) or 844(e) of this title. 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.

(c) The bulletin may omit any rule if either:

(1) a commercial publisher offers a comparable publication at a competitive price; or

(2) all three of the following apply:

(A) its publication would be unduly cumbersome or expensive; and

(B) the rule is made available on application to the adopting agency; and

(C) the bulletin contains a notice stating the general subject matter of the omitted rule and stating how a copy of the rule and any objection filed under subsection 842(b) or 844(e) of this title may be obtained.

(d) Bulletins shall be made available upon request to agencies and officials of this State free of charge and to other persons at prices fixed by the Secretary of State to cover mailing and publication costs.

(e) The Secretary of State shall adopt rules for the effective administration of this chapter. These rules shall be applicable to every agency and shall include ~~but not be limited to~~ uniform procedural requirements, style, appropriate forms, and a system for compiling and indexing rules.

Sec. 12. 3 V.S.A. § 848 is amended to read:

§ 848. RULES REPEAL; OPERATION OF LAW

(a) A rule shall be repealed without formal proceedings under this chapter if:

(1) the agency ~~which~~ that adopted the rule is abolished and its authority, specifically including its authority to implement its existing rules, has not been transferred to another agency; or

(2) a court of competent jurisdiction has declared the rule to be invalid; or

(3) the statutory authority for the rule, as stated by the agency under subdivision 838(b)(4) of this title, is repealed by the General Assembly or declared invalid by a court of competent jurisdiction.

(b) When a rule is repealed by operation of law under this section, the Secretary of State shall delete the rule from the published code of administrative rules.

(c)(1) On July 1, 2018, a rule shall be repealed without formal proceedings under this chapter if:

(A) as of July 1, 2016, the rule was in effect but not published in the code of administrative rules; and

(B) the rule is not published in such code before July 1, 2018.

(2) An agency seeking to publish a rule described in subdivision (1) of this subsection may submit a digital copy of the rule to the Secretary of State with proof acceptable to the Secretary that as of July 1, 2016 the rule was adopted and in effect under this chapter and the digital copy consists of the text of such rule without change.

(d) If the statutory authority for a rule, as stated by the agency under subdivision 838(b)(4), is amended by the General Assembly, the agency shall review the rule and make a determination whether such statutory amendment repeals the authority upon which the rule is based, and shall, within 60 days of the effective date of the statutory amendment, inform in writing the Secretary

of State and the Legislative Committee on Administrative Rules whether repeal or revision of the rule is required by the statutory amendment.

* * * Effective Dates * * *

Sec. 13. EFFECTIVE DATES

(a) This section and Secs. 6–7 shall take effect on passage.

(b) Secs. 8–12 shall take effect on July 1, 2016, except that in Sec. 8, 23 V.S.A. § 1607(e)(1) (oversight, reporting) shall take effect on January 16, 2017.

(c) Secs. 1, 2, 3, 4, and 5 shall take effect on October 1, 2016.

and that after passage the title of the bill be amended to read: “An act relating to privacy protection and a code of administrative rules”

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, on motion of Senator Benning, the Senate refused to concur in the House proposal of amendment and requested a Committee of Conference.

Thereupon, pursuant to the request of the Senate, the President announced the appointment of

Senator Benning
Senator Ashe
Senator White

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

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

Recess

On motion of Senator Campbell the Senate recessed until 4:00 P.M.

Called to Order

The Senate was called to order by the President.

**Rules Suspended; House Proposal of Amendment to Senate Proposal of
Amendment Concurred In**

H. 878.

Appearing on the Calendar for notice, on motion of Senator Flory, the rules were suspended and House proposal of amendment to Senate proposal of amendment to House bill entitled:

An act relating to capital construction and State bonding budget adjustment.

Was taken up for immediate consideration.

The House concurs in the Senate proposal of amendment with the following amendments thereto:

First: In Sec. 2, amending 2015 Acts and Resolves No. 26, Sec. 3, in subsection (a), by striking out “\$125,000.000” and inserting in lieu thereof “\$125,000.00”, in subdivision (b)(2), by striking out “\$6,313,881.00” and inserting in lieu thereof “\$5,813,881.00” and by striking out all after subsection (c) and inserting in lieu thereof the following:

Appropriation – FY 2016		\$5,125,000.00
Appropriation – FY 2017	\$14,855,681.00	\$11,277,092.00
Total Appropriation – Section 3	\$19,980,681.00	\$16,402,092.00

Second: In Sec. 7, amending 2015 Acts and Resolves No. 26, Sec. 9, by striking out the section in its entirety and inserting in lieu thereof the following:

Sec. 7. 2015 Acts and Resolves No. 26, Sec. 9 is amended to read:

Sec. 9. UNIVERSITY OF VERMONT

* * *

(b) ~~The sum of \$1,400,000.00 is~~ following sums are appropriated in FY 2017 to the University of Vermont for the following projects:

- (1) construction, renovation, and major maintenance: \$1,400,000.00
- (2) UVM STEM Complex: \$500,000.00

(c) It is the intent of the General Assembly that the amount appropriated in subdivision (b)(2) of this section shall be used as a challenge grant to raise funds for the University’s STEM Complex. The funds only shall become available after the University has notified the Chairs of the House Committee on Corrections and Institutions and the Senate Committee on Institutions and the Commissioner of Finance and Management that \$500,000.00 in committed funds has been raised as a match to the appropriation in subdivision (b)(2) of this section.

(d) On or before January 15, 2017, the Commissioner of Buildings and General Services shall conduct a feasibility study to evaluate the potential uses of the land and building at 195 Colchester Avenue in Burlington, provided that any use shall be consistent with existing deed covenants.

Appropriation – FY 2016	\$1,400,000.00
Appropriation – FY 2017	\$1,400,000.00 <u>\$1,900,000.00</u>
Total Appropriation – Section 9	\$2,800,000.00 <u>\$3,300,000.00</u>

Third: In Sec. 9, amending 2015 Acts and Resolves No. 26, Sec. 11, by striking out all after subsection (f) and inserting in lieu thereof the following:

(g) The sum of \$2,230,000.00 is appropriated in FY 2017 to the Department of Buildings and General Services for the Department of Fish and Wildlife for the Roxbury fish hatchery reconstruction project.

(h) Notwithstanding any other provision of law, the Commissioner of Environmental Conservation may transfer any funds appropriated in a capital construction act to the Department of Environmental Conservation to support the response to PFOA contamination. If a responsible party reimburses the Department for the cost of any such response, the Department shall use those funds to support the original capital appropriation and shall notify the House Committee on Corrections and Institutions and the Senate Committee on Institutions of the reimbursement.

Appropriation – FY 2016	\$13,481,601.00
Appropriation – FY 2017	\$13,243,000.00 <u>\$18,094,494.00</u>
Total Appropriation – Section 11	\$26,724,601.00 <u>\$31,576,095.00</u>

Fourth: In Sec. 11, amending 2015 Acts and Resolves No. 26, Sec. 13, by striking out all after subdivision (c)(2) and inserting in lieu thereof the following:

(3) Waterbury State Office Complex, blood analysis laboratory, renovations: \$530,000.00

(d) The Commissioner of Buildings and General Services is authorized to use up to \$50,000.00 of the amount appropriated in subdivision (c)(1) of this section for acoustical enhancements at the Williston Public Safety Answer Point Center (PSAP), if deemed necessary after consultation with the Department of Public Safety.

(e) After the funds have been expended for Williston as described in subdivision (c)(1) and subsection (d) of this section, the Commissioner is authorized to use any funds remaining from the amount appropriated in subdivision (c)(1) of this section to evaluate options to replace the Middlesex State Police Barracks.

Appropriation – FY 2016	\$300,000.00
Appropriation – FY 2017	<u>\$1,180,000.00</u>

~~Total Appropriation—§ 13~~ Total Appropriation – Section 13 \$1,480,000.00

Fifth: In Sec. 17, amending 2015 Acts and Resolves No. 26, Sec. 21, in subdivision (b)(7), by striking out “of the amount appropriated to” and inserting in lieu thereof “the balance of”, and by striking out subdivision (b)(8) in its entirety

Sixth: In Sec. 17, amending 2015 Acts and Resolves No. 26, Sec. 21, by striking subsection (d) in its entirety and inserting in lieu thereof the following:

(d) The sum of \$200,000.00 from the balance of the Vermont Water Source Protection Fund established in 24 V.S.A. § 4753 shall be reallocated to the Vermont Environmental Protection Agency (EPA) Drinking Water State Revolving Fund in Sec. 11(d)(3) of this act.

Seventh: By striking out Sec. 30, State Correctional Facilities; Committee; Assessment; Report, and inserting in lieu thereof the following:

Sec. 30. VERMONT STATE CORRECTIONAL FACILITIES;
COMMITTEE; ASSESSMENT; REPORT

(a) Creation. There is created a Correctional Facility Planning Committee to develop a 20-year capital plan for, and assess the population needs at, Vermont State correctional facilities.

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

(1) the Commissioner of Corrections or designee, who shall serve as chair;

(2) the Commissioner of Finance and Management or designee;

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

(4) the Commissioner for Children and Families or designee;

(5) the Commissioner of Mental Health or designee;

(6) the Commissioner of Disabilities, Aging, and Independent Living or designee;

(7) the Executive Director of the Crime Research Group or designee; and

(8) the President of the Vermont State Employees’ Association or designee.

(c) Powers and duties. The Committee shall assess the capital and programming needs of State correctional facilities, which shall include the following:

(1) An evaluation of the use, condition, and maintenance needs of each State correctional facility, including whether any facility should be closed, renovated, relocated, or repurposed. This evaluation shall include an update of the most recent facilities assessment as of June 30, 2016:

(A) each facility's replacement value;

(B) each facility's deferred maintenance schedule; and

(C) the cost of each facility's five-, ten-, and 15-year scheduled maintenance.

(2) An analysis of the historic population trends of State correctional facilities, and anticipated future population trends, including age, gender, and medical, mental health, and substance abuse conditions.

(3) An evaluation of whether the design and use of existing facilities adequately serve the current population and anticipated future populations, including whether the Out-of-State inmate program may be eliminated and the feasibility of constructing new infrastructure more suitable for current and future populations.

(4) An investigation into all available options for constructing new facilities.

(5) An evaluation on potential site locations for a replacement State correctional facility.

(d) Report and recommendations. On or before February 1, 2017, the Committee shall submit a report based on the assessment described in subsection (c) of this section, and any recommendations for legislative action, to the House Committee on Corrections and Institutions and the Senate Committee on Institutions.

Eighth: After Sec. 30, by adding a Sec. 30a to read as follows:

* * * Education * * *

Sec. 30a. VERMONT STATE COLLEGES; UNIVERSITY OF VERMONT;
CAPITAL BUDGET REQUESTS

On or before January 15, 2017, the Chancellor of the Vermont State Colleges and the President of the University of Vermont shall each submit a long-term strategic plan to the House Committee on Corrections and Institutions and the Senate Committee on Institutions for the most effective use of capital funds, including outlining priorities for whether to allocate future capital appropriations to general construction, maintenance, and renovation costs or to specific capital projects, and how to maximize the use of matching grant funds.

Ninth: In Sec. 36, State House Security, by striking out subsection (a) in its entirety and inserting in lieu thereof the following:

(a) The Sergeant at Arms is authorized to use funds appropriated in Sec. 15 of this act to:

- (1) install a remote lockdown system for doors to the State House;
- (2) conduct trainings at the State House; and
- (3) install seven security cameras in the State House.

Tenth: In Sec. 36, State House Security, by striking out subsection (c) in its entirety and inserting in lieu thereof the following:

(c) On or before August 1, 2016, the Sergeant at Arms shall develop lockdown guidelines and a camera use and data retention policy and procedure for the State House. The lockdown guidelines and camera use and data retention policy and procedure shall only become effective after majority approval of the Senate President Pro Tempore or designee, the Speaker of the House or designee, and the Chairs of the House Committee on Corrections and Institutions and the Senate Committee on Institutions. No cameras shall be installed until the camera use and data retention policy and procedure have been approved.

Eleventh: After Sec. 36, by adding a Sec. 36a to read as follows:

* * * Repeal * * *

Sec. 36a. REPEAL

24 V.S.A. § 5609 (enhanced 911 compliance) is repealed on July 1, 2018.

Thereupon, the question, Shall the Senate concur in the House proposal of amendment to the Senate proposal of amendment?, was decided in the affirmative.

**House Proposal of Amendment to Senate Proposal of Amendment
Concurred In**

H. 595.

House proposal of amendment to Senate proposal of amendment to House bill entitled:

An act relating to potable water supplies from surface waters.

Was taken up.

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

* * * Surface Water Sources; Potable Water Supply * * *

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 shall comply with other criteria and requirements adopted by the Secretary by rule for potable water supplies using a surface water as a source.

Sec. 3. SURFACE WATER SOURCE; RULEMAKING

The Secretary shall adopt rules to implement 10 V.S.A. § 1981 on or before July 1, 2017.

* * *Groundwater Testing; Technical Advisory Committee* * *

Sec. 4. TECHNICAL ADVISORY COMMITTEE; RECOMMENDATIONS ON GROUNDWATER TESTING

(a) The Secretary of Natural Resources shall seek the recommendations of the Technical Advisory Committee on Wastewater Systems and Potable Water Supplies regarding whether and how to test for contamination in groundwater sources used by potable water supplies permitted under 10 V.S.A. chapter 64. The recommendations shall address:

(1) whether the State should require testing of groundwater sources used by potable water supplies permitted under 10 V.S.A. chapter 64;

(2) if testing is recommended:

(A) in what situations or upon what occurrences should testing be required;

(B) from what component of a potable water supply the sample should be taken, including whether a sample from the wellhead of the potable water supply is sufficient;

(C) who should be authorized to take the sample; and

(D) what parameters or contaminants should be tested for in groundwater;

(3) any additional issues or requirements that the Technical Advisory Committee deems relevant to the testing of groundwater sources used by potable water supplies permitted under 10 V.S.A. chapter 64.

(b) The Secretary of Natural Resources shall submit the recommendations of the Technical Advisory Committee to the House Committee on Fish, Wildlife and Water Resources and the Senate Committee on Natural Resources and Energy on or before January 15, 2017.

* * * Environmental Contingency Fund * * *

Sec. 5. 10 V.S.A. § 1283(b) is amended to read:

(b) Disbursements under this subsection may be made for emergency purposes or to respond to other than emergency situations; provided, however, that disbursements in response to an individual situation which is not an emergency situation shall not exceed \$100,000.00 for costs attributable to each of the subdivisions of this subsection, unless the Secretary has received the approval of the General Assembly, or the Joint Fiscal Committee, in case the General Assembly is not in session. Furthermore, the balance in the Fund shall not be drawn below the amount of \$100,000.00, except in emergency situations. If the balance of the Fund becomes insufficient to allow a proper

response to one or more emergencies that have occurred, the Secretary shall appear before the Emergency Board, as soon as possible, and shall request that necessary funds be provided. Within these limitations, disbursements from the Fund may be made:

* * *

(7) to pay costs of management oversight provided by the State for investigation and cleanup efforts conducted by voluntary responsible parties ~~where those responsible parties have contributed monies to the Fund pursuant to a written agreement under subsection (f) of this section;~~

* * *

(9) to pay costs of required capital contributions and operation and maintenance when the remedial or response action was taken pursuant to 42 U.S.C. § 9601 et seq.;

(10) to pay the costs of oversight or conducting assessment of a natural resource damaged by the release of a hazardous material and being assessed for damages pursuant to section 6615d of this title; or

(11) to pay the costs of oversight or conducting restoration or rehabilitation to a natural resource damaged by the release of a hazardous material and being restored or rehabilitated pursuant to section 6615d of this title.

* * * ANR Information Requests; Hazardous Material Releases * * *

Sec. 6. 10 V.S.A. § 6615c is added to read:

§ 6615c. INFORMATION REQUESTS

(a)(1) When the Secretary has reasonable grounds to believe that the Secretary has identified a person who may be subject to liability for a release or threat of release under section 6615 of this title, the Secretary may require the person to furnish information related to:

(A) The type, nature, and quantity of any commercial chemical product or hazardous material that has been or is being used, generated, treated, stored, or disposed of at a facility or transported to a facility.

(B) The nature or extent of a release or threatened release of a hazardous material from a facility.

(C) Financial information related to the ability of a person to pay for or to perform the cleanup or information surrounding the corporate structure, if any, of such person who may be subject to liability for a release or threat of release under section 6615 of this title, provided that the person has notified the Secretary that he or she does not have the ability to pay, refuses to perform,

or fails to respond to a deadline established under section 6615b of this title to commit to performing a corrective action.

(2) A person served with an information request shall respond within 30 days of receipt of the request or by the date specified by the Secretary in the request, provided that the Secretary may require a person to respond within 10 days of receipt of a request when there is an imminent threat to the environment or other emergency that requires an expedited response.

(3) When the Secretary submits a request for information under this section, the Secretary shall provide the person who received the request information regarding the person's right to object or not comply with the request for information. The information shall include the potential actions that the Secretary may pursue if the person objects to or does not comply with the request for information.

(b)(1) A person who has received a request under subsection (a) of this section shall, at the discretion of the Secretary, either:

(A) grant the Secretary access, at reasonable times, to any facility, establishment, place, property, or location to inspect and copy all documents or records responsive to the request; or

(B) copy and furnish to the Secretary all information responsive to the request at the option and expense of the person or provide a written explanation that the information has already been provided to the Secretary and a reference to the permit, enforcement action, or other matter under which the Secretary obtained the requested information.

(2) A person responding to a request under subsection (a) of this section may assert any privilege under statute, rule, or common law that is recognized in the State of Vermont to limit access to such information, including the attorney-client privilege. A person responding to a request for information under this section shall not assert privileges related to business confidentiality, including trade secrets, in order to withhold requested information. Any information that is privileged shall be provided to the Secretary with the privileged material redacted. The Secretary may require that a person asserting a privilege under this section provide an index of all privileged information.

(c) The Secretary may require any person who has or may have knowledge of any information listed in subdivision (a)(1) of this section to appear at the offices of the Secretary and may take testimony and require the production of records that relate to a release or threatened release of a hazardous material.

(d) Any request for information under this section shall be served personally or by certified mail.

(e) A response to a request under this section shall be personally certified by the person responding to the request that, under penalty of perjury and to the best of the person's knowledge:

(1) the response is accurate and truthful; and

(2) the person has not omitted responsive information or will provide the responsive information according to a production schedule approved by the Secretary.

(f) Information identified as qualifying for the trade secret exemption under 1 V.S.A. § 317(c)(9) and other financial information submitted under this section shall be confidential and shall not be subject to inspection and copying under the Public Records Act. A person subject to an information request under this section shall be responsible for proving that submitted information qualifies for the trade secret exemption under 1 V.S.A. § 317(c)(9). The following information is not trade secret information or financial information for the purposes of this subsection:

(1) the trade name, common name, or generic class or category of the hazardous material;

(2) the physical properties of the hazardous material, including its boiling point, melting point, flash point, specific gravity, vapor density, solubility in water, and vapor pressure at 20 degrees Celsius;

(3) the hazards to health and the environment posed by the hazardous material, including physical hazards and potential acute and chronic health hazards;

(4) the potential routes of human exposure to the hazardous material at the facility;

(5) the location of disposal of any waste stream at the facility;

(6) any monitoring data or analysis of monitoring data pertaining to disposal activities;

(7) any hydrogeologic or geologic data; or

(8) any groundwater monitoring data.

(g) As used in this section, "information" means any written or recorded information, including all documents, records, photographs, recordings, e-mail, correspondence, or other machine readable material.

Sec. 7. 10 V.S.A. § 8005(b) is amended to read:

(b) Access orders and information requests.

(1) A Superior Court judge shall issue an access order when access has been refused and the investigator, by affidavit, describes the property to be examined and identifies:

(A) a provision of a permit that authorizes the inspection; or

(B) the property as being scheduled for inspection in accordance with a neutral inspection program adopted by the Secretary or the Natural Resources Board; or

(C) facts providing reasonable grounds to believe that a violation exists and that an examination of the specifically described property will be of material aid in determining the existence of the violation.

(2) A Superior Court shall issue an order requiring compliance with an information request submitted pursuant to section 6615c of this title when:

(A) the person served with the request fails to respond to the request in the time frame identified by the Secretary;

(B) the Secretary submits, by affidavit, facts providing reasonable grounds that a release or threatened release has taken place; and

(C) the information will be of material aid in responding to the release or threatened release.

(3) Issuance of an access order shall not negate the Secretary's authority to initiate criminal proceedings in the same matter by referring the matter to the Office of the Attorney General or a State's Attorney.

* * * Natural Resource Damages * * *

Sec. 8. 10 V.S.A. § 6615d is added to read:

§ 6615d. NATURAL RESOURCE DAMAGES; LIABILITY; RULEMAKING

(a) Definitions. As used in this section:

(1) "Acquisition of or acquiring the equivalent or replacement" means the substitution for an injured resource with a resource that provides the same or substantially similar services, when the substitution:

(A) is in addition to a substitution made or anticipated as part of a response action; and

(b) exceeds the level of response action determined appropriate for the site under section 6615b of this title.

(2) “Baseline condition” means the condition or conditions that would have existed at the area of assessed damages had the release of hazardous material at or from the facility in question not occurred.

(3) “Damages” means the amount of money sought by the Secretary for the injury, destruction, or loss of a natural resource.

(4) “Destruction” means the total and irreversible loss of natural resources.

(5) “Injury” means a measurable adverse long-term or short-term change in the chemical or physical quality or viability of a natural resource resulting either directly or indirectly from exposure to a release of hazardous material or exposure to a product of reactions from a release of hazardous materials.

(6) “Loss” means a measurable adverse reduction of a chemical or physical quality or viability of a natural resource.

(7) “Natural resource damage assessment” means the process of collecting, compiling, and analyzing information, statistics, or data through prescribed methodologies to determine the damages for injuries to a natural resource.

(8) “Natural resources” means fish, wildlife, biota, air, surface water, groundwater, wetlands, drinking water supplies, or State-held public lands.

(9) “Restoring,” “restoration,” “rehabilitating,” or “rehabilitation” means actions undertaken to return an injured natural resource to its baseline condition, as measured in terms of the injured resource’s physical, chemical, or biological properties or the services it had previously provided, when such actions are in addition to a response action under section 6615 of this title.

(10) “Services” means the physical and biological functions performed by the natural resource, including the human uses of those functions.

(b) Authorization. The Secretary may assess damages against any person found to be liable under section 6615 of this title for a release of hazardous material for injury to, destruction of, or loss of a natural resource from the release. The measure of damages that may be assessed for natural resource damages shall include the cost of restoring, rehabilitating, replacing, or acquiring the equivalent of the injured, damaged, or destroyed natural resources or the services the natural resources provided and any reasonable costs of the Secretary in conducting a natural resource damage assessment. The Secretary also may seek compensation for the interim injury to or loss of a natural resource pending recovery of services to the baseline condition of the natural resource.

(c) Rulemaking; methodology. The Secretary shall adopt rules to implement the requirements of this section, including a methodology by which the Secretary shall assess and value natural resource damages. The rules shall include:

(1) requirements or acceptable standards for the preassessment of natural resource damages, including requirements for:

(A) notification of the Secretary, natural resource trustees, or other necessary persons of potential damages to natural resources under investigation for the coordination of the assessments, investigations, and planning;

(B) authorized emergency response to natural resource damages when immediate action to avoid destruction of a natural resource is necessary or a situation in which there is a similar need for emergency action, and where the potentially liable party under section 6615 of this title fails to take emergency response actions requested by the Secretary; and

(C) sampling or screening of the potentially injured natural resource;

(2) requirements for a natural resource damages assessment plan to ensure that the natural resource damage assessment is performed in a planned and systematic manner, including:

(A) the categories of reasonable and necessary costs that may be incurred as part of the assessment plan;

(B) the methodologies for identifying and screening restoration alternatives and their costs;

(C) the types of reasonably reliable assessment procedures available to the Secretary, when the available procedures are authorized, and the requirements of the available procedures;

(D) how injury or loss shall be determined and how injury or loss is quantified; and

(E) how damages are measured in terms of the cost of:

(i) the restoration or rehabilitation of the injured natural resources to a condition where they can provide the level of services available at baseline condition; or

(ii) the replacement or acquisition of equivalent natural resources or services;

(3) requirements for post-natural resource damages assessment, including:

(A) the documentation that the Secretary shall produce to complete the assessment;

(B) how the Secretary shall seek recovery; and

(C) when and whether the Secretary shall require a restoration plan; and

(4) other requirements deemed necessary by the Secretary for implementation of the rules.

(d) Exceptions. The Secretary shall not seek to recover natural resource damages under this section when:

(1) the person liable for the release demonstrates that the nature and degree of the destruction, injury, or loss to the natural resources were identified in an application for, renewal of, review of, or other environmental assessment of a permit, certification, license, or other required authorization;

(2) the Secretary authorized the nature and degree of the destruction, injury, or loss to the natural resource in an issued permit, certification, license, or other authorization; and

(3) the person liable for the release was operating within the terms of its permit, certification, license, or other authorization.

(e) Limitations. The natural resource damages authorized under this section and the requirements for assessment under the rules authorized by this section shall not limit the authority of the Secretary of Natural Resources to seek or recover natural resource damages under other State law, federal law, or common law.

(f) Limit on double recovery. The Secretary or other natural resource trustee shall not recover natural resource damages under this section for the costs of damage assessment or restoration, rehabilitation, or acquisition of equivalent resources or services recovered by the Secretary or the other trustee under other authority of this chapter or other law for the same release of hazardous material and the same natural resource.

(g) Actions for natural resource damages. No action may be commenced for natural resource damages under this chapter, unless that action is commenced within six years after the date of the discovery of the loss and its connection with the release of hazardous material in question.

(h) Limit on preenactment damages. There shall be no recovery under this section for natural resource damages that occurred wholly before the adoption of rules under subsection (c) of this section.

(i) Use of funds. Damages recovered as natural resource damages shall be deposited in the Environmental Contingency Fund established pursuant to section 1283 of this title.

Sec. 9. NATURAL RESOURCE DAMAGES; COMMENCEMENT;

ADOPTION

(a) The Secretary of Natural Resources shall consult with interested parties and parties with expertise in natural resource damage assessment and valuation in the adoption of rules under 10 V.S.A. § 6615d. The Secretary shall convene a working group as part of this consultation. The Secretary shall convene the working group on or before July 1, 2016.

(b) On or before February 1, 2017, the Secretary of Natural Resources shall submit to the Senate and House Committees on Natural Resources and Energy and the House Committee on Fish, Wildlife and Water Resources a copy of the draft rules for natural resource damages required under 10 V.S.A. § 6615d for review and any recommended amendments to 10 V.S.A. § 6615d for review.

(c) The Secretary of Natural Resources shall commence rulemaking under 10 V.S.A. § 6615d on or before July 1, 2017. The Secretary shall adopt rules under 10 V.S.A. § 6615d on or before March 1, 2018.

(d) The Secretary of Natural Resources shall not seek natural resource damages under 10 V.S.A. § 6615d until the rules required under 10 V.S.A. § 6615d(c) have taken effect.

* * * Working Group on Toxic Chemicals * * *

Sec. 10. AGENCY OF NATURAL RESOURCES' WORKING GROUP ON TOXIC CHEMICAL USE IN THE STATE

(a) Formation. On or before July 1, 2016, the Secretary of Natural Resources shall establish a working group of interested parties and parties with expertise in the field of toxic chemical use and regulation to develop recommendations for how to improve the ability of the State to:

(1) prevent citizens and communities in the State from being exposed to toxic chemicals, hazardous materials, or hazardous wastes;

(2) identify and regulate the use of toxic chemicals or hazardous materials that currently are unregulated by the State; and

(3) inform communities and citizens in the State of potential exposure to toxic chemicals, including contamination of groundwater, public drinking water systems, and private potable water supplies

(b) Duties. The Working Group shall:

(1) Identify the existing State or federal programs that establish reporting or management requirements regarding the use or generation of a toxic substance, hazardous waste, or hazardous material. The Working Group shall identify how those programs identify the toxic substance, hazardous waste, or hazardous material for regulation and briefly describe the management of the waste or substance.

(2) Evaluate the State or federal programs identified in subdivision (1) of this subsection to determine:

(A) the program's effectiveness in preventing releases of toxic substances, hazardous wastes, or hazardous materials;

(B) whether gaps or duplication exists between the programs that should be addressed to reduce threats to human health and the environment; and

(C) whether the programs are adequately funded and staffed to meet their statutory and regulatory purpose.

(3) Identify State or federal programs that require a response to the release to a toxic substance, hazardous waste, or hazardous material and assess their effectiveness in responding to releases in a manner that minimizes impacts to human health and the environment.

(4) Identify programs in place in other states that address the threat to human health and the environment from emerging contaminants and assess their effectiveness in accomplishing those objectives.

(5) Evaluate the State of Vermont's existing sources of publicly available information about toxic chemicals, including emerging contaminants, hazardous waste, and hazardous materials in Vermont.

(6) Evaluate whether civil remedies under Vermont law are sufficient to ensure that private individuals are adequately protected from releases of hazardous materials, hazardous wastes, and toxic chemicals and that persons responsible for such releases pay for any harm caused.

(7) Evaluate the obligations on the Environmental Contingency Fund established under 10 V.S.A. § 1283 and funding alternatives that would ensure the long-term solvency of the Fund.

(c) The Working Group shall submit a report to the Senate and House Committees on Natural Resources and Energy and to the House Committee on Fish, Wildlife and Water Resources with its findings and recommendations on or before January 15, 2017.

* * * Chemicals of High Concern to Children * * *

Sec. 11. 18 V.S.A. § 1775 is amended to read:

§ 1775. DISCLOSURE OF INFORMATION ON CHEMICALS OF HIGH CONCERN

(a) Notice of chemical of high concern to children. ~~Unless the Commissioner adopts by rule a phased-in reporting requirement under section 1776 of this title, beginning on July 1, 2016, and biennially thereafter, a~~ A manufacturer of a children's product or a trade association representing a manufacturer of children's products shall submit to the Department the notice described in subsection (b) of this section for each chemical of high concern to children in a children's product if a chemical of high concern to children is:

* * *

(1) Submission of notice; dates. Unless the Commissioner adopts by rule a phased-in reporting requirement under section 1776 of this title, a manufacturer shall submit the notice required under subsection (a) of this section by:

(1) January 1, 2017; and

(2) August 31, 2018, and biennially thereafter.

* * * Basin Planning; Natural Resources Conservation Council * * *

Sec. 12. 10 V.S.A. § 1253(d) is amended to read:

(d)(1) Through the process of basin planning, the Secretary shall determine what degree of water quality and classification should be obtained and maintained for those waters not classified by the Board before 1981 following the procedures in sections 1254 and 1258 of this title. Those waters shall be classified in the public interest. The Secretary shall prepare and maintain an overall surface water management plan to assure that the State water quality standards are met in all State waters. The surface water management plan shall include a schedule for updating the basin plans. The Secretary, in consultation with regional planning commissions and ~~natural resource conservation districts~~ the Natural Resources Conservation Council, shall revise all 15 basin plans and update the basin plans on a five-year rotating basis. On or before January 15 of each year, the Secretary shall report to the House Committees on Agriculture and Forest Products, on Natural Resources and Energy, and on Fish, Wildlife and Water Resources, and to the Senate Committees on Agriculture and on Natural Resources and Energy regarding the progress made and difficulties encountered in revising basin plans. The report shall include a summary of basin planning activities in the previous calendar year, a schedule for the production of basin plans in the subsequent calendar year, and a

summary of actions to be taken over the subsequent three years. 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.

(2) In developing a basin plan under this subsection, the Secretary shall:

* * *

(G) develop, in consultation with the ~~applicable~~ regional planning commission, an analysis and formal recommendation on conformance with the goals and objectives of applicable regional plans;

* * *

(3) The Secretary shall, contingent upon the availability of funding, contract with a regional planning commission or the Natural Resources Conservation Council to assist in or to produce a basin plan under the schedule set forth in subdivision (1) of this subsection. When contracting with a regional planning commission or the Natural Resources Conservation Council to assist in or produce a basin plan, the Secretary may require the regional planning commission or the Natural Resources Conservation Council to:

(A) conduct any of the activities required under subdivision (2) of this subsection;

(B) provide technical assistance and data collection activities to inform municipal officials and the State in making water quality investment decisions;

(C) coordinate municipal planning and adoption or implementation of municipal development regulations to better meet State water quality policies and investment priorities; or

(D) assist the Secretary in implementing a project evaluation process to prioritize water quality improvement projects within the region to assure cost effective use of State and federal funds.

* * * State Grants; Water Quality Certification * * *

Sec. 13. SECRETARY OF ADMINISTRATION; WATER QUALITY STANDARDS CERTIFICATION FOR STATE-FUNDED GRANTS; REPORT

(a) As used in this section:

(1) “Applicant” shall include all entities, including businesses in which the applicant has a greater than 10 percent interest, or land owned or controlled by the applicant.

(2) “Good standing” means the applicant:

(A) is not a named party in any administrative order, consent decree, or judicial order relating to Vermont water quality standards issued by the State or any of its agencies or departments; and

(B) is in compliance with all federal and State water quality laws and regulations.

(b)(1) The Secretary of Administration shall amend the Standard State Provisions for Contracts and Grants, referred to as Attachment C to Administrative Bulletin 5, to require an applicant for a State-funded grant to certify, under penalty of perjury, that the applicant is in good standing with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets.

(2) The requirement under this subsection shall allow for an attachment or include space for an applicant who cannot certify under subdivision (1) of this subsection to explain the circumstances surrounding the applicant's inability to certify under subdivision (1) of this subsection.

(3) At any time prior to the award of a State-funded grant or during implementation of a State-funded grant, an applicant shall notify the State agency or department administering the State-funded grant if the applicant is no longer in good standing with the Agency of Natural Resources or the Agency of Agriculture, Food and Markets.

(c) A State agency or department may consider an applicant's certification or explanation under subsection (b) of this section in determining whether or not to award a State-funded grant to the applicant.

(d)(1) If a State-funded grant applicant knowingly provides a false certification or explanation under subsection (b) of this section or fails to notify the State agency or department administering the State-funded grant if the applicant is no longer in good standing with the Agency of Natural Resources or the Agency of Agriculture, Food and Markets as required in subdivision (b)(3) of this section, the State or its agencies or departments may:

(A) seek to recover the grant award; and

(B) deny any future grant award to the applicant, based on the false certification or explanation or failure to notify, for up to five years.

(2) In recovering a grant award under this section, the State or its agencies or departments shall be entitled to costs and expenses, including attorney's fees.

(e) This section shall not apply to federally funded grants, contracts, or tax credits or federal or State loan programs.

(f) On or before January 15, 2021, the Secretary of Administration shall submit a report to the House Committees on Fish, Wildlife and Water Resources and on Commerce and Economic Development and the Senate Committees on Natural Resources and Energy and on Economic Development, Housing and General Affairs regarding methods to require all economic development assistance applications to include a certification that the applicant is not in violation of the requirements of programs enforced by the Agency of Natural Resources under 10 V.S.A. § 8003(a). The report shall also include information regarding any enforcement action taken by the State or its agencies or departments under subsection (d) of this section.

* * * Effective Dates * * *

Sec. 14. EFFECTIVE DATES

(a) This act shall take effect on passage, except that:

(1) Sec. 13 (State grants; water quality certification) shall take effect on July 1, 2016; and

(2) Sec. 2 (permitting of surface water sources) shall take effect on July 1, 2017.

Thereupon, the question, Shall the Senate concur in the House proposal of amendment to the Senate proposal of amendment?, was decided in the affirmative.

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

H. 562.

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

An act relating to professions and occupations regulated by the Office of Professional Regulation and to the review of professional regulation.

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

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

House Proposal of Amendment Concurred In**S. 62.**

House proposal of amendment to Senate bill entitled:

An act relating to surrogate decision making for do-not-resuscitate orders and clinician orders for life-sustaining treatment.

Was taken up.

The House proposes to the Senate to amend the bill as follows:

By striking out Sec. 4, effective date, in its entirety and inserting in lieu thereof a new Sec. 4 to read as follows:

Sec. 4. EFFECTIVE DATE

This act shall take effect on January 1, 2018, provided that the Department of Disabilities, Aging, and Independent Living may commence the rulemaking process required pursuant to Sec. 3 of this act prior to that date in order to ensure that its rules are in effect on January 1, 2018.

Thereupon, the question, Shall the Senate concur in the House proposal of amendment?, was decided in the affirmative.

House Proposals of Amendment Concurred In**S. 123.**

House proposals of amendment to Senate bill entitled:

An act relating to standardized procedures for permits and approvals issued by the Department of Environmental Conservation.

Were taken up.

The House proposes to the Senate to amend the bill as follows:

First: By striking out Secs. 1 through 5 in their entirety and inserting in lieu thereof Secs. 1 through 5c to read:

* * * Environmental Conservation; Standard Procedures * * *

Sec. 1. 10 V.S.A. chapter 170 is added to read:

CHAPTER 170. DEPARTMENT OF ENVIRONMENTAL
CONSERVATION; STANDARD PROCEDURES;

Subchapter 1. General Provisions

§ 7701. PURPOSE

The purpose of this chapter is to establish standard procedures for public notice, public meetings, and decisions relating to applications for permits issued by the Department of Environmental Conservation.

§ 7702. DEFINITIONS

As used in this chapter:

(1) “Adjoining property owner” means a person who owns land in fee simple, if that land:

(A) shares a property boundary with a tract of land where proposed or actual activity regulated by the Department is located; or

(B) is adjacent to a tract of land where such activity is located and the two properties are separated only by a river, stream, or public highway.

(2) “Administrative amendment” means an amendment to an individual permit, general permit, or notice of intent under a general permit that corrects typographical errors, changes the name or mailing address of a permittee, or makes other similar changes to a permit that do not require technical review of the permitted activity or the imposition of new conditions or requirements.

(3) “Administrative record” means the application and any supporting data furnished by the applicant; all information submitted by the applicant during the course of reviewing the application; the draft permit or notice of intent to deny the application; the fact sheet and all documents cited in the fact sheet, if applicable; all comments received during the public comment period; the recording or transcript of any public meeting or meetings held; any written material submitted at a public meeting; the response to comments; the final permit; any document used as a basis for the final decision; and any other documents contained in the permit file.

(4) “Administratively complete application” means an application for a permit for which all initially required documentation has been submitted, and any required permit fee, and the information submitted initially addresses all application requirements but has not yet been subjected to a complete technical review.

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

(6) “Clean Air Act” means the federal statutes on air pollution prevention and control, 42 U.S.C. § 7401 et seq.

(7) “Clean Water Act” means the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.

(8) “Commissioner” means the Commissioner of Environmental Conservation or the Commissioner’s designee.

(9) “Department” means the Department of Environmental Conservation.

(10) “Document” means any written or recorded information, regardless of physical form or characteristics, which the Department produces or acquires in the course of reviewing an application for a permit.

(11) “Environmental notice bulletin” or “bulletin” means the website and e-mail notification system required by 3 V.S.A. § 2826.

(12) “Fact sheet” means a document that briefly sets forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing a draft decision.

(13) “General permit” means a permit that applies to a class or category of discharges, emissions, disposal, facilities, or activities within a common geographic area, including the entire State or a region of the State.

(14) “Individual permit” means a permit that authorizes a specific discharge, emission, disposal, facility, or activity that contains terms and conditions that are specific to the discharge, emission, disposal, facility, or activity.

(15) “Major amendment” means an amendment to an individual permit or notice of intent under a general permit that necessitates technical review.

(16) “Minor amendment” means an amendment to an individual permit or notice of intent under a general permit that requires a change in a condition or requirement, does not necessitate technical review, and is not an administrative amendment.

(17) “Notice of intent under a general permit” means an authorization issued by the Secretary to undertake an action authorized by a general permit.

(18) “Permit” includes any permit, certification, license, registration, determination, or similar form of permission required from the Department by law. However, the term excludes a professional license issued pursuant to chapter 48, subchapter 3 (licensing of well drillers) of this title and sections 1674 (water supply operators), 1936 (UST inspector licenses), 6607 (hazardous waste transporters), and 6607a (waste transportation) of this title.

(19) "Person" shall have the same meaning as under section 8502 of this title.

(20) "Person to whom notice is federally required" means a person to whom notice of an application or draft decision must be given under federal regulations adopted pursuant to the Clean Air Act or Clean Water Act.

(21) "Public meeting" means a meeting that is open to the public and recorded or transcribed, at which the Department shall provide basic information about the draft permit decision, an opportunity for questions to the applicant and the Department, and an opportunity for members of the public to submit oral and written comments.

(22) "Secretary" means the Secretary of Natural Resources or designee.

(23) "Technical review" means the application of scientific, engineering, or other professional expertise to the facts to determine whether activity for which a permit is requested meets the standards for issuing the permit under statute and rule.

§ 7703. RULES; ADDITIONAL NOTICE OR PROCEDURES

(a) Rules.

(1) Implementing rules. The Secretary may adopt rules to implement this chapter.

(2) Complex projects; preapplication process. The Secretary shall adopt rules to determine when a project requiring a permit is large and complex. These rules shall provide that an applicant proposing such a project, prior to filing an application for a permit, shall initiate a project scoping process pursuant to 3 V.S.A. § 2828 or shall hold an informational meeting that is open to the public. The rules shall ensure that:

(A) Written notice of an informational meeting under this section is sent to the owner of the land where the project is located if the applicant is not the owner; the municipality in which the project is located; the municipal and regional planning commissions for any municipality in which the project is located; if the project site is located on a boundary, any Vermont municipality adjacent to that boundary and the municipal and regional planning commissions for that municipality; and each adjoining property owner. At the time this written notice is sent, the Secretary also shall post the notice to the environmental notice bulletin.

(B) The notice to adjoining property owners informs them of how they can continue to receive notices and information through the environmental notice bulletin concerning the project as it is reviewed by the Secretary.

(C) The applicant furnishes by affidavit to the Secretary the names of those furnished notice and certifies compliance with the notice requirements of this subsection.

(D) The applicant and the Secretary or designee shall attend the meeting. The applicant shall respond to questions from other attendees.

(b) Additional notice.

(1) The Secretary may require, by rule or in an individual case, measures in addition to those directed by this chapter using any method reasonably calculated to give direct notice to persons potentially affected by a decision on the application.

(2) In an individual case, the Secretary may determine to apply the procedures of section 7713 (Type 2) of this chapter to the issuance of a permit otherwise subject to the procedures of section 7715 (Type 4) or section 7716 (Type 5) of this chapter.

(c) Extension of deadlines. A person may request that the Secretary extend any deadline for comment or requesting a public informational meeting established by this chapter. The person shall submit the request before the deadline and include a brief explanation of why the extension is justified. If the request is granted, the Secretary shall provide notice of the new deadline through the environmental notice bulletin.

§ 7704. ADMINISTRATIVE RECORD

(a) The Secretary shall create an administrative record for each application for a permit and shall make the administrative record available to the public.

(b) The Secretary shall base a draft or final decision on each application for a permit on the administrative record.

(c) With respect to permits issued under the Clean Air Act and Clean Water Act, the Secretary shall comply with any requirements under those acts concerning the maintenance and availability of the administrative record.

§ 7705. TIME; HOW COMPUTED

In this chapter:

(1) When time is to be reckoned from a day, date, or an act done, the day, date, or day when the act is done shall not be included in the computation.

(2) Computation of a time period shall use calendar days.

Subchapter 2. Standard Procedures§ 7711. PERMIT PROCEDURES; STANDARD PROVISIONS

(a) Notice through the environmental notice bulletin. When this chapter requires notice through the environmental notice bulletin:

(1) The bulletin shall generate and send an e-mail to notify:

(A) each person requiring notice under section 7712 of this chapter;

(B) the applicant;

(C) each person on an interested persons list;

(D) each municipality in which the activity to be permitted is located, except for notice of a draft or final general permit; and

(E) each other person to whom this chapter directs that a particular notice be provided through the bulletin.

(2) At a minimum, each notice generated by the bulletin shall contain:

(A) the name and contact information for the person at the Agency processing the permit;

(B) the name and address of the permit applicant, if applicable;

(C) the name and address of the facility or activity to be permitted, if applicable;

(D) a brief description of the activity for which the permit would be issued;

(E) the length of the period for submitting written comments and the process for submitting those comments, if applicable, and notice of the requirements regarding submission of comments during that period or at a public meeting in order to appeal under chapter 220 of this title;

(F) the process for requesting a public meeting, if applicable;

(G) when a public meeting has been scheduled, the time, date, and location of the meeting and a brief description of the nature and purpose of the meeting;

(H) when issued, the draft permit or notice of intent to deny a permit, and the period and process for submitting written comments on that draft permit or notice;

(I) when issued, the final decision issuing or denying a permit, and the process for appealing the decision; and

(J) any other information that this chapter directs be included in a particular notice to be generated by the bulletin.

(3) The environmental notice bulletin shall provide notice by mail as required by 3 V.S.A. § 2826.

(b) Notice to adjoining property owners. When this chapter requires notice of an application to adjoining property owners, the applicant shall provide notice of the application by U.S. mail to all adjoining property owners, on a form developed by the Secretary, at the time the application is submitted to the Secretary. The form shall state how the property owners can continue to receive notices and information concerning the project as it is reviewed by the Secretary. The applicant shall provide a signed certification to the Secretary that all adjoining property owners have been notified of the application. However, if the applicant has provided written notice to adjoining property owners as part of the preapplication engagement process for complex projects under rules adopted in accordance with subsection 7703(a) of this title, then instead of the written notice required of the applicant by this subsection, the Department shall provide notice of the application through the environmental notice bulletin to those adjoining property owners who have requested notice.

(c) Comment period length. When this chapter requires the Secretary to provide a public comment period, the length of the period shall be at least 30 days, unless this chapter applies a different period for submitting comments on the particular type of permit.

(d) Period to request a public meeting. When this chapter allows a person to request a public meeting on a draft decision, the person shall submit the request within 14 days of the date on which notice of the draft decision is posted to the environmental notice bulletin, unless this chapter specifies a different period for requesting a hearing on the particular type of permit.

(e) Public meeting; notice; additional comment period. When the Secretary holds a public meeting under this chapter:

(1) The Secretary shall:

(A) provide at least 14 days' prior notice of the public meeting through the environmental notice bulletin, unless this chapter specifies a different notice period for a public meeting on the particular type of permit;

(B) include in the notice, in addition to the information required by subsection (a) of this section, the date the Secretary gave notice of an administrative complete application, if applicable; and

(C) hold the period for written comments open for at least seven days after the meeting.

(2) The applicant or applicant's representative and the Secretary or designee shall attend the meeting. The applicant shall cause to be present those professionals retained in the preparation of the application. At the meeting, the applicant and the Secretary each shall answer questions relevant to the application or draft decision to the best of their ability.

(f) Draft decisions. When this chapter requires the Secretary to post a draft decision or draft general permit to the environmental notice bulletin, the Secretary shall post to the bulletin the draft decision or draft general permit and all documents on which the Secretary relied in issuing the draft. This post shall include instructions on how to inspect and how to request a copy of each other document that is part of the administrative record of the draft decision or permit.

(g) Response to comments. When this chapter requires the Secretary to provide a response to comments, the Secretary shall provide a response to each comment received during the comment period and the basis for the response. The Secretary also shall specify each provision of the draft decision that has been changed in the final decision and the reasons for each change. The Secretary shall post the response to comments to the environmental notice bulletin and send it to all commenters.

(h) Final decisions; content; notice.

(1) The Secretary's final decision on an application for a permit or on the issuance of a general permit shall include a concise statement of the facts and analysis supporting the decision that is sufficient to apprise the reader of the decision's factual and legal basis. The final decision also shall provide notice that it may be appealed and state the period for filing an appeal and how and where to file an appeal.

(2) When this chapter requires that the Secretary to post a final decision to the environmental notice bulletin, the Secretary also shall send a copy of the final decision to all commenters.

§ 7712. TYPE 1 PROCEDURES

(a) Purpose; scope.

(1) The purpose of this section is to establish the public notice and comment requirements that the Department must follow when adopting general permits and considering applications for individual permits under the Clean Air Act and Clean Water Act.

(2) This section governs each application for a permit to be issued by the Secretary pursuant to the requirements of the Clean Air Act and Clean Water Act and to each general permit to be issued under one of those acts. However,

the subsection does not apply to a notice of intent under a general permit. The procedures under this section shall be known as Type 1 Procedures.

(b) Notice of application.

(1) The applicant shall provide notice to adjoining property owners.

(2) At least 15 days prior to posting a draft decision, the Secretary shall provide notice of an administratively complete application through the environmental notice bulletin. The environmental notice bulletin shall send notice of such an application to each person to whom notice is federally required.

(3) This subsection (b) shall not apply to a general permit issued under this section.

(c) Notice of draft decision or draft general permit. The Secretary shall provide notice of a draft decision or draft general permit through the environmental notice bulletin and shall post the draft decision or permit to the bulletin. In addition to the requirements of section 7711 of this chapter:

(1) The Secretary shall post a fact sheet to the bulletin.

(2) The environmental notice bulletin shall send notice of the draft to each person to whom notice is federally required.

(3) The Secretary shall provide newspaper notice of the draft decision as required by this subdivision (3).

(A) If the draft decision pertains to an application for an individual permit, the Secretary shall provide notice in a daily or weekly newspaper in the area of the proposed project if the project is classified as major pursuant to the Clean Water Act or chapter 47 of this title or if required by federal statute or regulation.

(B) If the draft decision is a draft general permit, the Secretary shall provide notice in daily or weekly newspapers in each region of the State to which the draft general permit will apply.

(C) In addition to the requirements of this chapter and 3 V.S.A. § 2826, the notice from the environmental notice bulletin and the newspaper notice shall include all information required pursuant to applicable federal statute and regulation.

(d) Comment period. The Secretary shall provide a public comment period.

(e) Public meeting. On or before the end of the comment period, any person may request a public meeting on the draft decision or draft general permit issued under this section. The Secretary shall hold a public meeting

whenever any person files a written request for such a meeting. The Secretary otherwise may hold a public meeting at his or her discretion. The Secretary shall provide at least 30 days' notice of the public meeting through the environmental notice bulletin. If the notice of the public meeting is not issued at the same time as the draft decision or draft general permit, the Secretary also shall provide notice of the public meeting in the same manner as required for the draft decision or permit under subsection (c) of this section.

(f) Notice of final decision or final general permit. The Secretary shall provide notice of the final decision or final general permit through the environmental notice bulletin and shall post the final decision or permit to the bulletin. When the Secretary issues the final decision or final general permit, the Secretary shall provide a response to comments.

(g) Compliance with Clean Air and Water Acts. With respect to a issuance of a permit under the Clean Air Act or Clean Water Act, if a requirement under those acts directs the Secretary to provide the public with greater notice, opportunity to participate, or access to information than the corresponding requirement of this chapter, the Secretary shall comply with the federal requirement.

§ 7713. TYPE 2 PROCEDURES

(a) Purpose; scope.

(1) The purpose of this section is to establish the public notice and comment requirements that the Department must follow when considering applications for individual permits, except for individual permits specifically listed in other sections of this subchapter, and when considering other permits listed in this section.

(2) The procedures under this section shall be known as Type 2 Procedures. This section governs an application for each of the following:

(A) an individual permit issued pursuant to the Secretary's authority under this title and 29 V.S.A. chapter 11, except for permits governed by sections 7712 and 7714–7716 of this chapter;

(B) a wetland determination under section 914 of this title;

(C) an individual shoreland permit under chapter 49A of this title;

(D) a public water system source permit under section 1675 of this title;

(E) a provisional certification issued under section 6605d of this title; and

(F) a corrective action plan under section 6648 of this title.

(b) Notice of application.

(1) The applicant shall provide notice of the application to adjoining property owners.

(A) For public water system source protection areas, the applicant also shall provide notice to all property owners located in:

(i) zones 1 and 2 of the source protection area for a public community water system source; and

(ii) the source protection area for a public nontransient noncommunity water system source.

(B) For an individual shoreland permit under chapter 49A:

(i) The notice to adjoining property owners shall be to the adjoining property owners on the terrestrial boundary of the shoreland.

(ii) This chapter does not require notice to owners of property across the lake as defined in that chapter.

(2) The Secretary shall provide notice of an administratively complete application through the environmental notice bulletin.

(c) Notice of draft decision; comment period. The Secretary shall provide notice of a draft decision through the environmental notice bulletin and shall post the draft decision to the bulletin. The Secretary shall provide a public comment period.

(d) Public meeting. The Secretary shall hold a public meeting whenever any person files a written request for such a meeting. The Secretary otherwise may hold a public meeting at his or her discretion.

(e) Notice of final decision. The Secretary shall provide notice of the final decision through the environmental notice bulletin and shall post the final decision to the bulletin. When the Secretary issues the final decision, the Secretary shall provide a response to comments.

§ 7714. TYPE 3 PROCEDURES

(a) Purpose; scope.

(1) The purpose of this section is to establish the public notice and comment requirements that the Department must follow when adopting general permits, except for general permits governed by section 7712 of this chapter, and when considering other permits listed in this section.

(2) The procedures under this section shall be known as Type 3 Procedures. This section governs each of the following:

(A) Each general permit issued pursuant to the Secretary's authority under this title other than a general permit subject to section 7712 of this chapter. However, this section does not apply to a notice of intent under a general permit.

(B) Issuance of a dam safety order under chapter 43 of this title, except for an unsafe dam order under section 1095 of this title.

(C) An application or request for approval of:

(i) an individual shoreland permit under chapter 49A of this title;

(ii) an aquatic nuisance control permit under chapter 50 of this title;

(iii) a change in treatment for a public water supply under chapter 56 of this title;

(iv) a collection plan for mercury-containing lamps under section 7156 of this title;

(v) an individual plan for the collection and recycling of electronic waste under section 7554 of this title; and

(vi) a primary battery stewardship plan under section 7586 of this title.

(b) Notice of application. The Secretary shall provide notice of an administratively complete application through the environmental notice bulletin.

(c) Notice of draft decision; comment period. The Secretary shall provide notice of the draft decision through the environmental notice bulletin and shall post the draft decision to the bulletin. The Secretary shall provide a public comment period.

(d) Public meeting. The Secretary shall hold a public meeting whenever any person files a written request for such a meeting. The Secretary otherwise may hold a public meeting at his or her discretion.

(e) Notice of final decision. The Secretary shall provide notice of the final decision through the environmental notice bulletin and shall post the final decision to the bulletin. The Secretary shall provide a response to comments.

§ 7715. TYPE 4 PROCEDURES

(a) Purpose; scope.

(1) The purpose of this section is to establish the public notice and comment requirements that the Department must follow when considering applications for notice of intent under a general permit and other permits listed in this section.

(2) The procedures under this section shall be known as Type 4 Procedures. This section applies to each of the following:

(A) a notice of intent under a general permit issued pursuant to the Secretary's authority under this title; and

(B) an application for each of following permits:

(i) construction or operation of an air contaminant source or class of sources not identified in the State's implementation plan approved under the Clean Air Act;

(ii) construction or expansion of a public water supply under chapter 56 of this title, except that a change in treatment for a public water supply shall proceed in accordance with section 7714 of this chapter;

(iii) a category 1 underground storage tank under chapter 59 of this title;

(iv) a categorical solid waste certification under chapter 159 of this title; and

(v) a medium scale composting certification under chapter 159 of this title.

(b) Notice of application. The Secretary shall provide notice of an administratively complete application through the environmental notice bulletin.

(c) Notice of draft decision; comment period. The Secretary shall provide notice of the draft decision through the environmental notice bulletin and shall post the draft decision to the bulletin. The Secretary shall provide a public comment period of at least 14 days on the draft decision.

(d) Notice of final decision. The Secretary shall provide notice of the final decision through the environmental notice bulletin and shall post the decision to the bulletin. The Secretary shall provide a response to comments.

§ 7716. TYPE 5 PROCEDURES

(a) Purpose; scope.

(1) The purpose of this section is to establish the public notice and comment requirements that the Department must follow when issuing emergency permits and other permits listed in this section.

(2) The procedures under this section shall be known as Type 5 Procedures. This section shall govern each of the following:

(A) issuance of temporary emergency permits under section 912 of this title;

(B) applications for public water system operational permits under chapter 56 of this title;

(C) issuance of authorizations, under a stream alteration general permit issued under chapter 41 of this title, for reporting without an application, for an emergency, and for activities to prevent risks to life or of severe damage to improved property posed by the next annual flood;

(D) issuance of emergency permits issued under section 1268 of this title;

(E) issuance of emergency sludge and septage disposal approvals under section 6605 of this title; and

(F) shoreland registrations authorized under chapter 49A of this title.

(b) Notice of final decision. The Secretary shall provide notice of the final decision through the environmental notice bulletin and shall post the decision to the bulletin.

§ 7717. AMENDMENTS; RENEWALS

(a) A major amendment shall be subject to the same procedures applicable to the original permit decision under this chapter.

(b) A minor amendment shall be subject to the Type 4 Procedures, except that the Secretary need not provide notice of the administratively complete application.

(c) An administrative amendment shall not be subject to the procedural requirements of this chapter.

(d) A person may renew a permit under the same procedures applicable to the original permit decision under this chapter.

(e) With respect to amending a permit issued under the Clean Air Act or Clean Water Act, if a requirement under those acts directs the Secretary to provide the public with greater notice, opportunity to participate, or access to information than the corresponding requirement of this chapter, the Secretary shall comply with the federal requirement.

§ 7718. EXEMPTIONS

This subchapter shall not govern an application or petition for:

- (1) an unsafe dam order under section 1095 of this title;
- (2) a potable water supply and wastewater permit under subsection 1973(j) of this title;
- (3) a hazardous waste facility certification under section 6606 of this title; and
- (4) a certificate of need under section 6606a of this title.

Sec. 2. RULES; EFFECT ON PROCEDURAL REQUIREMENTS

Sec. 1 of this act shall take precedence over any inconsistent requirements for notice and processing of applications contained in rules adopted by the Department of Environmental Conservation other than rules pertaining to applications that are exempt under Sec. 1, 10 V.S.A. § 7718. On or before July 1, 2019, the Secretary of Natural Resources shall commence and complete amendments to conform these rules to Sec. 1.

* * * Environmental Notice Bulletin * * *

Sec. 3. 3 V.S.A. § 2826 is amended to read:

§ 2826. ENVIRONMENTAL NOTICE BULLETIN; PERMIT HANDBOOK

(a) ~~The Secretary shall establish procedures for the publication of an environmental notice bulletin, in order to provide for the timely public notification of permit applications, notices, comment periods, hearings, and permitting decisions. The Secretary shall begin publication of the bulletin by no later than July 1, 1995 on the Agency's website. At a minimum, the bulletin shall contain the following information:~~ The bulletin shall consist of a website and an e-mail notification system. The Secretary shall ensure that the website for the bulletin is readily accessible from the Agency's main web page.

~~(1) notice of administratively complete permit applications submitted to the Department of Environmental Conservation; When 10 V.S.A. chapter 170 requires the posting of information to the bulletin, the Secretary shall post the information to the bulletin's website.~~

~~(2) notice of the comment period on the application and draft permit, if any, for those applications which were noticed; When 10 V.S.A. chapter 170 requires notice to persons through the environmental notice bulletin, the bulletin shall generate an e-mail notification to those persons containing the information required by that chapter.~~

~~(3) notice of the issuance of a draft permit, if required by law, for those applications that were noticed; The Secretary shall provide members of the public the ability to register, through the bulletin, for a list of interested persons to receive e-mail notification of permit activity based on permit type,~~

municipality, proximity to a specified address, or a combination of these characteristics.

~~(4) information on how to request a public hearing or meeting; If an individual does not have an e-mail address, the individual may request to receive notifications through U.S. mail. On receipt of such a request, the Secretary shall mail to the individual the same information that the individual would have otherwise received through an e-mail generated by the bulletin.~~

~~(5) notice of the name of the staff person to contact for information regarding public hearings or meetings with respect to a particular application.~~

~~(6) notice of the issuance or denial of a permit for those applications that were noticed.~~

(b) ~~By January 1, 1995, the~~ The Secretary shall publish a permit handbook which lists all of the permits required for the programs administered by the Department of Environmental Conservation. The handbook shall include examples of activities that require certain permits, an explanation in lay terms of each of the permitting programs involved, and the names, addresses, and telephone numbers of the person or persons to contact for further information for each of the permitting programs. The Secretary shall update the handbook shall be updated, periodically.

Sec. 4. REPORTS; RULEMAKING; BULLETIN; REVISION

(a) On or before September 15, 2016, the Secretary shall commence all rulemaking required by Sec. 1 of this act.

(b) On or before February 15, 2017, the Secretary shall report in writing to the House and Senate Committees on Natural Resources and Energy and the House Committee on Fish, Wildlife and Water Resources on the Secretary's progress in adopting the rules required by Sec. 1 of this act and revising and reestablishing the environmental notice bulletin in accordance with Secs. 1 and 3 of this act.

(c) On or before July 1, 2017, the Secretary shall revise and reestablish the environmental notice bulletin to conform to the requirements of Secs. 1 and 3 of this act.

(d) On or before February 15, 2020, the Secretary of Natural Resources shall submit a written report to the House and Senate Committees on Natural Resources and Energy and the House Committee on Fish, Wildlife and Water Resources that:

(1) summarizes the Secretary's implementation of Secs. 1 through 3 of this act and details the steps taken to implement those sections;

(2) provides the Secretary's assessment of the effect of 10 V.S.A. chapter 170 on the amount of time taken by the Department of Environmental Conservation (DEC), during the preceding two calendar years, to review and issue decisions on applications and permits subject to that chapter and the data supporting that assessment;

(3) provides the Secretary's assessment of the effect of 10 V.S.A. chapter 170 on public participation, during the preceding two calendar years, in the review of applications and permits subject to that chapter and the data supporting that assessment;

(4) provides:

(A) the total and annual number of appeals, during 2018 and 2019, of DEC decisions subject to 10 V.S.A. chapter 170 and how each appeal was resolved;

(B) the total and annual number of times that a party moved to dismiss an issue or an appeal based on the requirements of 10 V.S.A. § 8504(d)(2) and the Environmental Division's ruling on those motions; and

(C) a comparison with the total and annual number of appeals, during calendar years 2015 through 2017, from DEC programs that become subject to the procedures of 10 V.S.A. chapter 170 on January 1, 2018, and how each of those appeals was resolved;

(5) provides the Secretary's overall evaluation of the success of Secs. 1 and 3 of this act in standardizing DEC permit procedures, increasing public participation in DEC's permit process, and resolving issues related to the issuance of DEC permits without appeal;

(6) based on the track record of 10 V.S.A. chapter 170 to date of the report, states the Secretary's recommendation on whether there is justification to amend the process for appealing those acts and decisions of the Secretary subject to that chapter; and

(7) if the recommendation under subdivision (6) of this subsection is affirmative, provides the Secretary's recommended amendments to the process for appealing those acts and decisions of the Secretary subject to 10 V.S.A. chapter 170.

* * * Appeals from Agency of Natural Resources to the
Environmental Division * * *

Sec. 5. 10 V.S.A. § 8504 is amended to read:

§ 8504. APPEALS TO THE ENVIRONMENTAL DIVISION

* * *

(d) Requirement ~~that aggrieved Act 250 parties~~ to participate before the District Commission or the Secretary.

(1) ~~No Participation before District Commission.~~ An aggrieved person may shall not appeal an act or decision that was made by a District Commission unless the person was granted party status by the District Commission pursuant to subdivision 6085(c)(1)(E) of this title, participated in the proceedings before the District Commission, and retained party status at the end of the District Commission proceedings. In addition, the person may only appeal those issues under the criteria with respect to which the person was granted party status.

(2) ~~Notwithstanding subdivision (d)(1) of this section,~~ However, notwithstanding these limitations, an aggrieved person may appeal an act or decision of the District Commission if the Environmental judge determines that:

(A) there was a procedural defect ~~which that~~ prevented the person from obtaining party status or participating in the proceeding;

(B) the decision being appealed is the grant or denial of party status; or

(C) some other condition exists which would result in manifest injustice if the person's right to appeal was disallowed.

(2) Participation before the Secretary.

(A) An aggrieved person shall not appeal an act or decision of the Secretary unless the person submitted to the Secretary a written comment during the comment period or an oral comment at the public meeting conducted by the Secretary. In addition, the person may only appeal issues related to the person's comment to the Secretary.

(i) To be sufficient for the purpose of appeal, a comment to the Secretary shall identify each reasonably ascertainable issue with enough particularity so that a meaningful response can be provided.

(ii) The appellant shall identify each comment that the appellant submitted to the Secretary that identifies or relates to an issue raised in his or her appeal.

(iii) A person moving to dismiss an appeal or an issue raised by an appeal pursuant to this subdivision (A) shall have the burden to prove that the requirements of this subdivision (A) are not satisfied.

(B) Notwithstanding the limitations of subdivision (2)(A) of this subsection, an aggrieved person may appeal an act or decision of the Secretary if the Environmental judge determines that:

(i) there was a procedural defect that prevented the person from commenting during the comment period or at the public meeting or otherwise participating in the proceeding;

(ii) the Secretary did not conduct a comment period and did not hold a public meeting;

(iii) the person demonstrates that an issue was not reasonably ascertainable during the review of an application or other request that led to the Secretary's act or decision; or

(iv) some other condition exists which would result in manifest injustice if the person's right to appeal was disallowed.

* * *

(p) Administrative record. The Secretary shall certify the administrative record as defined in chapter 170 of this title and shall transfer a certified copy of that record to the Environmental Division when:

(1) there is an appeal of an act or decision of the Secretary that is based on that record; or

(2) there is an appeal of a decision of a District Commission and the applicant used a decision of the Secretary based on that record to create a presumption under a criterion of subsection 6086(a) of this title that is at issue in the appeal.

Sec. 5a. 10 V.S.A. § 8506 is amended to read:

§ 8506. RENEWABLE ENERGY PLANT; TELECOMMUNICATIONS FACILITY; APPEALS

* * *

(c) The provisions of subdivisions 8504(c)(2) (notice of appeal), (d)(2) (participation before the Secretary), and (f)(1)(A) (automatic stays of certain permits), and subsections 8504(j) (appeals under a general permit) ~~and~~, (n) (intervention), and (p) (administrative record) of this title shall apply to appeals under this section except that, with respect to subsection (p), the Secretary shall transfer a certified copy of the administrative record to the Board.

* * *

Sec. 5b. PURPOSE

The purposes of the amendments contained in Secs. 5 (appeals to the Environmental Division) and 5a (renewable energy plant; telecommunications facility; appeals) of this act are to:

(1) require participation in the permitting process of the Department of Environmental Conservation (DEC) and identification of concerns about an application early in that process so that DEC and the applicant have an opportunity to address those concerns where possible before a permit becomes final and subject to appeal; and

(2) require that an issue raised on appeal be identified or related to an issue identified in a comment to the Secretary while guarding against creating an overly technical approach to the preservation of issues for the purpose of appeal when interpreting whether an appeal satisfies requirements of 10 V.S.A. § 8504(d)(2)(A).

Sec. 5c. FEDERALLY DELEGATED PROGRAMS

If the U.S. Environmental Protection Agency notifies the Secretary of Natural Resources that a provision of this act is inconsistent with the Clean Air Act or Clean Water Act as defined in 10 V.S.A. chapter 170 or federal regulations adopted under one of those acts, the Secretary shall report the receipt of this notification to the House and Senate Committees on Natural and Energy and the House Committee on Fish, Wildlife and Water Resources. This report shall attach the notification and may include proposed statutory revisions to address the inconsistency.

Second: After Sec. 37, by adding two new sections to be Secs. 37a and 37b to read:

Sec. 37a. 10 V.S.A. § 6604c(d) is amended to read:

(d) On or before July 1, ~~2016~~ 2017, the Secretary shall adopt rules that allow for the management of excavated soils requiring disposal that contain PAHs, arsenic, or lead in a manner that ensures protection of human health and the environment and promotes Vermont's traditional settlement patterns in compact village or city centers. At a minimum, the rules shall:

* * *

Sec. 37b. MANAGEMENT OF EXCAVATED DEVELOPMENT SOILS;
EXTENSION OF REPEAL DATE

2015 Acts and Resolves No. 52, Sec. 7 is amended to read:

Sec. 7. REPEAL

On July 1, ~~2016~~ 2017, 10 V.S.A. § 6604c(a), (b), and (c) are repealed.

Third: In Sec. 38 (effective dates), by adding subdivisions (3) and (4) to read:

(3) Secs. 33 through 37 (Act 250 jurisdictional opinions; appeals) shall take effect on passage and shall apply to appeals of jurisdictional opinions issued on or after the effective date of those sections. Notwithstanding the repeal of its authority to consider jurisdictional opinions, the Natural Resources Board shall have authority to complete its consideration of any jurisdictional opinion pending before it as of that effective date, and appeal of the Board's decision shall be governed by the law as it existed immediately prior to that date.

(4) Secs. 37a (rules; management of excavated soils) and 37b (extension of repeal date) shall take effect on passage.

Thereupon, the question, Shall the Senate concur in the House proposals of amendment?, was decided in the affirmative.

House Proposal of Amendment Concurred In**S. 257.**

House proposal of amendment to Senate bill entitled:

An act relating to residential rental agreements.

Was taken up.

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

Sec. 1. 9 V.S.A. § 4451 is amended to read:

§ 4451. DEFINITIONS

As used in this chapter:

* * *

(9) “Sublease” means a rental agreement, written or oral, embodying terms and conditions concerning the use and occupancy of a dwelling unit and premises between two tenants, a sublessor and a sublessee.

(10) “Tenant” means a person entitled under a rental agreement to occupy a residential dwelling unit to the exclusion of others.

Sec. 2. 9 V.S.A. § 4452 is amended to read:

§ 4452. EXCLUSIONS

Unless created to avoid the application of this chapter, this chapter does not apply to any of the following:

* * *

(7) transient residence in a campground, which for the purposes of this chapter means any property used for seasonal or short-term vacation or recreational purposes on which are located cabins, tents, or lean-tos, or campsites designed for temporary set-up of portable or mobile camping, recreational, or travel dwelling units, including tents, campers, and recreational vehicles such as motor homes, travel trailers, truck campers, and van campers; ~~or~~

(8) transient occupancy in a hotel, motel, or lodgings during the time the occupant is a recipient of General Assistance or Emergency Assistance temporary housing assistance, regardless of whether the occupancy is subject to a tax levied under 32 V. S.A. chapter 225; or

(9) occupancy of a dwelling unit without right or permission by a person who is not a tenant.

Sec. 3. 9 V.S.A. § 4456b is added to read:

§ 4456b. SUBLEASES; LANDLORD AND TENANT RIGHTS AND OBLIGATIONS

(a)(1) A landlord may condition or prohibit subleasing a dwelling unit under the terms of a written rental agreement, and may require a tenant to provide written notice of the name and contact information of any sublessee occupying the dwelling unit.

(2) If the terms of a written rental agreement prohibit subleasing the dwelling unit, the landlord or tenant may bring an action for ejectment pursuant to 12 V.S.A. §§ 4761 and 4853b against a person that is occupying the dwelling unit without right or permission. This subdivision (2) shall not be construed to limit the rights and remedies available to a landlord pursuant to this chapter.

(b) In the absence of a written rental agreement, a tenant shall provide the landlord with written notice of the name and contact information of any sublessee occupying the dwelling unit.

Sec. 4. 12 V.S.A. § 4761 is amended to read:

§ 4761. WHEN MAINTAINABLE; PARTIES

A person having claim to the seisin or possession of lands, tenements or hereditaments shall have an action of ejectment, according to the nature of the case, which shall be brought as well against the landlord, if any, as against the tenant in possession of the premises, or against a person that is occupying a dwelling unit, for which subleasing is prohibited pursuant to a written rental agreement, without right or permission pursuant to 9 V.S.A. § 4456b(a)(2); and, if otherwise brought, on motion, the same shall be abated. Tenants in common of lands may join in an action concerning their common interest in such lands.

Sec. 5. 12 V.S.A. § 4853b is added to read:

§ 4853b. UNLAWFUL OCCUPANT; EXPEDITED HEARING

(a)(1) In an action for ejectment, the landlord, the landlord's agent, or the tenant may file a motion for a judgment that the plaintiff is entitled to immediate possession of the premises on the grounds that the defendant is a person that is occupying a dwelling unit without right or permission and the written rental agreement for the dwelling unit prohibits subleasing pursuant to 9 V.S.A. § 4456b(a)(2).

(2) The motion may be filed and served with the complaint or at any time after the complaint has been filed. The motion shall be accompanied by an affidavit setting forth particular facts in support of the motion and a copy of the lease agreement.

(b) A hearing on the motion shall be held any time after 10 days' notice to the parties.

(c) At any time before the hearing, the defendant may oppose the motion pursuant to Rule 78(b) of the Vermont Rules of Civil Procedure by filing an affidavit, a signed written statement, or a memorandum in opposition to the motion. The affidavit, signed written statement, or memorandum shall set forth particular facts to show that a genuine dispute of fact exists in relation to the motion.

(d)(1) If the defendant fails to appear for the hearing, or to file an affidavit, signed written statement, or memorandum in opposition to the plaintiff's motion, or has failed to file an answer in the time provided pursuant to Rule 12 of the Vermont Rules of Civil Procedure, the plaintiff shall be entitled to judgment by default for immediate possession of the premises.

(2) If the court finds that the defendant is a person that is occupying the dwelling unit without right or permission and the written rental agreement for

the dwelling unit prohibits subleasing pursuant to 9 V.S.A. § 4456b(a)(2), the court shall grant the plaintiff's motion and issue judgment in favor of the plaintiff for immediate possession of the premises.

(e) If the court issues judgment in favor of the plaintiff pursuant to subsection (d) of this section, the court shall, on the date judgment is entered, issue a writ of possession directing the sheriff of the county in which the property or a portion thereof is located to serve the writ upon the defendant and, no sooner than five days after the writ is served, to put the plaintiff into possession.

(f) At any time prior to the execution of the writ of possession, the defendant may file an affidavit, signed written statement, or a motion with the court setting forth facts demonstrating that the defendant is occupying the premises lawfully. The court shall treat an affidavit, signed written statement, or a motion filed under this subsection as a motion pursuant to Rule 59 or 60 of the Vermont Rules of Civil Procedure, as appropriate.

Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2016.

Thereupon, the question, Shall the Senate concur in the House proposal of amendment?, was decided in the affirmative.

Rules Suspended; Bills Messaged

On motion of Senator Baruth, the rules were suspended, and the following bills were severally ordered messaged to the House forthwith:

S. 62, S. 123, S. 257, H. 562, H. 595, H. 878.

House Proposal of Amendment Concurred In with Amendment

S. 212.

House proposal of amendment to Senate bill entitled:

An act relating to court-approved absences from home detention and home confinement furlough.

Was taken up.

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

Sec. 1. 13 V.S.A. § 7554 is amended to read:

§ 7554. RELEASE PRIOR TO TRIAL

(a) Any person charged with an offense, other than a person held without bail under section 7553 or 7553a of this title, shall at his or her appearance

before a judicial officer be ordered released pending trial in accordance with this section.

(1) The defendant shall be ordered released on personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer unless the judicial officer determines that such a release will not reasonably ensure the appearance of the person as required. In determining whether the defendant presents a risk of nonappearance, the judicial officer shall consider, in addition to any other factors, the seriousness of the offense charged and the number of offenses with which the person is charged. If the officer determines that such a release will not reasonably ensure the appearance of the defendant as required, the officer shall, either in lieu of or in addition to the ~~above~~ methods of release in this section, impose the least restrictive of the following conditions or the least restrictive combination of the following conditions that will reasonably ensure the appearance of the defendant as required:

(A) Place the defendant in the custody of a designated person or organization agreeing to supervise him or her if the defendant is charged with an offense that is not a nonviolent misdemeanor or nonviolent felony as defined in 28 V.S.A. § 301.

(B) Place restrictions on the travel, association, or place of abode of the defendant during the period of release.

(C) Require the defendant to participate in an alcohol or drug treatment program. The judicial officer shall take into consideration the defendant's ability to comply with an order of treatment and the availability of treatment resources.

(D) Require the execution of a secured appearance bond in a specified amount and the deposit with the clerk of the Court, in cash or other security as directed, of a sum not to exceed 10 percent of the amount of the bond, such deposit to be returned upon the appearance of the defendant as required.

(E) Require the execution of a surety bond with sufficient solvent sureties, or the deposit of cash in lieu thereof.

(F) Impose any other condition found reasonably necessary to ensure appearance as required, including a condition requiring that the defendant return to custody after specified hours.

(G) Place the defendant in a program of community-based electronic monitoring in accordance with section 7554d of this title.

(2) If the judicial officer determines that conditions of release imposed to ensure appearance will not reasonably protect the public, the judicial officer may impose in addition the least restrictive of the following conditions or the least restrictive combination of the following conditions that will reasonably ensure protection of the public:

(A) Place the defendant in the custody of a designated person or organization agreeing to supervise him or her if the defendant is charged with an offense that is not a nonviolent misdemeanor or nonviolent felony as defined in 28 V.S.A. § 301.

(B) Place restrictions on the travel, association, or place of abode of the defendant during the period of release.

(C) Require the defendant to participate in an alcohol or drug treatment program. The judicial officer shall take into consideration the defendant's ability to comply with an order of treatment and the availability of treatment resources.

(D) Impose any other condition found reasonably necessary to protect the public, except that a physically restrictive condition may only be imposed in extraordinary circumstances.

(E) If the defendant is a State, county, or municipal officer charged with violating section 2537 of this title, the Court may suspend the officer's duties in whole or in part, if the Court finds that it is necessary to protect the public.

(F) Place the defendant in a program of community-based electronic monitoring in accordance with section 7554d of this title.

* * *

Sec. 2. 13 V.S.A. § 7554d is amended to read:

§ 7554d. ~~WINDHAM COUNTY~~ ELECTRONIC MONITORING PILOT PROGRAM

(a)(1) The Windham County Sheriff's Office (WCSO) shall establish and manage a two-year electronic monitoring pilot program in Windham County for the purpose of supervising persons ordered to be under electronic monitoring as a condition of release or in addition to the imposition of bail pursuant to section 7554 of this title, to home detention pursuant to section 7554b of this title, and home confinement furlough pursuant to 28 V.S.A. § 808b. The program shall be a part of an integrated community incarceration program and shall provide 24-hours-a-day, seven-days-a-week electronic monitoring with supervision and immediate response.

(2) For purposes of this program;

~~(A) if electronic monitoring is ordered by the Court pursuant to section 7554 of this title, the Court shall use the following criteria in section 7554b for determining whether home detention electronic monitoring is appropriate;~~

~~(B) the seven-day waiting period under 7554b of this title shall not apply; and~~

~~(C) for persons who are under the custody of the Department of Corrections pursuant to section 7554b of this title and 28 V.S.A. § 808b, the WCSO shall notify the Department of any violations.;~~

(A) the nature of the offense with which the defendant is charged;

(B) the defendant's prior convictions, history of violence, medical and mental health needs, history of supervision, and risk of flight; and

(C) any risk or undue burden to other persons who reside at the proposed residence or risk to third parties or to public safety that may result from the placement.

(3) The WCSO shall establish written policies and procedures for the electronic monitoring program, shall provide progress reports on the development of the policies and procedures to the Justice Oversight Committee, and shall submit the final policies and procedures to the Committee for approval on or before June 30, 2016.

(b) The goal of the pilot program is to assist policymakers in determining whether electronically monitored home detention and home confinement can be utilized for pretrial detention and as a post-adjudication option to reduce recidivism, to improve public safety, and to save valuable bed space for detainees and inmates who should, without an electronic monitoring program, would otherwise be lodged in a correctional facility. Additional benefits may include reducing transportation costs, increasing detainee access to services, reducing case resolution time, and determining if the program can be replicated statewide.

(c) The WCSO shall work with the Crime Research Group (CRG) for design and evaluation assistance. The program shall be evaluated by CRG to determine if the stated goals have been attained, the cost and savings of the program, identifying what goals or objective were not met and if not, what could be changed to meet the goals and objectives to ensure program success. The Joint Fiscal Office shall contract with the CRG to provide design and evaluation services.

(d)(1) The WCSO is authorized to enter into written agreements with the sheriffs of other counties permitting those counties to participate in the pilot program subject to the policies and procedures established by the WCSO under this section. At least one of the agreements shall be between the WCSO and a county with a significant population.

(2) The purpose of expanding the electronic monitoring program to other counties under this subsection is to increase the number of participants to a level sufficient to permit evaluation of whether the program is meeting the bed savings and other goals identified in subsection (b) of this section.

(e) The Department of Corrections shall enter into a memorandum of understanding with the Department of State's Attorneys and Sheriffs for oversight and funding of the electronic monitoring program established by this section. The memorandum shall establish processes for:

(1) transmitting funding for the electronic monitoring program from the Department of Corrections to the Department of State's Attorneys and Sheriffs for purposes of allocation to the sheriff's departments participating in the program; and

(2) maintaining oversight of the electronic monitoring program to ensure that it complies with the requirements of this section and the policies and procedures established by the WCSO pursuant to subdivision (a)(3) of this section.

~~(d)~~(f) The pilot program shall be in effect from July 1, 2014 through June 30, 2016 June 30, 2018.

Sec. 3. 28 V.S.A. § 808b is amended to read:

§ 808b. HOME CONFINEMENT FURLOUGH

(a) An offender may be sentenced to serve a term of imprisonment, but placed by a court on home confinement furlough that restricts the defendant to a preapproved place of residence continuously, except for authorized absences. Home confinement furlough shall be enforced by appropriate means of supervision, including electronic monitoring and other conditions such as limitations on alcohol, visitors, and access to firearms imposed by the ~~Court~~ court or the Department, or both.

(b) The Department, in its own discretion, may place on home confinement furlough an offender who has not yet served the minimum term of the 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.

~~(c) A home confinement furlough shall not exceed a total of 180 days and shall require the defendant:~~

~~(1) to remain at a preapproved residence at all times except for scheduled and preapproved absences for work, school, treatment, attorney appointments, court appearances, and other obligations as the Court may order; or~~

~~(2) to remain at a preapproved residence 24 hours a day on lock-down status except for medical appointments and court appearances.~~

~~(d)~~ In determining whether a home confinement furlough sentence is appropriate and whether a place of residence is suitable for such a sentence, all of the following shall be considered:

(1) The nature of the offense with which the defendant was charged and the nature of the offense of which the defendant was convicted.

(2) The defendant's criminal history record, history of violence, medical and mental health needs, history of supervision, and risk of flight.

(3) Any risk or undue burden to other persons who reside at the proposed residence or risk to third parties or to public safety that may result from such placement.

(d)(1) A home confinement furlough shall not exceed a total of 180 days and shall require the defendant:

(A) to remain at a preapproved residence at all times except for preapproved absences for work, school, treatment, attorney appointments, court appearances, and other obligations as the court may order; or

(B) to remain at a preapproved residence 24 hours a day on lock-down status except for medical appointments and court appearances.

(2) In cases involving offenders convicted of a listed crime, the defendant shall remain at a preapproved residence at all times except for preapproved absences for work, school, treatment, attorney appointments, court appearances, and other obligations as the court or Department may authorize. The day the absences are approved, the court or the Department shall provide a record to the prosecutor's office documenting the date, time, location, and purpose of the authorized absences. The authorized absences may commence no earlier than 24 hours following notification to the prosecutor's office. The Department may reschedule authorized absences only after providing 72 hours' advance notice to the prosecutor's office. In the case of a medical emergency, the notice required by this subdivision shall be provided as soon as practicable after the emergency.

(e) [Repealed.]

Sec. 4. APPLICABILITY

A defendant participating in an electronic monitoring program established under 13 V.S.A. § 7554d prior to July 1, 2016 shall not have his or her participation in the program withdrawn or affected as a result of this act.

Sec. 5. REPORT

On or before December 15, 2016, the Windham County Sheriff's Office shall report to the House Committee on Corrections and Institutions, the Senate Committee on Institutions, and the House and Senate Committees on Judiciary on the electronic monitoring program established under 13 V.S.A. § 7554d. The report shall include the number of program participants, the offense with which each participant is charged, the number of participants who violate conditions of the program, the costs of the program, and the manner in which the program creates budgetary savings, including whether and how the program makes correctional facility bed space available that would otherwise be occupied by detainees and inmates in the program.

Sec. 6. JOINT LEGISLATIVE JUSTICE OVERSIGHT COMMITTEE; 2016 LEGISLATIVE INTERIM; GENDER-BASED DISPARITIES IN DETENTION AND SENTENCING

During the 2016 legislative interim, the Joint Legislative Justice Oversight Committee shall evaluate any disparities in sentencing and detainment by gender, including the average duration of detention for men and women, and the percentage of sentences or detainments imposed for listed crimes and nonlisted crimes for men and women. The Committee also shall investigate whether the primary drivers for detention, such as lack of housing, substance abuse, and risk assessment results, differ for men and women.

Sec. 7. EFFECTIVE DATES

(a) This section and Sec. 2 shall take effect on passage.

(b) Secs. 1 and 3-7 shall take effect on July 1, 2016.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, Senator Nitka moved that the Senate concur in the House proposal of amendment with an amendment as follows:

First: In Sec. 2, 13 V.S.A. § 7554d(a)(1), after the words "addition to", by inserting the words or in lieu of

Second: In Sec.7 (Effective Dates), by striking subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read as follows:

(b) Secs. 1 and 3-6 shall take effect on July 1, 2016.

Which was agreed to.

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

S. 174.

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

An act relating to a model State policy for use of body cameras by law enforcement officers.

Was taken up for immediate consideration.

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

To the Senate and House of Representatives:

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

S. 174. An act relating to a model State policy for use of body cameras by law enforcement officers.

Respectfully reports that it has met and considered the same and recommends that the Senate accede to the House proposal of amendment.

*ALICE W. NITKA
JEANETTE K. WHITE
JOSEPH C. BENNING*

Committee on the part of the Senate

*RONALD E. HUBERT
DEBBIE G. EVANS
PATTI J. LEWIS*

Committee on the part of the House

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

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

Rules Suspended; Bill Messaged

On motion of Senator Baruth, the rules were suspended, and the following bill was ordered messaged to the House forthwith:

S. 212.

Recess

On motion of Senator Campbell the Senate recessed until 7:00 P.M.

Called to Order

The Senate was called to order by the President.

Message from the House No. 74

A message was received from the House of Representatives by Ms. Melissa Kucserik, its First Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House requests the Senate to return to the custody of the House, a bill originating in the Senate of the following title:

S. 230. An act relating to improving the siting of energy projects.

Message from the House No. 75

A message was received from the House of Representatives by Mr. Jeremy Weiss, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

S. 40. An act relating to the creation of a Vulnerable Adult Fatality Review Team.

And has passed the same in concurrence.

The House has considered the report of the Committee of Conference upon the disagreeing votes of the two Houses on Senate bill of the following title:

S. 215. An act relating to the regulation of vision insurance plans.

And has adopted the same on its part.

The House has considered Senate proposals of amendment to the following House bills:

H. 355. An act relating to licensing and regulating foresters.

H. 620. An act relating to health insurance and Medicaid coverage for contraceptives.

H. 812. An act relating to implementing an all-payer model and oversight of accountable care organizations.

And has severally concurred therein.

Pursuant to the request of the Senate for a Committee of Conference upon the disagreeing votes of the two Houses on Senate bill of the following title:

S. 155. An act relating to privacy protection.

The Speaker has appointed as members of such committee on the part of the House:

Rep. Burditt of West Rutland
Rep. Lalonde of South Burlington
Rep. Jewett of Ripton

Rules Suspension Refused

H. 858.

Pending entry on the Calendar for notice, Senator Baruth, moved the rules be suspended and House bill entitled:

An act relating to miscellaneous criminal procedure amendments.

Be taken up for immediate consideration, which was disagreed to on a division of the Senate, Yeas 15, Nays 11 (3/4ths majority not being attained).

Adjournment

On motion of Senator Campbell, the Senate adjourned until eleven o'clock in the morning.