

Senate Calendar

FRIDAY, MAY 11, 2018

SENATE CONVENES AT: 10:00 A.M.

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ACTION CALENDAR

UNFINISHED BUSINESS OF THURSDAY, MAY 10, 2018

House Proposals of Amendment

S. 260

An act relating to funding the cleanup of State waters.

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:

* * * Clean Water Funding * * *

Sec. 1. FINDINGS

The General Assembly finds that:

(1) Within Vermont there are 7,100 miles of rivers and streams and 812 lakes and ponds of at least five acres in size.

(2) Currently, over 350 waters or water segments in the State do not meet water quality standards, are at risk of not meeting water quality standards, or are altered due to the presence of aquatic nuisances.

(3) In 2015, the General Assembly enacted 2015 Acts and Resolves No. 64, an act relating to improving the quality of State waters (Act 64), for the purpose, among others, of providing mechanisms, staffing, and financing necessary for the State to achieve and maintain compliance with the Vermont Water Quality Standards for all State waters.

(4) Act 64 directed the State Treasurer to recommend to the General Assembly a long-term mechanism for financing water quality improvement in the State, including proposed revenue sources for water quality improvement programs.

(5) The State Treasurer submitted a Clean Water Report in January 2017 that included:

(A) an estimate that over 20 years it would cost \$2.3 billion to achieve compliance with water quality requirements;

(B) a projection that revenue available for water quality over the 20-year period would be approximately \$1.06 billion, leaving a 20-year total funding gap of \$1.3 billion;

(C) an estimate of annual compliance costs of \$115.6 million, which, after accounting for projected revenue, would leave a funding gap of \$48.5 million to pay for the costs of compliance with the first tier of federal and State water quality requirements; and

(D) a financing plan to provide more than \$25 million annually in additional State funds for water quality programs.

(6) After determining that a method to achieve equitable and effective long-term funding methods to support clean water efforts in Vermont was necessary, the General Assembly established in 2017 Acts and Resolves No. 73, Sec. 26 the Working Group on Water Quality Funding to develop draft legislation to accomplish this purpose.

(7) The Act 73 Working Group did not recommend a long-term funding method to support clean water efforts in Vermont and instead recommended that the General Assembly maintain a Capital Bill clean water investment of \$15 million a year through fiscal years 2020 and 2021.

(8) In the years beyond fiscal year 2021, the Act 73 Working Group acknowledged that capital funds would need to be reduced to \$10 to \$12 million a year and that additional revenues would need to be raised.

(9) The U.S. Environmental Protection Agency (EPA) in a letter to the General Assembly stated that it is important for the State of Vermont to establish a long-term revenue source to support water quality improvement in order to comply with the accountability framework of the Lake Champlain Total Maximum Daily Load plan.

(10) The General Assembly should in this act establish the necessary long-term revenue sources to support water quality improvement and should encourage the Executive Branch and other interested parties to propose additional or alternative revenue sources sufficient to achieve the State goals for water quality improvement.

Sec. 1a. INTENT OF THE GENERAL ASSEMBLY ON WATER QUALITY

(a) It is the intent of the General Assembly to provide long-term funding for the clean water initiatives through the following mechanisms and approaches:

(1) Develop and impose excise taxes on all materials that contribute to water pollution directly or indirectly through land use and activities in order to reduce their use, with the tax percentage of sufficient magnitude to raise needed revenue as that figure becomes more certain, with the resulting revenue to be deposited in the Clean Water Fund.

(2) Examine the Vermont tax code in order to:

(A) identify all provisions that function to subsidize or reduce the after-tax cost of any material or activity that contributes to water pollution; and

(B) eliminate or modify all such provisions to remove such inappropriate cost reductions, allocating any resulting revenue increases to the Clean Water Fund.

(3) Facilitate the formation of local storm water utility districts to finance storm water treatment through assessments on impervious surfaces in municipalities with sufficient density of development and impervious surfaces to warrant such an approach.

(b) No later than November 15, 2018, the Joint Fiscal Office, with the assistance of the Department of Taxes, shall report to the General Assembly with recommendations on how to implement the intent of the General Assembly, as outlined in subsection (a) of this section.

* * * Rooms and Meals Tax * * *

Sec. 2. 32 V.S.A. § 9241 is amended to read:

§ 9241. IMPOSITION OF TAX

(a) An operator shall collect a tax of nine and one quarter percent of the rent of each occupancy.

(b) An operator shall collect a tax on the sale of each taxable meal at the rate of nine and one quarter percent of each full dollar of the total charge and on each sale for less than one dollar and on each part of a dollar in excess of a full dollar in accordance with the following formula:

\$0.01-0.11	\$0.01
0.12-0.22	0.02
0.23-0.33	0.03
0.34-0.44	0.04
0.45-0.55	0.05
0.56-0.66	0.06
0.67-0.77	0.07
0.78-0.88	0.08
0.89-1.00	0.09
<u>0.01-0.11</u>	<u>0.01</u>
<u>0.12-0.22</u>	<u>0.02</u>
<u>0.23-0.32</u>	<u>0.03</u>

<u>0.33-0.43</u>	<u>0.04</u>
<u>0.44-0.54</u>	<u>0.05</u>
<u>0.55-0.65</u>	<u>0.06</u>
<u>0.66-0.76</u>	<u>0.07</u>
<u>0.77-0.86</u>	<u>0.08</u>
<u>0.87-1.00</u>	<u>0.09</u>

* * *

Sec. 3. 32 V.S.A. § 9242(c) is amended to read:

(c) A tax of nine and one-quarter percent of the gross receipts from meals and occupancies and 10 percent of the gross receipts from alcoholic beverages, exclusive of taxes collected pursuant to section 9241 of this title, received from occupancy rentals, taxable meals, and alcoholic beverages by an operator, is hereby levied and imposed and shall be paid to the State by the operator as herein provided. Every person required to file a return under this chapter shall, at the time of filing the return, pay the Commissioner the taxes imposed by this chapter as well as all other monies collected by him or her under this chapter; provided, however, that every person who collects the taxes on taxable meals and alcoholic beverages according to the tax bracket schedules of section 9241 of this title shall be allowed to retain any amount lawfully collected by the person in excess of the tax imposed by this chapter as compensation for the keeping of prescribed records and the proper account and remitting of taxes.

* * * Unclaimed Beverage Container Deposits * * *

Sec. 4. 10 V.S.A. § 1530 is added to read:

§ 1530. ABANDONED BEVERAGE CONTAINER DEPOSITS; DEPOSIT TRANSACTION ACCOUNT; ESCHEATS

(a) As used in this section, “deposit initiator” means the first distributor or manufacturer to collect the deposit on a beverage container sold to any person within the State.

(b) A deposit initiator shall open a separate interest-bearing account in a Vermont branch of a financial institution to be known as the deposit transaction account. The deposit initiator shall keep the deposit transaction account separate from all other revenues and accounts.

(c) Beginning on October 1, 2019, each deposit initiator shall deposit in its deposit transaction account the refund value established by section 1522 of this title for all beverage containers sold by the deposit initiator. The deposit

initiator shall deposit the refund value for each beverage container in the account not more than three business days after the date on which the beverage container is sold. All interest, dividends, and returns earned on the deposit transaction account shall be paid directly to the account. The deposit initiator shall pay all refunds on returned beverage containers from the deposit transaction account.

(d) Beginning on January 1, 2020, and quarterly thereafter, every deposit initiator shall report to the Secretary of Natural Resources and the Commissioner of Taxes concerning transactions affecting the deposit initiator's deposit transaction account in the preceding quarter. The deposit initiator shall submit the report on a form provided by the Commissioner of Taxes. The report shall include:

(1) the balance of the account at the beginning of the preceding quarter;

(2) the number of beverage containers sold in the preceding quarter and the number of beverage containers returned in the preceding quarter;

(3) the amount of beverage container deposits received by the deposit initiator and deposited into the deposit transaction account;

(4) the amount of refund payments made from the deposit transaction account in the preceding quarter;

(5) any income earned on the deposit transaction account in the preceding quarter;

(6) any other transactions, withdrawals, or service charges on the deposit transaction account from the preceding quarter; and

(7) any additional information required by the Commissioner of Taxes.

(e)(1) On or before January 1, 2020, and quarterly thereafter, each deposit initiator shall remit from its deposit transaction account to the Commissioner of Taxes any abandoned beverage container deposits from the preceding quarter. The amount of abandoned beverage container deposits for a quarter is the amount equal to the amount of deposits that should be in the deposit transaction account less the sum of:

(A) income earned on amounts on the account during that quarter; and

(B) the total amount of refund value paid out by the deposit initiator for beverage containers during that quarter.

(2) In any calendar quarter, the deposit initiator may submit to the Commissioner of Taxes a request for reimbursement of refunds paid under this chapter that exceed the funds that are or should be in the deposit initiator's

deposit transaction account. The Commissioner of Taxes shall pay a request for reimbursement under this subdivision from the funds remitted to the Commissioner under subdivision (1) of this subsection, provided that:

(A) the Commissioner determines that the funds in the deposit initiator's deposit transaction action are insufficient to pay the refunds on returned beverage containers; and

(B) a reimbursement paid by the Commissioner to the deposit initiator shall not exceed the amount paid by the deposit initiator under subdivision (1) of this subsection (e) in the preceding 12 months less amounts paid to the initiator pursuant to this subdivision (2) during that same 12-month period.

(f) The Secretary of Natural Resources may prohibit the sale of a beverage that is sold or distributed in the State by a deposit initiator who fails to comply with the requirements of this chapter. The Secretary may allow the sale of a beverage upon the deposit initiator's coming into compliance with the requirements of this chapter.

* * * Clean Water Fund; General Fund; * * *

Sec. 4a. 10 V.S.A. § 1388 is amended to read:

§ 1388. CLEAN WATER FUND

(a) There is created a special fund to be known as the "Clean Water Fund" to be administered by the Secretary of Administration. The Fund shall consist of:

(1) ~~revenues dedicated for deposit into the Fund by the General Assembly, including from the Property Transfer Tax surcharge established under 32 V.S.A. § 9602a; and~~

(2) other gifts, donations, and impact fees received from any source, public or private, dedicated for deposit into the Fund and approved by the Secretary of Administration;

(3) the amount equal to the increase from nine percent to nine and one-quarter percent of the rooms tax imposed by 32 V.S.A. § 9241(a) and the revenue from the increase from nine percent to nine and one-quarter percent of the meals tax imposed by 32 V.S.A. § 9241(b);

(4) the unclaimed beverage container deposits (escheats) remitted to the State under chapter 53 of this title; and

(5) other revenues dedicated for deposit into the Fund by the General Assembly.

* * *

Sec. 4b. 32 V.S.A. § 435 is amended to read:

§ 435. GENERAL FUND

(a) There is established the General Fund which shall be the basic operating fund of the State. The General Fund shall be used to finance all expenditures for which no special revenues have otherwise been provided by law.

(b) The General Fund shall be composed of revenues from the following sources:

(1) Alcoholic beverage tax levied pursuant to 7 V.S.A. chapter 15;

* * *

(7) Meals and rooms taxes levied pursuant to chapter 225 of this title less the amount deposited in the Clean Water Fund under 10 V.S.A. § 1388;

* * *

* * * Clean Water Fund Board * * *

Sec. 5. 10 V.S.A. § 1389 is amended to read:

§ 1389. CLEAN WATER FUND BOARD

(a) Creation.

(1) There is created the Clean Water Fund Board ~~which~~ that shall recommend to the Secretary of Administration ~~expenditures;~~

(A) appropriations from the Clean Water Fund; and

(B) clean water projects to be funded by capital appropriations.

(2) The Clean Water Fund Board shall be attached to the Agency of Administration for administrative purposes.

(b) Organization of the Board. The Clean Water Fund Board shall be composed of:

(1) the Secretary of Administration or designee;

(2) the Secretary of Natural Resources or designee;

(3) the Secretary of Agriculture, Food and Markets or designee;

(4) the Secretary of Commerce and Community Development or designee;

(5) the Secretary of Transportation or designee; and

(6) two members of the public who are not legislators, one of whom shall represent a municipality subject to the municipal separate storm sewer

system (MS4) permit and one of whom shall represent a municipality that is not subject to the MS4 permit, appointed as follows:

(A) the Speaker of the House shall appoint the member from an MS4 municipality; and

(B) the Committee on Committees shall appoint the member who is not from an MS4 municipality.

(c) Officers; committees; rules.

~~(1) The Clean Water Fund Board shall annually elect a chair from its members~~ Secretary of Administration shall serve as the Chair of the Board. The Clean Water Fund Board may elect additional officers from its members, establish committees or subcommittees, and adopt procedural rules as necessary and appropriate to perform its work.

(2) Members of the Board who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance shall be entitled to per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010 paid from the budget of the Agency of Administration for attendance of meetings of the Board.

(d) Powers and duties of the Clean Water Fund Board. The Clean Water Fund Board shall have the following powers and authority:

(1) The Clean Water Fund Board shall recommend to the Secretary of Administration the appropriate allocation of funds from the Clean Water Fund for the purposes of developing the State budget required to be submitted to the General Assembly under 32 V.S.A. § 306. All recommendations from the Board should be intended to achieve the greatest water quality gain for the investment. The recommendations of the Clean Water Fund Board shall be open to inspection and copying under the Public Records Act, and the Clean Water Fund Board shall submit to the Senate Committees on Appropriations, on Finance, on Agriculture, and on Natural Resources and Energy and the House Committees on Appropriations, on Ways and Means, on Agriculture and Forestry, and on Natural Resources, Fish, and Wildlife a copy of any recommendations provided to the Governor.

(2) The Clean Water Fund Board may pursue and accept grants, gifts, donations, or other funding from any public or private source and may administer such grants, gifts, donations, or funding consistent with the terms of the grant, gift, or donation.

(3) The Clean Water Fund Board shall:

(A) establish a process by which watershed organizations, State agencies, and other interested parties may propose water quality projects or programs for financing from the Clean Water Fund;

(B) develop an annual revenue estimate and proposed budget for the Clean Water Fund;

(C) establish measures for determining progress and effectiveness of expenditures for clean water restoration efforts;

(D) issue the annual Clean Water Investment Report required under section 1389a of this title; ~~and~~

(E) solicit, consult with, and accept public comment from organizations interested in improving water quality in Vermont regarding recommendations under this subsection (d) for the allocation of funds from the Clean Water Fund; and

(F) establish a process under which a watershed organization, State agency, or other interested party may propose that a water quality project or program identified in a watershed basin plan receive funding from the Clean Water Fund.

(e) Priorities.

(1) In making recommendations under subsection (d) of this section regarding the appropriate allocation of funds from the Clean Water Fund, the Board shall prioritize:

(A) funding to programs and projects that address sources of water pollution in waters listed as impaired on the list of waters established by 33 U.S.C. § 1313(d);

(B) funding to projects that address sources of water pollution identified as a significant contributor of water quality pollution, including financial assistance to grant recipients at the initiation of a funded project;

(C) funding to programs or projects that address or repair riparian conditions that increase the risk of flooding or pose a threat to life or property;

(D) assistance required for State and municipal compliance with stormwater requirements for highways and roads;

(E) funding for education and outreach regarding the implementation of water quality requirements, including funding for education, outreach, demonstration, and access to tools for the implementation of the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks and Recreation;

(F) funding for innovative or alternative technologies or practices designed to improve water quality or reduce sources of pollution to surface waters, including funding for innovative nutrient removal technologies and community-based methane digesters that utilize manure, wastewater, and food residuals to produce energy;

(G) funding to purchase agricultural land in order to take that land out of practice when the State water quality requirements cannot be remediated through agricultural Best Management Practices; ~~and~~

(H) funding to municipalities for the establishment and operation of stormwater utilities; and

(I) investment in watershed basin planning, water quality project identification screening, water quality project evaluation, and conceptual plan development of water quality projects.

(2) In developing its recommendations under subsection (d) of this section regarding the appropriate allocation of funds from the Clean Water Fund, the Clean Water Fund Board shall, during the first three years of its existence and within the priorities established under subdivision (1) of this subsection (e), prioritize awards or assistance to municipalities for municipal compliance with water quality requirements, and to municipalities for the establishment and operation of stormwater utilities.

(3) In developing its recommendations under subsection (d) of this section regarding the appropriate allocation of funds from the Clean Water Fund, the Board shall, after satisfaction of the priorities established under subdivision (1) of this subsection (e), attempt to provide for equitable apportionment of awards from the Fund to all regions of the State and for control of all sources of point and non-point sources of pollution in the State investment in all watersheds of the State based on the needs identified in watershed basin plans.

(f) Assistance. The Clean Water Fund Board shall have the administrative, technical, and legal assistance of the Agency of Administration, the Agency of Natural Resources, the Agency of Agriculture, Food and Markets, the Agency of Transportation, and the Agency of Commerce and Community Development for those issues or services within the jurisdiction of the respective agency. The cost of the services provided by agency staff shall be paid from the budget of the agency providing the staff services.

(g) Terms; appointed members. Members who are appointed to the Clean Water Fund Board shall be appointed for terms of four years, except initial appointments shall be made such that the member appointed by the Speaker shall be appointed for a term of two years. Vacancies on the Board shall be filled for the remaining period of the term in the same manner as initial appointments.

* * * Coordinated Water Quality Grants; Performance Grants * * *

Sec. 6. COORDINATED WATER QUALITY GRANTS

The Secretary of Natural Resources, the Secretary of Agriculture, Food and Markets, and the Secretary of Transportation shall coordinate prior to awarding water quality grants or funding in order to maximize the water quality benefit or impact of funded projects in a watershed planning basin. When grants are issued, the Secretary of Natural Resources, the Secretary of Agriculture, Food and Markets, and the Secretary of Transportation shall, when allowed by law, authorize funds or identify other funding opportunities that may be used to support capacity to implement projects in the watershed basin.

Sec. 7. 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 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 Forestry, on Natural Resources and Energy, and on Fish, Wildlife and Water Resources, Fish, and Wildlife, 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:

(A) identify waters that should be reclassified outstanding resource waters or that should have one or more uses reclassified under section 1252 of this title;

(B) identify wetlands that should be reclassified as Class I wetlands;

(C) identify projects or activities within a basin that will result in the protection and enhancement of water quality;

(D) assure that municipal officials, citizens, watershed groups, and other interested groups and individuals are involved in the basin planning process;

(E) assure regional and local input in State water quality policy development and planning processes;

(F) provide education to municipal officials and citizens regarding the basin planning process;

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

(H) provide for public notice of a draft basin plan; and

(I) provide for the opportunity of public comment on a draft basin plan.

(3) The Secretary shall, contingent upon the availability of funding, ~~contract with a regional planning commission or~~ negotiate and issue performance grants to the Vermont Association of Planning and Development Agencies or its designee and the Natural Resources Conservation Council or its designee to assist in or to produce a basin plan under the schedule set forth in subdivision (1) of this subsection in a manner consistent with the authority of regional planning commissions under 24 V.S.A. chapter 117 and the authority of the natural resources conservation districts under chapter 31 of this title. When ~~contracting~~ negotiating a scope of work with ~~a regional planning commission or the Vermont Association of Planning and Development Agencies or its designee and the Natural Resources Conservation Council or its designee~~ to assist in or produce a basin plan, the Secretary may require the ~~regional planning commission~~ Vermont Association of Planning and Development Agencies or the Natural Resources Conservation Council to:

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

(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 to 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 cost-effective use of State and federal funds.

* * * Lakes in Crisis * * *

Sec. 8. 10 V.S.A. chapter 47, subchapter 2A is added to read:

Subchapter 2A. Lake in Crisis

§ 1310. DESIGNATION OF LAKE IN CRISIS

(a) The Secretary of Natural Resources (Secretary) shall review whether a lake in the State should be designated as a lake in crisis upon the Secretary's own motion or upon petition of 15 or more persons or a selectboard of a municipality in which the lake or a portion of the lake is located.

(b) The Secretary shall designate a lake as a lake in crisis if, after review under subsection (a) of this section, the Secretary determines that:

(1) the lake or segments of the lake have been listed as impaired;

(2) the condition of the lake will cause:

(A) a potential harm to the public health; and

(B) a risk of damage to the environment or natural resources; and

(3) a municipality in which the lake or a portion of the lake is located has reduced the valuation of real property due to the condition of the lake.

§ 1311. STATE RESPONSE TO A LAKE IN CRISIS

(a) Adoption of crisis response plan. When a lake is declared in crisis, the Secretary shall within 90 days after the designation of the lake in crisis issue a comprehensive crisis response plan for the management of the lake in crisis in order to improve water quality in the lake or to mitigate or eliminate the potential harm to public health or the risk of damages to the environment or natural resources. The Secretary shall coordinate with the Secretary of Agriculture, Food and Markets and the Secretary of Transportation in the development of the crisis response plan. The crisis response plan may require implementation of one or both of the following in the watershed of the lake in crisis:

(1) water quality requirements necessary to address specific harms to public health or risks to the environment or natural resources; or

(2) implementation of or compliance with existing water quality requirements under one or more of the following:

(A) water quality requirements under chapter 47 of this title, including requiring a property owner to obtain a permit or implement best

management practices for the discharge of stormwater runoff from any size of impervious surfaces if the Secretary determines that the treatment of the discharge of stormwater runoff is necessary to reduce the adverse impacts to water quality of the discharge or stormwater on the lake in crisis;

(B) agricultural water quality requirements under 6 V.S.A. chapter 215, including best management practices under 6 V.S.A. § 4810 to reduce runoff from the farm; or

(C) water quality requirements adopted under section 1264 of this section for stormwater runoff from municipal or State roads.

(b) Public hearing. The Secretary shall hold at least one public hearing in the watershed of the lake in crisis and shall provide an opportunity for public notice and comment for a proposed lake in crisis response plan.

(c) Term of designation. A lake shall remain designated as in crisis under this section until the Secretary determines that the lake no longer satisfies the criteria for designation under subsection (b) of this section.

(d) Agency cooperation and services. All other State agencies shall cooperate with the Secretary in responding to the lake in crisis, and the Secretary shall be entitled to seek technical and scientific input or services from the Agency of Agriculture, Food and Markets, the Agency of Transportation, or other necessary State agencies.

§ 1312. LAKE IN CRISIS ORDER

The Secretary, after consultation with the Secretary of Agriculture, Food and Markets, may issue a lake in crisis order as an administrative order under chapter 201 of this title to require a person to:

(1) take an action identified in the lake in crisis response plan;

(2) cease or remediate any acts, discharges, site conditions, or processes contributing to the impairment of the lake in crisis;

(3) mitigate a significant contributor of a pollutant to the lake in crisis; or

(4) conduct testing, sampling, monitoring, surveying, or other analytical operations required to determine the nature, extent, duration, or severity of the potential harm to the public health or a risk of damage to the environment or natural resources.

§ 1313. ASSISTANCE

(a) A person subject to a lake in crisis order shall be eligible for technical and financial assistance from the Secretary to be paid from the Lake in Crisis Response Program Fund. The Secretary shall adopt by procedure the process for application for assistance under this section.

(b) State financial assistance awarded under this section shall be in the form of a grant. An applicant for a State grant shall pay at least 35 percent of the total eligible project cost. The dollar amount of a State grant shall be equal to the total eligible project cost, less 35 percent of the total as paid by the applicant, and less the amount of any federal assistance awarded.

(c) A grant awarded under this section shall comply with all terms and conditions for the issuance of State grants.

§ 1314. FUNDING OF STATE RESPONSE TO A LAKE IN CRISIS

(a) Initial response. Upon designation of a lake in crisis, the Secretary may, for the purposes of the initial response to the lake in crisis, expend up to \$50,000.00 appropriated to the Agency of Natural Resources from the Clean Water Fund for authorized contingency spending.

(b) Long-term funding. Annually, the Secretary of Natural Resources shall present to the House and Senate Committees on Appropriations a multi-year plan for the funding of all lakes designated in crisis under this subchapter. Based on the multi-year plan, the Secretary of Administration annually shall recommend to the House and Senate Committees on Appropriations recommended appropriations to the Lake in Crisis Response Program Fund for the subsequent fiscal year.

§ 1315. LAKE IN CRISIS RESPONSE PROGRAM FUND

(a) There is created a special fund known as the Lake in Crisis Response Program Fund to be administered by the Secretary of Natural Resources. The Fund shall consist of:

(1) funds that may be appropriated by the General Assembly; and

(2) other gifts, donations, or funds received from any source, public or private, dedicated for deposit into the Fund.

(b) The Secretary shall use monies deposited in the Fund for the Secretary's implementation of a crisis response plan for a lake in crisis and for financial assistance under section 1313 of this title to persons subject to a lake in crisis order.

(c) Notwithstanding the requirements of 32 V.S.A. § 588(3) and (4), interest earned by the Fund and the balance of the Fund at the end of the fiscal year shall be carried forward in the Fund and shall not revert to the General Fund.

Sec. 9. LAKE CARMİ; LAKE IN CRISIS

The General Assembly declares Lake Carmi as a lake in crisis under 10 V.S.A. chapter 47, subchapter 2A. The crisis response plan for Lake Carmi shall include implementation of runoff controls.

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

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

- (1) 10 V.S.A. chapter 23, relating to air quality;
- (2) 10 V.S.A. chapter 32, relating to flood hazard areas;
- (3) 10 V.S.A. chapters 47 and 56, relating to water pollution control, water quality standards, and public water supply, and lakes in crisis;

* * *

Sec. 11. 10 V.S.A. § 8503(a) is amended to read:

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

- (1) The following provisions of this title:
 - (A) chapter 23 (air pollution control);
 - (B) chapter 50 (aquatic nuisance control);
 - (C) chapter 41 (regulation of stream flow);
 - (D) chapter 43 (dams);
 - (E) chapter 47 (water pollution control; lakes in crisis);

* * *

* * * ANR Report on Future Farming Practices * * *

Sec. 12. AGENCY OF AGRICULTURE, FOOD AND MARKETS
REPORT ON FARMING PRACTICES IN VERMONT

(a) The Nutrient Management Commission convened by the Secretary of Agriculture, Food and Markets as a requirement of the U.S. Environmental Protection Agency's approved implementation plan for the Lake Champlain total maximum daily load plan shall review whether and how to revise farming practices in Vermont in a manner that mitigates existing environmental impacts while maintaining economic viability. In conducting its review, the Commission shall consider whether and how to:

- (1) revise farming practice to improve or build healthy soils;
- (2) reduce agriculturally based pollution in areas of high pollution, stressed, or impaired waters;

(3) establish a carrying capacity or maximum number of livestock that the land used for nutrient application on a farm can support without contribution of nutrients to a water;

(4) provide financial and technical support to facilitate the transition by farms to less-polluting practices through one or more of the following:

(A) cover cropping;

(B) reduced tillage or no tillage;

(C) accelerated implementation of best management practices (BMPs);

(D) evaluation of the effectiveness of using riparian buffers in excess of 25 feet;

(E) increased use of direct manure injection;

(F) crop rotations to build soil health, including limits on the planting of continuous corn;

(G) elimination or reduction of the use of herbicides in the termination of cover crops; and

(H) diversification of dairy farming.

(b) On or before January 15, 2019, the Secretary of Agriculture, Food and Markets shall submit to the Senate Committees on Natural Resources and Energy and on Agriculture and to the House Committees on Natural Resources, Fish, and Wildlife and on Agriculture and Forestry any recommendation of the Nutrient Management Commission regarding any of the farming practices or subject areas listed under subdivisions (a)(1)–(4) of this section.

* * * Effective Dates * * *

Sec. 13. EFFECTIVE DATES

This act shall take effect on passage, except that Secs. 2–3 (rooms and meals tax), 4a (Clean Water Fund), and 4b (General Fund) shall take effect on January 1, 2020.

S. 280

An act relating to the Advisory Council for Strengthening Families.

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. ADVISORY COUNCIL ON CHILD POVERTY AND STRENGTHENING FAMILIES

(a)(1) There is created the Advisory Council on Child Poverty and Strengthening Families to:

(A) identify and examine structural and other issues in Vermont that:

(i) lead to families living in poverty; and

(ii) create conditions that prevent families from moving out of poverty; and

(B) advance policies that:

(i) promote financial stability and asset building;

(ii) support safety nets for families with low income; and

(iii) mitigate the effects of childhood poverty.

(2) The Advisory Council shall provide guidance and recommend policies that either reduce incidences of or mitigate the effects of childhood poverty. It shall serve as an educational forum for both its members and the public. The Advisory Council shall use data better to understand existing and emerging challenges to children and families living in poverty.

(3) The Advisory Council shall monitor the development and implementation of the Agency of Human Services' childhood trauma response plan required pursuant to 2017 Acts and Resolves No. 43, Sec. 4.

(b)(1) Voting membership. The Advisory Council shall be composed of the following 15 voting members:

(A) three members of the Senate, not all from the same political party, appointed by the Committee on Committees, including one member from the Committee on Education and one member from the Committee on Health and Welfare;

(B) three members of the House, not all from the same political party, appointed by the Speaker of House, including one member from the Committee on Education and one member from the Committee on Human Services;

(C) a member appointed by Voices for Vermont's Children;

(D) a member appointed by the Vermont Low Income Advocacy Council;

(E) a member appointed by Vermont Legal Aid;

(F) a member appointed by the Vermont Coalition for Disability Rights;

(G) a member appointed by the Vermont Affordable Housing Coalition;

(H) a nongovernmental designee of the Child and Family Trauma Work Group who does not otherwise represent an organization with membership on this Council;

(I) an employee of the prekindergarten through grade 12 public education delivery system in Vermont appointed jointly by the Executive Directors of the Vermont Superintendents Association, the Vermont Principals' Association, and the Vermont Council of Special Education Coordinators;

(J) a business owner appointed by the Vermont Businesses Roundtable; and

(K) a member appointed by the Vermont Community Action Partnership.

(2) Nonvoting membership. The Advisory Council shall be composed of the following five nonvoting members or designees:

(A) the Secretary of Education;

(B) the Secretary of Human Services;

(C) the Commissioner for Children and Families;

(D) the Commissioner of Health; and

(E) the Commissioner of Labor.

(c) Assistance. The Advisory Council shall have the administrative, technical, and legal assistance of the Office of Legislative Council and the Joint Fiscal Office.

(d) Work products.

(1) Compilation of minutes. On or before January 1 of each year, the Advisory Council shall submit to the General Assembly a compilation of its meeting minutes from the previous calendar year that summarizes the Advisory Council's activities and decisions.

(2) Recommendations. On or before January 1 of each year, the Advisory Council shall submit a list of policy recommendations and legislative priorities from the previous calendar year to the General Assembly or to the appropriate State agency or organization that are aimed at reducing incidences of or mitigating the effects of childhood poverty.

(3) Legislation. On or before November 15 of each year, the Advisory Council may prepare legislation for introduction by one or more of its legislative members that contains any of the Advisory Council's policy

recommendations for reducing incidences of or mitigating the effects of childhood poverty.

(e) Meetings.

(1) The member of the House Committee on Human Services shall call the first meeting of the Advisory Council to occur on or before July 1 of each year.

(2) Each year the Advisory Council shall select a chair from among its legislative members at the first meeting. The Advisory Council may select a vice chair from among its legislative members.

(3) A majority of the voting members shall constitute a quorum.

(4) At least once annually, the Advisory Council shall meet in a location other than the State House for the purpose of receiving testimony from members of Vermont families experiencing poverty or organizations providing direct services to Vermont families experiencing poverty.

(5)(A) The Advisory Council shall cease to exist on July 1, 2028.

(B) Five years prior, in 2023, the Advisory Council shall conduct a midterm review of its achievements and effectiveness using results-based accountability. Among any other benchmarks that the Advisory Council chooses to measure pursuant to subdivision (C) of this subdivision (5), it shall review, as compared to 2016:

(i) the number and percentage of children living in families at 50 percent, 100 percent, and 200 percent of the federal poverty level; and

(ii) the number and percentage of children living in families paying more than 30 percent of their cash income for housing and related expenses.

(C) On or before January 1, 2019, the Advisory Council shall identify any additional benchmarks it plans to measure during its 2023 midterm review.

(f) Compensation and reimbursement.

(1) For attendance at meetings during adjournment of the General Assembly, a legislative member of the Advisory Council serving in his or her capacity as a legislator shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for not more than six meetings.

(2) Other members of the Advisory Council who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance shall be entitled to per diem compensation and

reimbursement of expenses pursuant to 32 V.S.A. § 1010 for not more than six meetings.

(3) Payments to members of the Advisory Council authorized under this subsection shall be made from monies appropriated by the General Assembly.

Sec. 2. 2015 Acts and Resolves No. 60, Sec. 23 is amended to read:

Sec. 23. JOINT LEGISLATIVE CHILD PROTECTION OVERSIGHT
COMMITTEE

* * *

(c) Powers and duties.

(1) The Committee shall:

~~(A) Exercise~~ exercise oversight over Vermont's ~~system~~ systems for youth justice and protecting children from abuse and neglect, including:

~~(i)(A)~~ (A) evaluating whether the branches, departments, agencies, and persons that are responsible for protecting children from abuse and neglect are effective;

~~(ii)(B)~~ (B) determining if there are deficiencies in the system and the causes of those deficiencies;

~~(iii)(C)~~ (C) evaluating which programs are the most cost-effective; and

~~(iv)(D)~~ (D) determining whether there is variation in policies, procedures, practices, and outcomes between different areas of the State and the causes and results of any such variation;

~~(v) evaluating whether licensed mandatory reporters should be required to certify that they completed training on the requirements set forth under 33 V.S.A. § 4913; and~~

~~(vi) evaluating the measures recommended by the Working Group to Recommend Improvements to CHINS Proceedings established in Sec. 24 of this act to ensure that once a child is returned to his or her family, the court or the Department for Children and Families may continue to monitor the child and family where appropriate.~~

~~(B) The Committee shall report any proposed legislation on or before January 15, 2016 to the House and Senate Committees on Judiciary, the House Committee on Human Services, and the Senate Committee on Health and Welfare.~~

(2) The Committee may review and make recommendations to the House and Senate Committees on Appropriations regarding budget proposals and appropriations relating to protecting children from abuse and neglect.

* * *

(h) Sunset. On June 1, ~~2018~~ 2022, this section (creating the Joint Legislative Child Protection Oversight Committee) is repealed and the Committee shall cease to exist.

Sec. 3. EFFECTIVE DATES

This act shall take effect on passage; provided, however, that if the date of passage is after June 1, 2018, then notwithstanding 1 V.S.A. § 214, Sec. 2 shall apply retroactively to June 1, 2018.

NEW BUSINESS

Third Reading

H. 576.

An act relating to stormwater management.

H. 922.

An act relating to making numerous revenue changes.

Second Reading

Favorable with Proposal of Amendment

H. 559.

An act relating to miscellaneous environmental subjects.

Reported favorably with recommendation of proposal of amendment by Senator Bray for the Committee on Natural Resources and Energy.

The Committee recommends 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:

* * * Basin Planning * * *

Sec. 1. 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 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 Forestry, on Natural Resources and Energy, and on Fish, Wildlife and Water Resources, Fish, and Wildlife, 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:

(A) identify waters that should be reclassified outstanding resource waters or that should have one or more uses reclassified under section 1252 of this title;

(B) identify wetlands that should be reclassified as Class I wetlands;

(C) identify projects or activities within a basin that will result in the protection and enhancement of water quality;

(D) assure that municipal officials, citizens, watershed groups, and other interested groups and individuals are involved in the basin planning process;

(E) assure regional and local input in State water quality policy development and planning processes;

(F) provide education to municipal officials and citizens regarding the basin planning process;

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

(H) provide for public notice of a draft basin plan; and

(I) provide for the opportunity of public comment on a draft basin plan.

(3) The Secretary shall, contingent upon the availability of funding, ~~contract with a regional planning commission or~~ negotiate and issue performance grants to the Vermont Association of Planning and Development Agencies or its designee and the Natural Resources Conservation Council or its designee to assist in or to produce a basin plan under the schedule set forth in subdivision (1) of this subsection in a manner consistent with the authority of regional planning commissions under 24 V.S.A. chapter 117 and the

authority of the natural resources conservation districts under chapter 31 of this title. When ~~contracting~~ negotiating a scope of work with a ~~regional planning commission~~ or the Vermont Association of Planning and Development Agencies or its designee and the Natural Resources Conservation Council or its designee to assist in or produce a basin plan, the Secretary may require the ~~regional planning commission~~ Vermont Association of Planning and Development Agencies 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.

* * * Clean Water Investment Report * * *

Sec. 2. 10 V.S.A. § 1389a(a) is amended to read:

(a) Beginning on January 15, 2017, and annually thereafter, the Secretary of Administration shall publish the Clean Water Investment Report. The Report shall summarize all investments, including their cost-effectiveness, made by the Clean Water Fund Board and other State agencies for clean water restoration over the prior ~~calendar~~ fiscal year. The Report shall include expenditures from the Clean Water Fund, the General Fund, the Transportation Fund, and any other State expenditures for clean water restoration, regardless of funding source.

* * * Petroleum Cleanup Fund * * *

Sec. 3. 10 V.S.A. § 1941(b) is amended to read:

(b) The Secretary may authorize disbursements from the Fund for the purpose of the cleanup and restoration of contaminated soil and groundwater caused by releases of petroleum from underground storage tanks and aboveground storage tanks, including air emissions for remedial actions, and for compensation of third parties for injury and damage caused by a release. This Fund shall be used for no other governmental purposes, nor shall any portion of the Fund ever be available to borrow from by any branch of government; it being the intent of the General Assembly that this Fund and its

increments shall remain intact and inviolate for the purposes set out in this chapter. Disbursements under this section may be made only for uninsured costs incurred after January 1, 1987 and for which a claim is made prior to July 1, ~~2019~~ 2029 and judged to be in conformance with prevailing industry rates. This includes:

* * *

Sec. 4. 10 V.S.A. § 1942 is amended to read:

§ 1942. PETROLEUM DISTRIBUTOR LICENSING FEE

(a) There is hereby established a licensing fee of one cent per gallon of motor fuel sold by a distributor or dealer or used by a user in this State, ~~which that~~ that will be assessed against every distributor, dealer, or user as defined in 23 V.S.A. chapters 27 and 28, and ~~which that~~ that will be deposited into the Petroleum Cleanup Fund established pursuant to subsection 1941(a) of this title. The Secretary, in consultation with the Petroleum Cleanup Fund Advisory Committee established pursuant to subsection 1941(e) of this title, shall annually report to the General Assembly on the balance of the Motor Fuel Account and shall make recommendations, if any, for changes to the program. The Secretary shall also determine the unencumbered balance of the Motor Fuel Account as of May 15 of each year, and if the balance is equal to or greater than \$7,000,000.00, then the licensing fee shall not be assessed in the upcoming fiscal year. The Secretary shall promptly notify all sellers assessing this fee of the status of the fee for the upcoming fiscal year. This fee ~~will~~ shall be paid in the same manner, at the same time, and subject to the same restrictions or limitations as the tax on motor fuels. The fee ~~will~~ shall be collected by the Commissioner of Motor Vehicles and deposited into the Petroleum Cleanup Fund. This fee requirement shall terminate on April 1, ~~2021~~ 2031.

(b) There is assessed a licensing fee of one cent per gallon for the bulk retail sale of heating oil, kerosene, or other dyed diesel fuel sold in this State. This fee shall be subject to the collection, administration, and enforcement provisions of 32 V.S.A. chapter 233, and the fees collected under this subsection by the Commissioner of Taxes shall be deposited into the Petroleum Cleanup Fund established pursuant to subsection 1941(a) of this title. The Secretary, in consultation with the Petroleum Cleanup Fund Advisory Committee established pursuant to subsection 1941(e) of this title, shall annually report to the General Assembly on the balance of the Heating Fuel Account and shall make recommendations, if any, for changes to the program. The Secretary shall also determine the unencumbered balance of the Heating Fuel Account as of May 15 of each year, and if the balance is equal to or greater than \$3,000,000.00, then the licensing fee shall not be assessed in the

upcoming fiscal year. The Secretary shall promptly notify all sellers assessing this fee of the status of the fee for the upcoming fiscal year. This fee provision shall terminate on April 1, 2021 2031.

Sec. 5. 10 V.S.A. § 1943(c) is amended to read:

(c) This tank assessment shall terminate on July 1, ~~2019~~ 2029.

* * * Mercury-Added Motor Vehicle Components * * *

Sec. 6. 10 V.S.A. § 7108 is added to read:

§ 7108. MERCURY-ADDED MOTOR VEHICLE COMPONENTS

(a) Applicability. This section applies to:

(1) a motor vehicle recycler or scrap metal recycling facility in the State; and

(2) a manufacturer of motor vehicles sold in this State.

(b) Mercury-added switch removal requirements. A motor vehicle recycler that accepts end-of-life motor vehicles shall remove mercury-added vehicle switches prior to crushing, shredding, or other scrap metal processing and prior to conveying for crushing, shredding, or other scrap metal processing.

(1) Motor vehicle recyclers shall maintain a log sheet of switches removed from end-of-life motor vehicles and shall provide such log to the Agency annually or upon request of the Agency.

(2) Switches, including switches encased in light or brake assemblies, shall be collected, stored, transported, and handled in accordance with all applicable State and federal laws.

(c) Manufacturer mercury-added switch recovery program. A manufacturer of vehicles sold in this State, individually or as part of a group, shall implement a mercury-added vehicle switch recovery program that includes the following:

(1) educational material to assist motor vehicle recyclers in identifying mercury-added vehicle switches and safely removing, properly handling, and storing switches;

(2) storage containers provided at no cost to all motor vehicle recyclers identified by the Agency, suitable for the safe storage of switches, including switches encased in light or brake assemblies;

(3) collection, packaging, shipping, and recycling of mercury-added switches, including switches encased in light or brake assemblies, provided to all motor vehicle recyclers at no cost and that comply with all applicable State and federal laws; and

(4) a report on or before December 1 annually to the Agency that includes the total number of mercury-added switches recovered in the program, the names of the motor vehicle recyclers and the number of switches removed from each, and the total amount of mercury collected during the previous 12-month period.

(d) Agency responsibility.

(1) The Agency shall provide workshops and other training to motor vehicle recyclers to inform them of the requirements of this section.

(2) The Agency may develop, by procedure, exemptions of certain mercury-added vehicle switches and other components from the requirements of this section, including mercury-added switches that are inaccessible due to motor vehicle damage and anti-lock brake switches in certain motor vehicle types that are difficult or labor-intensive to remove.

Sec. 7. APPLICATION OF ENACTMENT

On December 31, 2017, the former 10 V.S.A. § 7108, requiring establishing mercury-added vehicle component requirements, as established by 2006 Acts and Resolves No. 117, was repealed. Sec. 6 of this act reenacts 10 V.S.A. § 7108 in substantially the same form as the section was enacted by 2006 Acts and Resolves No. 117. Notwithstanding the requirements of 1 V.S.A. § 214, the requirements of 10 V.S.A. § 7108 as enacted by Sec. 6 of this act shall apply retroactively to December 31, 2017 and shall be implemented prospectively from that date.

Sec. 8. REPEAL OF MERCURY-ADDED MOTOR VEHICLE COMPONENT REQUIREMENTS

10 V.S.A. § 7108 (mercury-added vehicle component requirements) shall be repealed on December 31, 2021.

* * * Forgiveness of Municipal Water Supply and
Pollution Control Planning Advances * * *

Sec. 9. FORGIVENESS OF REPAYMENT OF PLANNING ADVANCES

The Secretary of Natural Resources shall not require a municipality to repay engineering planning advances awarded under 24 V.S.A. chapter 120, subchapter 2 if the Secretary determines that:

(1) the engineering planning advance was awarded prior to September 1, 2011; and

(2) due to the effects of Tropical Storm Irene, documentation is no longer available to establish the engineering planning scope and associated construction project for which the engineering planning advance was awarded.

* * * Act 250 Corrective Action Plans * * *

Sec. 10. 10 V.S.A. § 6081 is amended to read:

§ 6081. PERMITS REQUIRED; EXEMPTIONS

* * *

(x)(1) No permit or permit amendment is required for the construction of improvements for any one of the actions or abatements authorized in this subdivision:

(A) a remedial or removal action for which the Secretary of Natural Resources has authorized disbursement under section 1283 of this title;

(B) abating a release or threatened release, as directed by the Secretary of Natural Resources under section 6615 of this title;

(C) a remedial or removal action directed by the Secretary of Natural Resources under section 6615 of this title;

(D) a corrective action authorized in a corrective action plan approved by the Secretary of Natural Resources under section 6615b of this title;

(E) a corrective action authorized in a corrective action plan approved by the Secretary of Natural Resources under chapter 159, subchapter 3 of this title; or

(F) the management of “development soils,” as that term is defined in subdivision 6602(39) of this title, under a plan approved by the Secretary of Natural Resources under section 6604c of this title.

(2) Any development subsequent to the construction of improvements for any one of the actions or abatements authorized in subdivision (1) of this subsection shall not be exempt from the provisions of this chapter.

* * * Environmental Enforcement Report * * *

Sec. 11. 10 V.S.A. § 8017 is amended to read:

§ 8017. ANNUAL REPORT

The Secretary and the Attorney General shall report annually to the President Pro Tempore of the Senate, the Speaker of the House, the House Committee on ~~Fish, Wildlife and Water Resources~~ Natural Resources, Fish, and Wildlife, and the Senate ~~and House Committees~~ Committee on Natural Resources and Energy. The report shall be filed ~~no later than January 15~~ on or before February 15, on the enforcement actions taken under this chapter, and on the status of citizen complaints about environmental problems in the State. The report shall describe, at a minimum, the number of violations, the actions

taken, the disposition of cases, the amount of penalties collected, and the cost of administering the enforcement program. 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.

* * * Citizen Right of Action * * *

Sec. 12. 10 V.S.A. chapter 205 is added to read:

CHAPTER 205. CITIZEN RIGHT OF ACTION

§ 8055. CITIZEN RIGHT OF ACTION

(a) Suit authorized. Except as provided in subsection (c) of this section, a person may commence a civil action for equitable or declaratory relief on the person's own behalf against one or more of the following persons:

(1) any person who is alleged to be in violation of any statute, permit, certification, rule, permit condition, prohibition, or order set forth, issued, or required under 6 V.S.A. chapter 215;

(2) any person subject to regulation under this chapter who is alleged to be in violation of any statute, permit, certification, rule, permit condition, prohibition, or order set forth, issued, or required under chapter 37 or 47 of this title;

(3) the Secretary of Agriculture, Food and Markets when there is an alleged failure of the Agency of Agriculture, Food and Markets to perform any act or duty under 6 V.S.A. chapter 215 that is not discretionary for the Secretary of Agriculture, Food and Markets or the Agency of Agriculture, Food and Markets; and

(4) the Secretary of Natural Resources when there is an alleged failure of the Agency of Natural Resources to perform any act or duty under chapter 37 or 47 of this title that is not discretionary for the Secretary of Natural Resources or the Agency of Natural Resources.

(b) Prerequisite to commencement of action. A person shall not commence an action under subsection (a) of this section prior to 90 days after the plaintiff has given notice of the violation to:

(1) the Secretary of Agriculture, Food and Markets for an action initiated under subdivision (a)(1) or (3) of this section;

(2) the Secretary of Natural Resources for an action initiated under subdivision (a)(2) or (4) of this section; and

(3) any person who is alleged to be in violation of a statute, permit, certification, rule, permit condition, prohibition, or order set forth, issued, or required under 6 V.S.A. chapter 215 or under chapter 37 or 47 of this title.

(c) Action prohibited. A person shall not commence an action under subsection (a) of this section under either of the following circumstances:

(1) if the Secretary of Agriculture, Food and Markets, the Secretary of Natural Resources, or the Attorney General has commenced and is diligently prosecuting a civil or criminal action to require compliance with a statute, permit, certification, rule, permit condition, prohibition, or order set forth, issued, or required under 6 V.S.A. chapter 215 or under chapter 37 or 47 of this title; or

(2) if the alleged violator is diligently proceeding with complying with an assurance of discontinuance, corrective action, cease and desist order, or emergency administrative order issued under 6 V.S.A. chapter 215 or under chapter 201 of this title.

(d) Venue. A person shall bring an action under subsection (a) of this section in the Environmental Division of the Superior Court.

(e) Intervention. In any action under subsection (a) of this section:

(1) Any person may intervene as a matter of right when the person seeking intervention claims an interest relating to the subject of the action and he or she is so situated that the disposition of the action may, as a practical matter, impair or impede his or her ability to protect that interest unless:

(A) for an action initiated under subdivision (a)(1) or (3) of this section, the Secretary of Agriculture, Food and Markets or the Secretary of Natural Resources demonstrates that the applicant's interest is adequately represented by existing parties; or

(B) for an action initiated under subdivision (a)(2) or (4) of this section, the Secretary of Natural Resources demonstrates that the applicant's interest is adequately represented by existing parties.

(2) The Secretary of Agriculture, Food and Markets, the Secretary of Natural Resources, or the Attorney General may intervene as a matter of right as a party to represent its interests.

(f) Notice of action. A person bringing an action under subsection (a) of this section shall provide the notice required under subsection (b) of this section in writing. The notice shall be served on the alleged violator in person or by certified mail, return receipt requested. The notice to the Secretary shall be served by certified mail, return receipt requested. The notice shall include a brief description of the alleged violation and identification of the statute, permit, certification, rule, permit condition, prohibition, or order that is the subject of the violation.

(g) Attorney's fees; costs. The Environmental Division of the Superior Court may award costs, including reasonable attorney's fees and fees for expert witnesses, to a person bringing an action under subsection (a) of this section when the court determines that the award is appropriate. The Environmental Division of the Superior Court may award costs, including reasonable attorney's fees and fees for expert witnesses, to the State or to a person subject to an action under this section if the court determines that the action was frivolous, unreasonable, or without foundation.

(h) Rights preserved. Nothing in this section shall be construed to impair or diminish any common law or statutory right or remedy that may be available to any person. Rights and remedies created by this section shall be in addition to any other right or remedy, including the authority of the State to bring an enforcement action separate from an action brought under this section. No determination made by a court in an action maintained under this section, to which the State has not been a party, shall be binding upon the State in any enforcement action.

* * * Stormwater Permitting * * *

Sec. 13. 27 V.S.A. § 613(b) is amended to read:

(b) Beginning on July 1, 2004, and notwithstanding any law to the contrary, no encumbrance on record title to real property or effect on marketability of title shall be created by the failure of the holder of real property from which regulated stormwater runoff discharges to an impaired watershed to obtain, renew, or comply with the terms and conditions of a pretransition stormwater discharge permit for a conveyance or refinancing, provided that such holder:

(1) provides a notice of deferral of permit to the Secretary of Natural Resources with a property description, the identity of the impaired watershed, the permit number of any expired pretransition stormwater discharge permit covering the property, and such other information as the Secretary may require; and

(2) records in the land records a notice indicating, in an appropriate form to be determined by the Secretary of Natural Resources, that at the time of establishment of a general permit in the impaired watershed where the real property is located, but not later than ~~June 30, 2018~~ 180 days after the date of adoption by the Agency of Natural Resources of the stormwater rule pursuant to 10 V.S.A. § 1264, the mortgagor (in the case of a refinancing) or the grantee (in the case of a conveyance) shall be subject to all applicable requirements of the water quality remediation plan, TMDL, or watershed improvement permit established under 10 V.S.A. chapter 47.

Sec. 14. 2012 Acts and Resolves No. 91, Sec. 3, as amended by 2016 Acts and Resolves No. 73, Sec. 1, is further amended to read:

Sec. 3. REPEAL

27 V.S.A. § 613 (stormwater discharges during transition period; encumbrance on title) shall be repealed ~~on June 30, 2018~~ 180 days after the date the Agency of Natural Resources adopts the stormwater rule pursuant to 10 V.S.A. § 1264.

* * * Pollinator Friendly Solar * * *

Sec. 15. 6 V.S.A. chapter 217 is added to read:

CHAPTER 217. POLLINATOR-FRIENDLY SOLAR GENERATION
STANDARD

§ 5101. DEFINITIONS

As used in this chapter:

(1) “Agency” means the Agency of Agriculture, Food and Markets.

(2) “Invasive species” means any species of vegetation that:

(A) is designated as a noxious weed on the Agency’s Noxious Weed Rule under chapter 84 of this title;

(B) is listed on the Vermont Invasive Exotic Plant Committee Watch List;

(C) has been quarantined by the Agency as invasive; or

(D) has been determined to be invasive by the Agency of Natural Resources.

(3) “Native” refers to perennial vegetation that is native to Vermont. Native perennial vegetation does not include invasive species.

(4) “Naturalized” refers to perennial vegetation that is not native to Vermont, but is now considered to be well established and part of Vermont flora. Naturalized perennial vegetation does not include invasive species.

(5) “Owner” means a public or private entity that has a controlling interest in the solar site.

(6) “Perennial vegetation” means wildflowers, forbs, shrubs, sedges, rushes, and grasses that serve as habitat, forage, and migratory way stations for pollinators.

(7) “Pollinator” means bees, birds, bats, and other insects or wildlife that pollinate flowering plants, and includes wild and managed insects.

(8) “Solar site” means a ground-mounted solar system for generating electricity and the area surrounding that system under the control of the owner.

(9) “Vegetation management plan” means a written document that includes short- and long-term site management practices that will provide and maintain native and naturalized perennial vegetation.

§ 5102. BENEFICIAL HABITAT STANDARD

(a) This section establishes a standard for owners that intend to claim that, through the voluntary planting and management of vegetation, a solar site provides greater benefits to pollinators and shrub-dependent birds than are provided by solar sites not so managed.

(b) In order for the solar site to meet the beneficial habitat standard and for the owner of a solar site to claim that the solar site is beneficial to those species or is pollinator-friendly, all the following shall apply:

(1) The owner adheres to guidance set forth by the Pollinator-Friendly Scorecard (Scorecard) published by the University of Vermont (UVM) Extension.

(2) The owner shall make the solar site’s completed Scorecard available to the public and provide a copy of the completed Scorecard to the UVM Extension.

(3) If the site has a vegetation management plan:

(A) The plan shall maximize the use of native and naturalized perennial vegetation for foraging habitat beneficial to pollinators consistent with the solar site’s Scorecard.

(B) The owner shall make the vegetation management plan available to the public and provide a copy of the plan to the UVM Extension.

(4) When establishing perennial vegetation and beneficial foraging habitat, the solar site shall use native and naturalized plant species and seed mixes whenever practicable.

(c) Nothing in this chapter affects any findings that must be made in order to issue a State permit or other approval for a solar site or the duty to comply with any conditions in such a permit or approval.

* * * Municipalities; Village Center Designation; Electronic Filings * * *

Sec. 16. 24 V.S.A. § 2793 is amended to read:

§ 2793. DESIGNATION OF DOWNTOWN DEVELOPMENT DISTRICTS

* * *

(c) A designation issued under this section shall be effective for eight years and may be renewed on application by the municipality. The State Board also shall review a community's designation ~~every five~~ four years after issuance or renewal and may review compliance with the designation requirements at more frequent intervals. ~~On and after July 1, 2014, any~~ Any community applying for renewal shall explain how the designation under this section has furthered the goals of the town plan and shall submit an approved town plan map that depicts the boundary of the designated district. If at any time the State Board determines that the downtown development district no longer meets the standards for designation established in subsection (b) of this section, it may take any of the following actions:

* * *

Sec. 17. 24 V.S.A. § 2793a is amended to read:

§ 2793a. DESIGNATION OF VILLAGE CENTERS BY STATE BOARD

* * *

(d) The State Board shall review a village center designation ~~every five~~ eight years and may review compliance with the designation requirements at more frequent intervals. ~~On and after July 1, 2014, any~~ Any community applying for renewal shall explain how the designation under this section has furthered the goals of the town plan and shall submit an approved town plan map that depicts the boundary of the designated district. If at any time the State Board determines that the village center no longer meets the standards for designation established in subsection (a) of this section, it may take any of the following actions:

* * *

Sec. 18. 24 V.S.A. § 2793b is amended to read:

§ 2793b. DESIGNATION OF NEW TOWN CENTER DEVELOPMENT DISTRICTS

* * *

(d) A designation issued under this section shall be effective for eight years and may be renewed on application by the municipality. The State Board also shall review a new town center designation ~~every five~~ four years after issuance or renewal and may review compliance with the designation requirements at more frequent intervals. The State Board may adjust the schedule of review under this subsection to coincide with the review of a related growth center. If at any time the State Board determines the new town center no longer meets the standards for designation established in subsection (b) of this section, it may take any of the following actions:

* * *

Sec. 19. 24 V.S.A. § 4345b is amended to read:

§ 4345b. INTERMUNICIPAL SERVICE AGREEMENTS

(a)(1) Prior to exercising the authority granted under this section, a regional planning commission shall:

(A) draft bylaws specifying the process for entering into, method of withdrawal from, and method of terminating service agreements with municipalities; and

(B) hold one or more public hearings within the region to hear from interested parties and citizens regarding the draft bylaws.

(2) At least 30 days prior to any hearing required under this subsection, notice of the time and place and a copy of the draft bylaws, with a request for comments, shall be delivered to the chair of the legislative body of each municipality within the region, which may be done electronically, provided the sender has proof of receipt. The regional planning commission shall make copies available to any individual or organization requesting a copy.

* * *

Sec. 20. 24 V.S.A. § 4348 is amended to read:

§ 4348. ADOPTION AND AMENDMENT OF REGIONAL PLAN

* * *

(c) At least 30 days prior to the first hearing, a copy of the proposed plan or amendment, with a request for general comments and for specific comments with respect to the extent to which the plan or amendment is consistent with the goals established in section 4302 of this title, shall be delivered physically or electronically with proof of receipt, or sent by certified mail, return receipt requested, to each of the following:

(1) the chair of the legislative body of each municipality within the region;

(2) the executive director of each abutting regional planning commission;

(3) the Department of Housing and Community Development within the Agency of Commerce and Community Development;

(4) business, conservation, low-income advocacy, and other community or interest groups or organizations that have requested notice in writing prior to the date the hearing is warned; and

(5) the Agency of Natural Resources and the Agency of Agriculture, Food and Markets.

* * *

(e) The regional planning commission may make revisions to the proposed plan or amendment at any time not less than 30 days prior to the final public hearing held under this section. If the proposal is changed, a copy of the proposed change shall be delivered, physically or electronically with proof of receipt or by certified mail, return receipt requested, to the ~~chairperson~~ chair of the legislative body of each municipality within the region, and to any individual or organization requesting a copy, at least 30 days prior to the final hearing.

* * *

Sec. 21. 24 V.S.A. § 4352 is amended to read:

§ 4352. OPTIONAL DETERMINATION OF ENERGY COMPLIANCE;
ENHANCED ENERGY PLANNING

* * *

(e) Process for issuing determinations of energy compliance. Review of whether to issue a determination of energy compliance under this section shall include a public hearing noticed at least 15 days in advance by direct mail or electronically with proof of receipt to the requesting regional planning commission or municipal legislative body, posting on the website of the entity from which the determination is requested, and publication in a newspaper of general publication in the region or municipality affected. The Commissioner or regional planning commission shall issue the determination in writing within two months ~~of~~ after the receipt of a request for a determination. If the determination is negative, the Commissioner or regional planning commission shall state the reasons for denial in writing and, if appropriate, suggest acceptable modifications. Submissions for a new determination that follow a negative determination shall receive a new determination within 45 days.

* * *

Sec. 22. 24 V.S.A. § 4384 is amended to read:

§ 4384. PREPARATION OF PLAN; HEARINGS BY PLANNING
COMMISSION

* * *

(e) At least 30 days prior to the first hearing, a copy of the proposed plan or amendment and the written report shall be delivered physically or electronically with proof of receipt, or mailed by certified mail, return receipt requested to each of the following:

(1) the ~~chairperson~~ chair of the planning commission of each abutting municipality, or in the absence of any planning commission in an abutting municipality, to the clerk of that municipality;

(2) the executive director of the regional planning commission of the area in which the municipality is located;

(3) the ~~department of housing and community affairs~~ Department of Housing and Community Development within the ~~agency of commerce and community development~~ Agency of Commerce and Community Development; and

(4) business, conservation, ~~low-income~~ low-income advocacy, and other community or interest groups or organizations that have requested notice in writing prior to the date the hearing is warned.

* * *

Sec. 23. 24 V.S.A. § 4385 is amended to read:

§ 4385. ADOPTION AND AMENDMENT OF PLANS; HEARING BY
LEGISLATIVE BODY

* * *

(c) A plan of a municipality or an amendment thereof shall be adopted by a majority of the members of its legislative body at a meeting which is held after the final public hearing. If, however, at a regular or special meeting of the voters duly warned and held as provided in 17 V.S.A. chapter 55, a municipality elects to adopt or amend municipal plans by Australian ballot, that procedure shall then apply unless rescinded by the voters at a regular or special meeting similarly warned and held. If the proposed plan or amendment is not adopted so as to take effect within one year ~~of~~ after the date of the final hearing of the planning commission, it shall be considered rejected by the municipality. Plans and amendments shall be effective upon adoption, ~~and~~ Copies of newly adopted plans and amendments shall be provided to the regional planning commission and to the ~~commissioner of housing and community affairs~~ Commissioner of Housing and Community Development within 30 days ~~of~~ after adoption, which may be done electronically, provided the sender has proof of receipt. If a municipality wishes its plan or plan amendment to be eligible for approval under the provisions of section 4350 of this title, it shall request approval. The request for approval may be before or after adoption of the plan by the municipality, at the option of the municipality.

* * *

Sec. 24. 24 V.S.A. § 4424 is amended to read:

§ 4424. SHORELANDS; RIVER CORRIDOR PROTECTION AREAS;
FLOOD OR HAZARD AREA; SPECIAL OR FREESTANDING
BYLAWS

(a) Bylaws; flood and other hazard areas; river corridor protection. Any municipality may adopt freestanding bylaws under this chapter to address particular hazard areas in conformance with the municipal plan or, for the purpose of adoption of a flood hazard area bylaw, a local hazard mitigation plan approved under 44 C.F.R. § 201.6. Such freestanding bylaws may include the following, which may also be part of zoning or unified development bylaws:

(1) Bylaws to regulate development and use along shorelands.

(2) Bylaws to regulate development and use in flood areas, river corridor protection areas, or other hazard areas. The following shall apply if flood or other hazard area bylaws are enacted:

* * *

(D)(i) Mandatory provisions. Except as provided in subsection (c) of this section, all flood and other hazard area bylaws shall provide that no permit for new construction or substantial improvement shall be granted for a flood or other hazard area until after both the following:

(I) A copy of the application is mailed or delivered by the administrative officer or by the appropriate municipal panel to the Agency of Natural Resources or its designee, which may be done electronically, provided the sender has proof of receipt.

(II) Either 30 days have elapsed following the mailing or the Agency or its designee delivers comments on the application.

(ii) The Agency of Natural Resources may delegate to a qualified representative of a municipality with a flood hazard area bylaw or ordinance or to a qualified representative for a regional planning commission the Agency's authority under this subdivision (a)(2)(D) to review and provide technical comments on a proposed permit for new construction or substantial improvement in a flood hazard area. Comments provided by a representative delegated under this subdivision (a)(2)(D) shall not be binding on a municipality.

* * *

Sec. 25. 24 V.S.A. § 4441 is amended to read:

§ 4441. PREPARATION OF BYLAWS AND REGULATORY TOOLS;
AMENDMENT OR REPEAL

* * *

(e) At least 15 days prior to the first hearing, a copy of the proposed bylaw, amendment, or repeal and the written report shall be delivered physically or electronically with proof of receipt, or mailed by certified mail, return receipt requested, to each of the following:

(1) The ~~chairperson~~ chair of the planning commission of each abutting municipality, or in the absence of any planning commission in a municipality, the clerk of that abutting municipality.

(2) The executive director of the regional planning commission of the area in which the municipality is located.

(3) The ~~department of housing and community affairs~~ Department of Housing and Community Development within the ~~agency of commerce and community development~~ Agency of Commerce and Community Development.

* * *

Sec. 26. 24 V.S.A. § 4445 is amended to read:

§ 4445. AVAILABILITY AND DISTRIBUTION OF DOCUMENTS

Current copies of plans, bylaws, and capital budgets and programs shall be available to the public during normal business hours in the office of the clerk of any municipality in which those plans, bylaws, or capital budgets or programs have been adopted. The municipality shall provide all final adopted bylaws, amendments, or repeals to the regional planning commission of the area in which the municipality is located and to the ~~department of housing and community affairs~~ Department of Commerce and Community Development, which may be done electronically, provided the sender has proof of receipt.

* * * Wastewater System and Potable Water Supplies Lending * * *

Sec. 27. 24 V.S.A. § 4752 is amended to read:

§ 4752. DEFINITIONS

As used in this chapter:

* * *

(13) “Potable water supply facilities” ~~means municipal water sources, water treatment plants, structures, pipe lines, storage facilities, pumps, and attendant facilities necessary to develop a source of water and to treat and convey it in proper quantity and quality for public use within a municipality~~ has the same meaning as in 10 V.S.A. § 1972.

* * *

(17) “Designer” means a person authorized to design wastewater systems and potable water supplies as identified in 10 V.S.A. § 1975.

Sec. 28. 24 V.S.A. § 4753 is amended to read:

§ 4753. REVOLVING LOAN FUNDS; AUTHORITY TO SPEND; REPORT

(a) There is hereby established a series of special funds to be known as:

* * *

(10) The Vermont Wastewater and Potable Water Revolving Loan Fund, which shall be used to provide loans to individuals, in accordance with section 4763b of this title, for the design and construction of repairs to or replacement of wastewater systems and potable water supplies when the wastewater system or potable water supply is a failed system or supply as defined in 10 V.S.A. § 1972, or when a designer demonstrates that the wastewater system or potable water supply has a high probability of failing. The amount of up to \$275,000.00 from the fees collected pursuant to 3 V.S.A. § 2822(j)(4) shall be deposited on an annual basis into this Fund at the beginning of each fiscal year to ensure a minimum balance of available funds of \$275,000.00 exists for each fiscal year.

* * *

Sec. 29. 24 V.S.A. § 4763b is amended to read:

§ 4763b. LOANS TO INDIVIDUALS FOR FAILED WASTEWATER SYSTEMS AND FAILED POTABLE WATER SUPPLIES

(a) Notwithstanding any other provision of law, when the wastewater system or potable water supply serving only ~~one single-family residence on its own lot~~ single-family and multifamily residences either meets the definition of a failed supply or system in 10 V.S.A. § 1972 or is demonstrated by a designer to have a high probability of failing, the Secretary of Natural Resources may lend monies to ~~the owner of the residence~~ an owner of one or more of the residences from the Vermont Wastewater and Potable Water Revolving Loan Fund established in section 4753 of this title. In such cases, the following conditions shall apply:

(1) loans a loan may only be made to households with an owner with a household income equal to or less than 200 percent of the State average median household income;

(2) loans a loan may only be made to households where the recipient of the loan resides in the residence an owner who resides in one of the residences served by the failed supply or system on a year-round basis;

(3) loans a loan may only be made if the owner of the residence to an owner who has been denied financing for the repair, replacement, or construction due to involuntary disconnection by at least one other financing entity;

(4) when the failed supply or system also serves residences owned by persons other than the loan applicant, a loan may only be made for an equitable share of the cost to repair or replace the failed supply or system that is determined through agreement of all of the owners of residences served by the failed system or supply;

(5) no construction loan shall be made to an individual under this subsection, nor shall any part of any revolving loan made under this subsection be expended, until all of the following take place:

(A) the Secretary of Natural Resources determines that if a wastewater system and potable water supply permit is necessary for the design and construction of the project to be financed by the loan, the permit has been issued to the owner of the failed system or supply; and

(B) the individual applying for the loan certifies to the Secretary of Natural Resources that the proposed project has secured all State and federal permits, licenses, and approvals necessary to construct and operate the project to be financed by the loan;

~~(5)~~(6) all funds from the repayment of loans made under this section shall be deposited into the Vermont Wastewater and Potable Water Revolving Loan Fund.

(b) The Secretary of Natural Resources shall establish standards, policies, and procedures as necessary for the implementation of this section. The Secretary may establish criteria to extend the payment period of a loan or to waive all or a portion of the loan amount.

* * * Effective Dates * * *

Sec. 30. EFFECTIVE DATES

This act shall take effect on passage, except that Secs. 15 (pollinator friendly solar generation standard) and Secs. 16-26 (State designation; electronic filing) shall take effect July 1, 2018.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for February 13, 2018, pages 350-355 and February 14, 2018, page 357)

Reported favorably by Senator Campion for the Committee on Finance.

The Committee recommends that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Natural Resources and Energy.

(Committee vote: 7-0-0)

Reported favorably by Senator Nitka for the Committee on Appropriations.

The Committee recommends that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Natural Resources and Energy.

(Committee vote: 6-0-1)

Proposal of amendment to H. 559 to be offered by Senator Soucy

Senator Soucy moves to amend the proposal of amendment of the Committee on Natural Resources and Energy as follows:

By adding a Sec. 5a to read as follows:

Sec. 5a. COMBINATION TANK SYSTEMS; CONTINUATION OF SERVICE

(a) As used in this section:

(1) "Combination tank system" shall have the same meaning as set forth in 10 V.S.A. § 1922.

(2) "Motor fuel" means fuel subject to the licensing fee under 10 V.S.A. § 1942(a).

(b) Notwithstanding the requirements in 10 V.S.A. § 1927(e)(2) that a combination tank system shall be closed by January 1, 2018, the Secretary of Natural Resources may authorize a combination tank service to supply motor fuel after January 1, 2018 upon a determination that the combination tank system:

(1) is the sole supply of motor fuel in the municipality in which the combination tank system is located;

(2) is needed to supply motor fuel to public safety or fire control services in the municipality; and

(3) the owner of the combination system has entered into a contract and obtained financing to replace the tank as required under 10 V.S.A. § 1927.

(c) The Secretary may authorize the continued supply of motor fuel from a combination tank system under this section until October 1, 2018.

(d) This section shall be repealed on October 1, 2018.

H. 904.

An act relating to miscellaneous agricultural subjects.

Reported favorably with recommendation of proposal of amendment by Senator Pollina for the Committee on Agriculture.

The Committee recommends 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:

* * * Produce Inspection * * *

Sec. 1. 6 V.S.A. § 21(b) is amended to read:

(b) The Secretary shall have the authority to:

(1) respond to and remediate incidences of mass animal death, agricultural structure fires, or other emergencies on a farm in order to prevent a public health hazard;

(2) condemn, confiscate, or establish restrictions on the use, sale, or distribution of adulterated raw agricultural commodities or animal feed; and

(3) cooperate with the Department of Health and other State and federal agencies regarding:

(A) the prevention or remediation of the adulteration of raw agricultural commodities, food, or animal feed on farms; and

(B) application of the FDA Food Safety Modernization Act, 21 U.S.C. §§ 2201-2252 Pub. L. No. 111-353, to farms, farm products, or value-added products produced in the State.

Sec. 2. 6 V.S.A. § 852 is amended to read:

§ 852. ~~AUTHORITY; ENFORCEMENT~~

(a) The Secretary may enforce in the State the requirements of:

(1) the rules adopted under the ~~federal~~ U.S. Food and Drug Administration Food Safety Modernization Act, Public Law No. 111-353, for standards for growing, harvesting, packing, and holding of produce for human consumption Standards for Growing, Harvesting, Packing, and Holding of Produce for Human Consumption, 21 C.F.R. part 112; and

(2) the rules adopted under this chapter.

(b) The Agency may collaborate with the Vermont Department of Health regarding application of the ~~federal Food Safety Modernization Act and the rules adopted thereunder~~ U.S. Food and Drug Administration Food Safety Modernization Act, Standards for Growing, Harvesting, Packing, and Holding of Produce for Human Consumption, 21 C.F.R. part 112, and application of the rules adopted under this chapter.

(c) The Secretary shall carry out the provisions of this chapter using:

(1) monies appropriated to the Agency by the federal government for the purpose of administering the federal Food Safety Modernization Act and the rules adopted thereunder;

(2) monies appropriated to the Agency by the State for the purpose of administering this chapter; and

(3) other gifts, bequests, and donations by private entities for the purposes of administering this chapter.

Sec. 3. 6 V.S.A. § 853 is amended to read:

§ 853. FARM INSPECTIONS

(a)(1) The Secretary may inspect a produce farm during reasonable hours for the purposes of ensuring compliance with:

(A) the federal standards for growing, harvesting, packing, and holding of produce for human consumption, as adopted under 21 C.F.R. part 112; or

(B) the rules adopted under this chapter.

(2) This section shall not limit the Secretary's authority to respond to an emergency in order to prevent a public health hazard under section 21 of this title.

~~(b) After inspection, the Secretary may issue an inspection certificate that shall include the date and place of inspection along with any other pertinent facts that the Secretary may require.~~

(e) The Secretary may coordinate with other State agencies and organizations to carry out inspections at or near the same time on a given produce farm.

Sec. 4. 6 V.S.A. §§ 856 and 857 are added to read:

§ 856. ENFORCEMENT; CORRECTIVE ACTIONS

When the Secretary of Agriculture, Food and Markets determines that a person is violating the rules listed in section 852 of this title, the Secretary may issue a written warning that shall be served in person or by certified mail, return receipt requested. A warning issued under this section shall include:

- (1) a description of the alleged violation;
- (2) identification of this section;
- (3) identification of the applicable rule violated; and
- (4) the required corrective action that the person shall take to correct the violation.

§ 857. ENFORCEMENT; ADMINISTRATIVE ORDERS

(a) Notwithstanding the requirements of section 856 of this title, the Secretary at any time may pursue one or more of the following:

(1) issue a cease and desist order in accordance to a person the Secretary believes to be in violation of the rules listed in section 852 of this title;

(2) issue a verbal order or written administrative order to protect public health, including orders for the stop sale, recall, embargo, destruction, quarantine, and release of produce, when:

(A) the U.S. Food and Drug Administration requires immediate State action; or

(B) an alleged violation, activity, or farm practice presents an immediate threat to the public health or welfare;

(3) order mandatory corrective actions;

(4) take any action authorized under chapter 1 of this title;

(5) seek administrative or civil penalties in accordance with the requirements of section 15, 16, or 17 of this title.

(b) When the Secretary of Agriculture, Food and Markets issues a cease and desist order, written administrative order, or required corrective action under subsection (a) of this section, the Secretary shall provide the person subject to the order or corrective action with a statement that the order or corrective action is effective upon receipt and the person has 15 days from the date the order or corrective action was issued to request a hearing.

(c) If the Secretary of Agriculture, Food and Markets issues a verbal order under this section, the Secretary shall issue written notice to the person subject to the order within five days of the issuance of the verbal order. The written notice shall include a statement that the person has 15 days from the date the written notice was received to request a hearing.

(d) If a person who receives a cease and desist order, a verbal order, an administrative order, or a mandatory corrective action under this section does not request in writing a hearing within 15 days of receipt of the order or within 15 days of written notice for a verbal order, the person's right to a hearing is

waived. Upon receipt of a written request for a hearing, the Secretary promptly shall set a date and time for a hearing. A request for a hearing on a cease and desist order, verbal order, or administrative order issued under this section shall not stay the order.

(e) A person aggrieved by a final action or decision of the Secretary under this section may appeal de novo to the Civil Division of the Superior Court within 30 days of the final decision of the Secretary.

* * * Livestock and Poultry Transport for Slaughter * * *

Sec. 5. 6 V.S.A. § 1461a(c) is amended to read:

(c) Livestock and poultry that are transported to a commercial slaughter facility within the State shall not be removed from the facility without the facility's ~~owner~~ owner's first obtaining written permission from the State Veterinarian. For purposes of this section, arrival of the conveyance onto facility property and the offloading of livestock or poultry constitutes transport to a slaughter facility, regardless of whether the animals have been ~~offloaded~~ ~~or~~ presented for antemortem inspection. The State Veterinarian may require inspection and testing prior to issuing consent for removal.

* * * Farm and Forest Viability * * *

Sec. 6. 6 V.S.A. § 4710 is amended to read:

§ 4710. VERMONT FARM AND FOREST VIABILITY ENHANCEMENT PROGRAM

(a) The Vermont Farm and Forest Viability ~~Enhancement~~ Program is a voluntary program established in the Agency of Agriculture, Food and Markets to provide assistance to Vermont ~~farmers~~ farm, food, and forest-sector businesses to enhance the financial success and long-term viability of Vermont ~~agriculture~~ agricultural and forest sectors. In administering the Program, the Secretary shall:

(1) Collaborate with the Vermont Housing and Conservation Board, to administer the program with other State and federal agencies, private entities, and service groups to develop, coordinate, and provide technical and financial assistance to Vermont farmers farm, food, and forest-sector businesses.

(2) ~~Include teams of~~ Secure and coordinate experts to assist ~~farmers~~ farm, food, and forest-sector business owners in areas such as ~~assessing farm resources and potential~~ business and financial planning, succession planning, diversifying, adopting new technologies, improving product quality, developing value-added products, and lowering costs of production for Vermont's agricultural sector. The ~~teams~~ Providers may include ~~farm~~ business management specialists, University of Vermont Extension professionals,

~~veterinarians~~, and other experts to deliver the ~~informational and technological educational and consulting~~ services.

(3) Encourage agricultural or forest-sector economic development through investing in improvements to essential infrastructure and the promotion of ~~farm~~ businesses in ~~Vermont~~ these sectors.

(4) Enter into agreements with private organizations or individuals or with any agency or instrumentality of the United States or of this State and employ technical experts to carry out the purposes of this section.

(b) ~~The farm viability enhancement program~~ Farm and Forest Viability Program shall be assisted by an advisory board consisting of ~~ten~~ 12 members who shall include:

(1) The Secretary of Agriculture, Food and Markets. The Secretary shall serve as Chair of the Board.

(2) The Commissioner of Forests, Parks and Recreation or designee.

(3) The Commissioner of Economic Development or designee.

~~(3)~~(4) The Manager of the Vermont Economic Development Authority or designee.

~~(4)~~(5) The Director of University of Vermont Extension or designee.

~~(5)~~(6) The Executive Director of the Vermont Housing and Conservation Board or designee.

~~(6)~~(7) Four Vermont ~~farmers~~ agricultural or forest-sector business owners appointed by the Secretary of Agriculture, Food and Markets in consultation with the Vermont Housing and Conservation Board and the Commissioner of Forests, Parks and Recreation. ~~The four farmers shall serve two-year terms, except for the first year, two farmers chosen by the Chair shall serve one-year terms~~ At least two of the four business owners shall be agricultural-sector business owners.

~~(7)~~(8) ~~A person who has~~ Two people who have expertise in agricultural or forest-sector economics, financing, or business ~~planning~~ development appointed by the Secretary of Agriculture, Food and Markets in consultation with the Vermont Housing and Conservation Board and the Commissioner of Forests, Parks and Recreation.

(c) Members of the Advisory Board established in subsection (b) of this section other than ex officio members shall serve up to three two-year terms and shall be entitled to per diem expenses pursuant to 32 V.S.A. § 1010 for each day spent in the performance of their duties, and each such member shall be reimbursed ~~from the fund created by this section~~ for his or her reasonable

expenses incurred in carrying out his or her duties under this section.

(d) In consultation with the Advisory Board, the Secretary of Agriculture, Food and Markets and the Vermont Housing and Conservation Board shall establish ~~grant criteria~~, performance goals, performance measures that demonstrate Program results, and other criteria to implement the Program. The ~~grant~~ criteria shall include at least the following requirements:

~~(1) the application is developed in consultation with the producers who use or would use the Program and will address their needs;~~

~~(2) the use of the funds available to the Program is likely to succeed in improving the economic viability of the farm and the farm's producers business;~~

~~(3)~~(2) the ~~producers are committed~~ enrollees demonstrate commitment to participating in the Program; and

~~(4)~~(3) an evaluation shall be completed by ~~enrolled farmers in conjunction with the teams~~ enrollees.

~~(e)(1) The Farm Viability Enhancement Program Special Fund is established in the State Treasury and shall be administered by the Secretary of Agriculture, Food and Markets in accordance with the provisions of 32 V.S.A. chapter 7, subchapter 5, except that interest earned on the fund shall be retained in the Fund. The Fund shall be used only for the purpose of implementing and effectuating the Farm Viability Enhancement Program established by this section. There shall be deposited in such Fund any monies appropriated by the General Assembly to, or received by, the Secretary of Agriculture, Food and Markets from any other source, public or private. The Fund shall be used only for the purposes of:~~

~~(A) providing funds for the Farm Viability Enhancement Program as established in this section;~~

~~(B) providing funds to enrolled farmers;~~

~~(C) providing funds to service providers for administrative expenses of the program; and~~

~~(D) leveraging other competitive public and private funds, grants, and contributions for the Farm Viability Enhancement Program.~~

~~(2) The Secretary of Agriculture, Food and Markets, the Commissioner of Forests, Parks and Recreation, and the Vermont Housing and Conservation Board, separately or cooperatively, may solicit federal funds, grants, and private contributions for the Farm and Forest Viability Enhancement Program, but any Vermont Housing and Conservation Board funds used for the Farm and Forest Viability Enhancement Program shall be administered in accordance with 10 V.S.A. § 312.~~

~~(f)(1) In collaboration with the Vermont Housing and Conservation Board, the Secretary of Agriculture, Food and Markets and the Commissioner of Forests, Parks and Recreation, the Vermont Housing and Conservation Board shall report in writing to the Senate Committee Committees on Agriculture and on Economic Development, Housing and General Affairs and the House Committee Committees on Agriculture and Forestry and on Commerce and Economic Development on or before January 31 of each year with a report on the activities and performance of the Farm and Forest Viability Enhancement Program. At a minimum, the report shall include an evaluation of the Program utilizing the performance goals and performance measures established in consultation with the Advisory Board under subsection (d) of this section. The report should assess potential demand for the Program over the succeeding three years.~~

~~(2) The Agency of Agriculture, Food and Markets and the Vermont Housing and Conservation Board shall describe in their annual budget submissions plans to develop adequate State, federal, and private funds to carry out this initiative.~~

~~(g)(1) The Agricultural Economic Development Special Account is established as a dedicated sub-account of the Vermont Farm Viability Enhancement Program Special Fund. There shall be deposited in such account any monies:~~

~~(A) appropriated by the General Assembly to the account; and~~

~~(B) received by the State or the Secretary of Agriculture, Food and Markets from any source, public or private, for use for any of the purposes for which the account was established.~~

~~(2) The Fund shall only be used for the purposes of:~~

~~(A) encouraging private investment in the economic initiative; and~~

~~(B) providing incentives for technology businesses, determined by the Agency of Agriculture, Food and Markets to provide critical technological solutions for the growth of Vermont's agricultural economy.~~

~~(3) Assistance from the Agricultural Economic Development Special Account shall be available in order to produce agricultural energy, harvest biomass, convert biomass into energy, or enable installation and usage of wind, solar, or other technology that relies on a resource that is being consumed at a harvest rate at or below its natural regeneration rate pursuant to 30 V.S.A. § 8002(2), including:~~

~~(A) business and technical assistance for research and planning to aid a farmer or a group of farmers in developing business enterprises;~~

~~(B) cost-effective implementation assistance to leverage other sources of capital to assist a farmer or group of farmers in purchasing equipment, technology, or other assistance; and~~

~~(C) business, technical, and implementation assistance to persons that are not farmers for the development and implementation of technology or development of facilities designed to produce agricultural energy, harvest biomass, or convert biomass into energy, provided that the person is working in consultation with a Vermont farm, is creating an enterprise that utilizes Vermont resources, and provides Vermont a significant return on investment and meets any financial and technical criteria established by the Secretary by procedure. [Repealed.]~~

* * * Vermont Trails System; Act 250 * * *

Sec. 7. PURPOSE

The purpose of Sec. 8 of this act is to provide for consistency in the application of 10 V.S.A. chapter 151 (Act 250) to the construction and improvement of trails that are part of the Vermont Trails System under 10 V.S.A. chapter 20.

Sec. 8. 10 V.S.A. § 6001(3) is amended to read:

(3)(A) “Development” means each of the following:

* * *

(v) The construction of improvements on a tract of land involving more than 10 acres that is to be used for municipal, county, or State purposes. In computing the amount of land involved, land shall be included that is incident to the use such as lawns, parking areas, roadways, leaching fields and accessory buildings. Trails recognized as part of the Vermont Trails System under section 443 of this title shall be deemed to be for a State purpose.

* * *

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

* * *

(vi) Vermont Trail System projects. In the case of a construction project for a trail recognized as part of the Vermont Trail System pursuant to section 443 of this title, the computation of land involved shall not include any existing or planned portion of the trail or of the Vermont Trail System unless that portion will be physically altered as part of the project and is on the same tract or tracts of land.

* * * Forest Products Industry; Act 250 * * *

Sec. 9. 10 V.S.A. § 6084 is amended to read:

§ 6084. NOTICE OF APPLICATION; HEARINGS; COMMENCEMENT OF REVIEW

* * *

(g) When an application concerns the construction of improvements for one of the following, the application shall be processed as a minor application in accordance with subsections (b) through (e) of this section:

(1) a sawmill that produces one million board feet or less annually; or

(2) an operation that involves the primary processing of forest products of commercial value and that annually produces:

(A) 1,750 cords or less of firewood or cordwood; or

(B) 5,000 tons or less of bole wood, whole tree chips, or wood pellets.

* * * Forest Products Industry; Wood Energy; Supply * * *

Sec. 10. PUBLIC BUILDINGS; WOOD ENERGY; VERMONT SUPPLIERS; REPORT

(a) On or before December 15, 2018, the Commissioner of Buildings and General Services (Commissioner), in consultation with the Commissioner of Public Service, shall submit a written report and recommendation on the feasibility and impacts of requiring certain public buildings that use wood to produce heat or electricity, or both, to give preference to Vermont suppliers when making fuel supply purchases.

(b) As used in this section, “public building” has the same meaning as in 20 V.S.A. § 2730.

(c) The submission shall include the Commissioner’s specific recommendations as to each of the following categories of public buildings:

(1) schools owned, occupied, or administered by municipalities;

(2) other public buildings owned or occupied by the State of Vermont, counties, municipalities, or other public entities; and

(3) public buildings in Vermont that receive incentives or financing, or both, from the State of Vermont and are not within the category described in subdivisions (1) or (2) of this subsection.

(d) The Commissioner shall submit the report and recommendation to the Senate Committees on Agriculture and on Natural Resources and Energy and

the House Committees on Agriculture and Forestry and on Energy and Technology.

* * * Forestland; Use Value Appraisal * * *

Sec. 11. 32 V.S.A. § 3756 is amended to read:

§ 3756. QUALIFICATION FOR USE VALUE APPRAISAL

(a) The owner of eligible agricultural land, farm buildings, or managed forestland shall be entitled to have eligible property appraised at its use value, provided the owner shall have applied to the Director on or before September 1 of the previous tax year, on a form approved by the Board and provided by the Director. A farmer, whose application has been accepted on or before December 31 by the Director of the Division of Property Valuation and Review of the Department of Taxes for enrollment for the use value program for the current tax year, shall be entitled to have eligible property appraised at its use value, if he or she was prevented from applying on or before September 1 of the previous year due to the severe illness of the farmer.

* * *

~~(i)(1) After providing 30 days' notice to the owner, the Director shall remove from use value appraisal an entire parcel of managed forestland and notify the owner when the Commissioner of Forests, Parks and Recreation has not received a required management activity report or has received an adverse inspection report, unless the lack of conformance consists solely of the failure to make prescribed planned cutting. In that case, the Director may delay removal from use value appraisal for a period of one year at a time to allow time to bring the parcel into conformance with the plan.~~

~~(2)(A)~~ The Director shall remove from use value appraisal an entire parcel or parcels of agricultural land and farm buildings identified by the Secretary of Agriculture, Food and Markets as being used by a person:

~~(i)(A)~~ found, after administrative hearing, or contested judicial hearing or motion, to be in violation of water quality requirements established under 6 V.S.A. chapter 215, or any rules adopted or any permit or certification issued under 6 V.S.A. chapter 215; or

~~(ii)(B)~~ who is not in compliance with the terms of an administrative or court order issued under 6 V.S.A. chapter 215, subchapter 10 to remedy a violation of the requirements of 6 V.S.A. chapter 215 or any rules adopted or any permit or certification issued under 6 V.S.A. chapter 215.

~~(B)(2)~~ The Director shall notify the owner that agricultural land or a farm building has been removed from use value appraisal by mailing notification of removal to the owner or operator's last and usual place of

abode. After removal of agricultural land or a farm building from use value appraisal under this section, the Director shall not consider a new application for use value appraisal for the agricultural land or farm building until the Secretary of Agriculture, Food and Markets submits to the Director a certification that the owner or operator of the agricultural land or farm building is complying with the water quality requirements of 6 V.S.A. chapter 215 or an order issued under 6 V.S.A. chapter 215. After submission of a certification by the Secretary of Agriculture, Food and Markets, an owner or operator shall be eligible to apply for enrollment of the agricultural land or farm building according to the requirements of this section.

* * *

(k)(1) As used in this subsection:

(A) “Contiguous” means touching, bordering, or adjoining along the boundary of a property. Properties that would be contiguous if except for separation by a roadway, railroad, or other public easement shall be considered contiguous.

(B) “Parcel” shall have the same meaning as in section 4152 of this title.

(2) After providing 30 days’ notice to the owner, the Director shall remove from use value appraisal an entire parcel of contiguous managed forestland and notify the owner when the Commissioner of Forests, Parks and Recreation has not received a required management activity report or has received an adverse inspection report on greater than one percent of enrolled forestland on a parcel, unless the lack of conformance consists solely of the failure to make prescribed planned cutting. In that case, the Director may delay removal from use value appraisal for a period of one year at a time to allow opportunity to bring the parcel into conformance with the plan. When the Director receives an adverse inspection report documenting violations on less than or equal to one percent of forestland on a parcel, the forestland enrolled in the municipality in which the violation occurred shall be removed from use value appraisal, unless the lack of conformance consists solely of the failure to make a prescribed planned cutting under a forest management plan. If a violation consists solely of failure to make a prescribed planned cutting, the Director may delay removal of a parcel of forestland from use value appraisal for a period of one year at a time to allow the owner of the parcel opportunity to bring the parcel into conformance with its forest management plan.

Sec. 12. 32 V.S.A. § 3755(d) is amended to read:

(d) After managed forestland has been removed from use value appraisal due to an adverse inspection report under ~~subdivision 3756(i)(1)~~ subsection 3756(k) of this title, a new application for use value appraisal shall not be considered for a period of five years, and then shall be approved by the Department of Forests, Parks and Recreation only if a compliance report has been filed with the new application, certifying that appropriate measures have been taken to bring the parcel into compliance with minimum acceptable standards for forest or conservation management.

* * * Energy Efficiency; Efficiency Charge * * *

Sec. 13. 30 V.S.A. § 209 is amended to read:

§ 209. JURISDICTION; GENERAL SCOPE

* * *

(d) Energy efficiency.

* * *

(3) Energy efficiency charge; regulated fuels. In addition to its existing authority, the Commission may establish by order or rule a volumetric charge to customers for the support of energy efficiency programs that meet the requirements of section 218c of this title, with due consideration to the State's energy policy under section 202a of this title and to its energy and economic policy interests under section 218e of this title to maintain and enhance the State's economic vitality. The charge shall be known as the energy efficiency charge, shall be shown separately on each customer's bill, and shall be paid to a fund administrator appointed by the Commission and deposited into the Electric Efficiency Fund. When such a charge is shown, notice as to how to obtain information about energy efficiency programs approved under this section shall be provided in a manner directed by the Commission. This notice shall include, at a minimum, a toll-free telephone number, and to the extent feasible shall be on the customer's bill and near the energy efficiency charge.

* * *

(B) The charge established by the Commission pursuant to this subdivision (3) shall be in an amount determined by the Commission by rule or order that is consistent with the principles of least-cost integrated planning as defined in section 218c of this title.

(i) As circumstances and programs evolve, the amount of the charge shall be reviewed for unrealized energy efficiency potential and shall be adjusted as necessary in order to realize all reasonably available, cost-effective energy efficiency savings.

(ii) In setting the amount of the charge and its allocation, the Commission shall determine an appropriate balance among the following objectives; provided, however, that particular emphasis shall be accorded to the first four of these objectives: reducing the size of future power purchases; reducing the generation of greenhouse gases; limiting the need to upgrade the State's transmission and distribution infrastructure; minimizing the costs of electricity; reducing Vermont's total energy demand, consumption, and expenditures; providing efficiency and conservation as a part of a comprehensive resource supply strategy; providing the opportunity for all Vermonters to participate in efficiency and conservation programs; and targeting efficiency and conservation efforts to locations, markets, or customers where they may provide the greatest value.

(iii) The Commission, by rule or order, shall establish a process by which a customer ~~who pays an average annual energy efficiency charge under this subdivision (3) of at least \$5,000.00~~ may apply to the Commission to self-administer energy efficiency through the use of an energy savings account which shall contain a percentage of the customer's energy efficiency charge payments as determined by the Commission. The remaining portion of the charge shall be used for systemwide energy benefits. The Commission in its rules or order shall establish criteria for approval of these applications. A customer shall be eligible for an energy savings account if one of the following applies:

(I) The customer pays an average annual energy efficiency charge under this subdivision (3)(B)(iii) of at least \$5,000.00.

(II) The served premises of the customer are located in an industrial park in a rural area. As used in this subdivision (II):

(aa) "Industrial park" means an area of land permitted as an industrial park under 10 V.S.A. chapter 151 or under 24 V.S.A. chapter 117, or under both.

(bb) "Rural area" means a county of the State designated as "rural" or "mostly rural" by the U.S. Census Bureau in its most recent decennial census.

* * *

(e) Thermal energy and process fuel efficiency funding.

* * *

(2) If a program combines regulated fuel efficiency services with unregulated fuel efficiency services supported by funds under this section, the Commission shall allocate the costs of the program among the funding sources for the regulated and unregulated fuel sectors in proportion to the benefits provided to each sector.

* * *

(f) Goals and criteria; all energy efficiency programs. With respect to all energy efficiency programs approved under this section, the Commission shall:

(1) Ensure that all retail consumers, regardless of retail electricity, gas, or heating or process fuel provider or of household income, will have an opportunity to participate in and benefit from a comprehensive set of cost-effective energy efficiency programs and initiatives designed to overcome barriers to participation. To further this goal, the Commission shall require that a percentage of energy efficiency funds be used to deliver energy efficiency programs to customers with household incomes below 80 percent of the statewide median income, as defined by the U.S. Department of Housing and Urban Development, and the requirements of subdivision (e)(2) of this section shall not apply to such delivery.

* * *

* * * Sales and Use Tax; Advanced Wood Boilers * * *

Sec. 14. 32 V.S.A. § 9701 is amended to read:

§ 9701. DEFINITIONS

Unless the context in which they occur requires otherwise, the following terms when used in this chapter mean:

* * *

(54) “Noncollecting vendor” means a vendor that sells tangible personal property or services to purchasers who are not exempt from the sales tax under this chapter, but that does not collect the Vermont sales tax.

(55) “Advanced wood boiler” means a boiler or furnace:

(A) installed as a primary central heating system;

(B) rated as high-efficiency, meaning a higher heating value or gross calorific value of 85 percent or more;

(C) containing at least one week fuel-storage, automated startup and shutdown, and fuel feed; and

(D) meeting other efficiency and air emissions standards established by the Department of Environmental Conservation.

Sec. 15. 32 V.S.A. § 9741 is amended to read:

§ 9741. SALES NOT COVERED

Retail sales and use of the following shall be exempt from the tax on retail sales imposed under section 9771 of this title and the use tax imposed under section 9773 of this title.

* * *

(52) Advanced wood boilers, as defined in section 9701 of this title, whether for residential or commercial use.

Sec. 16. 32 V.S.A. § 9706(II) is added to read:

(II) The statutory purpose of the exemption for advanced wood boilers in subdivision 9741(52) of this title is to promote the forest products industry in Vermont by encouraging the purchase of modern wood heating systems.

* * * Effective Dates * * *

Sec. 17. EFFECTIVE DATES

(a) This section and Secs. 1–4 (produce inspection), 5 (livestock transfer), 7–8 (Act 250 trails designation), and 9 (Act 250 minor application; small sawmills) shall take effect on passage.

(b) All other sections shall take effect on July 1, 2018.

(Committee vote: 5-0-0)

(No House amendments)

Reported favorably with recommendation of proposal of amendment by Senator Bray for the Committee on Natural Resources and Energy.

The Committee recommends 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:

* * * Produce Inspection * * *

Sec. 1. 6 V.S.A. § 21(b) is amended to read:

(b) The Secretary shall have the authority to:

(1) respond to and remediate incidences of mass animal death, agricultural structure fires, or other emergencies on a farm in order to prevent a public health hazard;

(2) condemn, confiscate, or establish restrictions on the use, sale, or distribution of adulterated raw agricultural commodities or animal feed; and

(3) cooperate with the Department of Health and other State and federal agencies regarding:

(A) the prevention or remediation of the adulteration of raw agricultural commodities, food, or animal feed on farms; and

(B) application of the FDA Food Safety Modernization Act, 21 U.S.C. §§ 2201-2252 Pub. L. No. 111-353, to farms, farm products, or value-added products produced in the State.

Sec. 2. 6 V.S.A. § 852 is amended to read:

§ 852. ~~AUTHORITY; ENFORCEMENT~~

(a) The Secretary may enforce in the State the requirements of:

(1) ~~the rules adopted under the federal U.S. Food and Drug Administration Food Safety Modernization Act, Public Law No. 111-353, for standards for growing, harvesting, packing, and holding of produce for human consumption~~ Standards for Growing, Harvesting, Packing, and Holding of Produce for Human Consumption, 21 C.F.R. part 112; and

(2) the rules adopted under this chapter.

(b) The Agency may collaborate with the ~~Vermont~~ Department of Health regarding application of the ~~federal Food Safety Modernization Act and the rules adopted thereunder~~ U.S. Food and Drug Administration Food Safety Modernization Act, Standards for Growing, Harvesting, Packing, and Holding of Produce for Human Consumption, 21 C.F.R. part 112, and application of the rules adopted under this chapter.

(c) The Secretary shall carry out the provisions of this chapter using:

(1) monies appropriated to the Agency by the federal government for the purpose of administering the federal Food Safety Modernization Act and the rules adopted thereunder;

(2) monies appropriated to the Agency by the State for the purpose of administering this chapter; and

(3) other gifts, bequests, and donations by private entities for the purposes of administering this chapter.

Sec. 3. 6 V.S.A. § 853 is amended to read:

§ 853. FARM INSPECTIONS

(a)(1) The Secretary may inspect a produce farm during reasonable hours for the purposes of ensuring compliance with:

(A) the federal standards for growing, harvesting, packing, and holding of produce for human consumption, as adopted under 21 C.F.R. part 112; or

(B) the rules adopted under this chapter.

(2) This section shall not limit the Secretary's authority to respond to an emergency in order to prevent a public health hazard under section 21 of this title.

~~(b) After inspection, the Secretary may issue an inspection certificate that shall include the date and place of inspection along with any other pertinent~~

~~facts that the Secretary may require.~~

(e) The Secretary may coordinate with other State agencies and organizations to carry out inspections at or near the same time on a given produce farm.

Sec. 4. 6 V.S.A. §§ 856 and 857 are added to read:

§ 856. ENFORCEMENT; CORRECTIVE ACTIONS

When the Secretary of Agriculture, Food and Markets determines that a person is violating the rules listed in section 852 of this title, the Secretary may issue a written warning that shall be served in person or by certified mail, return receipt requested. A warning issued under this section shall include:

- (1) a description of the alleged violation;
- (2) identification of this section;
- (3) identification of the applicable rule violated; and
- (4) the required corrective action that the person shall take to correct the violation.

§ 857. ENFORCEMENT; ADMINISTRATIVE ORDERS

(a) Notwithstanding the requirements of section 856 of this title, the Secretary at any time may pursue one or more of the following:

(1) issue a cease and desist order in accordance to a person the Secretary believes to be in violation of the rules listed in section 852 of this title;

(2) issue a verbal order or written administrative order to protect public health, including orders for the stop sale, recall, embargo, destruction, quarantine, and release of produce, when:

(A) the U.S. Food and Drug Administration requires immediate State action; or

(B) an alleged violation, activity, or farm practice presents an immediate threat to the public health or welfare;

(3) order mandatory corrective actions;

(4) take any action authorized under chapter 1 of this title;

(5) seek administrative or civil penalties in accordance with the requirements of section 15, 16, or 17 of this title.

(b) When the Secretary of Agriculture, Food and Markets issues a cease and desist order, written administrative order, or required corrective action under subsection (a) of this section, the Secretary shall provide the person subject to the order or corrective action with a statement that the order or

corrective action is effective upon receipt and the person has 15 days from the date the order or corrective action was issued to request a hearing.

(c) If the Secretary of Agriculture, Food and Markets issues a verbal order under this section, the Secretary shall issue written notice to the person subject to the order within five days of the issuance of the verbal order. The written notice shall include a statement that the person has 15 days from the date the written notice was received to request a hearing.

(d) If a person who receives a cease and desist order, a verbal order, an administrative order, or a mandatory corrective action under this section does not request in writing a hearing within 15 days of receipt of the order or within 15 days of written notice for a verbal order, the person's right to a hearing is waived. Upon receipt of a written request for a hearing, the Secretary promptly shall set a date and time for a hearing. A request for a hearing on a cease and desist order, verbal order, or administrative order issued under this section shall not stay the order.

(e) A person aggrieved by a final action or decision of the Secretary under this section may appeal de novo to the Civil Division of the Superior Court within 30 days of the final decision of the Secretary.

* * * Livestock and Poultry Transport for Slaughter * * *

Sec. 5. 6 V.S.A. § 1461a(c) is amended to read:

(c) Livestock and poultry that are transported to a commercial slaughter facility within the State shall not be removed from the facility without the facility's ~~owner~~ owner's first obtaining written permission from the State Veterinarian. For purposes of this section, arrival of the conveyance onto facility property and the offloading of livestock or poultry constitutes transport to a slaughter facility, regardless of whether the animals have been offloaded ~~or~~ presented for antemortem inspection. The State Veterinarian may require inspection and testing prior to issuing consent for removal.

* * * Farm and Forest Viability * * *

Sec. 6. 6 V.S.A. § 4710 is amended to read:

§ 4710. VERMONT FARM AND FOREST VIABILITY ~~ENHANCEMENT~~ PROGRAM

(a) The Vermont Farm and Forest Viability ~~Enhancement~~ Program is a voluntary program established in the Agency of Agriculture, Food and Markets to provide assistance to Vermont farmers farm, food, and forest-sector businesses to enhance the financial success and long-term viability of Vermont ~~agriculture~~ agricultural and forest sectors. In administering the Program, the Secretary shall:

(1) Collaborate with the Vermont Housing and Conservation Board, to administer the program with other State and federal agencies, private entities, and service groups to develop, coordinate, and provide technical and financial assistance to Vermont farmers farm, food, and forest-sector businesses.

(2) ~~Include teams of~~ Secure and coordinate experts to assist ~~farmers farm, food, and forest-sector business owners~~ in areas such as assessing farm resources and potential business and financial planning, succession planning, diversifying, adopting new technologies, improving product quality, developing value-added products, and lowering costs of production for Vermont's agricultural sector. ~~The teams~~ Providers may include ~~farm~~ business management specialists, University of Vermont Extension professionals, ~~veterinarians,~~ and other experts to deliver the ~~informational and technological educational and consulting services.~~

(3) Encourage agricultural or forest-sector economic development through investing in improvements to essential infrastructure and the promotion of ~~farm~~ businesses in ~~Vermont~~ these sectors.

(4) Enter into agreements with private organizations or individuals or with any agency or instrumentality of the United States or of this State and employ technical experts to carry out the purposes of this section.

(b) ~~The farm viability enhancement program~~ Farm and Forest Viability Program shall be assisted by an advisory board consisting of ~~ten~~ 12 members who shall include:

(1) The Secretary of Agriculture, Food and Markets. The Secretary shall serve as Chair of the Board.

(2) The Commissioner of Forests, Parks and Recreation or designee.

(3) The Commissioner of Economic Development or designee.

~~(3)~~(4) The Manager of the Vermont Economic Development Authority or designee.

~~(4)~~(5) The Director of University of Vermont Extension or designee.

~~(5)~~(6) The Executive Director of the Vermont Housing and Conservation Board or designee.

~~(6)~~(7) Four Vermont farmers agricultural or forest-sector business owners appointed by the Secretary of Agriculture, Food and Markets in consultation with the Vermont Housing and Conservation Board and the Commissioner of Forests, Parks and Recreation. The four farmers shall serve two-year terms, except for the first year, two farmers chosen by the Chair shall serve one-year terms. At least two of the four business owners shall be agricultural-sector business owners.

~~(7)~~(8) A person who has Two people who have expertise in agricultural or forest-sector economics, financing, or business planning development appointed by the Secretary of Agriculture, Food and Markets in consultation with the Vermont Housing and Conservation Board and the Commissioner of Forests, Parks and Recreation.

(c) Members of the Advisory Board established in subsection (b) of this section other than ex officio members shall serve up to three two-year terms and shall be entitled to per diem expenses pursuant to 32 V.S.A. § 1010 for each day spent in the performance of their duties, and each such member shall be reimbursed ~~from the fund created by this section~~ for his or her reasonable expenses incurred in carrying out his or her duties under this section.

(d) In consultation with the Advisory Board, the Secretary of Agriculture, Food and Markets and the Vermont Housing and Conservation Board shall establish ~~grant criteria~~, performance goals, performance measures that demonstrate Program results, and other criteria to implement the Program. The ~~grant~~ criteria shall include at least the following requirements:

(1) ~~the application is developed in consultation with the producers who use or would use the Program and will address their needs;~~

(2) ~~the use of the funds available to the Program is likely to succeed in improving the economic viability of the farm and the farm's producers business;~~

~~(3)~~(2) the producers are committed enrollees demonstrate commitment to participating in the Program; and

~~(4)~~(3) an evaluation shall be completed by enrolled farmers in conjunction with the teams enrollees.

~~(e)(1) The Farm Viability Enhancement Program Special Fund is established in the State Treasury and shall be administered by the Secretary of Agriculture, Food and Markets in accordance with the provisions of 32 V.S.A. chapter 7, subchapter 5, except that interest earned on the fund shall be retained in the Fund. The Fund shall be used only for the purpose of implementing and effectuating the Farm Viability Enhancement Program established by this section. There shall be deposited in such Fund any monies appropriated by the General Assembly to, or received by, the Secretary of Agriculture, Food and Markets from any other source, public or private. The Fund shall be used only for the purposes of:~~

~~(A) providing funds for the Farm Viability Enhancement Program as established in this section;~~

~~(B) providing funds to enrolled farmers;~~

~~(C) providing funds to service providers for administrative expenses of the program; and~~

~~(D) leveraging other competitive public and private funds, grants, and contributions for the Farm Viability Enhancement Program.~~

~~(2) The Secretary of Agriculture, Food and Markets, the Commissioner of Forests, Parks and Recreation, and the Vermont Housing and Conservation Board, separately or cooperatively, may solicit federal funds, grants, and private contributions for the Farm and Forest Viability Enhancement Program, but any Vermont Housing and Conservation Board funds used for the Farm and Forest Viability Enhancement Program shall be administered in accordance with 10 V.S.A. § 312.~~

~~(f)(1) In collaboration with the Vermont Housing and Conservation Board, the Secretary of Agriculture, Food and Markets and the Commissioner of Forests, Parks and Recreation, the Vermont Housing and Conservation Board shall report in writing to the Senate Committee Committees on Agriculture and on Economic Development, Housing and General Affairs and the House Committee Committees on Agriculture and Forestry and on Commerce and Economic Development on or before January 31 of each year with a report on the activities and performance of the Farm and Forest Viability Enhancement Program. At a minimum, the report shall include an evaluation of the Program utilizing the performance goals and performance measures established in consultation with the Advisory Board under subsection (d) of this section. The report should assess potential demand for the Program over the succeeding three years.~~

~~(2) The Agency of Agriculture, Food and Markets and the Vermont Housing and Conservation Board shall describe in their annual budget submissions plans to develop adequate State, federal, and private funds to carry out this initiative.~~

~~(g)(1) The Agricultural Economic Development Special Account is established as a dedicated sub-account of the Vermont Farm Viability Enhancement Program Special Fund. There shall be deposited in such account any monies:~~

~~(A) appropriated by the General Assembly to the account; and~~

~~(B) received by the State or the Secretary of Agriculture, Food and Markets from any source, public or private, for use for any of the purposes for which the account was established.~~

~~(2) The Fund shall only be used for the purposes of:~~

~~(A) encouraging private investment in the economic initiative; and~~

~~(B) providing incentives for technology businesses, determined by the Agency of Agriculture, Food and Markets to provide critical technological solutions for the growth of Vermont's agricultural economy.~~

~~(3) Assistance from the Agricultural Economic Development Special Account shall be available in order to produce agricultural energy, harvest biomass, convert biomass into energy, or enable installation and usage of wind, solar, or other technology that relies on a resource that is being consumed at a harvest rate at or below its natural regeneration rate pursuant to 30 V.S.A. § 8002(2), including:~~

~~(A) business and technical assistance for research and planning to aid a farmer or a group of farmers in developing business enterprises;~~

~~(B) cost-effective implementation assistance to leverage other sources of capital to assist a farmer or group of farmers in purchasing equipment, technology, or other assistance; and~~

~~(C) business, technical, and implementation assistance to persons that are not farmers for the development and implementation of technology or development of facilities designed to produce agricultural energy, harvest biomass, or convert biomass into energy, provided that the person is working in consultation with a Vermont farm, is creating an enterprise that utilizes Vermont resources, and provides Vermont a significant return on investment and meets any financial and technical criteria established by the Secretary by procedure. [Repealed.]~~

* * * Nutrient Management Plans * * *

Sec. 7. 6 V.S.A. § 4817 is added to read:

§ 4817. NUTRIENT MANAGEMENT PLAN; REPORTING

Annually, an owner or operator of a large farm, medium farm, or small farm subject to small farm certification shall submit to the Secretary a digital or electronic copy of the nutrient management plan required under this chapter. A nutrient management plan submitted by an owner or operator of a farm under this section shall identify the known location of outfalls of subsurface tile drainage installed on the farm.

Sec. 8. SCHEDULE; SUBMISSION OF NUTRIENT MANAGEMENT PLAN

An owner or operator of a farm subject to the nutrient management plan reporting requirements of 6 V.S.A. § 4817 shall initiate submission of the nutrient management plan according to the following schedule:

(1) the owner or operator of a large farm, beginning on February 15, 2019 and annually thereafter;

(2) the owner or operator of a medium farm, beginning on April 30, 2019 and annually thereafter; and

(3) the owner or operator of a small farm subject to certification, beginning on January 31, 2021 and annually thereafter.

* * * Forest Habitat * * *

Sec. 9. 10 V.S.A. § 6001(38)–(42) are added to read:

(38) “Forest block” means a contiguous area of forest in any stage of succession and not currently developed for nonforest use that is mapped as an interior forest block within the 2016 interior forest block dataset created as part of resource mapping under section 127 of this title, as that dataset may be updated pursuant to procedures developed in accordance with that section. A forest block may include recreational trails, wetlands, or other natural features that do not themselves possess tree cover, and improvements constructed for farming, logging, or forestry purposes.

(39) “Fragmentation” means the division or conversion of a forest block or habitat connector by the separation of a parcel into two or more parcels; the construction, conversion, relocation, or enlargement of any building or other structure, or of any mining, excavation, or landfill; and any change in the use of any building or other structure, or land, or extension of use of land. However, fragmentation does not include the division or conversion of a forest block or habitat connector by a recreational trail or by improvements constructed for farming, logging, or forestry purposes below the elevation of 2,500 feet.

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

(41) “Habitat connector” refers to land or water, or both, that links patches of habitat within a landscape, allowing the movement, migration, and dispersal of animals and plants and the functioning of ecological processes. A habitat connector may include recreational trails and improvements constructed for farming, logging, or forestry purposes.

(42) As used in subdivisions (38), (39), and (41) of this section, “recreational trail” means a corridor that is not paved, and that is used for recreational purposes, including hiking, walking, bicycling, cross-country skiing, snowmobiling, all-terrain vehicle riding, and horseback riding.

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

§ 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

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

* * *

(8) Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, or rare and irreplaceable natural areas.

(A) Necessary wildlife habitat and endangered species. A permit will not be granted if it is demonstrated by any party opposing the applicant that a development or subdivision will destroy or significantly imperil necessary wildlife habitat or any endangered species; and

(i) the economic, social, cultural, recreational, or other benefit to the public from the development or subdivision will not outweigh the economic, environmental, or recreational loss to the public from the destruction or imperilment of the habitat or species; or

(ii) all feasible and reasonable means of preventing or lessening the destruction, diminution, or imperilment of the habitat or species have not been or will not continue to be applied; or

(iii) a reasonably acceptable alternative site is owned or controlled by the applicant which would allow the development or subdivision to fulfill its intended purpose.

(B) Forest blocks.

(i) A permit will not be granted for a development or subdivision within or partially within a forest block unless the applicant demonstrates that:

(I) the development or subdivision will avoid fragmentation of the forest block through the design of the project or the location of project improvements, or both;

(II) it is not feasible to avoid fragmentation of the forest block and the design of the development or subdivision minimizes fragmentation of the forest block; or

(III) it is not feasible to avoid or minimize fragmentation of the forest block and the applicant will mitigate the fragmentation in accordance with section 6094 of this title.

(ii) Methods for avoiding or minimizing the fragmentation of a forest block may include:

(I) Locating buildings and other improvements and operating the project in a manner that avoids or minimizes incursion into and disturbance of the forest block, including clustering of buildings and associated improvements.

(II) Designing roads, driveways, and utilities that serve the development or subdivision to avoid or minimize fragmentation of the forest

block. Such design may be accomplished by following or sharing existing features on the land such as roads, tree lines, stonewalls, and fence lines.

(C) Habitat connectors.

(i) A permit will not be granted for a development or subdivision unless the applicant demonstrates that:

(I) the development or subdivision will avoid fragmentation of a habitat connector through the design of the project or the location of project improvements, or both;

(II) it is not feasible to avoid fragmentation of the habitat connector and the design of the development or subdivision minimizes fragmentation of the connector; or

(III) it is not feasible to avoid or minimize fragmentation of the habitat connector and the applicant will mitigate the fragmentation in accordance with section 6094 of this title.

(ii) Methods for avoiding or minimizing the fragmentation of a habitat connector may include:

(I) locating buildings and other improvements at the farthest feasible location from the center of the connector;

(II) designing the location of buildings and other improvements to leave the greatest contiguous portion of the area undisturbed in order to facilitate wildlife travel through the connector; or

(III) when there is no feasible site for construction of buildings and other improvements outside the connector, designing the buildings and improvements to facilitate the continued viability of the connector for use by wildlife.

* * *

Sec. 11. 10 V.S.A. § 6088 is amended to read:

§ 6088. BURDEN OF PROOF

(a) The burden shall be on the applicant with respect to subdivisions 6086(a)(1), (2), (3), (4), (8)(B) and (C), (9), and (10) of this title.

(b) The Except for subdivisions 6086(a)(8)(B) and (C) of this title, the burden shall be on any party opposing the applicant with respect to subdivisions 6086(a)(5) through (8) of this title to show an unreasonable or adverse effect.

Sec. 12. 10 V.S.A. § 6094 is added to read:

§ 6094. MITIGATION OF FOREST BLOCKS AND HABITAT CONNECTORS

(a) A District Commission may consider a proposal to mitigate, through compensation, the fragmentation of a forest block or habitat connector if the applicant demonstrates that it is not feasible to avoid or minimize fragmentation of the block or connector in accordance with the respective requirements of subdivision 6086(a)(8)(B) or (C) of this title. A District Commission may approve the proposal only if it finds that the proposal will meet the requirements of the rules adopted under this section and will preserve a forest block or habitat connector of similar quality and character to the block or connector affected by the development or subdivision.

(b) The Natural Resources Board, in consultation with the Secretary of Natural Resources, shall adopt rules governing mitigation under this section.

(1) The rules shall state the acreage ratio of forest block or habitat connector to be preserved in relation to the block or connector affected by the development or subdivision.

(2) Compensation measures to be allowed under the rules shall be based on the ratio of land developed pursuant to subdivision (1) of this subsection and shall include:

(A) Preservation of a forest block or habitat connector of similar quality and character to the block or connector that the development or subdivision will affect.

(B) Deposit of an offsite mitigation fee into the Vermont Housing and Conservation Trust Fund under section 312 of this title.

(i) This mitigation fee shall be derived as follows:

(I) Determine the number of acres of forest block or habitat connector, or both, affected by the proposed development or subdivision.

(II) Multiply this number of affected acres by the ratio set forth in the rules.

(III) Multiply the resulting product by a “price-per-acre” value, which shall be based on the amount that the Commissioner of Forests, Parks and Recreation determines to be the recent, per-acre cost to acquire conservation easements for forest blocks and habitat connectors of similar quality and character in the same geographic region as the proposed development or subdivision.

(ii) The Vermont Housing Conservation Board shall use such a fee to preserve a forest block or habitat connector of similar quality and character to the block or connector affected by the development or subdivision.

(C) Such other compensation measures as the rules may authorize.

(c) The mitigation of impact on a forest block or a habitat connector, or both, shall be structured also to mitigate the impacts, under the criteria of subsection 6086(a) of this title other than subdivisions (8)(B) and (C), to land or resources within the block or connector.

(d) All forest blocks and habitat connectors preserved pursuant to this section shall be protected by permanent conservation easements that grant development rights and include conservation restrictions and are conveyed to a qualified holder, as defined in section 821 of this title, with the ability to monitor and enforce easements in perpetuity.

Sec. 13. RULE ADOPTION: SCHEDULE; GUIDANCE

(a) Rulemaking.

(1) On or before September 1, 2018, the Natural Resources Board (NRB) shall file proposed rules with the Secretary of State to implement Sec. 12 of this act, 10 V.S.A. § 6094.

(2) On or before March 1, 2019, the NRB shall finally adopt rules to implement Sec. 12 of this act, 10 V.S.A. § 6094, unless such deadline is extended by the Legislative Committee on Administrative Rules pursuant to 3 V.S.A. § 843(c).

(b) Guidance.

(1) On or before May 1, 2019, the NRB shall develop guidance for the District Commissions, applicants, and other affected persons with respect to:

(A) the forest block and habitat connector criteria adopted under Sec. 10 of this act, 10 V.S.A. § 6086(a)(8)(B) and (C); and

(B) designing recreational trails, subdivisions, and developments to minimize impacts in a manner that complies with those criteria.

(2) The NRB shall develop this guidance in collaboration with the Agency of Natural Resources (ANR). As part of developing this guidance, the NRB shall solicit input from affected parties and the public, including planners, developers, municipalities, environmental advocacy organizations, regional planning commissions, regional development corporations, and business advocacy organizations such as State and regional chambers of commerce.

Sec. 14. 10 V.S.A. § 127 is amended to read:

§ 127. RESOURCE MAPPING

(a) ~~On or before January 15, 2013, the~~ The Secretary of Natural Resources (Secretary) shall complete and maintain resource mapping based on the Geographic Information System (GIS) or other technology. The mapping shall identify natural resources throughout the State, including forest blocks, that may be relevant to the consideration of energy projects and projects subject to chapter 151 of this title. The Center for Geographic Information shall be available to provide assistance to the Secretary in carrying out the ~~GIS-based~~ resource mapping.

(b) ~~The Secretary of Natural Resources~~ shall consider the ~~GIS-based~~ resource maps developed under subsection (a) of this section when providing evidence and recommendations to the ~~Public Service Board~~ Utility Commission under 30 V.S.A. § 248(b)(5) and when commenting on or providing recommendations under chapter 151 of this title to District Commissions on other projects.

(c) The Secretary shall establish and maintain written procedures that include a process and science-based criteria for updating resource maps developed under subsection (a) of this section. Before establishing or revising these procedures, the Secretary shall provide an opportunity for affected parties and the public to submit relevant information and recommendations.

Sec. 15. 24 V.S.A. § 4303 is amended to read:

§ 4303. DEFINITIONS

The following definitions shall apply throughout this chapter unless the context otherwise requires:

* * *

(34) As used in subdivisions 4348a(a)(2) and 4382(a)(2) of this title:

(A) “Forest block” means a contiguous area of forest in any stage of succession and not currently developed for nonforest use. A forest block may include recreational trails, wetlands, or other natural features that do not themselves possess tree cover, and uses exempt from regulation under subsection 4413(d) of this title.

(35)(B) “Forest fragmentation” means the division or conversion of a forest block by land development other than by a recreational trail or use exempt from regulation under subsection 4413(d) of this title.

(36)(C) “Habitat connector” means land or water, or both, that links patches of wildlife habitat within a landscape, allowing the movement, migration, and dispersal of animals and plants and the functioning of ecological processes. A habitat connector may include recreational trails and uses exempt from regulation under subsection 4413(d) of this title. In a plan

or other document issued pursuant to this chapter, a municipality or regional plan commission may use the phrase “wildlife corridor” in lieu of “habitat connector.”

~~(37)~~(35) ~~“Recreational~~ As used in subdivision (34) of this section, “recreational trail” means a corridor that is not paved and that is used for hiking, walking, bicycling, cross-country skiing, snowmobiling, all-terrain vehicle riding, horseback riding, and other similar recreational activity.

* * * Forest Products Industry; Act 250 * * *

Sec. 16. 10 V.S.A. § 6084 is amended to read:

§ 6084. NOTICE OF APPLICATION; HEARINGS; COMMENCEMENT OF REVIEW

* * *

(g) When an application concerns the construction of improvements for one of the following, the application shall be processed as a minor application in accordance with subsections (b) through (e) of this section:

(1) a sawmill that produces three and one-half million board feet or less annually; or

(2) an operation that involves the primary processing of forest products of commercial value and that annually produces:

(A) 3,500 cords or less of firewood or cordwood; or

(B) 10,000 tons or less of bole wood, whole tree chips, or wood pellets.

* * * Report; Harvest Notification; Trip Tickets * * *

Sec. 17. REPORT; HARVEST NOTIFICATION; TRIP TICKETS

(a) On or before January 15, 2019, the Commissioner of Forests, Parks and Recreation shall submit a written report with analysis and recommendations on each of the following:

(1) whether to require a landowner on whose property timber harvest is to take place to file a harvest notification with the State of Vermont;

(2) whether to require trip tickets for loads of forest products when transported from the location of a timber harvest to the location of first measurement or when transported after first measurement, or both; and

(3) whether to require sawmills and other operations that involve the primary processing of forest products of commercial value to report annually the quantity of forest products processed.

(b) For each potential requirement described in subsection (a) of this section, the Commissioner shall include recommendations on how to implement the requirement, should the General Assembly decide to adopt the requirement.

(c) Prior to submitting the report, the Commissioner shall offer an opportunity for the public to submit relevant information and recommendations.

(d) The Commissioner shall submit the report to the House Committees on Agriculture and Forest Products and on Natural Resources, Fish, and Wildlife and the Senate Committees on Agriculture and on Natural Resources and Energy.

(e) In preparing the report, the Commissioner may use and build on prior relevant reports and submissions to the General Assembly.

* * * Forest Products Industry; Wood Energy; Supply * * *

Sec. 18. PUBLIC BUILDINGS; WOOD ENERGY; VERMONT SUPPLIERS; REPORT

(a) On or before December 15, 2018, the Commissioner of Buildings and General Services (Commissioner), in consultation with the Commissioner of Public Service, shall submit a written report and recommendation on the feasibility and impacts of requiring certain public buildings that use wood to produce heat or electricity, or both, to give preference to Vermont suppliers when making fuel supply purchases.

(b) As used in this section, “public building” has the same meaning as in 20 V.S.A. § 2730.

(c) The submission shall include the Commissioner’s specific recommendations as to each of the following categories of public buildings:

(1) schools owned, occupied, or administered by municipalities;

(2) other public buildings owned or occupied by the State of Vermont, counties, municipalities, or other public entities; and

(3) public buildings in Vermont that receive incentives or financing, or both, from the State of Vermont and are not within the category described in subdivision (1) or (2) of this subsection.

(d) The Commissioner shall submit the report and recommendation to the Senate Committees on Agriculture and on Natural Resources and Energy and the House Committees on Agriculture and Forestry and on Energy and Technology.

* * * Sales and Use Tax; Advanced Wood Boilers * * *

Sec. 19. 32 V.S.A. § 9701 is amended to read:

§ 9701. DEFINITIONS

Unless the context in which they occur requires otherwise, the following terms when used in this chapter mean:

* * *

(54) “Noncollecting vendor” means a vendor that sells tangible personal property or services to purchasers who are not exempt from the sales tax under this chapter, but that does not collect the Vermont sales tax.

(55) “Advanced wood boiler” means a boiler or furnace:

(A) installed as a primary central heating system;

(B) rated as high-efficiency, meaning a higher heating value or gross calorific value of 85 percent or more;

(C) containing at least one week fuel-storage, automated startup and shutdown, and fuel feed; and

(D) meeting other efficiency and air emissions standards established by the Department of Environmental Conservation.

Sec. 20. 32 V.S.A. § 9741 is amended to read:

§ 9741. SALES NOT COVERED

Retail sales and use of the following shall be exempt from the tax on retail sales imposed under section 9771 of this title and the use tax imposed under section 9773 of this title.

* * *

(52) Advanced wood boilers, as defined in section 9701 of this title, whether for residential or commercial use.

Sec. 21. 32 V.S.A. § 9706(II) is added to read:

(II) The statutory purpose of the exemption for advanced wood boilers in subdivision 9741(52) of this title is to promote the forest products industry in Vermont by encouraging the purchase of modern wood heating systems.

* * * Effective Dates * * *

Sec. 22. EFFECTIVE DATES

(a) This section and Secs. 1–4 (produce inspection), 5 (livestock transfer), 13 (rule adoption; schedule), 16 (Act 250 minor application; small sawmills), and 17 (report; harvest notification; trip tickets) shall take effect on passage.

(b) Sec. 15 (definitions) shall take effect on January 1, 2019 and shall supersede 2016 Acts and Resolves No. 171, Sec. 15. Sec. 15 shall apply to municipal and regional plans adopted or amended on or after January 1, 2019.

(c) Secs. 9 through 12 (forest habitat) shall take effect on May 1, 2019, except that on passage, Secs. 9 through 12 shall apply to the rulemaking and guidance under Sec. 13.

(d) All other sections shall take effect on July 1, 2018.

(Committee vote: 5-0-0)

Reported favorably with recommendation of proposal of amendment by Senator Pollina for the Committee on Finance.

The Committee recommends that the bill be amended as recommended by the Committee on Natural Resources and Energy with the following amendments thereto:

First: By adding Secs. 21a–21c to read as follows:

Sec. 21a. TRANSFER FROM CEDF TO GENERAL FUND; TAX EXPENDITURE; ADVANCED WOOD BOILERS

(a) Beginning July 1, 2018, the Clean Energy Development Fund quarterly shall calculate the foregone sales tax on advanced wood fired boilers resulting from the sales tax exemption under 32 V.S.A. § 9741(52) for advanced wood boilers. Beginning October 1, 2018, the Clean Energy Development Fund shall notify the Department of Taxes of the amount of sales tax foregone in the preceding calendar quarter resulting from the sales tax exemption under 32 V.S.A. § 9741(52) for advanced wood boilers.

(b) In fiscal years 2019 and 2020, the Clean Energy Development Fund shall transfer from the Clean Energy Development Fund to the General Fund the amount of the tax expenditure resulting from the sales tax exemption under 32 V.S.A. § 9741(52) on advanced wood boilers up to a maximum of \$200,000.00 for both fiscal years combined. The Department of Taxes shall deposit 64 percent of the monies transferred from the Clean Energy Development Fund into the General Fund under 32 V.S.A. § 435 and 36 percent of the monies in the Education Fund under 16 V.S.A. § 4025.

Sec. 21b. DEPARTMENT OF PUBLIC SERVICE REPORT ON FUNDING OF THE CLEAN ENERGY DEVELOPMENT FUND

On or before January 15, 2019, the Department of Public Service, after consultation with the Agency of Commerce and Community Development, the Department of Forests, Parks, and Recreation, and renewable energy organizations, shall submit to the Senate Committees on Finance, on Appropriations, and on Natural Resources and Energy and the House

Committees on Ways and Means, on Appropriations, and on Energy and Technology a recommended source of funding sufficient to sustainably fund the authorized uses of the Clean Energy Development Fund as provided under 30 V.S.A. § 8015.

Sec. 21c. REPEAL

(a) 32 V.S.A. § 9741(52) (sales tax exemption for advanced wood boilers) shall be repealed on July 1, 2021.

(b) Sec. 21a of this act (transfer from CEDF) shall be repealed on July 1, 2021.

Second: In Sec. 20, 32 V.S.A. § 9741, after “of this title” and before the period, by striking out “, whether for residential or commercial use”

(Committee vote: 5-0-2)

Reported without recommendation by Senator Nitka for the Committee on Appropriations.

(Committee vote: 5-1-1)

Proposal of amendment to H. 904 to be offered by Senator Bray

Senator Bray moves to amend the proposal of amendment of the Committee on Natural Resources and Energy by adding a new section to be numbered Sec. 17a to read as follows:

* * * Evaluation; Trails; Act 250 * * *

Sec. 17a. ACT 250 JURISDICTION; RECREATIONAL TRAILS;
EVALUATION

(a) In addition to the currently assigned tasks under 2017 Acts and Resolves No. 47 (Act 47), the Commission on Act 250: the Next 50 Years (the Commission) established under that act shall evaluate the strengths and challenges associated with regulation of recreational trails under 10 V.S.A. chapter 151 (Act 250) and alternative structures for the planning, review, and construction of future trail networks and the extension of existing trail networks. The Commission shall include recommendations on this issue in its report to the General Assembly due on or before December 15, 2018 under Act 47.

(b) To provide information and recommendations to the Commission on the issue identified in subsection (a) of this section, the Commissioner of Forest, Parks and Recreation or designee and the Chair of the Natural Resources Board or designee shall form a recreational trails working group that shall include officers and employees of the Agency of Natural Resources designated by the Secretary of Natural Resources, the Vermont Trails and

Greenways Council established under 10 V.S.A. chapter 20, representatives of environmental organizations, and other affected persons. The working group shall submit a report to the Commission on Act 250 on or before October 1, 2018.

(1) With respect to recreational trails, the working group's report shall examine multiple potential planning and regulatory structures, including possible revisions to Act 250; the creation of a trail oversight program within the Agency of Natural Resources that includes best development practices and an agency permitting process, including consideration of a general permit; and other options that the working group may identify.

(2) In considering alternative structures, the working group shall evaluate how best to foster the development of an interconnected recreational trail network in Vermont while safeguarding the State's natural resources, including water quality, wildlife habitat and populations, and sensitive natural communities and areas, and potential impacts on neighboring properties and host municipalities.

(3) The Commission shall consider the report of the working group during its deliberation and report preparation phase set forth in Act 47, Sec. 2(d)(3), and shall attach a copy of the working group's report to its own report to the General Assembly.

House Proposal of Amendment

S. 40

An act relating to increasing the minimum wage.

The House proposes to the Senate to amend the bill as follows:

First: In Sec. 1, 21 V.S.A. § 384, by striking out subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read:

(a)(1) An employer shall not employ any employee at a rate of less than \$9.15. ~~Beginning January 1, 2016, an employer shall not employ any employee at a rate of less than \$9.60. Beginning January 1, 2017, an employer shall not employ any employee at a rate of less than \$10.00. Beginning on January 1, 2018, an employer shall not employ any employee at a rate of less than \$10.50, and beginning~~ Beginning on January 1, 2019, an employer shall not employ any employee at a rate of less than \$11.10. Beginning on January 1, 2020, an employer shall not employ any employee at a rate of less than \$11.75. Beginning on January 1, 2021, an employer shall not employ any employee at a rate of less than \$12.50. Beginning on January 1, 2022, an employer shall not employ any employee at a rate of less than \$13.25. Beginning on January 1, 2023, an employer shall not employ any employee at a rate of less than \$14.10. Beginning on January 1, 2024, an employer shall

not employ any employee at a rate of less than \$15.00, and on each subsequent January 1, the minimum wage rate shall be increased by five percent or the percentage increase of the Consumer Price Index, CPI-U, U.S. city average, not seasonally adjusted, or successor index, as calculated by the U.S. Department of Labor or successor agency for the 12 months preceding the previous September 1, whichever is smaller, but in no event shall the minimum wage be decreased. The minimum wage shall be rounded off to the nearest \$0.01.

(2) An employer shall not employ a secondary school student at a rate of less than the minimum wage established pursuant to subdivision (1) of this subsection minus \$3.00.

(3) An employer in the hotel, motel, tourist place, and restaurant industry shall not employ a service or tipped employee at a basic wage rate less than one-half the minimum wage. As used in this subsection, “a service or tipped employee” means an employee of a hotel, motel, tourist place, or restaurant who customarily and regularly receives more than \$120.00 per month in tips for direct and personal customer service.

(4) If the minimum wage rate established by the U.S. government is greater than the rate established for Vermont for any year, the minimum wage rate for that year shall be the rate established by the U.S. government.

Second: In Sec. 4, 21 V.S.A. § 383, after the ellipsis and before subdivision (3) by inserting subdivisions (G), (H), and (I) to read:

(G) taxi-cab drivers; and

(H) outside salespersons; and

(I) students working during all or any part of the school year or regular vacation periods. [Repealed.]

Third: By striking out Sec. 5 in its entirety and inserting in lieu thereof a new Sec. 5 to read:

Sec. 5. EFFECTIVE DATES

(a) In Sec. 1, 21 V.S.A. § 384, subdivision (a)(2) shall take effect on January 1, 2019. The remaining provisions of Sec. 1 shall take effect on July 1, 2018.

(b) In Sec. 4, 21 V.S.A. § 383, the amendments to subdivisions (2)(G), (H), and (I) shall take effect on January 1, 2019. The remaining provisions of Sec. 4 shall take effect on July 1, 2018.

(c) The remaining sections of this act shall take effect on July 1, 2018.

House Proposal of Amendment to Senate Proposal of Amendment

H. 897

An act relating to enhancing the effectiveness, availability, and equity of services provided to students who require additional support

The House concurs in the Senate proposal of amendment with further amendments thereto as follows:

First: In Sec. 1, Findings, by adding a new subsection, to be subsection (f), to read:

(f) The General Assembly agrees with the findings in the Delivery of Services Report and with the advantages of moving to a census-based special education funding model as described in the Funding Report. The General Assembly recognizes that changing the models for delivery of services and funding for students who require additional support is a significant change for school systems and their constituencies, and that they will require time and assistance in making necessary adjustments.

Second: In Sec. 2, Goals, by adding a new subsection, to be subsection (d), to read:

(d) To provide additional staff and resources to the Agency of Education to support its work with supervisory unions and schools that are transitioning to the best practices recommended in the report entitled “Expanding and Strengthening Best-Practice Supports for Students who Struggle” issued by the District Management Group in November 2017.

Third: In Sec. 5, amending 16 V.S.A. chapter 101, in § 2942, by striking out subdivision (8)(D) in its entirety and inserting in lieu thereof the following:

(D) for whom English is not the primary language; or

Fourth: In Sec. 5, amending 16 V.S.A. chapter 101, in § 2962 in subsection (e), in the first sentence, by striking out the phrase “individualized education plan” and inserting in lieu thereof the phrase “individualized education program”.

Fifth: In Sec. 5, amending 16 V.S.A. chapter 101, in § 2967, by striking out subsection (a) in its entirety and inserting in lieu thereof the following:

(a) On or before December 15, the Secretary shall publish an estimate, by each supervisory union and its member districts to the extent they anticipate reimbursable, of its anticipated special education expenditures under this chapter, of the amount of State assistance necessary to fully fund sections 2961 through 2963 of this title in for the ensuing school year.

Sixth: In Sec. 9, Census-based Funding Advisory Group, by striking out subsection (b) in its entirety and inserting in lieu thereof the following:

(b) Membership. The Advisory Group shall be composed of the following 14 members:

(1) the Executive Director of the Vermont Superintendents Association or designee;

(2) the Executive Director of the Vermont School Boards Association or designee;

(3) the Executive Director of the Vermont Council of Special Education Administrators or designee;

(4) the Executive Director of the Vermont Principals' Association or designee;

(5) the Executive Director of the Vermont Independent Schools Association or designee;

(6) the Executive Director of the Vermont-National Education Association or designee;

(7) the Secretary of Education or designee;

(8) one member selected by the Vermont-National Education Association who is a special education teacher;

(9) one member selected by the Vermont Association of School Business Officials;

(10) one member selected by the Vermont Legal Aid Disability Law Project;

(11) one member who is either a family member, guardian, or education surrogate of a student requiring special education services or a person who has received special education services directly, selected by the Vermont Coalition for Disability Rights;

(12) the Commissioner of the Vermont Department of Mental Health or designee;

(13) one member who represents an approved independent school selected by the Council of Independent Schools; and

(14) one member selected by the Vermont Council of Special Education Administrators who is a special education teacher and who teaches in a school that is located in a different county than the special education teacher selected by the Vermont-National Education Association under subdivision (8) of this subsection.

Seventh: In Sec. 9, Census-based Funding Advisory Group, by striking out subsection (h) in its entirety and inserting in lieu thereof the following:

(h) Appropriation. The sum of \$5,376.00 is appropriated for fiscal year 2018 from the General Fund to the Agency of Education to provide funding for per diem compensation and reimbursement under subsection (g) of this section. The Agency shall include in its budget request to the General Assembly for each of fiscal years 2020, 2021, and 2022 the amount of \$5,376.00 to provide funding for per diem compensation and reimbursement under subsection (g) of this section.

Eighth: By striking out Sec. 20 in its entirety and by inserting in lieu thereof a new Sec. 20 to read as follows:

Sec. 20. 16 V.S.A. § 166 is amended to read:

§ 166. APPROVED AND RECOGNIZED INDEPENDENT SCHOOLS

* * *

(b) Approved independent schools. On application, the State Board shall approve an independent school that offers elementary or secondary education if it finds, after opportunity for hearing, that the school provides a minimum course of study pursuant to section 906 of this title and that it substantially complies with the Board's rules for approved independent schools. Except as provided in subdivision (6) of this subsection, the Board's rules must at minimum require that the school ~~has~~ have the resources required to meet its stated objectives, including financial capacity, faculty who are qualified by training and experience in the areas in which they are assigned, and physical facilities and special services that are in accordance with any State or federal law or regulation. Approval may be granted without State Board evaluation in the case of any school accredited by a private, State, or regional agency recognized by the State Board for accrediting purposes.

* * *

(5) The State Board may revoke ~~or~~, suspend, or impose conditions upon the approval of an approved independent school, after having provided an opportunity for a hearing, for substantial failure to comply with the minimum course of study, for failure to demonstrate that the school has the resources required to meet its stated objectives, for failure to comply with statutory requirements or the Board's rules for approved independent schools, or for failure to report under subdivision (4) of this subsection (b). Upon that revocation or suspension, students required to attend school who are enrolled in that school shall become truant unless they enroll in a public school, an approved or recognized independent school, or a home study program.

* * *

(8)(A) If an approved independent school experiences any of the following financial reporting events during the period of its approved status, the school shall notify the Secretary of Education within five days after its knowledge of the event unless the failure is de minimis:

(i) the school's failure to file its federal or State tax returns when due, after permissible extension periods have been taken into account;

(ii) the school's failure to meet its payroll obligations as they are due or to pay federal or State payroll tax obligations as they are due;

(iii) the school's failure to maintain required retirement contributions;

(iv) the school's use of designated funds for nondesignated purposes;

(v) the school's inability to fully comply with the financial terms of its secured installment debt obligations over a period of two consecutive months, including the school's failure to make interest or principal payments as they are due or to maintain any required financial ratios;

(vi) the withdrawal or conditioning of the school's accreditation on financial grounds by a private, State, or regional agency recognized by the State Board for accrediting purposes; or

(vii) the school's insolvency, as defined in 9 V.S.A. § 2286(a).

(B)(i) If the State Board reasonably believes that an approved independent school lacks financial capacity to meet its stated objectives during the period of its approved status, then the State Board shall notify the school in writing of the reasons for this belief and permit the school a reasonable opportunity to respond.

(ii) If the State Board, after having provided the school a reasonable opportunity to respond, does not find that the school has satisfactorily responded or demonstrated its financial capacity, the State Board may establish a review team, that, with the consent of the school, includes a member of the Council of Independent Schools, to:

(I) conduct a school visit to assess the school's financial capacity;

(II) obtain from the school such financial documentation as the review team requires to perform its assessment; and

(III) submit a report of its findings and recommendations to the State Board.

(iii) If the State Board concludes that an approved independent school lacks financial capacity to meet its stated objectives during the period of its approved status, the State Board may take any action that is authorized by this section.

(iv) In considering whether an independent school lacks financial capacity to meet its stated objectives during the period of its approved status and what actions the State Board should take if it makes this finding, the State Board may consult with, and draw on the analytical resources of, the Vermont Department of Financial Regulation.

(C) Information provided by an independent school under this subsection that is not already in the public domain is exempt from public inspection and copying under the Public Records Act and shall be kept confidential.

* * *

Ninth: By adding a new section, to be Sec. 20a, to read:

Sec. 20a. 16 V.S.A. § 166 is amended to read:

§ 166. APPROVED AND RECOGNIZED INDEPENDENT SCHOOLS

* * *

(b) Approved independent schools. On application, the State Board shall approve an independent school that offers elementary or secondary education if it finds, after opportunity for hearing, that the school provides a minimum course of study pursuant to section 906 of this title and that it substantially complies with all statutory requirements for approved independent schools and the Board's rules for approved independent schools. An independent school that intends to accept public tuition shall be approved by the State Board only on the condition that the school agrees, notwithstanding any provision of law to the contrary, to enroll any student who requires special education services and who is placed in or referred to the approved independent school as an appropriate placement and least restrictive environment for the student by the student's individualized education program team or by the local education agency; provided, however, that this requirement shall not apply to an independent school that limits enrollment to students who are on an individualized education program or a plan under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and who are enrolled pursuant to a written agreement between the local education agency and the school. Except as provided in subdivision (6) of this subsection, the Board's rules must at minimum require that the school ~~has~~ have the resources required to meet its stated objectives, including financial capacity, faculty who are qualified by training and experience in the areas in which they are assigned, and physical

facilities and special services that are in accordance with any State or federal law or regulation. Approval may be granted without State Board evaluation in the case of any school accredited by a private, State, or regional agency recognized by the State Board for accrediting purposes, provided that the State Board shall determine that the school complies with all student enrollment provisions required by law.

* * *

Tenth: In Sec. 21, amending 16 V.S.A. § 2973, by striking out subsections (a) and (b) in their entirety and inserting in lieu thereof the following:

(a)(1) Notwithstanding any provision of law to the contrary, an approved independent school that accepts public tuition shall enroll any student with an individualized education program who requires special education services and who is placed in the approved independent school as an appropriate placement and least restrictive environment for the student by the student's individualized education program team or by the local education agency (LEA); provided, however, that this requirement shall not apply to an independent school that limits enrollment to students who are on an individualized education program or a plan under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and who are enrolled pursuant to a written agreement between the LEA and the school.

(2) In placing a student with an independent school under subdivision (1) of this subsection, the student's individualized education program team and the LEA shall comply with all applicable federal and State requirements.

(3) An approved independent school is not required to demonstrate that it has the resources to serve every category of special education as defined under State Board of Education rules in order to be approved or retain its approval to receive public funding for general tuition.

(4) The terms "special education services," "LEA," and "individualized education program" or "IEP" as used in this section shall have the same meanings as defined by State Board rules.

(b)(1) The Secretary of Education shall establish minimum standards of services for students receiving special education services in independent schools in Vermont; ~~shall set, after consultation with independent schools in Vermont, the maximum rates to be paid by the Agency and school districts for tuition, room, and board based on the level of services;~~ and may advise independent schools as to the need for certain special education services in Vermont.

(2)(A) The Secretary of Education shall set, after consultation with independent schools in Vermont, and based on the level of services provided

by the schools, the maximum rates to be paid by the Agency and supervisory unions or school districts for tuition, room, and board for residential placement of students who require special education services. The amount charged by an independent school for tuition shall reflect the school's actual or anticipated costs of providing special education services to the student and shall not exceed the maximum rates set by the Secretary, provided that the Secretary may permit charges in excess of these maximum rates where the Secretary deems warranted.

(B)(i) An approved independent school that enrolls a student under subdivision (a)(1) of this section may bill the responsible LEA for excess special education costs incurred by the independent school in providing special education services beyond those covered by general tuition. Reimbursement of these excess special education costs shall be based on the direct-costs rates approved by the Secretary for services actually provided to the student consistent with the Agency of Education Technical Manual for special education cost accounting. The Agency of Education shall publish specific elements that must be included as part of an independent school's invoice for excess special education costs, and these elements shall be included in the written agreement required under subdivision (c)(2) of this section.

(ii) In establishing the direct cost rates for reimbursement under this subdivision (B), the Secretary shall apply the principle of treating an approved independent school and a public school with parity in the amount of federal, State, and local contributions to cover the costs of providing special education services.

(iii) An approved independent school that enrolls a student under subdivision (a)(1) of this section shall provide such documentation to the Secretary as the Secretary deems necessary in order to ensure that amounts payable under this subdivision (B) to the school are reasonable in relation to the special education services provided by the school. The Secretary may withhold, or direct an LEA to withhold, payment under this subdivision pending the Secretary's receipt of required documentation under this subdivision, or may withhold, or direct an LEA to withhold, an amount determined by the Secretary as not reasonable in relation to the special education services provided by the school.

(C)(i) The Secretary shall set, after consultation with independent schools in Vermont, the maximum tuition rates to be paid by the Agency and supervisory unions or school districts to independent schools that limit enrollment to students who are on an IEP or a plan under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and who are enrolled pursuant to a written agreement between the LEA and the school. The maximum tuition rates shall be based on the level of services provided by the school.

(ii) The tuition rates established by the Secretary under this subdivision (C) shall be no more than the costs that are reasonably related to the level of services provided by the school and shall be set forth on a form prescribed for that purpose by the Secretary of Education. The Secretary shall determine the relationship between costs and the level of services by using generally accepted accounting principles, such as those set forth in the Handbook (II) for Financial Accounting of Vermont School Systems.

(iii) After the Secretary approves a tuition rate for an independent school under this subdivision (C), the school shall not exceed that tuition rate until such time as a new tuition rate is approved by the Secretary.

Eleventh: In Sec. 21, amending 16 V.S.A. § 2973, in subdivision (c)(1), by striking out subdivision (C) in its entirety and inserting in lieu thereof the following:

(C) employing or contracting with staff who have the required licensure to provide special education services;

Twelfth: In Sec. 21, amending 16 V.S.A. § 2973, in subsection (c), by striking out subdivision (2) in its entirety and inserting in lieu thereof the following:

(2) An approved independent school that enrolls a student requiring special education services who is placed with the school under subdivision (a)(1) of this section:

(A) shall enter into a written agreement with the LEA committing to the requirements under subdivision (1) of this subsection (c); and

(B) shall ensure that qualified school personnel attend planning meetings and IEP meetings for the student.

Thirteenth: In Sec. 21, amending 16 V.S.A. § 2973, by striking out subsection (d) in its entirety and inserting in lieu thereof the following:

(d)(1) If a student is placed with an approved independent school under subsection (a) of this section and either the LEA and the school each certifies, or the hearing officer under subdivision (3) of this subsection certifies, to the Secretary of Education that the school is unable to provide required IEP services due to its inability to retain qualified staff, then the LEA shall make another placement that satisfies the federal requirements to provide the student with a free and appropriate public education in the least restrictive environment.

(2) If the conditions in subdivision (1) of this subsection are satisfied:

(A) the approved independent school shall not be subject to any disciplinary action or the revocation of its approved status by the State Board of Education due to its failure to enroll the student; and

(B) no private right of action shall be created on the part of the student or his or her family members, or any other private party, to:

(i) require the LEA to place the student with the approved independent school or the school to enroll the student; or

(ii) hold the LEA or the approved independent school responsible for monetary damages due to the failure of the school to enroll the student or the necessity for the LEA to make an alternative placement.

(3) If the LEA and approved independent school do not agree on whether the school is unable to retain qualified staff under subdivision (1) of this subsection, then the LEA and the school shall jointly contract with a hearing officer to conduct a hearing with the parties and make a determination, which shall be final. The cost for the hearing officer shall be split evenly between the two parties.

Fourteenth: By striking out the remaining section, effective dates, and its reader assistance heading in their entireties and by inserting in lieu thereof the following:

Sec. 22. SPECIAL EDUCATION ENDORSEMENT; APPROVAL FOR
SPECIAL EDUCATION CATEGORIES

(a) On or before November 1, 2019, the Vermont Standards Board for Professional Educators shall review its special educator endorsement requirements and initiate rulemaking to update its rules to ensure that these requirements do not serve as a barrier to satisfying statewide demands for licensed special educators.

(b) On or before November 1, 2020, the State Board of Education shall review its rules for approving independent schools in specific special education categories and initiate rulemaking to update its rules to simplify and expedite the approval process.

* * * Effective Dates * * *

Sec. 23. EFFECTIVE DATES

(a) The following sections shall take effect on July 1, 2019:

(1) Sec. 14 (extraordinary services reimbursement);

(2) Sec. 15 (16 V.S.A. § 4001); and

(3) Sec. 17 (transition).

(b) Sec. 5 (16 V.S.A. chapter 101) shall take effect on July 1, 2020.

(c) Secs. 20a-21 (approved independent schools) shall take effect on July 1, 2022.

(d) This section and the remaining sections shall take effect on passage.

Reports of Committees of Conference

H. 780.

An act relating to portable rides at agricultural fairs, field days, and other similar events.

To the Senate and House of Representatives:

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

H. 780. An act relating to portable rides at agricultural fairs, field days, and other similar events.

Respectfully reports that it has met and considered the same and recommends that the Senate recede from its proposals of amendment and that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The General Assembly finds that:

(1) Fairs are essential to the character, community life, and economy of Vermont, and amusement rides help to increase fair attendance.

(2) Attendance at Vermont fairs exceeds 375,000 people a year, and the total budget for all Vermont fairs exceeds \$7 million a year. Vermont fairs generate over \$85,000.00 of sales tax revenue per year.

(3) An inspection regime for amusement rides based upon standards that are nationally recognized and used in other states will increase the safety of fair rides and help ensure the continued popularity of Vermont fairs.

Sec. 2. 31 V.S.A. § 721 is amended to read:

§ 721. DEFINITIONS

As used in this chapter:

(1) “Amusement ride” means a mechanical device that carries or conveys passengers along, around, or over a fixed or restricted route or course for the purpose of giving the passengers amusement, pleasure, thrills, or excitement. ~~In addition, for~~ For the purposes of this chapter, amusement ride shall also not include bungee jumping, zip lines, or waterslides or obstacle, challenge, or adventure courses.

(2) “Operator” or “owner” means a person who owns or controls or has the duty to control the operation of amusement rides.

~~(3) “Certificate” or “certificate of operation” means a document issued by the Secretary of State authorizing the operation of one or more amusement rides, indicating thereon the following information for each amusement ride: the proper ride model, serial number, passenger capacity of the ride, the recommended maximum speed of the ride, and recommended direction of travel of the ride. The Secretary of State may amend a certificate to add other amusement rides to be operated in the State during a calendar year.~~

Sec. 3. 31 V.S.A. § 722 is amended to read:

§ 722. CERTIFICATE OF OPERATION

(a) An amusement ride may not be operated in this State unless the Secretary of State has issued a certificate of operation to the owner or operator within the preceding 12 months.

(b) An application for a certificate of operation shall be submitted to the Secretary of State not fewer than 30 business days before an amusement ride is operated in this State.

(c) The Secretary of State shall issue a “certificate of operation” ~~no later~~ not fewer than 15 business days before the amusement ride is first operated in the State, if the owner or operator submits ~~all~~ the following:

(1) Certificate of insurance in the amount of not less than \$1,000,000.00 that insures both the owner and the operator against liability for injury to persons and property arising out of the use or operation of the amusement ride.

(2) Payment of a fee in the amount of \$100.00.

(3) Proof or a statement of compliance with the requirements of 21 V.S.A. chapter 9.

~~(e)~~(d) The certificate of operation shall be valid for one year from the date of issue and shall be in a manner and format to be prescribed by the Secretary of State. A certificate of operation shall identify the ride’s:

(1) name and model;

(2) serial number;

(3) passenger capacity; and

(4) recommended maximum speed.

~~(d)~~(e) A copy of the certificate of operation shall be posted on or near each amusement ride covered by the certificate and shall be in full public view at all times during the operation of the ride kept at the office of the amusement ride operator.

(f) The Secretary of State shall:

(1) determine the manner and format of the certificate of operation, any forms to be used to apply for the certificate of operation, the adhesive sticker that shall be affixed to the ride pursuant to subdivision 723a(b)(2) of this title, and the certification to be filed pursuant to subdivision 723a(b)(3) of this title;

(2) make any forms and certifications available on the Secretary of State's website and shall provide adhesive stickers to inspectors;

(3) allow an owner or operator to apply for certificates of operation for multiple rides at one time, using one form;

(4) charge one fee for the filing of each application form, regardless of the number of rides listed on the application.

Sec. 4. 31 V.S.A. § 723a is added to read:

§ 723a. SAFETY INSPECTIONS

(a) A amusement ride shall not be operated in this State unless:

(1) The ride has been inspected in the State within the preceding 12 months by a person who is:

(A) certified:

(i) by the National Association of Amusement Ride Safety Officials as a Level II Inspector; or

(ii) by the Amusement Industry Manufacturers and Suppliers International at a level that is equivalent to the certification pursuant to subdivision (i) of this subdivision (1)(A); and

(B) insured, including for liability; and

(C) not the owner or operator of the ride or an employee or agent of the owner or operator.

(2) The inspection complied with the American Society for Testing and Materials (ASTM) current standard F770 concerning the practices for ownership, operation, maintenance, and inspection of amusement rides and devices.

(3) A valid certificate of operation has been issued for the ride pursuant to section 722 of this title.

(b) After a ride has been inspected pursuant to subsection (a) of this section:

(1) The owner or operator shall submit the certificate or other record of inspection to the Secretary of State within 15 business days following the date of inspection.

(2) An adhesive sticker, in a format to be determined by the Secretary of State, shall be affixed to the ride that indicates:

(A) the date and location the inspection was completed; and

(B) the name of the inspector.

(3) The owner or operator shall submit a certification, in a format to be determined by the Secretary of State, to the organization hosting a fair, field day, or other event or location, at which the owner or operator intends to operate a ride, stating that the ride has been inspected pursuant to subsection (a) of this section and stickers have been affixed pursuant to this subsection prior to the ride being used to carry or convey passengers.

(c) A ride shall be inspected for safety by the owner or operator:

(1) after the ride has been set up but before being used to carry or convey passengers; and

(2) every day thereafter that the ride is used to carry or convey passengers.

(d) The owner or operator of an amusement ride shall:

(1) keep records of all safety inspections;

(2) make those records available to the Secretary of State or the Office of the Attorney General promptly upon request;

(3) keep a paper or electronic copy of all required forms or certifications, and of all safety inspections conducted by the owner or operator during the preceding 12 months for each ride:

(A) on or near that ride; or

(B) at the office of the amusement ride operator; and

(4) operate, maintain, and inspect all rides in compliance with ASTM current standards for ownership, operation, maintenance, and inspection of amusement rides and devices.

Sec. 5. 31 V.S.A. § 723 is amended to read:

§ 723. OPERATIONS OPERATOR AND PATRON RESPONSIBILITIES

(a) An operator of an amusement ride shall:

(1) be at least 18 years of age;

(2) operate only one amusement ride at a time; and

(3) be in attendance at all times that the ride is operating; and

(4) operate the ride in accordance with the ride manufacturer's specifications.

(b) An operator of an amusement ride may deny any person entrance to an amusement ride if the operator believes that entrance by that person may jeopardize the safety of the person or other persons.

(c) A patron shall:

(1) understand that there are risks in riding an amusement ride;

(2) exercise good judgment and act in a responsible and safe manner while riding an amusement ride; and

(3) obey all signage that is reasonably written and posted and all directions from ride operators and owners that are given in a clear and understandable manner.

Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2019.

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

An act relating to rides at agricultural fairs, field days, and other similar events.

*ROBERT A. STARR
ANTHONY POLLINA
FRANCIS K. BROOKS*

*Committee on the part of the
Senate*

*RICHARD H. LAWRENCE
JOHN L. BARTHOLOMEW
SAMUEL R. YOUNG*

Committee on the part of the House

H. 910.

An act relating to the Open Meeting Law and the Public Records Act.

To the Senate and House of Representatives:

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

H. 910. An act relating to the Open Meeting Law and the Public Records Act.

Respectfully reports that it has met and considered the same and recommends that the House accede to the Senate proposal of amendment, and that the bill be amended by striking out Sec. 3, 1 V.S.A. § 317, in its entirety and inserting in lieu thereof the following:

Sec. 3. 1 V.S.A. § 317 is amended to read:

§ 317. DEFINITIONS; PUBLIC AGENCY; PUBLIC RECORDS AND DOCUMENTS; EXEMPTIONS

* * *

(d)(1) On or before December 1, 2015, the Office of Legislative Council shall compile a list lists of all Public Records Act exemptions found in the Vermont Statutes Annotated. In compiling the list, the Office of Legislative Council shall consult with the Attorney General's office. The list shall be updated no less often than every two years, and, one of which shall be arranged by subject area, and the other in order by title and section number.

(2) On or before December 1, 2019, the Office of Legislative Council shall compile a list arranged in order by title and section number of all Public Records Act exemptions found in the Vermont Statutes Annotated that are repealed, or are narrowed in scope, on or after January 1, 2019. The list shall indicate:

(A) the effective date of the repeal or narrowing in scope of the exemption; and

(B) whether or not records produced or acquired during the period of applicability of the repealed or narrowed exemption are to remain exempt following the repeal or narrowing in scope.

(3) The Office of Legislative Council shall update the lists required under subdivisions (1) and (2) of this subsection no less often than every two years. In compiling and updating these lists, the Office of Legislative Council shall consult with the Office of Attorney General. The list lists, and any updates thereto, shall be posted in a prominent location on the websites of the General Assembly, the Secretary of State's Office, the Attorney General's Office, and the State Library, and shall be sent to the Vermont League of Cities and Towns.

(e)(1) For any exemption to the Public Records Act enacted or substantively amended in legislation introduced in the General Assembly in 2019 or later, in the fifth year after the effective date of the enactment, reenactment, or substantive amendment of the exemption, the exemption shall be repealed on July 1 of that fifth year except if the General Assembly reenacts the exemption prior to July 1 of the fifth year or if the law otherwise requires.

(2) Legislation that enacts, reenacts, or substantively amends an exemption to the Public Records Act shall explicitly provide for its repeal on July 1 of the fifth year after the effective date of the exemption unless the legislation specifically provides otherwise.

(f) Unless otherwise provided by law, a record produced or acquired during the period of applicability of an exemption that is subsequently repealed or narrowed in scope shall, if exempt during that period, remain exempt following the repeal or narrowing in scope of the exemption.

*BRIAN P. COLLAMORE
CHRISTOPHER A. PEARSON
JEANETTE K. WHITE*

*Committee on the part of the
Senate*

*JAMES HARRISON
JOHN M. GANNON
CYNTHIA A. WEED*

Committee on the part of the House

NOTICE CALENDAR

House Proposal of Amendment to Senate Proposal of Amendment to House Proposal of Amendment

S. 222

An act relating to miscellaneous judiciary procedures

The House concurs in the Senate proposal of amendment with further amendment thereto as follows:

First: By striking out Sec. 17a in its entirety and inserting in lieu thereof a new Sec. 17a to read as follows:

Sec. 17a. 18 V.S.A. § 4474c is amended to read:

§ 4474c. PROHIBITIONS, RESTRICTIONS, AND LIMITATIONS
REGARDING THE USE OF MARIJUANA FOR SYMPTOM
RELIEF

* * *

~~(d) A registered patient or registered caregiver may not transport marijuana in public unless it is secured in a locked container. [Repealed.]~~

* * *

Second: By striking out Sec. 17b in its entirety and inserting in lieu thereof a new Sec. 17b to read as follows:

Sec. 17b. 18 V.S.A. § 4474e is amended to read:

§ 4474e. DISPENSARIES; CONDITIONS OF OPERATION

* * *

(d)(1) A dispensary shall implement appropriate security measures to deter and prevent the unauthorized entrance into areas containing marijuana and the theft of marijuana and shall ensure that each location has an operational security alarm system. All cultivation of marijuana shall take place in a secure, locked facility which is either indoors or outdoors, but not visible to the public and that can only be accessed by the owners, principals, financiers, and employees of the dispensary who have valid Registry identification cards. An outdoor facility is not required to have a roof, provided all other requirements are met. The Department shall perform an annual on-site assessment of each dispensary and may perform on-site assessments of a dispensary without limitation for the purpose of determining compliance with this subchapter and any rules adopted pursuant to this subchapter and may enter a dispensary at any time for such purpose. During an inspection, the Department may review the dispensary's confidential records, including its dispensing records, which shall track transactions according to registered patients' Registry identification numbers to protect their confidentiality.

* * *

(4) A dispensary shall submit the results of a financial audit to the Department of Public Safety ~~no~~ not later than ~~60~~ 90 days after the end of the dispensary's first fiscal year, and every other year thereafter. The audit shall be conducted by an independent certified public accountant, and the costs of any such audit shall be borne by the dispensary. The Department may also periodically require, within its discretion, the audit of a dispensary's financial records by the Department.

* * *

Third: In Sec. 17c, 18 V.S.A. § 4474g(b)(2), after the words "serve as an" by striking out "owner, principal, financier, or"

Fourth: By striking out Sec. 17d in its entirety and inserting in lieu thereof a new Sec. 17d to read as follows:

Sec. 17d. [Deleted.]

House Proposal of Amendment

S. 257

An act relating to miscellaneous changes to education law.

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:

* * * Out-of-State Independent Schools * * *

Sec. 1. 16 V.S.A. § 822 is amended to read:

§ 822. SCHOOL DISTRICT TO MAINTAIN PUBLIC HIGH SCHOOLS OR
PAY TUITION

(a) Each school district shall maintain one or more approved high schools in which high school education is provided for its resident students unless:

(1) the electorate authorizes the school board to close an existing high school and to provide for the high school education of its students by paying tuition to a public high school, an approved independent high school, or an independent school meeting education quality standards, to be selected by the parents or guardians of the student, ~~within or outside the State~~; or

* * *

Sec. 2. 16 V.S.A. § 828 is amended to read:

§ 828. TUITION TO APPROVED SCHOOLS; AGE; APPEAL

(a) A school district shall not pay the tuition of a student except to:

(1) a public school;

(2) an approved independent school, in Vermont;

(3) an independent school in Vermont meeting education quality standards;

(4) a tutorial program approved by the State Board;

(5) an approved education program, ~~or~~;

(6) an independent school in another state ~~or country~~ that is approved under the laws of that state or country, nor shall payment; provided, however, that the state is contiguous to Vermont;

(7) a public or independent school in the Province of Quebec approved under the laws of Canada; or

(8) a school to which a student on an individualized education plan has been referred or placed by the student's individualized education plan team or local education agency.

(b) Payment of tuition on behalf of a person shall not be denied on account of age.

(c) Unless otherwise provided, a person who is aggrieved by a decision of a school board relating to eligibility for tuition payments, the amount of tuition payable, or the school he or she may attend, may appeal to the State Board and its decision shall be final.

Sec. 3. TRANSITION

Notwithstanding any provision to the contrary in Sec. 2 of this act, a school district that is required to pay, or elects to pay, tuition on behalf of a student under this title shall pay tuition on behalf of the student notwithstanding the fact that the school is located in another country or in a state that is not contiguous to Vermont if the student attended that school during the 2017-2018 school year or is enrolled at that school as of July 1, 2018 for the 2018-2019 school year; provided, however, that tuition shall be paid for not more than four years after enactment of this act.

* * * Elections * * *

Sec. 4. ELECTIONS; UNIFIED UNION SCHOOL DISTRICT

(a) Notwithstanding any provision of law to the contrary, the election of a director on the board of a unified union school district who is to serve on the board after expiration of the term for an initial director shall be held at the unified union school district's annual meeting unless otherwise provided in the district's articles of agreement.

(b) Notwithstanding any provision of law to the contrary, if a vacancy occurs on the board of a unified union school district and the vacancy is in a seat that is allocated to a specific town, the clerk of the unified union district shall immediately notify the selectboard of the town. Within 30 days after the receipt of that notice, the unified union school district board, in consultation with the selectboard, shall appoint a person who is otherwise eligible to serve as a member of the unified union school district board to fill the vacancy until an election is held at an annual or special meeting, unless otherwise provided in accordance with the unified union school district's articles of agreement.

(c) Notwithstanding any provision of law to the contrary, the clerk, treasurer, and moderator of a unified union school district elected at an annual meeting shall enter upon their duties on July 1 following their election and shall serve a term of up to three years or until their successors are elected and qualified, except that if the voters at an annual meeting so vote, moderators elected at an annual meeting shall assume office upon election and shall serve for a term of up to three years or until their successors are elected and qualified.

(d) This section is repealed on July 1, 2020.

Sec. 5. 16 V.S.A. § 706k is amended to read:

§ 706k. ELECTION OF DISTRICT OFFICERS

(a)(1) A school director representing a member district who is to serve on the union school district board after the expiration of the terms provided for

school directors in the final report shall be elected by that member district at an annual or special meeting. ~~Such~~ The election shall be by Australian ballot in those member districts that so elect their town school district directors. School directors elected at an annual meeting shall assume office upon election and shall serve a term of three years or until their successors are elected and qualified.

(2) Union district officers, except the clerk, treasurer, and moderator, elected at an annual meeting shall enter upon their duties on July 1 following their election and shall serve a term of one year or until their successors are elected and qualified. The clerk, treasurer, and moderator elected at an annual meeting shall enter upon their duties on July 1 following their election and shall serve a term of up to three years or until their successors are elected and qualified, except that if the voters at an annual meeting so vote, moderators elected at an annual meeting shall assume office upon election and shall serve for a term of ~~one year~~ up to three years or until their successors are elected and qualified. ~~School directors elected at an annual meeting shall assume office upon election and shall serve a term of three years or until their successors are elected and qualified.~~

(3) The clerk of the union district shall, within ten days after the election or appointment of any officer or director, give notice of the results to the Secretary of State.

* * *

* * * School Radon Mitigation * * *

Sec. 6. SCHOOL RADON MITIGATION; FUNDING OPPORTUNITIES

The Secretaries of Education and of Administration and the Commissioner of Health shall explore funding opportunities for testing and mitigating elevated radon concentrations in schools and contingency plans for the loss of related federal funding. On or before December 1, 2018, the Secretaries and the Commissioner shall jointly submit a written report to the House Committees on Corrections and Institutions and on Education and to the Senate Committees on Education and on Institutions with viable options for testing all schools for radon and for funding the mitigation of elevated radon concentrations in schools.

Sec. 7. PILOT; RADON TESTING IN SCHOOLS

The Commissioner of Health shall establish a pilot program to test schools in five supervisory unions for elevated concentrations of radon during the 2018–2019 school year with the goal of testing 30 schools. Schools that have been tested for radon within the previous five years need not be retested. The Agency of Education, in collaboration with the Department of Health, shall seek supervisory unions to volunteer for the pilot program.

* * * Technical Correction * * *

Sec. 8. 16 V.S.A. § 4015 is amended to read:

§ 4015. SMALL SCHOOL SUPPORT

(a) In this section:

* * *

(2) “Enrollment” means the number of students who are enrolled in a school operated by the district on October 1. A student shall be counted as one whether the student is enrolled as a full-time or part-time student. Students enrolled in prekindergarten programs shall not be counted.

* * *

* * * Prekindergarten Education * * *

Sec. 9. 16 V.S.A. § 829 is amended to read:

§ 829. PREKINDERGARTEN EDUCATION

(a) Definitions. As used in this section:

(1) “Prekindergarten child” means a child who, as of the date established by the district of residence for kindergarten eligibility, is:

(A) three or four years of age or is five years of age but is not yet eligible to be enrolled in kindergarten; or

(B) five years of age but is not yet enrolled in kindergarten if the child is on an individualized education program or a plan under Section 504 of the Rehabilitation Act of 1973 and the child’s individualized education program team or evaluation and planning team recommends that the child receive prekindergarten education services.

(2) “Prekindergarten education” means services designed to provide to prekindergarten children developmentally appropriate early development and learning experiences based on Vermont’s early learning standards.

(3) “Prequalified private provider” means a private provider of prekindergarten education that is qualified pursuant to subsection (c) of this section.

(4)(A) “Prequalified public provider” means a provider of prekindergarten education that is a school district that is qualified pursuant to subsection (c) of this section.

(B) “Prequalified public provider” does not mean a school district that contracts with a prequalified private provider for the provision of prekindergarten education services.

(b) Access to publicly funded prekindergarten education.

(1) ~~No~~ Not fewer than ten hours per week of publicly funded prekindergarten education shall be available for 35 weeks annually to each prekindergarten child whom a parent or guardian wishes to enroll in an available, prequalified program operated by a public school or a private provider.

(2) If a parent or guardian chooses to enroll a prekindergarten child in an available, prequalified program, then, pursuant to the parent or guardian's choice, the school district of residence shall:

(A) pay tuition pursuant to subsections (d) and (h) of this section upon the request of the parent or guardian to:

(i) a prequalified private provider; or

(ii) a prequalified public school provider that operates a prekindergarten program ~~that has been prequalified pursuant to subsection (c) of this section~~ located outside the district; or

(B) if the school district of residence is a prequalified public provider, enroll the child in the prekindergarten education program that it operates.

(3) If requested by the parent or guardian of a prekindergarten child, the school district of residence shall pay tuition to a prequalified ~~program operated by a private provider or a public school in another district~~ private provider or a prequalified public provider that operates a prekindergarten program located outside the district even if the district of residence is a prequalified public provider that operates a prekindergarten education program.

(4) ~~If the supply of prequalified private and public providers is insufficient to meet the demand for publicly funded prekindergarten education in any region of the State, nothing~~ Nothing in this section shall be construed to require the State or a district to begin or expand a prekindergarten education program to satisfy that a demand; but rather, in collaboration with the Agencies of Education and of Human Services, the local Building Bright Futures Council shall meet with school districts and private providers in the region to develop a regional plan to expand capacity for prekindergarten education.

(c) Prequalification. Pursuant to rules ~~jointly developed and overseen by the Secretaries~~ Secretary of Education ~~and of Human Services~~ and adopted by the State Board pursuant to 3 V.S.A. chapter 25, the ~~Agencies jointly~~ Agency of Education may determine that a private or public provider of prekindergarten education is qualified for purposes of this section and include the provider in a publicly accessible database of prequalified providers. At a

minimum, the rules shall define the process by which a provider applies for and maintains prequalification status, and shall identify the minimum quality standards for prequalification, and shall include the following requirement. In order to be eligible for tuition payments:

(1) ~~A program of prekindergarten education, whether provided by a school district or a private provider, shall have received~~ private provider shall meet minimum program quality by:

(A) Having:

(i) National Association for the Education of Young Children (NAEYC) accreditation; or

~~(ii) at least four stars in the Department for Children and Families' STARS system with a plan to get to at least two points in each of the five arenas; or~~

~~(C) three stars in the STARS system if the provider has developed a plan, approved by the Commissioner for Children and Families and the Secretary of Education, to achieve four or more stars with at least two points in each of the five arenas in no more than three years, and the provider has met intermediate milestones.~~

(B) For a:

(i) private provider that is regulated as a center-based child care program, employing or contracting for the services of at least one licensed professional educator with an endorsement in early childhood education or in early childhood special education under chapter 51 of this title who is present at the private provider's program site during the hours that are publicly funded; or

(ii) private provider that is regulated as a family child care home that is not licensed and endorsed in early childhood education or early childhood special education, employing or contracting for the services of at least one licensed professional educator with an endorsement in early childhood education or in early childhood special education under chapter 51 of this title for at least three hours per week during each of the 35 weeks per year in which prekindergarten education is paid for with publicly funded tuition to provide regular, active supervision and training of the private provider's staff.

(2) A licensed public provider shall employ or contract meet minimum program quality by:

(A) employing or contracting for the services of at least one teacher who is licensed and endorsed licensed professional educator with an

endorsement in early childhood education or in early childhood special education under chapter 51 of this title to provide direct instruction during the hours that are publicly funded; and

(B) meeting health, safety, and quality rules adopted by the State Board of Education.

~~(3) A registered home provider that is not licensed and endorsed in early childhood education or early childhood special education shall receive regular, active supervision and training from a teacher who is licensed and endorsed in early childhood education or in early childhood special education under chapter 51 of this title.~~

(d) Tuition, budgets, and average daily membership.

(1) On behalf of a resident prekindergarten child, a district shall pay tuition for prekindergarten education for ten hours per week for 35 weeks annually to a prequalified private provider or to a public school prequalified public provider that is outside the district ~~that is prequalified pursuant to subsection (c) of this section~~; provided, however, that the district shall pay tuition for weeks that are within the district's academic year. Tuition paid under this section shall be at a statewide rate, which may be adjusted regionally, that is established annually through a process jointly developed and implemented by the Agencies Agency of Education and of Human Services. A district shall pay tuition upon:

(A) receiving notice from the child's parent or guardian that the child is or will be admitted to the prekindergarten education program operated by the prequalified private provider or the other district; and

(B) concurrent enrollment of the prekindergarten child in the district of residence for purposes of budgeting and determining average daily membership.

(2) In addition to any direct costs of operating a prekindergarten education program, a district of residence shall include anticipated tuition payments and any administrative, quality assurance, quality improvement, transition planning, or other prekindergarten-related costs in its annual budget presented to the voters.

(3) Pursuant to subdivision 4001(1)(C) of this title, the district of residence may include within its average daily membership any prekindergarten child for whom it has provided prekindergarten education or on whose behalf it has paid tuition pursuant to this section.

(4) A prequalified private provider may receive additional payment directly from the parent or guardian only for prekindergarten education in excess of the hours paid for by the district pursuant to this section or for child

care services, or both. The prequalified private provider is not bound by the statewide rate established in this subsection when determining the rates it will charge the parent or guardian for these excess hours. A prequalified private provider shall not impose additional fees for the publicly funded hours.

(e) Rules. The Secretary of Education ~~and the Commissioner for Children and Families~~ shall jointly develop ~~and agree to~~ rules and present them to the State Board for adoption under 3 V.S.A. chapter 25 as follows:

(1) To permit private providers that are not prequalified pursuant to subsection (c) of this section to create new or continue existing partnerships with school districts through which the school district provides supports that enable the provider to fulfill the requirements of subdivision (c)~~(2) or (3)~~ (1)(B), and through which the district may or may not make in-kind payments as a component of the statewide tuition established under this section.

~~(2) To authorize a district to begin or expand a school-based prekindergarten education program only upon prior approval obtained through a process jointly overseen by the Secretaries of Education and of Human Services, which shall be based upon analysis of the number of prekindergarten children residing in the district and the availability of enrollment opportunities with prequalified private providers in the region. Where the data are not clear or there are other complex considerations, the Secretaries may choose to conduct a community needs assessment. [Repealed.]~~

(3) To require that the school district provides opportunities for effective parental participation in the prekindergarten education program.

(4) To establish a process by which:

(A) a parent or guardian notifies the district that the prekindergarten child is or will be admitted to a prekindergarten education program not operated by the district and concurrently enrolls the child in the district pursuant to subdivision (d)(1) of this section;

(B) a district:

(i) pays tuition pursuant to a schedule that does not inhibit the ability of a parent or guardian to enroll a prekindergarten child in a prekindergarten education program or the ability of a prequalified private provider to maintain financial stability; and

(ii) enters into an agreement with any provider to which it will pay tuition regarding quality assurance, transition, and any other matters; agreements entered into for the 2019-2020 school year and future school years shall be in a form prescribed by the Secretary of Education; and

(C) a provider that has received tuition payments under this section on behalf of a prekindergarten child notifies a district that the child is no longer enrolled.

(5) To establish a process to calculate an annual statewide tuition rate that is based upon the actual cost of delivering ten hours per week of prekindergarten education that meets all ~~established~~ required quality standards and to allow for regional adjustments to the rate.

(6) [Repealed.]

(7) To require a district to include identifiable costs for prekindergarten programs and essential early education services in its annual budgets and reports to the community.

(8) To require a district to report to the Agency of Education annual expenditures made in support of prekindergarten education, with distinct figures provided for expenditures made from the General Fund, from the Education Fund, and from all other sources, which shall be specified.

(9) To provide an administrative process for:

(A) a parent, guardian, or provider to challenge an action of a school district or the State when the complainant believes that the district or State is in violation of State statute or rules regarding prekindergarten education; and

(B) a school district to challenge an action of a provider or the State when the district believes that the provider or the State is in violation of State statute or rules regarding prekindergarten education.

(10) To establish a system by which the Agency of Education ~~and Department for Children and Families~~ shall ~~jointly~~ monitor and evaluate prekindergarten education programs to promote optimal results for children that support the relevant population-level outcomes set forth in 3 V.S.A. § 2311 and to collect data that will inform future decisions. The Agency ~~and Department~~ shall be required to report annually to the General Assembly in January. At a minimum, the system shall monitor and evaluate:

(A) programmatic details, including the number of children served, the number of private and public programs operated, and the public financial investment made to ensure access to quality prekindergarten education;

(B) the quality of public and private prekindergarten education programs and efforts to ensure continuous quality improvements through mentoring, training, technical assistance, and otherwise; and

(C) the results for children, including school readiness and proficiency in numeracy and literacy.

(11) To establish a process for documenting the progress of children enrolled in prekindergarten education programs and to require public and private providers to use the process to:

(A) help individualize instruction and improve program practice; and

(B) collect and report child progress data to the Secretary of Education on an annual basis.

(12) To establish health, safety, and quality requirements for prequalified public providers that are consistent with the Child Care Licensing Regulations adopted by the Agency of Human Services and are monitored annually by the Agency of Education.

(f) Other provisions of law. Section 836 of this title shall not apply to this section.

(g) Limitations. Nothing in this section shall be construed to permit or require payment of public funds to a private provider of prekindergarten education in violation of Chapter I, Article 3 of the Vermont Constitution or in violation of the Establishment Clause of the U.S. Constitution.

(h) Geographic limitations.

(1) Notwithstanding the requirement that a district pay tuition to any prequalified public or private provider in the State, a school board may choose to limit the geographic boundaries within which the district shall pay tuition by paying tuition solely to those prequalified providers in which parents and guardians choose to enroll resident prekindergarten children that are located within the district's "prekindergarten region" as determined in subdivision (2) of this subsection.

(2) For purposes of this subsection, upon application from the school board, a district's prekindergarten region shall be determined ~~jointly~~ by the ~~Agencies~~ Agency of Education and ~~of Human Services~~ in consultation with the school board, private providers of prekindergarten education, parents and guardians of prekindergarten children, and other interested parties pursuant to a process adopted by rule under subsection (e) of this section. A prekindergarten region:

(A) shall not be smaller than the geographic boundaries of the school district;

(B) shall be based in part upon the estimated number of prekindergarten children residing in the district and in surrounding districts, the availability of prequalified private and public providers of prekindergarten education, commuting patterns, and other region-specific criteria; and

(C) shall be designed to support existing partnerships between the school district and private providers of prekindergarten education.

(3) If a school board chooses to pay tuition to providers solely within its prekindergarten region, and if a resident prekindergarten child is unable to access publicly funded prekindergarten education within that region, then the child's parent or guardian may request and in its discretion the district may pay tuition at the statewide rate for a prekindergarten education program operated by a prequalified provider located outside the prekindergarten region.

(4) Except for the narrow exception permitting a school board to limit geographic boundaries under subdivision (1) of this subsection, all other provisions of this section and related rules shall continue to apply.

Sec. 10. 16 V.S.A. § 4010 is amended to read:

§ 4010. DETERMINATION OF WEIGHTED MEMBERSHIP

(a) On or before the first day of December during each school year, the Secretary shall determine the average daily membership of each school district for the current school year. The determination shall list separately:

- (1) resident prekindergarten children;
- (2) resident students being provided elementary ~~or kindergarten~~ education, excluding prekindergarten children; and
- (3) resident students being provided secondary education.

* * *

(c) The Secretary shall determine the weighted long-term membership for each school district using the long-term membership from subsection (b) of this section and the following weights for each class:

- (1) ~~Prekindergarten~~ except as otherwise provided in this subsection, prekindergarten—0.46;
- (2) for a resident child enrolled in a prekindergarten program offered by a prequalified public provider, as defined in section 829(a) of this title, that is the district of residence with a duration of 20 hours or more per week for 35 weeks annually—0.70;
- (3) ~~Elementary or~~ elementary, excluding prekindergarten—1.0; and
- (4) ~~Secondary~~ secondary—1.13

* * *

Sec. 11. 33 V.S.A. § 3502 is amended to read:

§ 3502. CHILD CARE FACILITIES; SCHOOL AGE CARE IN PUBLIC SCHOOLS; 21ST CENTURY FUND

(a) Unless exempted under subsection (b) of this section, a person shall not operate a child care facility without a license, or operate a family child care home without registration from the Department.

(b) The following persons are exempted from the provisions of subsection (a) of this section:

* * *

(5) an after-school program that serves students in one or more grades from kindergarten through secondary school, that receives funding through the 21st Century Community Learning Centers program, and that is overseen by the Agency of Education, unless the after-school program asks to participate in the child care subsidy program; and

(6) a public provider of prekindergarten education, as defined under 16 V.S.A. § 829(a)(4), unless the public provider participates in the child care subsidy program.

* * *

Sec. 12. 16 V.S.A. § 11 is amended to read:

§ 11. CLASSIFICATIONS AND DEFINITIONS

(a) As used in this title, unless the context otherwise clearly requires:

* * *

(31) “Early childhood education,” “early education,” or “prekindergarten education” means services designed to provide developmentally appropriate early development and learning experiences based on Vermont’s early learning standards to ~~children~~ a child who ~~are three to four years of age and to five-year-old children who are not eligible for or enrolled in kindergarten~~ is:

(A) three or four years of age or is five years of age but is not yet eligible to be enrolled in kindergarten; or

(B) five years of age but is not yet enrolled in kindergarten if the child is on an individualized education program or a plan under Section 504 of the Rehabilitation Act of 1973 and the child’s individualized education program team or evaluation and planning team recommends that the child receive prekindergarten education services.

* * *

Sec. 13. PREKINDERGARTEN TRANSITION

Until such time as the State Board of Education implements rules that establish health, safety, and quality requirements for prequalified public providers under Sec. 9 of this act, prequalified public providers shall be subject to the health, safety, and quality rules adopted by the Agency of Human Services and the oversight by the Agency of Human Services in its enforcement of these rules.

* * * Educator Licensing Requirements * * *

Sec. 14. EDUCATOR LICENSURE REQUIREMENTS

(a) The Vermont Standards Board for Professional Educators shall consider whether the educator licensure and endorsement requirements are appropriate or should be updated. As part of its review, the Board shall consider whether the use by a school of a school-based teacher quality and performance measurement program approved by the New England Association of Schools and Colleges, or examinations offered by the Smarter Balanced Assessment Consortium, should be used as criteria to qualify for licensure and endorsement. On or before December 1, 2018, the Board shall report its findings and recommendations to the House and Senate Committees on Education.

(b) As part of its review under subsection (a) of this section, the Vermont Standards Board for Professional Educators shall consider whether the educator licensure and endorsement requirements for teachers in career technical education centers are appropriate or should be updated. After the House and Senate Committees on Education have concluded their consideration of the report of the Vermont Standards Board for Professional Educators under subsection (a) of this section, the Vermont Standards Board for Professional Educators and the State Board of Education shall either update their educator licensure and endorsement rules for teachers in career technical education centers or issue a report to the House and Senate Committees on Education that they do not intend to update these rules. Until the date upon which these updated rules are implemented or the report is issued, teachers employed by career technical centers who were hired before April 1, 2018 and who do not have the licensure or endorsement that is required under applicable rules shall be exempt from these rules and any requirement to pursue licensure or endorsement under these rules.

(c) Notwithstanding subsection (b) of this section and any provision of law to the contrary, an employee in an approved area career technical center located in an approved independent school who was hired before April 1, 2018 and who did not have the licensure or endorsement that is required under applicable rules governing career technical centers shall be exempt from these

rules. An employee hired on or after April 1, 2018 shall be subject to these rules, and an employee hired before April 1, 2018 who complied with these rules shall maintain his or her licensure and endorsements as required by these rules.

* * * Ethnic and Social Equity Standards Advisory
Working Group * * *

Sec. 15. ETHNIC AND SOCIAL EQUITY STANDARDS ADVISORY
WORKING GROUP

(a) Findings.

(1) In 1999, the Vermont Advisory Committee to the U.S. Commission on Civil Rights published a report titled Racial Harassment in Vermont Public Schools and described the state of racism in public schools. The Committee held various hearings and received reports from stakeholders and concluded that “racial harassment” appeared “pervasive in and around the State’s public schools,” and observed that “the elimination of this harassment” was “not a priority among school administrators, school boards, elected officials, and State agencies charged with civil rights enforcement.”

(2) In 2003, the Commission released a follow-up report concluding that, although some positive efforts had been made since the original report was published, the problem persisted. One of the many problems highlighted was the “curriculum issues in the State’s public schools. In some instances, teachers employ curriculum materials and lesson plans that promote racial stereotypes.” One of the conclusions was that there was a need for a bias-free curriculum.

(3) On December 2017, the Act 54 report on Racial Disparities in State Systems, issued by the Attorney General and Human Rights Commission Task Force, was released. According to the report, education is one of the five State systems in which racial disparities persist and need to be addressed. The Attorney General and Human Rights Commission held three stakeholder meetings and found “a surprising amount of coalescence around the most important issues” and “the primary over-arching theme was that we will be able to reduce racial disparities by changing the underlying culture of our state with regard to race.” One of the main suggestions for accomplishing this was to “teach children from an integrated curriculum that fairly represents both the contributions of People of Color (as well as indigenous people, women, people with disabilities, etc.), while fairly and accurately representing our history of oppression of these groups.” The other suggestions were to educate State employees about implicit bias, white privilege, white fragility, and white supremacy, and increase the representation of people of color in the State and school labor forces by focusing on recruitment, hiring, and retention, as well

as promotion of people of color into positions of authority and responsibility on boards and commissions.

(4) The harassment of lesbian, gay, bisexual, transgender, queer, questioning, intersex, asexual, and nonbinary communities; other students of color; and students with disabilities and the lack of understanding of people in power about the magnitude of the systemic impacts of harassment and bias damage the whole community.

(b) Definitions. As used in this act:

(1) “Ethnic groups” means nondominant racial and ethnic groups in the United States, including people who are indigenous and people of African, Asian, Pacific Island, Chicanx, Latinx, or Middle Eastern descent.

(2) “Ethnic studies” means the instruction of students in prekindergarten through grade 12 in the historical contributions and perspectives of ethnic groups and social groups.

(3) “Social groups” means females, people with disabilities, immigrants, refugees, and individuals who are lesbian, gay, bisexual, transgender, queer, questioning, intersex, asexual, or nonbinary.

(c) Creation and composition. The Ethnic and Social Equity Standards Advisory Working Group is established. The Working Group shall comprise the following 17 members:

(1) eight members who are members of, and represent the interests of, ethnic groups and social groups;

(2) a Vermont-based, college-level faculty expert in ethnic studies;

(3) the Secretary of Education or designee;

(4) the Executive Director of the Vermont-National Education Association or designee;

(5) an Assistant Attorney General in the Office of the Vermont Attorney General with experience working with the Agency of Education on racial and social justice issues in schools;

(6) the Executive Director of the Vermont School Boards Association or designee;

(7) a representative for the Vermont Principals’ Association with expertise in the development of school curriculum;

(8) a representative for the Vermont Curriculum Leaders Association;

(9) the Executive Director of the Vermont Superintendents Association or designee; and

(10) the Executive Director of the Vermont Independent Schools' Association or designee.

(d) Appointment and operation.

(1) The Vermont Coalition for Ethnic and Social Equity in Schools (Coalition) shall appoint the eight members who represent ethnic groups and social groups and the member identified under subdivision (c)(2) of this section. Appointments of members to fill vacancies to these positions shall be made by the Coalition.

(2) As a group, the Working Group shall represent the breadth of geographic areas within the State and shall have experience in the areas of ethnic standards or studies, social justice, inclusivity, and advocacy for the groups they represent.

(3)(A) The Secretary of Education or designee shall call the first meeting of the Working Group to occur on or before September 1, 2018.

(B) The Working Group shall select a chair from among its members at the first meeting.

(C) A majority of the membership shall constitute a quorum.

(D) The Working Group shall cease to exist on July 1, 2021.

(e) Compensation and reimbursement. Members of the Committee who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance shall be entitled to per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010 for not more than ten meetings per year. These payments shall be made from monies appropriated to the Agency of Education.

(f) Appropriation. The sum of \$13,420.00 is appropriated to the Agency of Education from the General Fund for fiscal year 2019 for the per diem compensation and expense reimbursements authorized by this section to be paid to the members of the Ethnic and Social Equity Standards Advisory Working Group. The Agency shall include in its budget request to the General Assembly for fiscal years 2020 and 2021 the amount of \$13,420.00 for the per diem compensation and expense reimbursements authorized by this section to be paid to members of the Working Group.

(g) Duties of the Working Group.

(1) The Working Group shall review statewide curriculum standards adopted by the State Board of Education and, on or before June 30, 2020, recommend to the State Board updates and additional standards to recognize fully the history, contribution, and perspectives of ethnic groups and social groups. These recommended additional standards shall be designed to:

(A) increase cultural competency of students in prekindergarten through grade 12;

(B) increase attention to the history, contribution, and perspectives of ethnic groups and social groups;

(C) promote critical thinking regarding the history, contribution, and perspectives of ethnic groups and social groups;

(D) commit the school to eradicating any racial bias in its curriculum;

(E) provide, across its curriculum, content and methods that enable students to explore safely questions of identity, race equality, and racism; and

(F) ensure the basic curriculum and extracurricular programs are welcoming to all students and take into account parental concerns about religion or culture.

(2) The Working Group may review all existing State statutes regarding school policies and recommend to the General Assembly proposed statutory changes with the following goals:

(A) Ensuring that the school curriculum:

(i) promotes critical thinking regarding the history, contribution, and perspectives of ethnic groups and social groups;

(ii) includes content and related instructional materials and methods that enable students to explore safely questions of identity and membership in ethnic groups and social groups, race equality, and racism; and

(iii) facilitates a welcoming environment for all students while taking into account parental concerns about bias or exclusion of ethnic groups or social groups.

(B) Ensuring engagement opportunities that provide families a welcoming means of raising any concern about their child's experience as it bears on race or ethnic or social group identity at school.

(3) The Working Group shall include in its report to the General Assembly under subdivisions (h)(2) and (3) of this section any statute, State Board rule, or school district policy that it has identified as needing review or amendment in order to:

(A) promote an overarching focus on preparing all students to participate effectively in an increasingly racially, culturally, and socially diverse Vermont and in global communities;

(B) ensure every student is in a safe, secure, and welcoming learning and social environment in which bias, whether implicit or explicit, toward others based on their membership in ethnic or social groups is acknowledged and addressed appropriately;

(C) challenge racist, sexist, gender, or ability-based bias or bias based on socioeconomic status when it occurs, using principles aligned with restorative practice;

(D) specify prohibited conduct as it relates to racism, sexism, ableism, and other social biases and refers to the process through which alleged misconduct will be addressed, including disciplinary action as appropriate;

(E) establish disciplinary responses to racial or ethnic and social group incidents that include the utilization of restorative practices where appropriate; and

(F) ensure that the school provides all its personnel training in how best to address bias incidents.

(h) Reports.

(1) The Working Group shall, on or before March 1, 2019, submit a report to the General Assembly that includes:

(A) the membership of the Working Group and its meeting schedule;

(B) its plan to accomplish the work described in subdivision (g)(1) of this section, including the timeline for reviewing all statewide curriculum standards and for its recommendation to the State Board of additional standards to recognize fully the history, contribution, and perspectives of ethnic groups and social groups; and

(C) its plan to accomplish the work described in subdivisions (g)(2) and (3) of this section, including the timeline for reviewing all existing State statutes regarding school policies and drafting proposed legislation.

(2) The Working Group shall, on or before December 15, 2019, submit a report to the General Assembly, including:

(A) the membership of the Working Group and its meeting schedule;

(B) recommended statutory changes under subdivisions (g)(2) and (3) of this section; and

(C) recommendations for training and appropriations to support implementation of the recommended statutory changes.

(3) The Working Group shall, on or before July 1, 2021, submit a report to the General Assembly, including:

(A) any further recommended statutory changes under subdivision (g)(2) of this section; and

(B) recommendations for training and appropriations to support implementation of the recommended changes.

(i) Duties of the State Board of Education. The Board of Education shall, on or before June 30, 2021, consider adopting ethnic and social equity studies standards into existing statewide curriculum standards for students in prekindergarten through grade 12. The State Board shall consider the report submitted by the Working Group under subdivision (g)(1) of this section when determining the standards to adopt.

Sec. 16. 16 V.S.A. § 164 is amended to read:

§ 164. STATE BOARD; GENERAL POWERS AND DUTIES

The State Board shall evaluate education policy proposals, including timely evaluation of policies presented by the Governor and Secretary; engage local school board members and the broader education community; and establish and advance education policy for the State of Vermont. In addition to other specified duties, the Board shall:

* * *

(17) Report annually on the condition of education statewide and on a ~~school-by-school~~ supervisory union and school district basis. The report shall include information on attainment of standards for student performance adopted under subdivision (9) of this section, number and types of complaints of harassment, hazing, or bullying made pursuant to chapter 9, subchapter 5 of this title and responses to the complaints, financial resources and expenditures, and community social indicators. The report shall be organized and presented in a way that is easily understandable by the general public and that enables each school, school district, and supervisory union to determine its strengths and weaknesses. To the extent consistent with State and federal privacy laws and regulations, data on student performance and hazing, harassment, or bullying incidents shall be disaggregated by student groups, including ethnic and racial groups, poverty status, disability status, English language learner status, and gender. The Secretary shall use the information in the report to determine whether students in each school, school district, and supervisory union are provided educational opportunities substantially equal to those provided in other schools, school districts, and supervisory unions pursuant to subsection 165(b) of this title.

* * *

* * * Expanded Learning Opportunities * * *

Sec. 17. 16 V.S.A. chapter 100 is added to read:

CHAPTER 100. EXPANDED LEARNING OPPORTUNITIES

§ 2911. DEFINITIONS

As used in this title:

(1) “Expanded Learning Opportunity (ELO)” means a structured program designed to serve prekindergarten through secondary school-aged children and youths outside the school day and year on a regular basis, including before and after school and during the summer, by providing opportunities for personal, emotional, and academic growth for children and youths.

(2) “ELO Committee” means the Expanded Learning Opportunities Committee created by section 2912 of this chapter.

(3) “ELO Special Fund” means the Vermont Expanded Learning Opportunities Special Fund, under section 2913 of this chapter.

§ 2912. EXPANDED LEARNING OPPORTUNITIES COMMITTEE;
REPORT

(a) Creation; membership. There is created the Expanded Learning Opportunities Committee, to be composed of the following 10 members:

(1) the Secretary of Education or designee;

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

(3) the Commissioner of Labor or designee;

(4) the Director of Vermont Afterschool, Inc. or designee;

(5) one member representing private foundations or Vermont’s philanthropic community, one member representing the business community, and one member representing the education community, appointed by the Prekindergarten-16 Council; and

(6) three members representing ELO programs that have been in operation since on or before July 1, 2017, with one member to be appointed each by the Governor, the Speaker of the House, and the Committee on Committees.

Second: In Sec. 17, adding 16 V.S.A. chapter 100, in § 2912, Expanded Learning Opportunities Committee, by striking out subsection (c) in its entirety and inserting in lieu thereof the following:

(c) Terms. ELO Committee members shall serve, commencing on January 1, three-year terms or until the member's earlier resignation or removal. An ELO Committee member may be appointed prior to January 1, 2019, in which case the initial term of that member shall extend to January 1, 2022. The respective appointing authority shall fill a vacancy for the remainder of any unexpired term. An appointed member shall not serve more than three full consecutive terms.

(b) Duties. The Committee shall:

(1) recommend to the Agency of Education grants to be awarded from the ELO Special Fund; and

(2) work with the philanthropic and business communities in Vermont to pursue and accept grants or other funding from any public or private source for the ELO Special Fund.

(c) Terms. ELO Committee members shall serve, commencing on January 1, three-year terms or until the member's earlier resignation or removal, except for legislative members, who shall be appointed to two-year terms that mirror their legislative terms. A nonlegislative ELO Committee member may be appointed prior to January 1, 2019, in which case the initial term of that member shall extend to January 1, 2022. A legislative ELO Committee member may be appointed after the beginning of the legislator's legislative term and prior to January 1, 2019, in which case the initial term of that member shall extend to the end of the legislator's next two-year legislative term. The respective appointing authority shall fill a vacancy for the remainder of any unexpired term. An appointed member shall not serve more than three full consecutive terms. A legislator's service on the ELO Committee shall terminate on the date that the legislator no longer serves as a member of the General Assembly.

(d) Officers; subcommittees; rules. The ELO Committee shall elect a chair from among its members. It may elect other officers, establish subcommittees, and adopt procedural rules as it determines necessary and appropriate to perform its work.

(e) Quorum; voting; meetings.

(1) A majority of all members shall constitute a quorum.

(2) Action is taken by the ELO Committee if authorized by a majority of the members present and voting at any regular or special meeting at which a quorum is present.

(3) The ELO Committee may permit any or all members to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of electronic communication by which all members participating

may simultaneously or sequentially communicate with each other during the meeting. A member participating in a meeting by this means is deemed to be present in person at the meeting.

(4) On or before September 1, 2018, the Secretary of Education or designee shall convene the first meeting of the ELO Committee.

(f) Administrative support. The Agency of Education shall provide administrative support to the ELO Committee.

(g) Compensation, reimbursement, and appropriations. Members of the Committee who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance shall be entitled to per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010 for not more than six meetings per year. The sum of \$4,392.00 is appropriated to the Agency of Education from the General Fund in fiscal year 2019 for the per diem compensation and expense reimbursements authorized by this section to be paid to these members of the Committee. The Agency shall include in its budget request to the General Assembly for each subsequent fiscal year the amount of \$4,392.00 for the per diem compensation and expense reimbursements authorized by this section to be paid to these members of the Committee.

(h) Report. Notwithstanding 2 V.S.A. § 20(d), the ELO Committee shall report to the House and Senate Committees on Education and on Appropriations on or before January 15 annually regarding the ELO Committee's activities, including:

(1) its recommendations to improve access to expanded learning opportunities for children and youths from families with low income where expanded learning opportunities are not readily available;

(2) its recommendations to build workforce readiness skills in the fields of science, technology, engineering, and mathematics; and

(3) the extent to which transportation is a barrier to expanded learning opportunities.

(i) Sunset. This section is repealed on July 1, 2023.

§ 2913: VERMONT EXPANDED LEARNING OPPORTUNITIES SPECIAL FUND

(a) There is established the Vermont Expanded Learning Opportunities Special Fund comprising grants, donations, and contributions from any private or public source. Monies in the ELO Special Fund shall be available to the Agency of Education for the purpose of increasing access to ELOs throughout Vermont. The Commissioner of Finance and Management may draw warrants

for disbursements from the Fund in anticipation of receipts. The Fund shall be administered pursuant to 32 V.S.A. chapter 7, subchapter 5, except that interest earned and any remaining balance at the end of the fiscal year shall be retained and carried forward in the Fund.

(b) The Agency of Education shall report annually in its budget presentation to the House and Senate Committees on Education and on Appropriations on the number and amount of ELO grants disbursed and the geographic locations of the recipients.

Sec. 18. 16 V.S.A. § 2906 is amended to read:

§ 2906. VERMONT EXPANDED LEARNING OPPORTUNITIES SPECIAL FUND ESTABLISHED

~~(a) As used in this section, “Expanded Learning Opportunity” means a structured program designed to serve prekindergarten through secondary school-age children and youth outside the school day and year on a regular basis, including before and after school and during the summer, by providing opportunities for personal, emotional, and academic growth for children and youth.~~

~~(b) There is established a Vermont Expanded Learning Opportunities Special Fund comprising grants, donations, and contributions from any private or public source. Monies in the Fund shall be available to the Agency for the purpose of increasing access to expanded learning opportunities throughout Vermont. The Commissioner of Finance and Management may draw warrants for disbursements from this Fund in anticipation of receipts. The Fund shall be administered pursuant to 32 V.S.A. chapter 7, subchapter 5, except that interest earned and any remaining balance at the end of the fiscal year shall be retained and carried forward in the Fund. [Repealed.]~~

* * * Postsecondary Educational Institutions; Closing * * *

Sec. 19. 16 V.S.A. § 175 is amended to read:

§ 175. POSTSECONDARY EDUCATIONAL INSTITUTIONS; CLOSING

(a) When an institution of higher education, whether or not chartered in this State, proposes to discontinue the regular course of instruction, either permanently or for a temporary period other than a customary vacation period, the institution shall:

(1) promptly inform the State Board;

(2) prepare the academic record of each current and former student in a form satisfactory to the State Board and including interpretive information required by the Board; and

(3) deliver the records to a person designated by the State Board to act as permanent repository for the institution's records, together with the reasonable cost of entering and maintaining the records.

* * *

(d) When an institution of higher education is unable or unwilling to comply substantially with the record preparation and delivery requirements of subsection (a) of this section, the State Board shall bring an action in Superior Court to compel compliance with this section, and may in a proper case obtain temporary custody of the records.

(e) When an institution of higher education is unable or unwilling to comply with the requirements of subsection (a) of this section, the State Board may expend State funds necessary to ensure the proper storage and availability of the institution's records. The Attorney General shall then seek recovery under this subsection, in the name of the State, of all of the State's incurred costs and expenses, including attorney's fees, arising from the failure to comply. Claims under this subsection shall be a lien on all the property of a defaulting institution, until all claims under this subsection are satisfied. The lien shall take effect from the date of filing notice thereof in the records of the town or towns where property of the defaulting institution is located.

* * *

~~(g)(1) The Association of Vermont Independent Colleges (AVIC) shall maintain a memorandum of understanding with each of its member colleges under which each member college agrees to:~~

~~(1) upon the request of AVIC, properly administer the student records of a member college that fails to comply with the requirements of subsection (a) of this section; and~~

~~(2) contribute on an equitable basis and in a manner determined in the sole discretion of AVIC to the costs of another AVIC member or other entity selected by AVIC maintaining the records of a member college that fails to comply with the requirements of subsection (a) of this section. If an institution of higher education is placed on probation for financial reasons by its accrediting agency, the institution shall, not later than two days after learning that it has been placed on probation, inform the State Board of Education of its status, and not later than 90 days after being place on probation, shall submit a student record plan to the State Board for approval.~~

~~(2) The student record plan shall include an agreement with an institution of higher education or other entity to act as a repository for the institution's records with funds set aside, if necessary, for the permanent maintenance of the student records.~~

(3) If the State Board does not approve the plan, the State may take action under subsections (d) and (e) of this section.

* * * Statewide Negotiation of Health Care Benefits
for School Employees * * *

Sec. 20. STUDY COMMITTEE ON STATEWIDE NEGOTIATION OF
HEALTH CARE BENEFITS FOR SCHOOL EMPLOYEES

(a) The Study Committee on Statewide Negotiation of Health Care Benefits for School Employee (Committee) is created to determine how to transition to a single, statewide health benefit plan for all school employees of supervisory unions and school districts.

(b)(1) The Committee shall comprise the following six members:

(A) three current members of the House of Representatives, not all from the same political party, who shall be appointed by the Speaker of the House of Representatives; and

(B) three current members of the Senate, not all from the same political party, who shall be appointed by the Committee on Committees.

(2) If a member of the Committee ceases to serve as a member of the General Assembly, a replacement appointee who is a member of the General Assembly shall be appointed in the same manner as the initial appointment.

(c) The Committee shall propose draft legislation that addresses the following matters concerning the transition to a single, statewide health benefit plan for all school employees of supervisory unions and school districts:

(1) the structure and composition of parties to a statewide negotiation;

(2) a timeline for negotiations and impasse procedures;

(3) a process for statewide ratification of the agreement resulting from the statewide negotiation; and

(4) how income sensitization will be decided as part of the negotiations.

(d) The Committee's draft legislation shall include a requirement that any fact-finding required for impasse resolution shall give weight to:

(1) the financial capacity of the school district;

(2) the interest and welfare of the public and the financial ability of the school board to pay for increased costs of public services, including the cost of labor;

(3) comparisons of the wages, hours, and conditions of employment of the employees involved in the dispute with the wages, hours, and conditions of employment of State and municipal employees who are not employed by supervisory unions or school districts;

(4) the overall compensation currently received by the employees, including direct wages, fringe benefits, and continuity conditions and stability of employment, and all other benefits received; and

(5) the rate of growth of the economy of the State of Vermont for the year of negotiation as well as during the prior three-year period.

(e)(1) The Committee shall consult with the Secretary of Education and the Vermont Education Health Initiative as necessary.

(2) The Committee shall have the administrative, technical, and legal assistance of the Office of Legislative Council.

(f) On or before December 15, 2018, the Committee shall provide its proposed legislation to the House Committees on Education, on General, Housing, and Military Affairs, and on Ways and Means and the Senate Committees on Education, on Economic Development, Housing and General Affairs, and on Finance.

(g) The Speaker of the House shall call the first meeting of the Committee to occur on or before July 1, 2018. The Committee shall select a chair from among its members at the first meeting. A majority of the membership shall constitute a quorum. The Committee shall cease to exist on December 16, 2018.

(h) As used in this section, “supervisory union” and “school district” shall have the same meanings as set forth in 16 V.S.A. § 11.

* * * Mitigating Trauma and Toxic Stress During Childhood * * *

Sec. 21. 16 V.S.A. § 2902 is amended to read:

§ 2902. TIERED SYSTEM OF SUPPORTS AND EDUCATIONAL SUPPORT TEAM

* * *

(b) The tiered system of supports shall:

(1) be aligned as appropriate with the general education curriculum;

(2) be designed to enhance the ability of the general education system to meet the needs of all students;

(3) be designed to provide necessary supports promptly, regardless of an individual student’s eligibility for categorical programs;

(4) seek to identify and respond to students in need of support for at-risk behaviors and to students in need of specialized, individualized behavior supports; and

(5) provide all students with a continuum of evidence-based and

research-based behavior practices, including trauma-sensitive programming, that teach and encourage prosocial skills and behaviors schoolwide;

(6) promote collaboration with families, community supports, and the system of health and human services; and

(7) provide professional development as needed to support all staff in implementing the system.

(c) The educational support team for each public school in the district shall be composed of staff from a variety of teaching and support positions and shall:

(1) Determine which enrolled students require additional assistance to be successful in school or to complete secondary school based on indicators set forth in guidelines developed by the Secretary, such as academic progress, attendance, behavior, or poverty. The educational support team shall pay particular attention to students during times of academic or personal transition and to those students who have been exposed to trauma.

* * *

Sec. 22. 16 V.S.A. § 2904 is amended to read:

§ 2904. REPORTS

Annually, each superintendent shall report to the Secretary in a form prescribed by the Secretary, on the status of the ~~educational support systems~~ multi-tiered system of supports in each school ~~in the supervisory union~~. The report shall describe the services and supports that are a part of the ~~education support system~~ multi-tiered system of supports, how they are funded, and how building the capacity of the ~~educational support system~~ multi-tiered system of supports has been addressed in the ~~school action plans~~, school's continuous improvement plan and professional development and shall be in addition to the report required of the ~~educational support~~ multi-tiered system of supports team in subdivision 2902(c)(6) of this chapter. The superintendent's report shall include a description and justification of how funds received due to Medicaid reimbursement under section 2959a of this title were used.

Sec. 23. ALIGNMENT OF DESIGNATED AND SPECIALIZED SERVICE AGENCIES WITH SUPERVISORY UNIONS

The Agencies of Education and of Human Services shall discuss areas of geographical overlap to better coordinate the provision of their respective services. The Agencies shall jointly present the results of their efforts to the House and Senate Committees on Education on or before January 15, 2019.

Sec. 24. SCHOOL NURSES; HEALTH-RELATED BARRIERS TO LEARNING

On or before September 1, 2018, the Agency of Human Services' Director of Prevention and Health Improvement shall coordinate with the Vermont State School Nurse Consultant and with the Agency of Education systematically to support local education agencies, school administrators, and school nurses in ensuring that all students' health appraisal forms are completed on an annual basis to enable school nurses to identify students' health-related barriers to learning.

* * * Effective Dates * * *

Sec. 25. EFFECTIVE DATES

(a) Secs. 8 (Technical Correction) shall take effect July 1, 2019. Secs. 9, 11, and 12 (Prekindergarten Education) shall take effect on July 1, 2019 for the 2019-2020 school year and future school years.

(b) Sec. 10, which increases the weighting from 0.46 to 0.70 for a resident child enrolled in a public prekindergarten program with a duration of 20 hours or more per week for 35 weeks annually, shall take effect July 1, 2020 in order to provide sufficient time to determine how to better ensure equity and access to publicly funded hours across the private and public prekindergarten delivery systems.

(c) This section and the remaining sections shall take effect on passage, and Secs. 4(c) and 5 shall apply to the subsequent election of district officers of a unified union school district or a union school district.

Reports of Committees of Conference

H. 143.

An act relating to automobile insurance requirements and transportation network companies.

To the Senate and House of Representatives:

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

H.143. An act relating to automobile insurance requirements and transportation network companies.

Respectfully reports that it has met and considered the same and recommends that the Senate recede from its proposal of amendment and concur in the House proposal of amendment with further amendments as follows:

First: In Sec. 2, 23 V.S.A. chapter 10, in § 750(b)(3), by striking out subdivision (A) in its entirety and by inserting in lieu thereof a new subdivision (A) to read as follows:

(A) The following automobile insurance requirements shall apply while a driver is engaged in a prearranged ride:

(i) primary automobile liability insurance that provides at least \$1,000,000.00 for death, bodily injury, and property damage;

(ii) uninsured and underinsured motorist coverage that provides at least \$1,000,000.00 for death, bodily injury, and property damage; and

(iii) \$5,000.00 in medical payments coverage (Med Pay).

Second: In Sec. 2, 23 V.S.A. chapter 10, in § 751(c)(3), by striking out the word “seven” and by inserting in lieu thereof five

*RICHARD W. SEARS
JOSEPH C. BENNING
DEBORAH J. INGRAM*

*Committee on the part of the
Senate*

*JEAN D. O'SULLIVAN
MICHAEL J. MARCOTTE
CHARLES A. KIMBELL*

Committee on the part of the House

H. 711.

An act relating to employment protections for crime victims.

To the Senate and House of Representatives:

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

H. 711. An act relating to employment protections for crime victims.

Respectfully reports that it has met and considered the same and recommends that the House accede to the Senate proposals of amendment and that the bill be further amended in Sec. 4, 21 V.S.A. § 495o (volunteer emergency responders) by striking out the section in its entirety and renumbering the remaining section to be numerically correct.

REBECCA A. BALINT
ALICE W. NITKA
DAVID J. SOUCY

*Committee on the part of the
Senate*

HELEN J. HEAD
THOMAS S. STEVENS
VICKI M. STRONG

Committee on the part of the House

H. 764.

An act relating to data brokers and consumer protection.

To the Senate and House of Representatives:

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

H. 764. An act relating to data brokers and consumer protection.

Respectfully reports that it has met and considered the same and recommends that the Senate recede from its proposal of amendment and that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS AND INTENT

(a) The General Assembly finds the following:

(1) Providing consumers with more information about data brokers, their data collection practices, and the right to opt out.

(A) While many different types of business collect data about consumers, a “data broker” is in the business of aggregating and selling data about consumers with whom the business does not have a direct relationship.

(B) A data broker collects many hundreds or thousands of data points about consumers from multiple sources, including: Internet browsing history; online purchases; public records; location data; loyalty programs; and subscription information. The data broker then scrubs the data to ensure accuracy; analyzes the data to assess content; and packages the data for sale to a third party.

(C) Data brokers provide information that is critical to services offered in the modern economy, including: targeted marketing and sales; credit reporting; background checks; government information; risk mitigation and fraud detection; people search; decisions by banks, insurers, or others

whether to provide services; ancestry research; and voter targeting and strategy by political campaigns.

(D) While data brokers offer many benefits, there are also risks associated with the widespread aggregation and sale of data about consumers, including risks related to consumers' ability to know and control information held and sold about them and risks arising from the unauthorized or harmful acquisition and use of consumer information.

(E) There are important differences between "data brokers" and businesses with whom consumers have a direct relationship.

(i) Consumers who have a direct relationship with traditional and e-commerce businesses may have some level of knowledge about and control over the collection of data by those business, including: the choice to use the business's products or services; the ability to review and consider data collection policies; the ability to opt out of certain data collection practices; the ability to identify and contact customer representatives; the ability to pursue contractual remedies through litigation; and the knowledge necessary to complain to law enforcement.

(ii) By contrast, consumers may not be aware that data brokers exist, who the companies are, or what information they collect, and may not be aware of available recourse.

(F) The State of Vermont has the legal authority and duty to exercise its traditional "Police Powers" to ensure the public health, safety, and welfare, which includes both the right to regulate businesses that operate in the State and engage in activities that affect Vermont consumers as well as the right to require disclosure of information to protect consumers from harm.

(G) To provide consumers with necessary information about data brokers, Vermont should adopt a narrowly tailored definition of "data broker" and require data brokers to register annually with the Secretary of State and provide information about their data collection activities, opt-out policies, purchaser credentialing practices, and security breaches.

(2) Ensuring that data brokers have adequate security standards.

(A) News headlines in the past several years demonstrate that large and sophisticated businesses, governments, and other public and private institutions are constantly subject to cyberattacks, which have compromised sensitive personal information of literally billions of consumers worldwide.

(B) While neither government nor industry can prevent every security breach, the State of Vermont has the authority and the duty to enact legislation to protect its consumers where possible.

(C) One approach to protecting consumer data has been to require government agencies and certain regulated businesses to adopt an “information security program” that has “appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of records” and “to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm.” Federal Privacy Act; 5 U.S.C. § 552a.

(D) The requirement to adopt such an information security program currently applies to “financial institutions” subject to the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq; to certain entities regulated by the Vermont Department of Financial Regulation pursuant to rules adopted by the Department; to persons who maintain or transmit health information regulated by the Health Insurance Portability and Accountability Act; and to various types of businesses under laws in at least 13 other states.

(E) Vermont can better protect its consumers from data broker security breaches and related harm by requiring data brokers to adopt an information security program with appropriate administrative, technical, and physical safeguards to protect sensitive personal information.

(3) Prohibiting the acquisition of personal information through fraudulent means or with the intent to commit wrongful acts.

(A) One of the dangers of the broad availability of sensitive personal information is that it can be used with malicious intent to commit wrongful acts, such as stalking, harassment, fraud, discrimination, and identity theft.

(B) While various criminal and civil statutes prohibit these wrongful acts, there is currently no prohibition on acquiring data for the purpose of committing such acts.

(C) Vermont should create new causes of action to prohibit the acquisition of personal information through fraudulent means, or for the purpose of committing a wrongful act, to enable authorities and consumers to take action.

(4) Removing financial barriers to protect consumer credit information.

(A) In one of several major security breaches that have occurred in recent years, the names, Social Security numbers, birth dates, addresses, driver’s license numbers, and credit card numbers of over 145 million Americans were exposed, including over 247,000 Vermonters.

(B) In response to concerns about data security, identity theft, and consumer protection, the Vermont Attorney General and the Department of Financial Regulation have outlined steps a consumer should take to protect his or her identity and credit information. One important step a consumer can take is to place a security freeze on his or her credit file with each of the national

credit reporting agencies.

(C) Under State law, when a consumer places a security freeze, a credit reporting agency issues a unique personal identification number or password to the consumer. The consumer must provide the PIN or password, and his or her express consent, to allow a potential creditor to access his or her credit information.

(D) Except in cases of identity theft, current Vermont law allows a credit reporting agency to charge a fee of up to \$10.00 to place a security freeze, and up to \$5.00 to lift temporarily or remove a security freeze.

(E) Vermont should exercise its authority to prohibit these fees to eliminate any financial barrier to placing or removing a security freeze.

(b) Intent.

(1) Providing consumers with more information about data brokers, their data collection practices, and the right to opt out. It is the intent of the General Assembly to provide Vermonters with access to more information about the data brokers that collect consumer data and their collection practices by:

(A) adopting a narrowly tailored definition of “data broker” that:

(i) includes only those businesses that aggregate and sell the personal information of consumers with whom they do not have a direct relationship; and

(ii) excludes businesses that collect information from their own customers, employees, users, or donors, including: banks and other financial institutions; utilities; insurers; retailers and grocers; restaurants and hospitality businesses; social media websites and mobile “apps”; search websites; and businesses that provide services for consumer-facing businesses and maintain a direct relationship with those consumers, such as website, “app,” and e-commerce platforms; and

(B) requiring a data broker to register annually with the Secretary of State and make certain disclosures in order to provide consumers, policy makers, and regulators with relevant information.

(2) Ensuring that data brokers have adequate security standards. It is the intent of the General Assembly to protect against potential cyber threats by requiring data brokers to adopt an information security program with appropriate technical, physical, and administrative safeguards.

(3) Prohibiting the acquisition of personal information with the intent to commit wrongful acts. It is the intent of the General Assembly to protect Vermonters from potential harm by creating new causes of action that prohibit

the acquisition or use of personal information for the purpose of stalking, harassment, fraud, identity theft, or discrimination.

(4) Removing financial barriers to protect consumer credit information. It is the intent of the General Assembly to remove any financial barrier for Vermonters who wish to place a security freeze on their credit report by prohibiting credit reporting agencies from charging a fee to place or remove a freeze.

Sec. 2. 9 V.S.A. chapter 62 is amended to read:

CHAPTER 62. PROTECTION OF PERSONAL INFORMATION

Subchapter 1. General Provisions

§ 2430. DEFINITIONS

~~The following definitions shall apply throughout this chapter unless otherwise required~~ As used in this chapter:

(1)(A) “Brokered personal information” means one or more of the following computerized data elements about a consumer, if categorized or organized for dissemination to third parties:

(i) name;

(ii) address;

(iii) date of birth;

(iv) place of birth;

(v) mother’s maiden name;

(vi) unique biometric data generated from measurements or technical analysis of human body characteristics used by the owner or licensee of the data to identify or authenticate the consumer, such as a fingerprint, retina or iris image, or other unique physical representation or digital representation of biometric data;

(vii) name or address of a member of the consumer’s immediate family or household;

(viii) Social Security number or other government-issued identification number; or

(ix) other information that, alone or in combination with the other information sold or licensed, would allow a reasonable person to identify the consumer with reasonable certainty.

(B) “Brokered personal information” does not include publicly available information to the extent that it is related to a consumer’s business or profession.

(2) “Business” means a commercial entity, including a sole proprietorship, partnership, corporation, association, limited liability company, or other group, however organized and whether or not organized to operate at a profit, including a financial institution organized, chartered, or holding a license or authorization certificate under the laws of this State, any other state, the United States, or any other country, or the parent, affiliate, or subsidiary of a financial institution, but in no case shall it does not include the State, a State agency, or any political subdivision of the State, or a vendor acting solely on behalf of, and at the direction of, the State.

(2)(3) “Consumer” means an individual residing in this State.

(4)(A) “Data broker” means a business, or unit or units of a business, separately or together, that knowingly collects and sells or licenses to third parties the brokered personal information of a consumer with whom the business does not have a direct relationship.

(B) Examples of a direct relationship with a business include if the consumer is a past or present:

(i) customer, client, subscriber, user, or registered user of the business’s goods or services;

(ii) employee, contractor, or agent of the business;

(iii) investor in the business; or

(iv) donor to the business.

(C) The following activities conducted by a business, and the collection and sale or licensing of brokered personal information incidental to conducting these activities, do not qualify the business as a data broker:

(i) developing or maintaining third-party e-commerce or application platforms;

(ii) providing 411 directory assistance or directory information services, including name, address, and telephone number, on behalf of or as a function of a telecommunications carrier;

(iii) providing publicly available information related to a consumer’s business or profession; or

(iv) providing publicly available information via real-time or near-real-time alert services for health or safety purposes.

(D) The phrase “sells or licenses” does not include:

(i) a one-time or occasional sale of assets of a business as part of a transfer of control of those assets that is not part of the ordinary conduct of the business; or

(ii) a sale or license of data that is merely incidental to the business.

(5)(A) “Data broker security breach” means an unauthorized acquisition or a reasonable belief of an unauthorized acquisition of more than one element of brokered personal information maintained by a data broker when the brokered personal information is not encrypted, redacted, or protected by another method that renders the information unreadable or unusable by an unauthorized person.

(B) “Data broker security breach” does not include good faith but unauthorized acquisition of brokered personal information by an employee or agent of the data broker for a legitimate purpose of the data broker, provided that the brokered personal information is not used for a purpose unrelated to the data broker’s business or subject to further unauthorized disclosure.

(C) In determining whether brokered personal information has been acquired or is reasonably believed to have been acquired by a person without valid authorization, a data broker may consider the following factors, among others:

(i) indications that the brokered personal information is in the physical possession and control of a person without valid authorization, such as a lost or stolen computer or other device containing brokered personal information;

(ii) indications that the brokered personal information has been downloaded or copied;

(iii) indications that the brokered personal information was used by an unauthorized person, such as fraudulent accounts opened or instances of identity theft reported; or

(iv) that the brokered personal information has been made public.

~~(3)(6) “Data collector” may include the State, State agencies, political subdivisions of the State, public and private universities, privately and publicly held corporations, limited liability companies, financial institutions, retail operators, and any other entity that, means a person who, for any purpose, whether by automated collection or otherwise, handles, collects, disseminates, or otherwise deals with nonpublic personal information personally identifiable information, and includes the State, State agencies, political subdivisions of the State, public and private universities, privately and publicly held corporations, limited liability companies, financial institutions, and retail operators.~~

(4)(7) “Encryption” means use of an algorithmic process to transform data into a form in which the data is rendered unreadable or unusable without use of a confidential process or key.

(8) “License” means a grant of access to, or distribution of, data by one person to another in exchange for consideration. A use of data for the sole benefit of the data provider, where the data provider maintains control over the use of the data, is not a license.

~~(5)(9)~~(A) “Personally identifiable information” means ~~an individual’s~~ a consumer’s first name or first initial and last name in combination with any one or more of the following digital data elements, when either the name or the data elements are not encrypted or redacted or protected by another method that renders them unreadable or unusable by unauthorized persons:

(i) Social Security number;

(ii) motor vehicle operator’s license number or nondriver identification card number;

(iii) financial account number or credit or debit card number, if circumstances exist in which the number could be used without additional identifying information, access codes, or passwords;

(iv) account passwords or personal identification numbers or other access codes for a financial account.

(B) “Personally identifiable information” does not mean publicly available information that is lawfully made available to the general public from federal, State, or local government records.

~~(6)(10)~~ “Records Record” means any material on which written, drawn, spoken, visual, or electromagnetic information is recorded or preserved, regardless of physical form or characteristics.

~~(7)(11)~~ “Redaction” means the rendering of data so that ~~it is~~ the data are unreadable or ~~is~~ are truncated so that no more than the last four digits of the identification number are accessible as part of the data.

~~(8)(12)~~(A) “Security breach” means unauthorized acquisition of₂ electronic data or a reasonable belief of an unauthorized acquisition of₂ electronic data that compromises the security, confidentiality, or integrity of a consumer’s personally identifiable information maintained by ~~the~~ a data collector.

(B) “Security breach” does not include good faith but unauthorized acquisition of personally identifiable information by an employee or agent of the data collector for a legitimate purpose of the data collector, provided that the personally identifiable information is not used for a purpose unrelated to the data collector’s business or subject to further unauthorized disclosure.

(C) In determining whether personally identifiable information has been acquired or is reasonably believed to have been acquired by a person

without valid authorization, a data collector may consider the following factors, among others:

(i) indications that the information is in the physical possession and control of a person without valid authorization, such as a lost or stolen computer or other device containing information;

(ii) indications that the information has been downloaded or copied;

(iii) indications that the information was used by an unauthorized person, such as fraudulent accounts opened or instances of identity theft reported; or

(iv) that the information has been made public.

§ 2433. ACQUISITION OF BROKERED PERSONAL INFORMATION; PROHIBITIONS

(a) Prohibited acquisition and use.

(1) A person shall not acquire brokered personal information through fraudulent means.

(2) A person shall not acquire or use brokered personal information for the purpose of:

(A) stalking or harassing another person;

(B) committing a fraud, including identity theft, financial fraud, or e-mail fraud; or

(C) engaging in unlawful discrimination, including employment discrimination and housing discrimination.

(b) Enforcement.

(1) A person who violates a provision of this section commits an unfair and deceptive act in commerce in violation of section 2453 of this title.

(2) The Attorney General has the same authority to adopt rules to implement the provisions of this section and to conduct civil investigations, enter into assurances of discontinuance, bring civil actions, and take other enforcement actions as provided under chapter 63, subchapter 1 of this title.

* * *

Subchapter 5. Data Brokers

§ 2446. ANNUAL REGISTRATION

(a) Annually, on or before January 31 following a year in which a person meets the definition of data broker as provided in section 2430 of this title, a data broker shall:

- (1) register with the Secretary of State;
- (2) pay a registration fee of \$100.00; and
- (3) provide the following information:

(A) the name and primary physical, e-mail, and Internet addresses of the data broker;

(B) if the data broker permits a consumer to opt out of the data broker's collection of brokered personal information, opt out of its databases, or opt out of certain sales of data:

(i) the method for requesting an opt-out;

(ii) if the opt-out applies to only certain activities or sales, which ones; and

(iii) whether the data broker permits a consumer to authorize a third party to perform the opt-out on the consumer's behalf;

(C) a statement specifying the data collection, databases, or sales activities from which a consumer may not opt out;

(D) a statement whether the data broker implements a purchaser credentialing process;

(E) the number of data broker security breaches that the data broker has experienced during the prior year, and if known, the total number of consumers affected by the breaches;

(F) where the data broker has actual knowledge that it possesses the brokered personal information of minors, a separate statement detailing the data collection practices, databases, sales activities, and opt-out policies that are applicable to the brokered personal information of minors; and

(G) any additional information or explanation the data broker chooses to provide concerning its data collection practices.

(b) A data broker that fails to register pursuant to subsection (a) of this section is liable to the State for:

(1) a civil penalty of \$50.00 for each day, not to exceed a total of \$10,000.00 for each year, it fails to register pursuant to this section;

(2) an amount equal to the fees due under this section during the period it failed to register pursuant to this section; and

(3) other penalties imposed by law.

(c) The Attorney General may maintain an action in the Civil Division of the Superior Court to collect the penalties imposed in this section and to seek appropriate injunctive relief.

§ 2447. DATA BROKER DUTY TO PROTECT INFORMATION;
STANDARDS; TECHNICAL REQUIREMENTS

(a) Duty to protect personally identifiable information.

(1) A data broker shall develop, implement, and maintain a comprehensive information security program that is written in one or more readily accessible parts and contains administrative, technical, and physical safeguards that are appropriate to:

(A) the size, scope, and type of business of the data broker obligated to safeguard the personally identifiable information under such comprehensive information security program;

(B) the amount of resources available to the data broker;

(C) the amount of stored data; and

(D) the need for security and confidentiality of personally identifiable information.

(2) A data broker subject to this subsection shall adopt safeguards in the comprehensive security program that are consistent with the safeguards for protection of personally identifiable information and information of a similar character set forth in other State rules or federal regulations applicable to the data broker.

(b) Information security program; minimum features. A comprehensive information security program shall at minimum have the following features:

(1) designation of one or more employees to maintain the program;

(2) identification and assessment of reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of any electronic, paper, or other records containing personally identifiable information, and a process for evaluating and improving, where necessary, the effectiveness of the current safeguards for limiting such risks, including:

(A) ongoing employee training, including training for temporary and contract employees;

(B) employee compliance with policies and procedures; and

(C) means for detecting and preventing security system failures;

(3) security policies for employees relating to the storage, access, and transportation of records containing personally identifiable information outside business premises;

(4) disciplinary measures for violations of the comprehensive information security program rules;

(5) measures that prevent terminated employees from accessing records containing personally identifiable information;

(6) supervision of service providers, by:

(A) taking reasonable steps to select and retain third-party service providers that are capable of maintaining appropriate security measures to protect personally identifiable information consistent with applicable law; and

(B) requiring third-party service providers by contract to implement and maintain appropriate security measures for personally identifiable information;

(7) reasonable restrictions upon physical access to records containing personally identifiable information and storage of the records and data in locked facilities, storage areas, or containers;

(8)(A) regular monitoring to ensure that the comprehensive information security program is operating in a manner reasonably calculated to prevent unauthorized access to or unauthorized use of personally identifiable information; and

(B) upgrading information safeguards as necessary to limit risks;

(9) regular review of the scope of the security measures:

(A) at least annually; or

(B) whenever there is a material change in business practices that may reasonably implicate the security or integrity of records containing personally identifiable information; and

(10)(A) documentation of responsive actions taken in connection with any incident involving a breach of security; and

(B) mandatory post-incident review of events and actions taken, if any, to make changes in business practices relating to protection of personally identifiable information.

(c) Information security program; computer system security requirements. A comprehensive information security program required by this section shall at minimum, and to the extent technically feasible, have the following elements:

(1) secure user authentication protocols, as follows:

(A) an authentication protocol that has the following features:

(i) control of user IDs and other identifiers;

(ii) a reasonably secure method of assigning and selecting passwords or use of unique identifier technologies, such as biometrics or token devices;

(iii) control of data security passwords to ensure that such passwords are kept in a location and format that do not compromise the security of the data they protect;

(iv) restricting access to only active users and active user accounts; and

(v) blocking access to user identification after multiple unsuccessful attempts to gain access; or

(B) an authentication protocol that provides a higher level of security than the features specified in subdivision (A) of this subdivision (c)(1).

(2) secure access control measures that:

(A) restrict access to records and files containing personally identifiable information to those who need such information to perform their job duties; and

(B) assign to each person with computer access unique identifications plus passwords, which are not vendor-supplied default passwords, that are reasonably designed to maintain the integrity of the security of the access controls or a protocol that provides a higher degree of security;

(3) encryption of all transmitted records and files containing personally identifiable information that will travel across public networks and encryption of all data containing personally identifiable information to be transmitted wirelessly or a protocol that provides a higher degree of security;

(4) reasonable monitoring of systems for unauthorized use of or access to personally identifiable information;

(5) encryption of all personally identifiable information stored on laptops or other portable devices or a protocol that provides a higher degree of security;

(6) for files containing personally identifiable information on a system that is connected to the Internet, reasonably up-to-date firewall protection and operating system security patches that are reasonably designed to maintain the integrity of the personally identifiable information or a protocol that provides a higher degree of security;

(7) reasonably up-to-date versions of system security agent software that must include malware protection and reasonably up-to-date patches and virus definitions, or a version of such software that can still be supported with up-to-date patches and virus definitions and is set to receive the most current security updates on a regular basis or a protocol that provides a higher degree of security; and

(8) education and training of employees on the proper use of the computer security system and the importance of personally identifiable information security.

(d) Enforcement.

(1) A person who violates a provision of this section commits an unfair and deceptive act in commerce in violation of section 2453 of this title.

(2) The Attorney General has the same authority to adopt rules to implement the provisions of this chapter and to conduct civil investigations, enter into assurances of discontinuance, and bring civil actions as provided under chapter 63, subchapter 1 of this title.

Sec. 3. 9 V.S.A. § 2480b is amended to read:

§ 2480b. DISCLOSURES TO CONSUMERS

(a) A credit reporting agency shall, upon request and proper identification of any consumer, clearly and accurately disclose to the consumer all information available to users at the time of the request pertaining to the consumer, including:

(1) any credit score or predictor relating to the consumer, in a form and manner that complies with such comments or guidelines as may be issued by the Federal Trade Commission;

(2) the names of users requesting information pertaining to the consumer during the prior 12-month period and the date of each request; and

(3) a clear and concise explanation of the information.

(b) As frequently as new telephone directories are published, the credit reporting agency shall cause to be listed its name and number in each telephone directory published to serve communities of this State. In accordance with rules adopted by the Attorney General, the credit reporting agency shall make provision for consumers to request by telephone the information required to be disclosed pursuant to subsection (a) of this section at no cost to the consumer.

(c) Any time a credit reporting agency is required to make a written disclosure to consumers pursuant to 15 U.S.C. § 1681g, it shall disclose, in at least 12 point type, and in bold type as indicated, the following notice:

“NOTICE TO VERMONT CONSUMERS

(1) Under Vermont law, you are allowed to receive one free copy of your credit report every 12 months from each credit reporting agency. If you would like to obtain your free credit report from [INSERT NAME OF COMPANY], you should contact us by [[writing to the following address:

[INSERT ADDRESS FOR OBTAINING FREE CREDIT REPORT]] or [calling the following number: [INSERT TELEPHONE NUMBER FOR OBTAINING FREE CREDIT REPORT]], or both].

(2) Under Vermont law, no one may access your credit report without your permission except under the following limited circumstances:

(A) in response to a court order;

(B) for direct mail offers of credit;

(C) if you have given ongoing permission and you have an existing relationship with the person requesting a copy of your credit report;

(D) where the request for a credit report is related to an education loan made, guaranteed, or serviced by the Vermont Student Assistance Corporation;

(E) where the request for a credit report is by the Office of Child Support Services when investigating a child support case;

(F) where the request for a credit report is related to a credit transaction entered into prior to January 1, 1993; and or

(G) where the request for a credit report is by the Vermont State Tax Department of Taxes and is used for the purpose of collecting or investigating delinquent taxes.

(3) If you believe a law regulating consumer credit reporting has been violated, you may file a complaint with the Vermont Attorney General's Consumer Assistance Program, 104 Morrill Hall, University of Vermont, Burlington, Vermont 05405.

Vermont Consumers Have the Right to Obtain a Security Freeze

You have a right to place a "security freeze" on your credit report pursuant to 9 V.S.A. § 2480h at no charge ~~if you are a victim of identity theft. All other Vermont consumers will pay a fee to the credit reporting agency of up to \$10.00 to place the freeze on their credit report.~~ The security freeze will prohibit a credit reporting agency from releasing any information in your credit report without your express authorization. A security freeze must be requested in writing by certified mail.

The security freeze is designed to help prevent credit, loans, and services from being approved in your name without your consent. However, you should be aware that using a security freeze to take control over who gains access to the personal and financial information in your credit report may delay, interfere with, or prohibit the timely approval of any subsequent request or application you make regarding new loans, credit, mortgage, insurance,

government services or payments, rental housing, employment, investment, license, cellular phone, utilities, digital signature, ~~internet~~ Internet credit card transaction, or other services, including an extension of credit at point of sale.

When you place a security freeze on your credit report, within ten business days you will be provided a personal identification number ~~or~~, password, or other equally or more secure method of authentication to use if you choose to remove the freeze on your credit report or authorize the release of your credit report for a specific party, parties, or period of time after the freeze is in place. To provide that authorization, you must contact the credit reporting agency and provide all of the following:

(1) The unique personal identification number ~~or~~, password, or other method of authentication provided by the credit reporting agency.

(2) Proper identification to verify your identity.

(3) The proper information regarding the third party or parties who are to receive the credit report or the period of time for which the report shall be available to users of the credit report.

A credit reporting agency may not charge a fee ~~of up to \$5.00 to a consumer who is not a victim of identity theft~~ to remove the freeze on your credit report or authorize the release of your credit report for a specific party, parties, or period of time after the freeze is in place. ~~For a victim of identity theft, there is no charge when the victim submits a copy of a police report, investigative report, or complaint filed with a law enforcement agency about unlawful use of the victim's personal information by another person.~~

A credit reporting agency that receives a request from a consumer to lift temporarily a freeze on a credit report shall comply with the request no later than three business days after receiving the request.

A security freeze will not apply to “preauthorized approvals of credit.” If you want to stop receiving preauthorized approvals of credit, you should call [INSERT PHONE NUMBERS] [ALSO INSERT ALL OTHER CONTACT INFORMATION FOR PRESCREENED OFFER ~~OPT-OUT~~ OPT-OUT.]

A security freeze does not apply to a person or entity, or its affiliates, or collection agencies acting on behalf of the person or entity with which you have an existing account that requests information in your credit report for the purposes of reviewing or collecting the account, provided you have previously given your consent to this use of your credit reports. Reviewing the account includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

You have a right to bring a civil action against someone who violates your rights under the credit reporting laws. The action can be brought against a credit reporting agency or a user of your credit report.”

(d) The information required to be disclosed by this section shall be disclosed in writing. The information required to be disclosed pursuant to subsection (c) of this section shall be disclosed on one side of a separate document, with text no smaller than that prescribed by the Federal Trade Commission for the notice required under 15 U.S.C. § ~~1681q~~ § 1681g. The information required to be disclosed pursuant to subsection (c) of this section may accurately reflect changes in numerical items that change over time (such as the ~~phone~~ telephone number or address of Vermont State agencies), and remain in compliance.

(e) The Attorney General may revise this required notice by rule as appropriate from time to time so long as no new substantive rights are created therein.

Sec. 4. 9 V.S.A. § 2480h is amended to read:

§ 2480h. SECURITY FREEZE BY CREDIT REPORTING AGENCY; TIME IN EFFECT

(a)(1) ~~Any~~ A Vermont consumer may place a security freeze on his or her credit report. A credit reporting agency shall not charge a fee to ~~victims of identity theft but may charge a fee of up to \$10.00 to all other~~ Vermont consumers for placing ~~and \$5.00 for~~ or removing, removing for a specific party or parties, or removing for a specific period of time after the freeze is in place, a security freeze on a credit report.

(2) ~~A consumer who has been the victim of identity theft may place a security freeze on his or her credit report by making a request in writing by certified mail to a credit reporting agency with a valid copy of a police report, investigative report, or complaint the consumer has filed with a law enforcement agency about unlawful use of his or her personal information by another person. All other Vermont consumers may place a security freeze on his or her credit report by making a request in writing by certified mail to a credit reporting agency.~~

(3) A security freeze shall prohibit, subject to the exceptions in subsection (1) of this section, the credit reporting agency from releasing the consumer's credit report or any information from it without the express authorization of the consumer. ~~When a security freeze is in place, information from a consumer's credit report shall not be released to a third party without prior express authorization from the consumer.~~

(4) This subsection does not prevent a credit reporting agency from advising a third party that a security freeze is in effect with respect to the consumer's credit report.

(b) A credit reporting agency shall place a security freeze on a consumer's credit report ~~no~~ not later than five business days after receiving a written request from the consumer.

(c) The credit reporting agency shall send a written confirmation of the security freeze to the consumer within 10 business days and shall provide the consumer with a unique personal identification number or password, other than the customer's Social Security number, or another method of authentication that is equally or more secure than a PIN or password, to be used by the consumer when providing authorization for the release of his or her credit for a specific party, parties, or period of time.

(d) If the consumer wishes to allow his or her credit report to be accessed for a specific party, parties, or period of time while a freeze is in place, he or she shall contact the credit reporting agency, request that the freeze be temporarily lifted, and provide the following:

(1) ~~Proper~~ proper identification;

(2) ~~The~~ the unique personal identification number ~~or~~, password, or other method of authentication provided by the credit reporting agency pursuant to subsection (c) of this section; and

(3) ~~The~~ the proper information regarding the third party, parties, or time period for which the report shall be available to users of the credit report.

(e) A credit reporting agency may develop procedures involving the use of telephone, fax, the Internet, or other electronic media to receive and process a request from a consumer to lift temporarily ~~lift~~ a freeze on a credit report pursuant to subsection (d) of this section in an expedited manner.

(f) A credit reporting agency that receives a request from a consumer to lift temporarily a freeze on a credit report pursuant to subsection (d) of this section shall comply with the request ~~no~~ not later than three business days after receiving the request.

(g) A credit reporting agency shall remove or lift temporarily ~~lift~~ a freeze placed on a consumer's credit report only in the following cases:

(1) Upon consumer request, pursuant to subsection (d) or (j) of this section.

(2) If the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer. If a credit reporting agency intends to remove a freeze upon a consumer's credit report pursuant to this subdivision, the credit reporting agency shall notify the consumer in writing prior to removing the freeze on the consumer's credit report.

(h) If a third party requests access to a credit report on which a security freeze is in effect and this request is in connection with an application for credit or any other use and the consumer does not allow his or her credit report to be accessed for that specific party or period of time, the third party may treat the application as incomplete.

(i) If a consumer requests a security freeze pursuant to this section, the credit reporting agency shall disclose to the consumer the process of placing and lifting temporarily ~~lifting~~ a security freeze and the process for allowing access to information from the consumer's credit report for a specific party, parties, or period of time while the security freeze is in place.

(j) A security freeze shall remain in place until the consumer requests that the security freeze be removed. A credit reporting agency shall remove a security freeze within three business days of receiving a request for removal from the consumer who provides both of the following:

(1) ~~Proper~~ proper identification; and

(2) ~~The~~ the unique personal identification number, ~~or~~ password, or other method of authentication provided by the credit reporting agency pursuant to subsection (c) of this section.

(k) A credit reporting agency shall require proper identification of the person making a request to place or remove a security freeze.

(l) The provisions of this section, including the security freeze, do not apply to the use of a consumer report by the following:

(1) A person, or the person's subsidiary, affiliate, agent, or assignee with which the consumer has or, prior to assignment, had an account, contract, or debtor-creditor relationship for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or debt, or extending credit to a consumer with a prior or existing account, contract, or debtor-creditor relationship, subject to the requirements of section 2480e of this title. For purposes of this subdivision, "reviewing the account" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

(2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under subsection (d) of this section for purposes of facilitating the extension of credit or other permissible use.

(3) Any person acting pursuant to a court order, warrant, or subpoena.

(4) The Office of Child Support when investigating a child support case pursuant to Title IV-D of the Social Security Act (42 U.S.C. et seq.) and 33 V.S.A. § 4102.

(5) The Economic Services Division of the Department for Children and Families or the Department of Vermont Health Access or its agents or assignee acting to investigate welfare or Medicaid fraud.

(6) The Department of Taxes, municipal taxing authorities, or the Department of Motor Vehicles, or any of their agents or assignees, acting to investigate or collect delinquent taxes or assessments, including interest and penalties, unpaid court orders, or acting to fulfill any of their other statutory or charter responsibilities.

(7) A person's use of credit information for the purposes of prescreening as provided by the federal Fair Credit Reporting Act.

(8) Any person for the sole purpose of providing a credit file monitoring subscription service to which the consumer has subscribed.

(9) A credit reporting agency for the sole purpose of providing a consumer with a copy of his or her credit report upon the consumer's request.

(10) Any property and casualty insurance company for use in setting or adjusting a rate or underwriting for property and casualty insurance purposes.

Sec. 5. REPORTS

(a) On or before March 1, 2019, the Attorney General and Secretary of State shall submit a preliminary report concerning the implementation of this act to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs.

(b) On or before January 15, 2020, the Attorney General and Secretary of State shall update its preliminary report and provide additional information concerning the implementation of this act to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs.

(c) On or before January 15, 2019, the Attorney General shall:

(1) review and consider the necessity of additional legislative and regulatory approaches to protecting the data security and privacy of Vermont consumers, including:

(A) whether to create or designate a Chief Privacy Officer and if so, the appropriate duties for, and the resources necessary to support, that position; and

(B) whether to expand or reduce the scope of regulation to businesses with direct relationships to consumers; and

(2) report its findings and recommendations to the House Committees on Commerce and Economic Development and on Energy and Technology and to the Senate Committee on Economic Development, Housing and General Affairs.

Sec. 6. ONE-STOP FREEZE NOTIFICATION

(a) The Attorney General, in consultation with industry stakeholders, shall consider one or more methods to ease the burden on consumers when placing or lifting a credit security freeze, including the right to place a freeze with a single nationwide credit reporting agency and require that agency to initiate a freeze with other agencies.

(b) On or before January 15, 2019, the Attorney General shall report his or her findings and recommendations to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs.

Sec. 7. EFFECTIVE DATES

(a) This section, Secs. 1 (findings and intent), 3–4 (eliminating fees for placing or removing a credit freeze), and 5–6 (reports) shall take effect on passage.

(b) Sec. 2 (data brokers) shall take effect on January 1, 2019.

*PHILIP E. BARUTH
REBECCA A. BALINT
DAVID J. SOUCY*

*Committee on the part of the
Senate*

*WILLIAM G. F. BOTZOW
MICHAEL J. MARCOTTE
JEAN D. O'SULLIVAN*

Committee on the part of the House

CONCURRENT RESOLUTIONS FOR ACTION

H.C.R. 388 - 408 (For text of Resolutions, see Addendum to House Calendar for May 10, 2018)

CONFIRMATIONS

The following appointments will be considered by the Senate, as a group, under suspension of the Rules, as moved by the President *pro tempore*, for confirmation together and without debate, by consent thereby given by the Senate. However, upon request of any senator, any appointment may be singled out and acted upon separately by the Senate, with consideration given to the report of the Committee to which the appointment was referred, and with full debate; and further, all appointments for the positions of Secretaries of Agencies, Commissioners of Departments, Judges, Magistrates, and members of the Public Utility Commission shall be fully and separately acted upon.

Robert Fischer of Barre, - Member, Vermont Citizens Advisory Committee on Lake Champlain's Future – By Senator Campion for the Committee on Natural Resources and Energy. (5/11/18)

Mark Naud, of South Hero - Member, Vermont Citizens Advisory Committee on Lake Champlain's Future – By Senator Campion for the Committee on Natural Resources and Energy. (5/11/18)

Karen O'Neill of Hinesburg – Member, State Labor Relations Board – Adverse - By Senator Sirotkin for the Committee on Economic Development, Housing and General Affairs. (5/11/18)

John Benoit of Barre – Member, Electricians Licensing Board – By Senator Sirotkin for the Committee on Economic Development, Housing and General Affairs. (5/12/18)

Betsy Gentile of Brattleboro – Member, Vermont Economic Progress Council – By Senator Balint for the Committee on Economic Development, Housing and General Affairs. (5/12/18)

Patricia Horn of Windsor – Member, Vermont Economic Progress Council – By Senator Clarkson for the Committee on Economic Development, Housing and General Affairs. (5/12/18)

Tom Jagielski of Grand Isle – Member, Occupational Safety and Health Review Board – By Senator Soucy for the Committee on Economic Development, Housing and General Affairs. (5/12/18)

Michael Keane of North Bennington – Member, Vermont Economic Progress Council – By Senator Soucy for the Committee on Economic Development, Housing and General Affairs. (5/12/18)

Janet Metz of Jericho – Member, Employment Security Board – By Senator Sirotkin for the Committee on Economic Development, Housing and General Affairs. (5/12/18)

Casey Mock of Burlington – Executive Director, Vermont Economic Progress Council – By Senator Sirotkin for the Economic Development, Housing and General Affairs. (5/12/18)

Thomas Nesbitt of Waterbury Center – Member, Plumbers Examining Board – By Senator Baruth for the Committee on Economic Development, Housing and General Affairs. (5/12/18)

Rachel Smith of St. Albans – Member, Vermont Economic Progress Council – By Senator Baruth for the Committee on Economic Development, Housing and General Affairs. (5/12/18)

Jo Ann Troiano of Montpelier – Member, Vermont State Housing Authority – By Senator Balint for the Committee on Economic Development, Housing and General Affairs. (5/12/18)

Brian Thomas of Shrewsbury – Member, Plumbers Examining Board – By Senator Soucy for the Committee on Economic Development, Housing and General Affairs. (5/12/18)

Steven Voight of Norwich – Member, Vermont Economic Development Authority – By Senator Sirotkin for the Committee on Finance. (5/12/18)