

# Journal of the Senate

THURSDAY, MAY 6, 2021

The Senate was called to order by the President.

## Devotional Exercises

A moment of silence was observed in lieu of devotions.

## Message from the House No. 64

A message was received from the House of Representatives by Ms. Alona Tate, its Second Assistant Clerk, as follows:

Madam President:

I am directed to inform the Senate that:

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

**S. 39.** An act relating to the Judicial Branch fee report and electronic filing fees.

And has passed the same in concurrence.

The House has considered Senate proposals of amendment to the following House bills:

**H. 46.** An act relating to miscellaneous provisions of mental health law.

**H. 104.** An act relating to considerations in facilitating the interstate practice of health care professionals using telehealth.

And has severally concurred therein.

The Governor has informed the House that on May 4, 2021, he approved and signed a bill originating in the House of the following title:

**H. 195.** An act relating to use of facial recognition technology by law enforcement in cases involving sexual exploitation of children.

The Governor has informed the House that on May 5, 2021, he approved and signed a bill originating in the House of the following title:

**H. 128.** An act relating to limiting criminal defenses based on victim identity.

**Bill Referred to Committee on Finance****H. 289.**

House bill of the following title, appearing on the Calendar for notice, and affecting the revenue of the state, under the rule was referred to the Committee on Finance:

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

**Bill Referred to Committee on Appropriations****H. 360.**

House bill of the following title, appearing on the Calendar for notice and carrying an appropriation or requiring the expenditure of funds, under the rule was referred to the Committee on Appropriations:

An act relating to accelerated community broadband deployment.

**House Proposals of Amendment Concurred In****S. 66.**

House proposals of amendment to Senate bill entitled:

An act relating to electric bicycles.

Were taken up.

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

First: In Sec. 1, 23 V.S.A. § 4(18)(A), by inserting “motor-assisted bicycles.” preceding the words “electric bicycles”

Second: In Sec. 2, 23 V.S.A. § 4(21), by inserting “motor-assisted bicycles.” preceding the words “electric bicycles”

Third: In Sec. 5, 23 V.S.A. § 4(81), by inserting the words “a motor-assisted bicycle or” preceding the words “an electric bicycle”

Fourth: In Sec. 8, 23 V.S.A. § 3501(1), in the last sentence, by striking out the words “or electric bicycle” and inserting in lieu thereof “, a motor-assisted bicycle, or an electric bicycle”

Fifth: In Sec. 9, 23 V.S.A. § 3801(1), by inserting “, motor-assisted bicycles.” preceding the words “or electric bicycles”

Sixth: By striking out Sec. 3, 23 V.S.A. § 4(45), in its entirety and inserting a new Sec. 3 to read as follows:

Sec. 3. 23 V.S.A. § 4(45) is amended to read:

(45)(A) “Motor-driven cycle” means any vehicle equipped with two or three wheels, a power source providing up to a maximum of two brake horsepower and having a maximum piston or rotor displacement of 50 cubic centimeters if a combustion engine is used, which will propel the vehicle, unassisted, at a speed not to exceed 30 miles per hour on a level road surface, and which is equipped with a power drive system that functions directly or automatically only, not requiring clutching or shifting by the operator after the drive system is engaged. As motor vehicles, motor-driven cycles shall be subject to the purchase and use tax imposed under 32 V.S.A. chapter 219 rather than to a general sales tax. ~~Neither an electric~~ Electric personal assistive mobility device nor a devices, motor-assisted bicycle is a bicycles, and electric bicycles are not motor-driven eyele cycles.

(B)(i) “Motor-assisted bicycle” means any bicycle or tricycle with fully operable pedals and equipped with a motor that in itself is capable of producing a top speed of not more than 20 miles per hour on a paved level surface when ridden by an operator who weighs 170 pounds and either:

(I) has an internal combustion motor with a power output of not more than 1,000 watts or 1.3 horsepower; and or

(II) in itself is capable of producing a top speed of no more than 20 miles per hour on a paved level surface when ridden by an operator who weighs 170 pounds has an electric motor with a power output of not more than 1,000 watts and does not meet the requirements of one of the three classes in subdivisions (46)(A)(i)–(iii) of this section.

(ii) Motor-assisted bicycles shall be regulated in accordance with section 1136 of this title.

(iii) Electric bicycles, as defined in subdivision (46) of this section, are not motor-assisted bicycles, as defined in subdivision (45) of this section.

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

**Proposal of Amendment; Bill Passed in Concurrence with Proposal of Amendment**

**H. 426.**

House bill entitled:

An act relating to addressing the needs and conditions of public school facilities in the State.

Was taken up.

Thereupon, pending third reading of the bill, Senators Perchlik, Campion, Chittenden, Hooker, Lyons, Pearson and Terenzini moved to amend the Senate proposal of amendment by striking out Sec. 12 in its entirety and inserting in lieu thereof the following:

Sec. 12. RADON TESTING; SCHOOL FACILITIES; DEPARTMENT OF HEALTH

(a) On or before January 15, 2023, each public school, as defined in 16 V.S.A. § 11, shall perform a radon measurement in accordance with the ANSI/AARST protocol for conducting Radon and Radon Decay Products in Schools and Large Buildings (MALB-2014) on any facility that has not had a test completed in five or more years.

(b) Each public school shall make available the results of the radon measurement described in subsection (a) of this section to each employee and student at the school.

Sec. 13. EFFECTIVE DATE

This act shall take effect on passage.

Which was agreed to.

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment.

**Bill Passed in Concurrence with Proposal of Amendment**

**H. 433.**

House bill of the following title:

An act relating to the Transportation Program and miscellaneous changes to laws related to transportation.

Was read the third time and passed in concurrence with proposal of amendment on a roll call, Yeas 29, Nays 0.

Senator Mazza having demanded the yeas and nays, they were taken and are as follows:

**Roll Call**

**Those Senators who voted in the affirmative were:** Balint, Baruth, Benning, Bray, Brock, Campion, Chittenden, Clarkson, Collamore, Cummings, Hardy, Hooker, Ingalls, Kitchel, Lyons, Mazza, McCormack, Nitka, Parent, Pearson, Perchlik, Pollina, Ram, Sears, Sirotkin, Starr, Terenzini, Westman, White.

**Those Senators who voted in the negative were:** None.

**The Senator absent and not voting was:** MacDonald.

**Proposal of Amendment; Third Reading Ordered**

**H. 449.**

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

An act relating to the membership and duties of the Vermont Pension Investment Commission and the creation of the Pension Benefits, Design, and Funding Task Force.

Reported recommending that the Senate propose to the House to amend the bill as follows:

First: By striking out Sec. 1, 3 V.S.A. chapter 17, in its entirety and inserting in lieu thereof the following:

~~CHAPTER 17. VERMONT STATE POLICE AND MOTOR VEHICLE  
INSPECTORS' RETIREMENT SYSTEM VERMONT PENSION  
INVESTMENT COMMISSION~~

§ 521. DEFINITIONS

As used in this chapter,:

(1) ~~“Committee”~~ “Commission” means the Vermont Pension Investment ~~Committee~~ Commission.

(2) “Financial expert” means an individual with material expertise and experience in institutional fund management, or other significant pension or other relevant financial expertise.

(3) “Independent” means an individual who does not have a direct or indirect material interest in the Plans.

(A) An individual has a direct or indirect material interest in the Plans if:

(i) the individual is a beneficiary of any of the Plans; or

(ii) the individual or the individual's spouse, parent, child, sibling, or in-law is or has been within the past five years an employee, director, officer, owner of a publicly traded company, consultant, manager, or had another material role with an entity servicing the Plans.

(B) An individual is considered an owner of a publicly traded company if the individual owns, directly or indirectly, five percent or more of a class of the company's equity securities registered under the Securities

Exchange Act of 1934 (15 U.S.C. § 78 et seq.), as amended.

(4) “Plans” means the Vermont State Teachers’ Retirement System, the Vermont State Employees’ Retirement System, and the Vermont Municipal Employees’ Retirement System pursuant to section 472 of this title, 16 V.S.A. § 1943, and 24 V.S.A. § 5063.

§ 522. VERMONT PENSION INVESTMENT COMMITTEE  
COMMISSION

(a) Members. There is created the Vermont Pension Investment ~~Committee~~ Commission, an independent commission, to comprise ~~seven~~ nine members as follows:

(1) ~~one member and one alternate, who may or may not be trustees of the Board of the Vermont State Employees’ Retirement System,~~ elected by the employee and retiree members of ~~that board~~ the Board of the Vermont State Employees’ Retirement System;

(2) ~~one member and one alternate, who may or may not be trustees of the Board of the State Teachers’ Retirement System of Vermont,~~ elected by the employee and retiree members of ~~that~~ the Board of the Vermont State Teachers’ Retirement System;

(3) ~~one member and one alternate, who may or may not be trustees of the Board of the Vermont Municipal Employees’ Retirement System,~~ elected by the municipal employee and municipal official members of ~~that~~ the Board of the Vermont Municipal Employees’ Retirement System;

(4) two members and one alternate, who shall each be a financial expert and independent, appointed by the Governor;

(5) the State Treasurer or designee, an ex-officio voting member; and

(6) one member, appointed by the other ~~six voting~~ eight members of the ~~Committee~~ Commission, who shall serve as Chair of the ~~Committee~~ Commission and at the pleasure of the ~~Committee~~ Commission;

(7) one member representing a municipal employer, appointed by the Executive Director of the Vermont League of Cities and Towns; and

(8) one member representing a school employer, appointed by the Vermont School Boards Association.

(b) Training. ~~An authority responsible for electing or appointing a member or alternate shall consider the experience and knowledge of potential members and alternates consistent with the purposes of the Committee, and shall inform potential members and alternates that they shall participate in~~ Members and alternates of the Commission shall be required to participate in onboarding and

ongoing periodic training in investments, securities, and fiduciary responsibilities as directed by the Committee Commission. The Commission shall provide an annual report to the respective authorities responsible for electing and appointing members and alternates regarding attendance at Commission meetings and relevant educational programs attended.

~~(c) Initially, one appointee and the alternate appointee of the Governor shall serve a two-year term, and the second appointee shall serve for a four-year term. Thereafter, the Governor's appointees and alternate appointee shall serve for four-year terms. Initially, the member and alternate chosen by the Vermont Municipal Employees' Retirement Board shall serve for a two-year term, the member and alternate chosen by the Vermont State Teachers' Retirement Board shall serve for a three-year term and the member and alternate chosen by the Vermont State Employees' Retirement Board shall serve for a four-year term. Thereafter, all members and alternates shall serve for four-year terms. Member terms.~~

(1) Except as provided in subdivision (2) of this section and for the ex-officio members of the Commission, all members and alternates of the Commission shall serve staggered four-year terms. A vacancy created before the expiration of a term shall be filled in the same manner as the original appointment for the unexpired portion of the term. A member or alternate appointed to fill a vacancy created before the expiration of a term shall not be deemed to have served a term for the purpose of this subsection. Members and alternates of the Commission shall be eligible for reappointment and shall serve not more than three terms; provided, however, that a single term served as an alternate shall not be used to calculate a member's total term limit. Members and alternates of the Commission may be removed only for cause. The Commission shall adopt rules pursuant to chapter 25 of this title to define the basis and process for removal.

(2) If the Chair is unable to perform his or her duties, the Commission shall elect an interim chair who shall be a financial expert and independent.

(3) Terms shall end on June 30 with new terms beginning on July 1.

(4) Notwithstanding subdivision (3) of this subsection, members and alternates shall serve until their successors are appointed subject to the term limits provided in this subsection.

(d) Chair and vice chair.

(1)(A) The Chair of the Vermont Pension Investment Committee Commission shall have the financial, investment, leadership, and governance expertise as required by policies adopted by the Commission.

(B) The Chair shall be a nonvoting member, except in the case of a tie vote.

(2) The Vermont Pension Investment Commission shall elect a vice chair from among its members.

~~(e) The Vermont Pension Investment Committee shall elect a vice chair from among its members~~ Eligibility. No legislator who is currently serving in the General Assembly shall serve on the Commission.

~~(f) Four Meetings.~~

~~(1) Five members of the Committee~~ Commission shall constitute a quorum.

~~(2) If a member is not in attendance, the alternate of that member shall be eligible to act as a member of the Committee~~ Commission during the absence of the member.

~~(3) Four Five~~ concurring votes shall be necessary for a decision of the Committee Commission at any meeting of the Committee Commission, except that any decision of the Commission relating to setting actuarial assumptions pursuant to subdivision 523(b)(1) of this title shall require six concurring votes. The Committee shall be attached to the Office of the State Treasurer for administrative support, and the expenses of the Committee and the Treasurer's office in support of the Committee shall be paid proportionately from the funds of the three retirement systems and any individual municipalities that have been allowed to invest their retirement funds pursuant to subsection 523(a) of this title.

~~(g) Leave time.~~ Public employee members and alternates shall be granted reasonable leave time by their employers to attend Committee Commission meetings and Committee-related Commission-related educational programs.

~~(h) The Committee shall provide an annual report to the respective authorities responsible for electing and appointing members and alternates regarding attendance at Committee meetings and relevant educational programs attended~~ Compensation and reimbursements. Members and alternates of the Commission who are not public employees shall be entitled to compensation as set forth in 32 V.S.A. § 1010 and reimbursement for all necessary expenses that they may incur through service on the Commission from the funds of the retirement systems. The Chair of the Commission may be compensated from the funds at a level not to exceed one-third of the salary of the State Treasurer, as determined by the other members of the Commission.



~~(i) A vacancy of an elected or appointed member or alternate shall be filled for the remainder of the term by the authority responsible for electing or appointing that member or alternate Assistance and expenses.~~

(1) The Commission shall have the administrative and technical support of the Office of the State Treasurer.

(2) The Commission may collect proportionally from the funds of the three retirement systems and any individual municipalities that have been allowed to invest their retirement funds pursuant to subsection 523(a) of this title, any expenses incurred that are associated with carrying out its duties, and any expenses incurred by the Treasurer's office in support of the Commission.

(3) The Attorney General shall serve as legal advisor to the Commission.

§ 523. VERMONT PENSION INVESTMENT COMMITTEE  
COMMISSION; DUTIES

(a) General. The Vermont Pension Investment ~~Committee~~ Commission shall be responsible for the investment of the assets of the ~~State Teachers' Retirement System of Vermont~~ Vermont State Teachers' Retirement System, the Vermont State Employees' Retirement System, and the Vermont Municipal Employees' Retirement System pursuant to section 472 of this title, 16 V.S.A. § 1943, and 24 V.S.A. § 5063. The ~~Committee~~ Commission shall strive to maximize total return on investment, within acceptable levels of risk for public retirement systems, in accordance with the standards of care established by the prudent investor rule under 14A V.S.A. § 902. The ~~Committee~~ Commission may, in its discretion, subject to approval by the Attorney General, also enter into agreements with municipalities administering their own retirement systems to invest retirement funds for those municipal pension plans. The State Treasurer shall serve as the custodian of the funds of all three retirement systems. The ~~Committee~~ Commission may, in its discretion, also enter into agreements with the State Treasurer to invest the State Employees' Postemployment Benefits Trust Fund, established in ~~3 V.S.A. § section~~ 479a of this title, and the Retired Teachers' Health and Medical Benefits Fund, established in 16 V.S.A. § 1944b.

(b) ~~Members and alternates of the Committee who are not public employees shall be entitled to compensation as set forth in 32 V.S.A. § 1010 and reimbursement for all necessary expenses that they may incur through service on the committee from the funds of the retirement systems. The Chair of the Committee may be compensated from the funds at a level not to exceed one-third of the salary of the State Treasurer, as determined by the other members of the Committee~~ Powers and duties. The Commission shall have

the following duties:

(1) Set the following actuarial assumptions:

(A) the investment rate of return;

(B) the inflation rate; and

(C) the smoothing rate method used for the actuarial valuation of assets and returns.

(2) Not more than 180 days after the end of each fiscal year, conduct an asset allocation study that reviews the expected return of each fund, including a risk analysis using best practices methodologies to estimate potential risks to the fund's asset values over a five-, 10-, and 20-year period, and the remainder of the statutory amortization period. The study shall be submitted to the House and Senate Committees on Government Operations and the Office of the Governor and made publicly available within 10 days of completion.

(c) Recordkeeping. ~~The Committee Commission~~ shall keep a record of all its proceedings, which shall be open for public inspection.

(d) Policies. ~~The Committee Commission~~ shall formulate policies and procedures deemed necessary and appropriate to carry out its functions, including a written statement of the responsibilities of and expectations for the Chair of the ~~Committee Commission~~ and standards of conduct for members and employees of the Commission in order to maintain and promote public confidence in the integrity of the Commission. The standard of conduct policies shall prohibit members and employees from receiving or soliciting any gift, including meals, alcoholic beverages, travel fare, room and board, or any other thing of value, tangible or intangible, from any vendor or potential vendor of investment services, management services, brokerage services, and other services to the Commission.

(e) ~~The Attorney General shall serve as legal advisor to the Committee Contracts.~~

(~~f~~) ~~Contracts approved by the Committee Commission and related documents may be executed by the Chair, or, in the Chair's absence, the Vice Chair.~~

(f) Asset and liability study. Beginning on July 1, 2022, and every three years thereafter, based on the most recent actuarial valuations of each Plan, the Commission shall study the assets and liabilities of each Plan over a 20-year period. The study shall:

(1) project the expected path of the key indicators of each Plan's financial health based on all current actuarial and investment assumptions;

current contribution and benefit policies, including the Plans' mark-to-market funded ratio; actuarially required contributions by source; payout ratio; and related liquidity obligations; and

(2) project the effect on each Plan's financial health resulting from:

(A) possible material deviations from Plan assumptions in investment assumptions, including returns versus those expected and embedded in the actuary's estimate of actuarially required contributions and any material changes in capital markets volatility; and

(B) possible material deviations from key plan actuarial assumptions, including retiree longevity, potential benefit increases, and inflation.

(g) Changes to actuarial rate of return. Notwithstanding any other provision of law to the contrary, Any changes to the actuarial rate of return shall be made at a joint meeting of by the Commission and the appropriate Retirement Board. The Board and Commission shall review the recommendations of the actuary and the investment consultant. A change to an actuarial rate of return shall be by joint resolution of the Board and Commission. Each body shall vote according to its own procedures. In the event that the Board and Commission are unable to agree on an actuarial rate of return, the existing assumed rate of return shall remain in effect.

(h) Annual reports.

(1) Beginning on January 15, 2022, and every year thereafter, the Commission shall submit to the House and Senate Committees on Government Operations:

(A) a report on the performance of each Plan versus its demographic investment and other actuarial assumptions over a three-, five-, seven-, and 10-year period, and the funding ratio of each Plan to each Plan beneficiary at the end of each fiscal year; and

(B) a report on the status of the funding and investment performance of each Plan and any relevant information from the asset liability and scenario testing completed during the prior fiscal year.

(2) The Commission shall send to each participant or beneficiary of each Plan a written or electronic copy of the report described in subdivision (1) of this subsection, in the format authorized by the participant or beneficiary. The report shall be consolidated with any other reports required to be sent by the Commission to the participants or beneficiaries of each Plan.

Second: In Sec. 2, Vermont Pension Investment Commission; transition of member terms, by striking out subdivision (1) and inserting in lieu thereof the following:

(1) Beginning on July 1, 2021, members shall be appointed to fill the new member seats established in 3 V.S.A. § 522(a)(7) and (8) in Sec. 1 of this act. The member appointed pursuant to 3 V.S.A. § 522(a)(7) in Sec. 1 of this act shall serve an initial term of one year, and the member appointed pursuant to 3 V.S.A. § 522(a)(8) in Sec. 1 of this act shall serve an initial term of two years.

Third: In Sec. 3, Vermont Pension Investment Commission; fiscal year 2022 reports, in subsection (b), in the first sentence, by striking out “stand-alone entity” and inserting in lieu thereof an independent entity

Fourth: By striking out Secs. 10–12 in their entirety and inserting in lieu thereof the following:

Sec. 10. PENSION BENEFITS, DESIGN, AND FUNDING TASK FORCE;  
STATE EMPLOYEES’ RETIREMENT SYSTEM; STATE  
TEACHERS’ RETIREMENT SYSTEM; REPORT

(a) Creation. There is created the Pension Benefits, Design, and Funding Task Force to review and report on the benefits, design, and funding of retirement and retiree health benefit plans for the Vermont State Employees’ Retirement System and the Vermont State Teachers’ Retirement System.

(b) Membership.

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

(A) two current members of the House of Representatives, not from the same political party, who shall be appointed by the Speaker of the House;

(B) two current members of the Senate, not from the same political party, who shall be appointed by the Committee on Committees;

(C) the Secretary of Administration or designee;

(D) the State Treasurer or designee;

(E) three members, who shall be appointed by the President of the Vermont-NEA;

(F) two members, who shall be appointed by the President of the Vermont State Employees’ Association; and

(G) one member of the Vermont Troopers’ Association, who shall be appointed by the President of the Vermont Troopers’ Association.

(2)(A) The members appointed pursuant to subdivisions (1)(A) and (B) of this subsection (b) shall not be direct or indirect beneficiaries of the Vermont State Employees’ Retirement System or the Vermont State Teachers’ Retirement System.

(B) The members appointed pursuant to subdivisions (1)(E)–(G) of this subsection (b) shall not be currently serving as a legislator or the spouse or partner of an individual currently serving as a legislator.

(c) Powers and duties.

(1) The Task Force shall make recommendations about benefit provisions and appropriate funding sources along with other recommendations it deems appropriate for consideration, consistent with actuarial and governmental accounting standards, as well as demographic and workforce trends and the long-term sustainability of the benefit programs, including the following:

(A) developing and evaluating a range of strategies to lower the actuarially determined employer contributions and unfunded actuarially accrued liability based on actuarial value of assets in the State Employees' Retirement System and the Teachers' Retirement System by between 25 and 100 percent of the size of the increases from fiscal year 2021 to fiscal year 2022, as reported in the respective Actuarial Valuation and Review for each retirement system, dated June 30, 2020, while maintaining the 2038 amortization date;

(B) a five-year review of benefit expenditure levels as well as employer and employee contribution levels and growth rates and a three-, five-, and 10-year projection of these levels and rates;

(C) identifying potential options for limiting the growth in the actuarially determined employer contributions to not more than inflation;

(D) assessing the impacts associated with any modifications to the current amortization schedule;

(E) based on benefit and funding benchmarks:

(i) proposed benefit structures with the objective of adequate benefits, including an evaluation of a shared-risk model for employer and employee contributions and cost-of-living adjustments, with a focus on reducing any future increases to the unfunded actuarially accrued liability;

(ii) an estimate of the cost of current and any proposed benefit structures on a budgetary and full actuarial accrual basis;

(iii) the State's pension contributions as a percentage of direct general spending and a comparison of other states' pension contributions; and

(iv) how proposed benefit changes for new members may reduce the impact of future actuarial assumption losses;

(F) evaluating any cross-subsidization between all groups within the Vermont State Employees' Retirement System and adjusting contribution amounts to eliminate any cross-subsidization;

(G) examining permanent and temporary revenue streams to fund the Vermont State Employees' Retirement System and the State Teachers' Retirement System;

(H) a plan for prefunding other postemployment benefits, with an evaluation of using federal funds to the extent permissible, including identifying long-term impacts of pay-as-you-go funding;

(I) evaluating the intermediate and long-term impacts to the State and local economies because of any proposed changes to current benefit structures and contribution characteristics and their potential effects on retiree spending power, including retirees who identify as female and retirees who are persons with disabilities; and

(J) an examination of the effects of current benefit structures and contribution characteristics on the recruitment and retention of public school educators and State employees and an evaluation of any proposed changes to current benefit structures and contribution characteristics on the recruitment and retention of public school educators and State employees in the future.

(2) The Task Force shall not make recommendations on adjusting the assumed rates of return.

(d) Stakeholder input. During the course of its deliberations, and prior to any final recommendations being made, the Task Force shall:

(1) solicit input, including through public hearings, from affected stakeholders, including those impacted by issues of inequities; and

(2) consult with representatives designated by the Supreme Court acting in its constitutional role as the administrator of the Judicial Branch, Group D members of the State Employees' Retirement System, and members of the State Employees' Retirement System who are employees of the Department of Corrections.

(e) Assistance.

(1) The Task Force shall have:

(A) fiscal assistance from the Joint Fiscal Office and Office of the State Treasurer; and

(B) committee support services from the Office of Legislative Operations.

(2) The Office of Legislative Counsel and Joint Fiscal Office are authorized to contract for advisory services for the Task Force from an independent actuary, benefits expert, and legal expert, as necessary.

(f) Leave time. Public employee members of the Task Force shall be granted reasonable leave time by their employers to attend Task Force meetings.

(g) Report. On or before October 15, 2021, the Task Force shall submit an interim written report to the Governor and to the House and Senate Committees on Government Operations with an update on the work of the Task Force. The Task Force shall submit a final report with its findings and any recommendations for legislative action on or before December 2, 2021. The Task Force shall also provide the report to the Board of Trustees of the State Employees' and Teachers' Retirement Systems for their consideration and comment to the General Assembly.

(h) Meetings.

(1) The members appointed pursuant to subdivisions (b)(1)(A) and (B) of this section shall appoint a House and Senate member as co-chairs, who shall call the first meeting of the Task Force to occur on or before June 15, 2021.

(2) A majority of the membership shall constitute a quorum.

(3) The Task Force shall cease to exist on June 30, 2022.

(i) Compensation and reimbursement.

(1) For attendance at meetings during adjournment of the General Assembly, a legislative member of the Task Force 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. § 23 for not more than 15 meetings. These payments shall be made from monies appropriated to the General Assembly.

(2) Other members of the Task Force who are not State employees shall be entitled to per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010 for not more than 15 meetings. These payments shall be made from monies appropriated to the State Treasurer.

Sec. 11. 2 V.S.A. chapter 31 is added to read:

Chapter 31. JOINT LEGISLATIVE PENSION OVERSIGHT  
COMMITTEE

§ 1001. CREATION OF COMMITTEE

(a) Creation. There is created a Joint Legislative Pension Oversight Committee for the purpose of working with and providing assistance to other legislative committees on matters related to State's retirement system other postemployment benefits.

(b) Members. The Committee shall be composed of the following members, who shall be appointed each biennial session of the General Assembly:

(1) three members of the House, who shall not be from the same party, appointed by the Speaker of the House; and

(2) three members of the Senate, who shall not be from the same party, appointed by the Committee on Committees.

(c) Powers and duties. The Committee shall evaluate and make recommendations on the following:

(1) issues of public policy related to the provision of retirement benefits to the State's public sector workforce;

(2) changes to statutory provisions regarding the provision, design, and administration of retirement benefits and the retirement systems;

(3) issues of public policy relating to health benefit design innovations, State regulatory measures, and alternative methods of providing pooled health care benefits to both active and retired school employees to lower health care costs for employees, retirees, school boards, and the State; and

(4) the appropriate annual appropriation to fund the State's retirement obligations in accordance with actuarial recommendations, statutory amortization schedules, and funding policies.

(d) Policies. The Committee shall elect a chair, vice chair, and clerk from among its members and shall adopt rules of procedures. The Chair shall rotate biennially between the House and Senate members. The Committee shall keep minutes of its meetings.

(e) Meetings.

(1) When the General Assembly is in session, the Committee shall meet at the call of the Chair.

(2) The Committee may meet six times during adjournment and may meet more often subject to approval of the Speaker of the House and the President Pro Tempore of the Senate.

(3) A quorum shall consist of four members.



(f) Assistance. The Committee shall have assistance from the Office of Legislative Counsel, the Office of Legislative Operations, and the Joint Fiscal Office.

(g) Compensation and reimbursement. For attendance at a meeting when the General Assembly is not in session, members of the Committee shall be entitled to compensations for services and reimbursement of expenses as provided under subsection 23(a) of this title.

(h) Reports. Annually, on or before December 1 each year, the Vermont Investment Pension Commission and the Boards of Trustees for the State Employees' Retirement System, Teachers' Retirement System, and Municipal Employees' Retirement, shall report to the Committee.

#### Sec. 12. CONFORMING REVISIONS

When preparing the Vermont Statutes Annotated for publication, the Office of Legislative Counsel shall replace "Vermont Pension Investment Committee" with "Vermont Pension Investment Commission" throughout the statutes as needed for consistency with Secs. 1–9 of this act, provided the revisions have no other effect on the meaning of the affected statutes.

#### Sec. 13. EFFECTIVE DATES

This act shall take effect on passage, except that Sec. 11 shall take effect on July 1, 2022.

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

Thereupon, the bill was read the second time by title only pursuant to Rule 43.

Thereupon, pending the question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Government Operations?, Senators Brock, Benning and White moved to amend the proposal of amendment of the Committee on Government Operations, as follows:

In Sec. 1, 3 V.S.A. chapter 17, § 522, subsection (d), subdivision (1)(A) by inserting be a financial expert and independent, and shall after "Vermont Pension Investment ~~Committee~~ Commission shall"

Which was agreed to.

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

**House Proposal of Amendment Concurred In**

**S. 102.**

House proposal of amendment to Senate bill entitled:

An act relating to the regulation of agricultural inputs for farming.

Was taken up.

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

\* \* \* Compost Foraging; Farming \* \* \*

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

§ 6001. DEFINITIONS

~~It~~ As used in this chapter:

\* \* \*

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

\* \* \*

(D) The word “development” does not include:

(i) The construction of improvements for farming, logging, or forestry purposes below the elevation of 2,500 feet.

\* \* \*

(vii) The construction of improvements below the elevation of 2,500 feet for the on-site storage, preparation, and sale of compost, provided that one of the following applies:

\* \* \*

(III) The compost is principally used on the farm where it was produced.

\* \* \*

(22) “Farming” means:

(A) the cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural and orchard crops; or

(B) the raising, feeding, or management of livestock, poultry, fish, or bees; or

(C) the operation of greenhouses; or

(D) the production of maple syrup; or

(E) the on-site storage, preparation, and sale of agricultural products principally produced on the farm; or

(F) the on-site storage, preparation, production, and sale of fuel or power from agricultural products or wastes principally produced on the farm; or

(G) the raising, feeding, or management of four or more equines owned or boarded by the farmer, including training, showing, and providing instruction and lessons in riding, training, and the management of equines; or

(H) the importation of 2,000 cubic yards per year or less of food residuals or food processing residuals onto a farm for the production of compost, provided that:

(i) the compost is principally used on the farm where it is produced; or

(ii) the compost is produced on a small farm that raises or manages poultry.

\* \* \*

(38) “Farm” means, for the purposes of subdivision (22)(H) of this section, a parcel or parcels of land owned, leased, or managed by a person and devoted primarily to farming that meets the threshold criteria as established under the Required Agricultural Practices.

(39) “Food processing residuals” means the remaining organic material from a food processing plant and may include whey and other dairy, cheese making, and ice cream residuals or residuals from any food manufacturing process excluding livestock or poultry slaughtering and rendering operations. “Food processing residuals” does not include food residuals from markets, groceries, or restaurants.

(40) “Food residuals” has the same meaning as in section 6602 of this title.

(41) “Principally used” means, for the purposes of subdivision (3)(D)(vii)(III) and (22)(H) of this section, that more than 50 percent, either by volume or weight, of the compost produced on the farm is physically and permanently incorporated into the native soils on the farm as a soil enhancement and is not removed or sold at any time thereafter.

(42) “Small farm” has the same meaning as in 6 V.S.A. § 4871.

Sec. 2. Section 2 of the Agency of Agriculture, Food and Markets, Vermont Required Agricultural Practices Rule for the Agricultural Nonpoint Source Pollution Control Program is amended to read:

## Section 2. Definitions

\* \* \*

2.16 Farming means:

- (a) the cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural, viticultural, and orchard crops; or
- (b) the raising, feeding, or management of livestock, poultry, fish, or bees; or
- (c) the operation of greenhouses; or
- (d) the production of maple syrup; or
- (e) the on-site storage, preparation, and sale of agricultural products principally produced on the farm; or
- (f) the on-site storage, preparation, production, and sale of fuel or power from agricultural products or wastes principally produced on the farm; or
- (g) the raising, feeding, or management of four or more equines owned or boarded by the farmer, including training, showing, and providing instruction and lessons in riding, training, and the management of equines; or
- (h) the importation of 2,000 cubic yards per year or less of food residuals or food processing residuals onto a farm for the production of compost, provided that:
  - (1) the compost is principally used on the farm where it is produced; or
  - (2) the compost is produced on a small farm that raises or manages poultry.

\* \* \*

2.44 “Food residual” means source separated and uncontaminated material that is derived from processing or discarding of food and that is recyclable, in a manner consistent with 10 V.S.A. § 6605k. Food residual may include preconsumer and postconsumer food scraps. “Food residual” does not mean meat and meat-related products when the food residuals are composted by a resident on site.

2.45 “Principally used” means that more than 50 percent, either by volume or weight, of the compost produced on the farm is physically and permanently incorporated into the native soils on the farm as a soil enhancement and is not removed or sold at any time thereafter.

Sec. 3. 6 V.S.A. chapter 218 is added to read:

CHAPTER 218. AGRICULTURAL RESIDUALS MANAGEMENT

§ 5131. PURPOSE

The purpose of this chapter is to establish a program for the management of residual wastes generated, imported to, or managed on a farm for farming in Vermont.

§ 5132. DEFINITIONS

As used in this chapter:

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

(2) “Compost” means a stable humus-like material produced by the controlled biological decomposition of organic matter through active management but shall not mean sewage, septage, or materials derived from sewage or septage.

(3) “Farm” means a parcel or parcels of land owned, leased, or managed by a person and devoted primarily to farming that meets the threshold criteria for regulation under the Required Agricultural Practices.

(4) “Farming” has the same meaning as in 10 V.S.A. § 6001(22).

(5) “Food processing residuals” means the remaining organic material from a food processing plant and may include whey and other dairy, cheese making, and ice cream residuals or residuals from any food manufacturing process excluding livestock or poultry slaughtering and rendering operations. “Food processing residuals” do not include food residuals from markets, groceries, or restaurants.

(6) “Food residuals” means source separated and uncontaminated material that is derived from processing or discarding of food and that is recyclable or compostable. “Food residuals” may include preconsumer and postconsumer food scraps. “Food residuals” include meat and meat-related products when the disposition of the products is managed on a farm.

(7) “Secretary” means the Secretary of Agriculture, Food and Markets.

(8) “Source separation” has the same meaning as in 10 V.S.A. § 6602.

§ 5133. FOOD RESIDUALS; RULEMAKING

(a) The Secretary shall regulate the importation of food residuals or food processing residuals onto a farm.

(b)(1) The Secretary shall adopt by rule requirements for the management of food residuals and food processing residuals on a farm. The rules may

include requirements regarding:

(A) the proper composting of food residuals or food processing residuals;

(B) destruction of pathogens in food residuals, food processing residuals, or compost;

(C) prevention of public health threat from food residuals, food processing residuals, or compost;

(D) protection of natural resources or the environment; and

(E) prevention of objectionable odors, noise, vectors, or other nuisance conditions.

(2) The Secretary may adopt the rules required by this section as part of the Required Agricultural Practices or as independent rules under this chapter.

(3) The rules shall prohibit a farm from initiating the production of compost from food residuals or food processing residuals imported onto the farm on or after July 1, 2021 within a downtown, village center, new town center, neighborhood development area, or growth center designated under 24 V.S.A. chapter 76a, unless the municipality has expressly allowed composting in the designated area under the municipal zoning or subdivision bylaws or in an approved municipal plan.

(4) The rules adopted under this section shall be designed to reduce odor, noise, vectors, and other nuisance conditions on farms and to protect the public health and the environment in a manner that is equal to or better than the rules for compost facilities in the Agency of Natural Resources' Vermont Solid Waste Management Rules, as amended.

(c) A farm producing compost under 10 V.S.A. § 6001(22)(H) shall be regulated under this chapter and shall not require a certification or other approval from the Agency of Natural Resources under 10 V.S.A. chapter 159.

Sec. 4. 10 V.S.A. § 6605 is amended to read:

§ 6605. SOLID WASTE MANAGEMENT FACILITY CERTIFICATION

(a)(1) No person shall construct, substantially alter, or operate any solid waste management facility without first obtaining certification from the Secretary for such facility, site, or activity, except for sludge or septage treatment or storage facilities located within the fenced area of a domestic wastewater treatment plant permitted under chapter 47 of this title. This exemption for sludge or septage treatment or storage facilities shall exist only if:

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\* \* \*

(2) Certification shall be valid for a period not to exceed 10 years.

\* \* \*

(n) A farm producing compost under subdivision 6001(22)(H) is exempt from the requirements of this section.

Sec. 5. 10 V.S.A. § 6605h is amended to read:

§ 6605h. COMPOSTING REGISTRATION

Notwithstanding sections 6605, 6605f, and 6611 of this title, the Secretary may, by rule, authorize a person engaged in the production or management of compost at a small scale composting facility to register with the Secretary instead of obtaining a facility certification under section 6605 or 6605c of this title. This section shall not apply to a farm producing compost under subdivision 6001(22)(H) of this title.

Sec. 6. 10 V.S.A. § 6605j is amended to read:

§ 6605j. ACCEPTED COMPOSTING PRACTICES

(a) The Secretary, in consultation with the Secretary of Agriculture, Food and Markets, shall adopt by rule, pursuant to 3 V.S.A. chapter 25, and shall implement and enforce accepted composting practices for the management of composting in the State. These accepted composting practices shall address:

(1) standards for the construction, alteration, or operation of a composting facility;

(2) standards for facility operation, including acceptable quantities of product or inputs, vector management, odors, noise, traffic, litter control, contaminant management, operator training and qualifications, recordkeeping, and reporting;

(3) standards for siting of composting facilities, including siting and operation of compost storage areas, compost bagging areas, and roads and parking areas;

(4) standards for the composting process, including rotation, management of compost piles, compost pile size, and monitoring of compost operations;

(5) standards for management of runoff from compost facilities, including liquids management from the feedstock area, active composting areas, curing area, and compost storage area; the use of swales or stormwater management around or within a compost facility; vegetative buffer requirements; and run-off management from tipping areas;

(6) specified areas of the State unsuitable for the siting of commercial composting that utilizes post-consumer food residuals or animal mortalities, such as designated downtowns, village centers, village growth areas, or areas of existing residential density; and

(7) definitions of “small-scale composting facility,” “medium-scale composting facility,” and “de minimis composting exempt from regulation.”

(b) A person operating a small scale composting facility ~~or operating a composting facility on a farm~~ who follows the accepted composting practices shall not be required to obtain a discharge permit under section 1263 or 1264 of this title, a solid waste facility certification under chapter 159 of this title, or an air emissions permit under chapter 23 of this title unless a permit is required by federal law or the Secretary of Natural Resources determines that a permit is necessary to protect public health or the environment.

(c) ~~The Secretary of Natural Resources shall coordinate with the Secretary of Agriculture, Food and Markets in implementing and enforcing the accepted composting practices. The Secretary of Agriculture, Food and Markets and the Secretary of Natural Resources may, after opportunity for public review and comment, develop a memorandum of understanding for implementation and enforcement of the accepted composting practices. [Repealed.]~~

(d) The Secretary shall not regulate under this section a farm producing compost under subdivision 6001(22)(H) of this title.

#### Sec. 7. APPLICATION OF SOLID WASTE MANAGEMENT RULES

Prior to adoption of rules under 6 V.S.A. § 5133, the Secretary of Agriculture, Food and Markets shall require a person producing compost on a farm under 10 V.S.A. § 6001(22)(H) to comply with Sections 6-1101 through 6-1111 of the Agency of Natural Resources’ Vermont Solid Waste Management Rules. After adoption of rules under 6 V.S.A. § 5133, Sections 6-1101 through 6-1111 of the Agency of Natural Resources’ Vermont Solid Waste Management Rules shall not apply to a person producing compost on a farm under 10 V.S.A. § 6001(22)(H).

#### Sec. 8. REPORT ON IMPORTATION OF FOOD RESIDUALS FOR FARMING

On or before January 15, 2022 and annually thereafter, the Secretary of Agriculture, Food and Markets shall submit to the Senate Committees on Agriculture and on Natural Resources and Energy and the House Committees on Agriculture and Forestry and on Natural Resources, Fish, and Wildlife a report regarding importation of food residuals for composting under 10 V.S.A. § 6001(22)(H). The report shall include:



(1) an inventory of the operators of farms that are producing compost under 10 V.S.A. § 6001(22)(H), including the estimated volume of food residuals imported onto farms;

(2) a status report on the rulemaking required under 6 V.S.A. § 5133 and any subsequent amendment to those rules;

(3) an accounting of any complaints regarding or enforcement actions brought against a farm producing compost under 10 V.S.A. § 6001(22)(H); and

(4) any additional information that the Secretary determines is relevant to the administration of compost production under 10 V.S.A. § 6001(22)(H).

#### Sec. 8a. RULEMAKING; IMPLEMENTATION

The Secretary of Agriculture, Food and Markets shall initiate the rulemaking required under 6 V.S.A. § 5133 on or before January 1, 2022. The Secretary of Agriculture, Food and Markets shall file under 3 V.S.A. § 841 a final proposal of the rules required under 6 V.S.A. § 5133 on or before January 1, 2023.

\* \* \* Dosage Form Animal Health Products; Feed Supplements \* \* \*

Sec. 9. 6 V.S.A. chapter 26 is amended to read:

#### CHAPTER 26. COMMERCIAL FEEDS

\* \* \*

#### § 323. DEFINITIONS

~~When~~ As used in this chapter:

(1) “Dosage form animal health product” means any product intended to affect the structure or function of the animal’s body or enhance or support the health or well-being of livestock, poultry, dogs, cats, or other domestic animals that does not provide nutritional benefit, does not require a prescription from a licensed veterinarian, is not intended for cosmetic purposes, or is exempted by the Secretary by rule. “Dosage form animal health product” shall not include a product regulated by the U.S. Food and Drug Administration as a drug.

(2) “Brand name” means any word, name, symbol, or device, or any combination thereof, identifying the commercial feed, feed supplement, dosage form animal health product, or a distributor or registrant and distinguishing it from that of others.

(2)(3) “Commercial feed” means all materials except whole seeds unmixed or physically altered entire unmixed seeds, when not adulterated within the meaning of subsection 327(a) of this title, which ~~that~~ are distributed

for use as feed or for mixing in feed. The Secretary by regulation may exempt from this definition, or from specific provisions of this chapter, commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when such commodities, compounds, or substances are not intermixed or mixed with other materials, and are not adulterated within the meaning of subsection 327(a) of this title.

(3)(4) “Customer-formula feed” means commercial feed that consists of a mixture of commercial feeds or feed ingredients each batch of which is manufactured according to the specific instructions of the final purchaser.

(4)(5) “Distribute” means to offer for sale, sell, exchange, or barter commercial feed, feed supplements, or dosage form animal health products or to supply, furnish, or otherwise provide commercial feed, feed supplements, or dosage form animal health products through any means, including sales outlets, catalogues, the telephone, the Internet, or any electronic means.

(5)(6) “Distributor” means any person who distributes commercial feeds, feed supplements, or dosage form animal health products.

(6)(7) “Drug” means any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in domestic animals other than humans and substances other than feed intended to affect the structure or any function of the animal body.

(7)(8) “Feed ingredient” means each of the constituent materials making up a commercial feed.

(9) “Feed supplement” means a material used with another to improve the nutritive balance or performance of the total and intended to be fed undiluted as a supplement to other feeds or offered free choice with other parts of the ration separately available or further diluted and mixed to produce a complete feed.

(8)(10) “Label” means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed, feed supplement, or dosage form animal health product is distributed, or on the invoice or delivery slip with which a commercial feed, feed supplement, or dosage form animal health product is distributed.

(9)(11) “Labeling” means all labels and other written, printed, or graphic matter upon a commercial feed, feed supplement, or dosage form animal health product or any of its containers, or the wrapper accompanying the commercial feed, feed supplement, or dosage form animal health product or advertisements, brochures, posters, electronic media, the Internet, and television and radio announcements used in promoting the sale of the commercial feed, feed supplement, or dosage form animal health product.

~~(10)~~(12) “Manufacture” means to produce, grind, mix, or blend, or further process a commercial feed, feed supplement, or dosage form animal health product for distribution.

~~(11)~~(13) “Mineral feed” means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

~~(12)~~(14) “Official sample” means a sample of feed taken by the Secretary in accordance with the provisions of subdivision 330(3) of this title.

~~(13)~~(15) “Percent” or “percentages” means percentages by weights.

~~(14)~~(16) “Permitted analytical variances” means those allowances for the inherent variability in sampling and laboratory analysis.

~~(15)~~(17) “Pet” means any domesticated animal normally maintained in or near the household of the owner.

~~(16)~~(18) “Pet food” means any commercial feed prepared and distributed for consumption by pets.

~~(17)~~(19) “Product” means the name of the commercial feed ~~which, feed supplement, or dosage form animal health product that~~ identifies it as to kind, class, or specific use.

~~(18)~~(20) “Specialty pet” means any domesticated animal pet normally maintained in a cage or tank.

~~(19)~~(21) “Specialty pet food” means any commercial feed prepared and distributed for consumption by specialty pets.

~~(20)~~(22) “Ton” means a net weight of 2,000 pounds avoirdupois.

#### § 324. REGISTRATION AND FEES

(a) No person shall manufacture or distribute a commercial feed, feed supplement, or dosage form animal health product in this State unless that person has first filed with the ~~Vermont~~ Agency of Agriculture, Food and Markets, in a form and manner to be prescribed by rules by the Secretary:

- (1) the name of the manufacturer or distributor;
- (2) the manufacturer’s or distributor’s place of business;
- (3) the location of each manufacturing or distribution facility; and
- (4) any other information that the Secretary considers to be necessary.

(b) A person shall not distribute in this State a commercial feed, feed supplement, or dosage form animal health product that has not been registered pursuant to the provisions of this chapter. Application shall be in a form and manner to be prescribed by rule of the Secretary. The Secretary shall have the

authority to determine whether a product subject to an application shall be registered as a commercial feed, feed supplement, or dosage form animal health product.

(c)(1) The application for registration of a commercial feed or feed supplement shall be accompanied by a registration fee of \$105.00 per product. The registration fees, along with any surcharges collected under subsection (e)(d) of this section, shall be deposited in the special fund created by subsection 364(e)(f) of this title. Funds deposited in this account shall be restricted to implementing and administering the provisions of this title and any other provisions of the law relating to fertilizer, lime, or seeds. If the Secretary so requests, the application for registration shall be accompanied by a label or other printed matter describing the product.

(2) The application for registration of a dosage form animal health product shall be accompanied by a registration fee of \$35.00 per product. The registration fees, along with any surcharges collected under subsection (d) of this section, shall be deposited in the special fund created by subsection 364(f) of this title. Funds deposited in this account shall be restricted to implementing and administering the provisions of this title and any other provisions of the law relating to items registered under this chapter. If the Secretary so requests, the application for registration shall be accompanied by a label or other printed matter describing the product.

(e)(d) No person shall distribute in this State any commercial feed, feed supplement, or dosage form animal health product required to be registered under this chapter upon which the Secretary has placed a withdrawal from distribution order because of nonregistration. A surcharge of \$10.00, in addition to the registration fee required by subsection (b)(c) of this section, shall accompany the application for registration of each product upon which a withdrawal from distribution order has been placed for reason of nonregistration, and must be received before removal of the withdrawal from distribution order.

(d)(e) No person shall distribute a commercial feed product in the State that is labeled as bait or feed for white-tailed deer.

#### § 325. LABELING

(a) A commercial feed or feed supplement, except a customer-formula feed, shall be accompanied by a label bearing the following information:

(1) the net weight;

(2) the product name and the brand name, if any, under which the commercial feed or feed supplement is distributed;

(3) the guaranteed analysis as required by rule in section 329 of this title;

(4) the common, usual name or collective term of each ingredient used in the manufacture of the commercial feed or feed supplement in descending order;

(5) the name and principal mailing address of the manufacturer or the person responsible for distributing the commercial feed or feed supplement;

(6) adequate directions for use for all commercial feeds or feed supplements containing drugs and for ~~such~~ other feeds as the Secretary may require by rule as necessary for their safe and effective use; and

(7) precautionary statements required to ~~assure~~ ensure the safe and effective use of the commercial feed or feed supplement.

(b) A dosage form animal health product shall be accompanied by a label bearing the following information:

(1) the net weight or count;

(2) the product name and the brand name, if any, under which the dosage form animal health product is distributed;

(3) the established name of each active ingredient and the amount of active ingredient per serving in descending order;

(4) the established name of each inactive ingredient in alphabetical order or in descending order by predominance of the ingredient;

(5) the name, city, and town of the manufacturer or the person responsible for distributing the dosage form animal health product or an e-mail address for the manufacturer or distributor;

(6) adequate directions for use of the dosage form animal health product;

(7) precautionary statements and warnings required to ensure the safe and effective use of the dosage form animal health product; and

(8) structure-function claim stating the intended use of the dosage form animal health product.

(c) Customer-formula feed shall be accompanied by a label, invoice, delivery slip, or other shipping document, bearing the following information:

(1) name and address of the manufacturer;

(2) name and address of the purchaser;

(3) date of delivery;

(4) the name of each commercial feed and each other ingredient used in the mixture;

(5) adequate directions for use for all customer-formula feeds containing drugs and for such other feeds as the Secretary may require by rule to ~~assure~~ ensure their safe and effective use;

(6) the direction for use and precautionary statements;

(7) when a drug-containing product is used:

(A) the purpose of the medication or a claim statement; and

(B) the established name of each active drug ingredient and the level of each drug used in the final mixture; and

(8) the guaranteed analysis as required by rule pursuant to section 329 of this title.

~~(e)~~(d) For purposes of labeling customer-formula feeds, the guaranteed analysis is not required when:

(1) one or more of the ingredients are provided to the manufacturer by the final purchaser; or

(2) the manufacturer uses a guaranteed analysis provided by the final purchaser as part of the specific instructions for blending a customer-formula feed.

#### § 326. MISBRANDING

A commercial feed, feed supplement, or dosage form animal health product shall be deemed to be misbranded if:

(1) its labeling is false or misleading in any particular;

(2) it is distributed under the name of another commercial feed, feed supplement, or dosage form animal health product;

(3) it is not labeled as required in section 325 of this title;

(4) it purports to be or is represented as a commercial feed, or if it purports to contain or is represented as containing a commercial feed ingredient, unless the commercial feed or feed ingredient conforms to the definition, if any, prescribed by rule of the Commissioner; or

(5) information required to appear on the label in a conspicuous manner cannot be easily identified or understood under customary conditions of purchase and use.

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§ 327. ADULTERATION

(a) A commercial feed including whole seeds shall be deemed to be adulterated if it bears or contains any poisonous or deleterious substance ~~which~~ that may render it injurious to human or animal health, but in case the substance is not an added substance, the commercial feed shall not be considered adulterated under this subsection if the quantity of the substance in the commercial feed does not ordinarily render it injurious to health.

(b) Any other commercial feed, feed supplement, or dosage form animal health product shall be deemed to be adulterated if:

(1) any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor;

(2) its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling;

(3) if use of the product may result in contamination of a raw agricultural product;

(4) it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice and rules promulgated by the Secretary to assure that the drug meets the requirement of this chapter as to safety and has the identity and strength and meets the quality and purity characteristics ~~which~~ that it purports or is represented to possess; or

~~(4)~~(5) it contains viable weed seeds in amounts exceeding the limits that the Secretary shall establish by rule.

§ 328. TONNAGE REPORTING

~~(a) Every person who registers a commercial feed pursuant to the provisions of this chapter shall report to the Agency of Agriculture, Food and Markets annually the total amount of combined feed is distributed within the State and which is intended for use within the State. The report shall be made on forms and in a manner to be prescribed by the Secretary for calendar years 2016 and 2017.~~

~~(b) This reporting requirement shall not apply to pet foods, within the meaning of subdivisions 323(16) and (19) of this title, and shall not apply to feeds intended for use outside the State. [Repealed.]~~

§ 329. RULES

(a) The Secretary is authorized to adopt rules establishing procedures or standards, or both, for product registration, labeling, adulteration, reporting, inspection, sampling, guarantees, product analysis, or other conditions

necessary for the implementation and enforcement of this chapter. Where appropriate, the rules shall be consistent with the model rules developed by the Association of American Feed Control Officials and regulations adopted by the federal Food, Drug and Cosmetic Act, 21 U.S.C. § 301 et seq.

(b) The official definitions of feed ingredients and official feed terms adopted by the Association of American Feed Control Officials and published in the official publication of that organization, together with any regulation promulgated pursuant to the authority of the federal Food, Drug and Cosmetic Act, 21 U.S.C. § 301 et seq., relevant to the subject matter of this chapter, are hereby adopted as rules under this chapter, together with all subsequent amendments. The Secretary may, by rule, amend or repeal any rule adopted under this subsection.

(c) A person shall not manufacture or distribute raw milk as a commercial feed, feed supplement, or dosage form animal health product in the State for any species unless all of the following conditions are satisfied:

(1) the raw milk shall be decharacterized using a sufficient method to render it distinguishable from products packaged for human consumption;

(2) raw animal feed, feed supplements, dosage form animal health products, or pet food products shall be packaged in containers that are labeled “not for human consumption”;

(3) raw animal feed, feed supplements, dosage form animal health products, or pet food products shall not be stored or placed for retail sale with, or in the vicinity of, milk or milk products intended for human consumption; and

(4) notwithstanding any rule adopted under subsection (b) of this section to the contrary of the provisions of this subsection, the manufacture and distribution of raw animal feed, feed supplements, dosage form animal health products, or pet food products shall comply with the requirements of this chapter.

#### § 330. INSPECTION; SAMPLING; ANALYSIS

(a) For the purpose of enforcing this chapter and determining whether or not an operation may be subject to these provisions, the Secretary upon presenting appropriate credentials is authorized:

(1) to enter any premises during normal business hours where commercial feeds, feed supplements, or dosage form animal health products are manufactured, processed, packed, or held for distribution and to stop and enter any vehicle being used to transport or hold feeds;



(2) to inspect factories, warehouses, establishments, vehicles, equipment, finished and unfinished materials, containers, and labeling;

(3) to sample commercial feed ~~and~~, feed ingredients, feed supplements, or dosage form animal health products.

(b) Sampling and analysis shall be conducted in accordance with methods published by the Association of Official Analytical Chemists or in accordance with other generally recognized methods. The results of all analyses of official samples shall be forwarded by the Secretary to the correspondent named in the registration form and to the purchaser. When the inspection and analysis of an official sample indicates that a commercial feed, feed supplement, or dosage form animal health product has been adulterated or misbranded and upon request within 30 days following receipt of the analysis, the Secretary shall furnish to the registrant a portion of the sample concerned.

#### § 331. PRODUCT DEFICIENCY; SHORT WEIGHT

(a) No registrant may produce, package, distribute, or possess any commercial feed, feed supplement, or dosage form animal health product that is short weight or deficient in either guaranteed ingredients or guaranteed analysis. The Secretary by rule shall establish permitted analytical variances that shall be used to determine whether a commercial feed, feed supplement, or dosage form animal health product is deficient.

(b) The Secretary is authorized to assess administrative penalties for any product found to be short weight or deficient in guaranteed analysis. In assessing these penalties, the Secretary shall give consideration to the appropriateness of the penalty with respect to the size of the business being assessed, the gravity of the violation, the good faith of the registrant, and the overall history of prior violations. Administrative penalties shall be paid to the Secretary for deposit and use in the revolving account established by subsection 364~~(e)~~(f) of this title. Penalties shall be assessed in the following manner:

(1) any registrant who is found to have violated this section for a particular product for the first time during any calendar year shall receive an administrative penalty of not more than \$150.00;

(2) any registrant who is found to have violated this section with regard to the same product for the second time during the same calendar year shall receive an administrative penalty of not more than \$300.00; and

(3) any registrant who is found to have violated this section with regard to the same product on three or more occasions during the same calendar year shall receive an administrative penalty of not more than \$500.00.

(c) In assessing a penalty under this section, the Secretary shall issue a written notice of penalty to the registrant setting forth in a short and plain statement the alleged violation and the proposed fine. The notice shall state that the penalty will become final 14 days from the date the notice of penalty is issued unless the registrant requests a hearing before the Secretary.

(d) Any registrant aggrieved by a decision of the Secretary may appeal questions of law to a Superior Court within 30 days of the final decision of the Secretary. The Secretary may enforce a final administrative penalty by filing an action in any District or Superior Court.

§ 332. DETAINED COMMERCIAL FEEDS, FEED SUPPLEMENTS, OR DOSAGE FORM ANIMAL HEALTH PRODUCTS

(a) ~~“Withdrawal from distribution”~~ Withdrawal from distribution orders. When the Secretary has reasonable cause to believe any lot of commercial feed, feed supplement, or dosage form animal health product is being distributed in violation of any of the provisions of this chapter or any of the rules under this chapter, he or she may issue and enforce a written or printed “withdrawal from distribution” order, warning the distributor not to dispose of the lot of commercial feed, feed supplement, or dosage form animal health product in any manner until written permission is given by the Secretary or the court. The Secretary shall release the lot of commercial feed, feed supplement, or dosage animal health product withdrawn when this chapter and rules have been complied with. If compliance is not obtained within 30 days, the Secretary may begin, or upon request of the distributor or registrant shall begin, proceedings for condemnation.

(b) ~~“Condemnation and confiscation.”~~ Any lot of commercial feed, feed supplement, or dosage form animal health product not in compliance with this chapter and rules shall be subject to seizure on complaint of the Secretary to a court of competent jurisdiction in the area in which the commercial feed is located. In the event the court finds the commercial feed, feed supplement, or dosage form animal health product to be in violation of this chapter and orders the condemnation of the commercial feed, feed supplement, or dosage form animal health product, it shall be disposed of in any manner consistent with the quality of the commercial feed, feed supplement, or dosage form animal health product and the laws of the State, provided that in no instance shall the disposition of the commercial feed, feed supplement, or dosage form animal health product be ordered by the court without first giving the claimant an opportunity to apply to the court for release of the commercial feed, feed supplement, or dosage form animal health product or for permission to process or relabel the commercial feed, feed supplement, or dosage form animal health product to bring it into compliance with this chapter.

\* \* \*

## § 336. ADMINISTRATIVE PENALTY

Consistent with chapter 1 of this title, the Secretary may assess an administrative penalty upon determining that a person has violated a rule issued under this chapter or has violated this chapter in the following manner:

(1) Distributed a feed, feed supplement, or dosage form animal health product without first obtaining the appropriate product registration.

(2) Distributed a commercial feed, feed supplement, or dosage form animal health product without appropriate labeling.

(3) Violated a cease and desist order.

(4) Failed to meet the product guarantee on the label or for the custom formula feed.

(5) Distributed a commercial feed which, feed supplement, or dosage form animal health product that is adulterated as defined in section 327 of this chapter.

\* \* \* Plant Amendments; Plant Biostimulants; Soil Amendments \* \* \*

Sec. 10. 6 V.S.A. chapter 28 is amended to read:

## CHAPTER 28. FERTILIZER AND LIME

## § 361. TITLE

This chapter shall be known as the “Fertilizer and Lime Law of 1986.”

## § 362. ENFORCING OFFICIAL

This chapter shall be administered by the Secretary of Agriculture, Food and Markets, or ~~his or her~~ designee, hereafter referred to as the Secretary.

## § 363. DEFINITIONS

As used in this chapter:

(1) “Agricultural lime” or “agricultural liming material” or “lime” means ~~and includes~~:

(A) all products ~~whose~~ with calcium and magnesium compounds that are capable of neutralizing soil acidity and ~~which that~~ are intended, sold, or offered for sale for agricultural or plant propagation purposes;

(B) limestone consisting essentially of calcium carbonate or a combination of calcium carbonate with magnesium carbonate capable of neutralizing soil acidity; or

(C) industrial waste or industrial by-products ~~which~~ that contain calcium, calcium and magnesium, or calcium, magnesium, and potassium in forms that are capable of neutralizing soil acidity and which are intended, sold, or offered for sale for agricultural purposes. For the purposes of this chapter, the terms “agricultural lime,” “lime,” and “agricultural liming material” shall have the same meaning.

(2) “Brand” means a term, design, or trademark used in connection with one or more grades or formulas of fertilizer, plant amendment, plant biostimulant, soil amendment, or lime.

(3) “Distribute” means to import, consign, manufacture, produce, compound, mix, or blend fertilizer or to offer for sale, sell, barter, or otherwise supply ~~or apply~~ a fertilizer, a plant amendment, a plant biostimulant, a soil amendment, or lime in this State. “Distribute” shall include online sales.

(4) “Distributor” means any person who distributes fertilizer, plant amendments, plant biostimulants, soil amendments, or lime.

(5) “Exceptional quality biosolid” means a product derived in whole or in part from domestic wastes that have been subjected to and meet the requirements of the following:

(A) a pathogen reduction process established in 40 C.F.R. § 503.32(a)(3), (4), (7), or (8);

(B) one of the vector attraction reduction standards established in 40 C.F.R. part 503.33;

(C) the contaminant concentration limits in Vermont Solid Waste Rules § 6-1303(a)(1); and

(D) if derived from a composting process, Vermont Solid Waste Rules § 6-1303(a)(4).

~~(5)~~(6) “Fertilizer” means any substance containing one or more recognized plant nutrients that is used for its plant nutrient content and that is designed for use or claimed to have value in promoting plant growth or health, except unprocessed animal or vegetable manures and other products exempted by the Secretary.

(A) A fertilizer material is a substance that either:

(i) contains important quantities of at least one of the primary plant nutrients: nitrogen, phosphorus, or potassium;

(ii) has 85 percent or more of its plant nutrient content present in the form of a single chemical compound; or

(iii) is derived from a plant or chemical residue or by-product or natural material deposit ~~which~~ that has been processed in such a way that its content of plant nutrients has not been materially changed except by purification and concentration.

(B) A mixed fertilizer is a fertilizer containing any combination or mixture of fertilizer materials.

(C) A specialty fertilizer is a fertilizer distributed for nonfarm use.

(D) A bulk fertilizer is a fertilizer distributed in a nonpackaged form.

(7) “Formulation” means a material or mixture of materials prepared according to a particular formula.

~~(6)~~(8) “Grade” means the percentage of total nitrogen, available phosphorus or phosphoric acid, and soluble potassium or potash stated in whole numbers in the same terms, order, or percentages as in the guaranteed analysis. Specialty fertilizers and fertilizer materials may be guaranteed in fractional terms. Any grade expressed in fractional terms ~~which~~ that is not preceded by a whole number shall be preceded by zero.

~~(7)~~(9) “Guaranteed analysis” means:

(A) in reference to fertilizer, the minimum percentages of plant nutrients claimed by the manufacturer or producer of the product in the following order and form: nitrogen, phosphorus, and potash; and

(B) in reference to agricultural lime or agricultural liming material, the minimum percentages of calcium oxide and magnesium oxide or calcium carbonate and the calcium carbonate equivalent, or both, as claimed by the manufacturer or producer of the product.

~~(8)~~(10) “Label” means the display of all written, printed, or graphic matter upon the immediate container, or a statement accompanying a fertilizer, plant amendment, plant biostimulant, soil amendment, or lime.

~~(9)~~(11) “Labeling” means all written, printed, or graphic material upon or accompanying any ~~lime or~~ fertilizer, plant amendment, plant biostimulant, soil amendment, or lime including advertisements, brochures, posters, and television and radio announcements used in promoting the sale of the ~~lime or~~ fertilizer, plant amendment, plant biostimulant, soil amendment, or lime.

~~(10)~~(12) “Official sample” means any sample of fertilizer, plant amendment, plant biostimulant, soil amendment, or lime taken by the Secretary.

(13) “Plant amendment” means any substance applied to plants or seeds that is intended to improve growth, yield, product quality, reproduction, flavor

or other favorable characteristics of plants, except for fertilizer, soil amendments, agricultural liming materials, animal and vegetable manures, pesticides, plant regulators, and other materials exempted by rule adopted under this chapter.

(14) “Plant biostimulant” means a substance or microorganism that, when applied to seeds, plants, or the rhizosphere, stimulates natural processes to enhance or benefit nutrient uptake, nutrient efficiency, tolerance to abiotic stress, or crop quality and yield except for fertilizers, soil amendments, plant amendments, or pesticides. The Secretary may modify the definition of “plant biostimulant” by rule or procedure in order to maintain consistency with U.S. Department of Agriculture requirements.

(15) “Percent” or “percentage” means the percentage by weight.

(16) “Primary nutrient” includes nitrogen, available phosphoric acid or phosphorus, and soluble potash or potassium.

(17) “Product” means the name of the fertilizer, plant amendment, plant biostimulant, soil amendment, or lime which that identifies it as to kind, class, or specific use.

(18) “Registrant” means the person who registers fertilizers a fertilizer, plant amendment, plant biostimulant, soil amendment, or lime under the provisions of this chapter.

(19) “Soil amendment” means a substance or mixture of substance that is intended to improve the physical, chemical, biological, or other characteristics of the soil, except fertilizers, agricultural liming materials, unprocessed animal manures, unprocessed vegetable manures, pesticides, plant biostimulants, and other materials exempted by rule. A compost product from a facility under the jurisdiction of the Agency of Natural Resources’ Solid Waste Management Rules or exceptional quality biosolids shall not be regulated as a soil amendment under this chapter, unless marketed and distributed for the use in the production of an agricultural commodity.

(20) “Ton” means a net weight of 2,000 pounds avoirdupois.

(21) “Use” includes all purposes for which a fertilizer, plant amendment, plant biostimulant, soil amendment, or lime is applied.

(22) “Weight” means the weight of undried material as offered for sale.

#### § 364. REGISTRATION

(a) Each brand or grade or formula of fertilizer, plant amendment, plant biostimulant, or soil amendment shall be registered in the name of the person

whose name appears upon the label before being distributed in this State. The application for registration shall be submitted to the Secretary on a form furnished by the Agency of Agriculture, Food and Markets and shall be accompanied by a fee of ~~\$20.00 per nutrient or recognized plant food element to a maximum of \$140.00 per brand or grade~~ \$85.00 per grade or formulation registered. Upon approval by the Secretary, a copy of the registration shall be furnished to the applicant. All registrations expire on December 31 of each year. The application shall include the following information:

- (1) the brand and grade or formulation;
- (2) the guaranteed analysis if applicable; and
- (3) the name and address of the registrant.

(b) A distributor shall not be required to register any fertilizer ~~which, plant amendment, plant biostimulant, or soil amendment that~~ is already registered under this chapter by another person, provided there is no change in the label for the fertilizer, plant amendment, plant biostimulant, or soil amendment.

(c) A distributor shall not be required to register each grade of fertilizer formulated or each formulation of soil amendment according to specifications ~~which that~~ are furnished by a consumer prior to mixing, but shall be required to label the fertilizer or soil amendment as provided in subsection 365(b) of this title.

(d) The Secretary may request additional proof of testing of products prior to registration for guaranteed analyses or adulterants.

(e) Each separately identified agricultural lime product shall be registered before being distributed in this State. Registration shall be performed in the same manner as fertilizer registration except that each application shall be accompanied by a fee of \$50.00 per product.

~~(e)~~(f) The registration and tonnage fees, along with any deficiency penalties collected pursuant to sections 331 and 372 of this title, shall be deposited in a special fund. Funds deposited in this fund shall be restricted to implementing and administering the provisions of this title and any other provisions of law relating to feeds and seeds.

#### § 365. LABELS

(a)(1) Any fertilizer or agricultural lime distributed in this State in containers shall have placed on or affixed to the container a label setting forth in clearly legible and conspicuous form the following information:

- (A) net weight;

(B) brand and grade, provided that grade shall not be required when no primary nutrients are claimed;

(C) guaranteed analysis; and

(D) name and address of the registrant.

(2) For bulk shipments, this information in written or printed form shall accompany delivery and be supplied to the purchaser at the time of delivery.

(b) A fertilizer or lime formulated according to specifications furnished by a consumer prior to mixing shall be labeled to show: the net weight, the guaranteed analysis or name, analysis and weight of each ingredient used in the mixture, and the name and address of the distributor and purchaser.

(c)(1) If the Secretary finds that a requirement for expressing calcium and magnesium in elemental form would not impose an economic hardship on distributors and users of agricultural liming materials by reason of conflicting label requirements among states, he or she may require by rule that the minimum percent of calcium oxide and magnesium oxide or calcium carbonate and magnesium carbonate, or both, shall be expressed in the following terms:

Total Calcium (Ca) ..... percent

Total Magnesium (Mg) ..... percent

~~(2) Under this rule, an affected person shall be given a reasonable time to come into compliance.~~

(d)(1) Any plant amendment, plant biostimulant, or soil amendment distributed in this State in containers shall have placed on or affixed to the container a label setting forth in clearly legible and conspicuous form the following information:

(A) net weight or volume;

(B) brand name;

(C) purpose of product;

(D) directions for application;

(E) guaranteed analysis; and

(F) name and address of the registrant.

(2) For bulk shipments of fertilizer, plant amendments, plant biostimulants, soil amendments, or lime, the information required under this subsection shall accompany delivery in written or printed form and shall be supplied to the purchaser at the time of delivery.



(3) Under ~~this~~ a rule adopted under this subsection, an affected person shall be given a reasonable time to come into compliance.

§ 366. TONNAGE FEES

(a) A person distributing fertilizer to a nonregistrant consumer in the State annually shall pay the following fees to the Secretary:

- (1) a \$150.00 minimum tonnage fee;
- (2) \$0.50 per ton of agricultural fertilizer distributed; and
- (3) \$30.00 per ton of nonagricultural fertilizer distributed.

(b) Persons distributing fertilizer shall report annually on or before January 15 for the previous year ending December 31 to the Secretary revealing the amounts of each grade of fertilizer and the form in which the fertilizer was distributed within this State. Each report shall be accompanied with payment and written permission allowing the Secretary to examine the person's books for the purpose of verifying tonnage reports.

(c) No information concerning tonnage sales furnished to the Secretary under this section shall be disclosed in such a way as to divulge the details of the business operation to any person unless it is necessary for the enforcement of the provisions of this chapter.

(d) Persons distributing a plant amendment, plant biostimulant, or soil amendment in the State shall report annually on or before January 15 for the previous year ending December 31 to the Secretary revealing the amounts of each formulation of plant amendment, plant biostimulant, or soil amendment and the form in which the plant amendment, plant biostimulant, or soil amendment was distributed within this State. Each report shall include a written authorization allowing the Secretary to examine the person's books for the purpose of verifying tonnage reports. Plant amendments, plant biostimulants, and soil amendments are exempt from tonnage fees.

(e) Agricultural limes, including agricultural lime mixed with wood ash, are exempt from the tonnage fees required in this section.

(f) Lime and wood ash mixtures may be registered as agricultural liming materials and guaranteed for potassium or potash, provided that the wood ash totals less than 50 percent of the mixture.

(g)(1) All fees collected under subdivisions (a)(1) and (2) of this section shall be deposited in the special fund created by subsection 364(e)(~~f~~) of this title and used in accordance with its provisions.

(2) All fees collected under subdivision (a)(3) of this section shall be deposited in the Agricultural Water Quality Special Fund created under section

4803 of this title.

(h) [Repealed.]

§ 367. INSPECTION; SAMPLING; ANALYSIS

For the purpose of enforcing this chapter and determining whether or not fertilizers, plant amendments, plant biostimulants, soil amendments, and limes ~~lime~~ distributed in this State endanger the health and safety of Vermont citizens, the Secretary upon presenting appropriate credentials is authorized:

(1) To enter any public or private premises except domiciles during regular business hours and stop and enter any vehicle being used to transport or hold fertilizer, a plant amendment, a plant biostimulant, a soil amendment, or lime.

(2) To inspect blending plants, warehouses, establishments, vehicles, equipment, finished or unfinished materials, containers, labeling, and records relating to distribution, storage, or use.

(3) To sample and analyze any fertilizer, plant amendment, plant biostimulant, soil amendment, or lime. The methods of sampling and analysis shall be those adopted by the Association of Official Analytical Chemists. In cases not covered by this method or in cases where methods are available in which improved applicability has been demonstrated, the Secretary may authorize and adopt methods which reflect sound analytical procedures.

(4) To develop any reasonable means necessary to monitor and adopt rules for the use of fertilizers ~~and agricultural limes,~~ plant amendments, plant biostimulants, soil amendments, and lime on Vermont soils where monitoring indicates environmental or health problems. In addition, the Secretary may develop and adopt rules for the proper storage of fertilizers ~~and limes,~~ plant amendments, plant biostimulants, soil amendments, and lime held for distribution or sale.

§ 368. MISBRANDING

(a) No person shall distribute a misbranded fertilizer, plant amendment, plant biostimulant, soil amendment, or agricultural lime. A fertilizer, plant amendment, plant biostimulant, or soil amendment shall be deemed to be misbranded if:

(1) its labeling is false or misleading in any particular;

(2) it is distributed under the name of another fertilizer product, plant amendment, plant biostimulant, or soil amendment;

(3) it contains unsubstantiated claims;

(4) it is not labeled as required in section 365 of this title and in accordance with rules adopted under this chapter; or

~~(4)~~(5) it is labeled, or represented, to contain a plant nutrient ~~which that~~ does not conform to the standard of identity established by rule. In adopting ~~these rules under this chapter~~, the Secretary shall give consideration to definitions recommended by the Association of American Plant Food Control Officials.

(b) An agricultural lime shall be deemed to be misbranded if:

(1) its labeling is false or misleading in any particular; or

(2) it is not labeled as required by section 365 of this title and in accordance with rules adopted under this chapter.

#### § 369. ADULTERATION

No person shall distribute an adulterated lime, plant amendment, plant biostimulant, soil amendment, or fertilizer product. A fertilizer, plant amendment, plant biostimulant, soil amendment, or lime shall be deemed to be adulterated if:

(1) it contains any deleterious or harmful ingredient in an amount sufficient to render it injurious to beneficial plant life when applied in accordance with directions for use on the label, or if uses of the product may result in contamination or condemnation of a raw agricultural commodity by use, or if adequate warning statements or directions for use ~~which that~~ may be necessary to protect plant life are not shown on the label;

(2) its composition falls below or differs from that which it is purported to possess by its labeling;

(3) it contains crop seed or weed seed; or

(4) it contains heavy metals, radioactive substances, or synthetic organics in amounts sufficient to render it injurious to livestock or human health when applied in accordance with directions for use on the label, or if adequate warning statements or directions for use ~~which that~~ may be necessary to protect livestock or human health are not shown on the label.

#### § 370. PUBLICATION; CONSUMER INFORMATION REGARDING FERTILIZER USE ON NONAGRICULTURAL TURF OF FERTILIZER, PLANT AMENDMENTS, PLANT BIOSTIMULANTS, AND SOIL AMENDMENTS

(a) The Secretary shall publish on an annual basis:

(1) information concerning the distribution of fertilizers, plant amendments, plant biostimulants, soil amendments, and limes; and

(2) results of analyses based on official samples of fertilizers, plant amendments, plant biostimulants, soil amendments, and lime distributed within the State as compared with guaranteed analyses required pursuant to the terms of this chapter.

(b)(1) The Secretary, in consultation with the University of Vermont Extension, fertilizer industry representatives, lake groups, and other interested or affected parties, shall produce information for distribution to the general public with respect to the following:

(A) problems faced by the waters of the State because of discharges of phosphorus;

(B) an explanation of the extent to which phosphorus exists naturally in the soil;

(C) voluntary best management practices for the use of fertilizers containing phosphorus on nonagricultural turf; and

(D) best management practices for residential sources of phosphorus.

(2) The Secretary shall develop the information required under this subsection and make it available to the general public in the manner deemed most effective, which may include:

(A) conspicuous posting at the point of retail sale of fertilizer containing phosphorus, according to recommendations for how that conspicuous posting may best take place;

(B) public service announcements by means of electronic media;

(C) other methods deemed by the Secretary to be likely to be effective.

~~(3) The Secretary shall develop proposed criteria for evaluating the effectiveness of the information program and shall present them to legislative committees on natural resources and energy and on agriculture by no later than January 1, 2007. By no later than July 1, 2007, the Secretary shall hold one or more public information meetings to obtain the input of the public on a draft assessment of the effectiveness of this section in increasing the use of best management practices in the use of fertilizers on nonagricultural turf. By no later than December 1, 2008, the Secretary shall provide those legislative committees with a final assessment of the effectiveness of this subsection, which shall include an analysis of the extent to which the information developed under this subsection has been effectively provided to and relied~~

~~upon by retail customers who purchase fertilizers containing phosphorus and shall include any recommendations for making the program more effective. [Repealed.]~~

§ 371. RULES; ~~ENFORCEMENT~~

The Secretary is authorized to adopt rules pursuant to 3 V.S.A. chapter 25 as may be necessary to implement the intent of this chapter and to enforce those rules.

\* \* \*

§ 374. SHORT WEIGHT

(a) If any fertilizer, plant amendment, plant biostimulant, soil amendment, or agricultural liming material is found to be short in net weight, the registrant of the fertilizer, plant amendment, plant biostimulant, soil amendment, or lime shall pay a penalty of three times the value of the actual shortage to the affected party.

(b) Each registrant shall be offered an opportunity for a hearing before the Secretary. Penalty payments shall be made within 30 days after notice of the Secretary's decision to assess a penalty. Proof of payment to the consumer shall be promptly forwarded to the Secretary by the registrant.

(c) If the consumer cannot be found, the amount of the penalty payments shall be paid to the Secretary who shall deposit the payment into the revolving account established by subsection 364(e)(f) of this title.

(d) This section is not an exclusive cause of action and persons affected may utilize any other right of action available under law.

§ 375. CANCELLATION OF REGISTRATION

The Secretary is authorized to cancel or suspend the registration of any fertilizer, plant amendment, plant biostimulant, soil amendment, or ~~liming material~~ lime or refuse a registration application if he or she finds that the provisions of this chapter or the rules adopted under this chapter have been violated, provided that no registration shall be revoked or refused without a hearing before the Secretary.

§ 376. DETAINED FERTILIZER AND LIME

(a) "Withdrawal from distribution" orders. When the Secretary has reasonable cause to believe any lot of fertilizer, plant amendment, plant biostimulant, soil amendment, or lime is being distributed in violation of any of the provisions of this chapter or any of the rules under this chapter, he or she may issue and enforce a written or printed "withdrawal from distribution" order, warning the distributor not to dispose of the lot of fertilizer, plant

amendment, plant biostimulant, soil amendment, or lime in any manner until written permission is given by the Secretary or the court. The Secretary shall release the lot of fertilizer, plant amendment, plant biostimulant, soil amendment, or lime withdrawn when this chapter and rules have been complied with. If compliance is not obtained within 30 days, the Secretary may begin, or upon request of the distributor or registrant shall begin, proceedings for condemnation.

(b) “Condemnation and confiscation.” Any lot of fertilizer, plant amendment, plant biostimulant, soil amendment, or lime not in compliance with this chapter and rules shall be subject to seizure on complaint of the Secretary to a court of competent jurisdiction in the area in which the fertilizer, plant amendment, plant biostimulant, soil amendment, or lime is located. In the event the court finds the fertilizer, plant amendment, plant biostimulant, soil amendment, or lime to be in violation of this chapter and orders the condemnation of the fertilizer, plant amendment, plant biostimulant, soil amendment, or lime, it shall be disposed of in any manner consistent with the quality of the fertilizer, plant amendment, plant biostimulant, soil amendment, or lime and the laws of the State, provided that in no instance shall disposition of the fertilizer, plant amendment, plant biostimulant, soil amendment, or lime be ordered by the court without first giving the claimant an opportunity to apply to the court for release of the fertilizer, plant amendment, plant biostimulant, soil amendment, or lime or for permission to process or relabel the fertilizer, plant amendment, plant biostimulant, soil amendment, or lime to bring it into compliance with this chapter.

\* \* \*

#### § 379. EXCHANGES BETWEEN MANUFACTURERS

Nothing in this chapter shall be construed to restrict or impair sales or exchanges of fertilizers, plant amendments, plant biostimulants, or soil amendments to each other by importers, manufacturers, or manipulators who mix fertilizer materials, plant amendments, plant biostimulants, or soil amendments for sale, or to prevent the free and unrestricted shipments of fertilizer, plant amendments, plant biostimulants, or soil amendments to manufacturers or manipulators who have registered their brands as required by provisions of this chapter.

#### § 380. ADMINISTRATIVE PENALTY

Consistent with chapter 1 of this title, the Secretary may assess an administrative penalty upon determining that a person has violated a rule issued under this chapter or has violated this chapter in the following manner:

(1) distributed a specialty fertilizer, plant amendment, plant biostimulant, soil amendment, or lime without first obtaining the appropriate product registration;

(2) distributed a fertilizer, plant amendment, plant biostimulant, soil amendment, or lime without appropriate labeling;

(3) failed to report or to accurately report the amount and form of each grade of fertilizer distributed in Vermont on an annual basis;

(4) failed to report or to accurately report the amount and form of each formulation of plant amendment, plant biostimulant, or soil amendment;

(5) failed to pay the appropriate tonnage fee; or

(5)(6) violated a cease and desist order.

#### § 381. GOLF COURSES; NUTRIENT MANAGEMENT PLAN

~~Beginning July 1, 2012, as~~ As a condition of the permit issued to golf courses under chapter 87 of this title and ~~regulations~~ rules adopted thereunder, a golf course shall be required to submit to the Secretary of Agriculture, Food and Markets a nutrient management plan for the use and application of fertilizer to grasses or other lands owned or controlled by the golf course. The nutrient management plan shall ensure that the golf course applies fertilizer according to the agronomic rates for the site-specific conditions of the golf course.

Sec. 10a. 6 V.S.A. § 372(d) is amended to read:

(d) If the consumer cannot be found, the amount of the penalty payments shall be paid to the Secretary who shall deposit the payment into the revolving account established by subsection 364(e)(f) of this title.

Sec. 10b. 6 V.S.A. § 570(c) is amended to read:

(c) The registration fees collected under this section shall be deposited in the special fund created by subsection 364(e)(f) of this title and shall be used for the administration of the requirements of this chapter.

Sec. 10c. 6 V.S.A. § 648(e) is amended to read:

(e) All fees shall be deposited in the special fund created by subsection 364(e)(f) of this title and used in accordance with its provisions.

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

#### Sec. 11. EFFECTIVE DATES

(a) This section and Secs. 1–8a (compost foraging; farming) shall take effect on passage.

(b) All other sections shall take effect on July 1, 2021.

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

**Rules Suspended; Bill Passed in Concurrence with Proposals; Bill  
Messaged**

**H. 449.**

On motion of Senator Balint, the rules were suspended and House bill entitled:

An act relating to the membership and duties of the Vermont Pension Investment Commission and the creation of the Pension Benefits, Design, and Funding Task Force.

Was placed on all remaining stages of its passage forthwith in concurrence with proposals of amendment.

Thereupon, the bill was read the third time and passed in concurrence with proposals of amendment.

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

**Adjournment**

On motion of Senator Balint, the Senate adjourned until ten o'clock in the morning.