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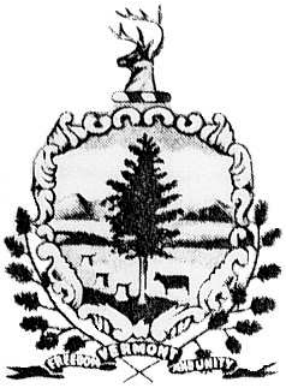

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SECRETARY OF THE SENATE

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Rules Suspended; Bill Passed

S. 97.

Pending entry on the Calendar for action tomorrow, on motion of Senator Shumlin, the rules were suspended and Senate bill entitled:

An act relating to a Vermont state employees' cost-savings incentive program.

Was placed on all remaining stages of its passage forthwith.

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

Rules Suspended; Bills Messaged

On motion of Senator Shumlin, the rules were suspended, and the following bills were severally ordered messaged to the House forthwith:

S. 97, H. 15, H. 86, H. 436.

Message from the House No. 72

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

Mr. President:

I am directed to inform the Senate that:

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

S. 2. An act relating to offenders with a mental illness or other functional impairment.

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

The Governor has informed the House that on the April 29, 2009, he approved and signed bills originating in the House of the following titles:

H. 160. An act relating to approval of the charter of the Town of Hartford.

H. 186. An act relating to authorizing the department of fish and wildlife to administer polygraph examinations to applicants for law enforcement positions.

The Governor has informed the House that on the April 30, 2009, he approved and signed a bill originating in the House of the following title:

H. 135. An act relating to wireless communication facilities and project approvals for municipal and cooperative utilities.

Adjournment

On motion of Senator Shumlin, the Senate adjourned, to reconvene on Monday, May 4, 2009, at ten o'clock in the forenoon pursuant to J.R.S. 30.

MONDAY, MAY 4, 2009

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

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the House No. 73

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

Mr. President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

H. 125. An act relating to farm-fresh milk.

H. 222. An act relating to senior protection and financial services.

H. 240. An act relating to no-net-loss of state hunting lands.

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

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

S. 47. An act relating to salvage yards.

S. 129. An act relating to containing health care costs by decreasing variability in health care spending and utilization.

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

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

H. 15. An act relating to aquatic nuisance control.

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

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

Rep. Adams of Hartland
Rep. McCullough of Williston
Rep. Webb of Shelburne

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

H. 86. An act relating to the regulation of professions and occupations.

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

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

Rep. Evans of Essex
Rep. Hubert of Milton
Rep. Townsend of Randolph

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

S. 26. An act relating to recovery of profits from crime.

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

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

Rep. Jewett of Ripton
Rep. Flory of Pittsford
Rep. French of Shrewsbury

The Governor has informed the House that on the May 1, 2009, he approved and signed bill originating in the House of the following title:

H. 34. An act relating to automated external defibrillators.

Pledge of Allegiance

The President *pro tempore* then led the members of the Senate in the pledge of allegiance.

Bills Referred

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

H. 125.

An act relating to farm-fresh milk.

To the Committee on Rules.

H. 222.

An act relating to senior protection and financial services.

To the Committee on Rules.

H. 240.

An act relating to no-net-loss of state hunting lands.

To the Committee on Rules.

Senate Resolution Placed on Calendar

S.R. 13.

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

By Senator Lyons,

S.R. 13. Senate resolution urging the Agency of Natural Resources to retain delegated authority to administer the federal Clean Water Act in Vermont.

Whereas, the federal Clean Water Act requires dischargers of pollutants to the navigable waters of Vermont to obtain a national pollutant discharge elimination system (NPDES) permit, and

Whereas, the federal Clean Water Act authorizes the United States Environmental Protection Agency (EPA) to delegate to states the authority to administer and enforce the NPDES permit program for discharges to navigable waters, and

Whereas, EPA delegated administration of the federal Clean Water Act in Vermont to the Agency of Natural Resources (ANR) in 1974, and

Whereas, ANR's delegated authority allows the agency, instead of EPA, to implement and enforce permitting requirements for all development and farms in the state, and

Whereas, delegation of the Clean Water Act to ANR allows the agency access to significant federal funding to administer the NPDES permitting program in the state, and

Whereas, delegation of the Clean Water Act to ANR allows the agency to initiate an enforcement action to forestall citizen suits against discharges that potentially violate the Clean Water Act, and

Whereas, Secretary of the Agency of Natural Resources Jonathan Wood stated that ANR is considering returning delegation of the NPDES permit program in Vermont to EPA, and

Whereas, returning delegation of the NPDES permit program to EPA would require developers in Vermont to apply to EPA Region 1 in Boston for necessary stormwater permits, and

Whereas, returning delegation of the NPDES permit program to EPA would require farms and stormwater discharges that are permitted under state law to be permitted by EPA under the federal Clean Water Act, and

Whereas, returning delegation of the NPDES permit program to EPA would prevent ANR from forestalling citizen suits against discharges in the state, and

Whereas, returning delegation of the NPDES permit program to EPA would require ANR to forfeit over $1.2 million in federal funds and require the termination of 17 employees at the agency, and

Whereas, the Vermont General Assembly is the public policy entity of the state, and

Whereas, the return of delegation of the NPDES permit program to EPA is a significant public policy issue, *now therefore be it*

***Resolved by the Senate*:**

That ANR is urged not to return the authority delegated to it by EPA to implement and enforce the NPDES permit program of the federal Clean Water Act without approval of the Vermont general assembly, *and be it further*

***Resolved*:** That the Secretary of the Senate be directed to send a copy of this resolution to Governor James Douglas, EPA administrator Lisa Jackson, the Vermont Congressional Delegation, and Vermont Secretary of Natural Resources Jonathan Wood.

Thereupon, in the discretion of the President *pro tempore*, under Rule 51, the resolution was placed on the Calendar for action the next legislative day.

Consideration Postponed

Senate bill entitled:

S. 99.

An act relating to amending the Act 250 criteria relating to traffic, scattered development, and rural growth areas.

Was taken up.

Thereupon, without objection consideration of the bill was postponed until the next legislative day.

Consideration Postponed

Joint House resolution entitled:

J.R.H. 15.

Joint resolution relating to the designation of commemorative observances in concurrent resolutions.

Was taken up.

Thereupon, without objection consideration of the joint resolution was postponed until the next legislative day.

Bill Amended; Consideration Interrupted by Recess

S. 137.

Senate bill entitled:

An act relating to the Vermont recovery and reinvestment act of 2009.

Was taken up.

Thereupon, pending third reading of the bill, Senator Lyons moved to amend the bill as follows:

First: By striking out Sec. 1 in its entirety and inserting in lieu thereof a new Sec. 1 to read as follows:

Sec. 1. SPRINGFIELD REDEVELOPMENT; PILOT PROGRAM

(a) For purposes of this section:

(1) "Redevelopment area" means an area within the town of Springfield that: is identified by the town to accommodate a significant amount of industrial activity, high technology, or other job-producing activity; includes one or more industrial facilities that have been vacant or substantially underutilized for more than ten years; has at least 15,000 square feet or a minimum of five acres if the site includes an older structure; and does not detract from the planned economic development of the downtown designated district.

(2) "Qualified business" means any business that intends to locate in or expand into the redevelopment area and:

(A) Is in compliance with applicable zoning and other local bylaws and requirements for locating in the redevelopment area.

(B) Is in compliance with applicable federal, state, and local regulations.

(C) Will employ at least ten new full-time employees in positions that are not retail sales within a year of approval.

(D) Will pay wages and benefits to all full-time employees that meet or exceed the prevailing compensation level for that particular employment.

(3) "Qualified redeveloper" means any taxpayer that purchases and redevelops an industrial building in the redevelopment area for sale or lease to a qualified business.

(4) "Secretary" means the secretary of commerce and community development.

(5) "Substantially underutilized" means a property or facility of which less than ten percent has been occupied for uses other than storage or warehousing for at least ten years and for which active and sustained marketing has produced no significant employment.

(b) There is created a redevelopment pilot program which shall be administered as follows:

(1) The town of Springfield may apply to the secretary for approval of a redevelopment area authorized by this section.

(2) Qualified businesses and qualified redevelopers may apply to the secretary for the benefits provided by this section.

(3) Approval of a redevelopment area under this section shall be for a period of ten years and may be extended by the secretary, upon application by the municipality, for one additional ten-year period.

(4) Applications from the town of Springfield for approval of a redevelopment area and from qualified businesses and qualified redevelopers for approval of benefits shall be made in accordance with guidelines established by the secretary.

(5) The secretary shall issue a written decision granting or denying an application within 45 days of receipt of a completed application. If the secretary denies an application, the decision shall state the reasons for the denial. The town of Springfield, a qualified business, or a qualified redeveloper denied approval may submit a new application at any time.

(6) Decisions of the secretary under this section are not subject to chapter 25 of Title 3 and shall be final and not reviewable.

(7) Beginning no later than 12 months after approval by the secretary, qualified businesses and qualified redevelopers shall annually submit a written report to the secretary verifying that the business continues to meet all the requirements of this section.

(8) The secretary is authorized to approve one redevelopment area in accordance with this section.

(c) Qualified businesses and qualified redevelopers located in a redevelopment area are eligible for the following benefits:

(1) The sales tax exemption provided under 32 V.S.A. § 9741(48) for the building materials, machinery, equipment, or trade fixtures purchased for use in the Springfield pilot zone or redevelopment area.

(2) A ten-year exemption from the education tax imposed under 32 V.S.A. § 5402 on the nonresidential value of the redeveloped property.

(3) An annual income tax credit equal to three percent of the total wages and salaries paid during the taxable year to employees for services performed within the Springfield pilot zone or redevelopment area.

(4) Priority given to applications by such businesses or redevelopers for state permits and other state approvals over any other pending application.

(5) Priority consideration by any state agency for eligibility for state or federal funding or other aid to industrial development based on a cost-benefit analysis.

(6) Priority consideration for financing programs available through the Vermont economic development authority under chapter 12 of this title.

(7) Technical support from the department of public safety and the division for historic preservation for the rehabilitation of older and historic buildings.

(d) Property tax exemptions under this section shall commence in the first tax year in which the qualified business or qualified redeveloper has made expenditures in the approved redevelopment area.

(e) Any benefits received by a qualified redeveloper related to the redevelopment, sale, or lease of improved space to a qualified business within a redevelopment area shall not be separately available to a qualified business that purchases or leases all or part of the facility improved by the redeveloper.

(f) Benefits shall not be available for either of the following:

(1) Retail sales activities; or

(2) Relocating a business within Vermont to a redevelopment area.

(g) Benefits granted to a qualified business or a qualified redeveloper may be terminated and recaptured by the secretary upon determination that the qualified business or a qualified redeveloper is no longer in compliance with, or has failed to meet, the requirements of this section. A decision to terminate or recapture benefits shall not be subject to chapter 25 of Title 3 and shall be final and not reviewable.

(h) The secretary, on or before January 15, 2011, and biennially thereafter, shall report to the general assembly on the progress of the redevelopment pilot program under this section and its impact on new economic development and the creation of new jobs.

Second: By inserting twenty-five new sections to be numbered Secs. 34a - 34y to read as follows:

* * * Small-Scale Hydroelectric Projects * * *

Sec. 34a. FINDINGS

The general assembly finds and declares that:

(1) The generation of renewable power within Vermont is critical to the economic development, energy independence, and financial security of the state.

(2) Section 401 of the federal Clean Water Act, 33 U.S.C. § 1341, requires any applicant for a federal permit that may involve a discharge to navigable waters to obtain certification from the state that the permitted activity does not violate the state's water quality standards.

(3) As set forth in 10 V.S.A. § 1004, the secretary of natural resources is the agent that the U.S. Environmental Protection Agency delegated to conduct Clean Water Act § 401 certifications in the state of Vermont.

(4) The secretary of natural resources should be required to adopt procedures establishing an application process for certification of hydroelectric projects in a timely manner that allows for the predictable and affordable development of small-scale hydroelectric power projects.

Sec. 34b. 10 V.S.A. § 1006 is added to read:

§ 1006. CERTIFICATION OF HYDROELECTRIC PROJECTS; APPLICATION PROCESS

(a) As used in this section:

(1) "Bypass reach" means that area in a waterway between the initial point where water has been diverted through turbines or other mechanical means for the purpose of water-powered generation of electricity and the point

at which water is released into the waterway below the turbines or other mechanical means of electricity generation.

(2) "Conduit" means any tunnel, canal, pipeline, aqueduct, flume, ditch, or similar constructed water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.

(3) "Hydroelectric project" means a facility, site, or conduit planned or operated for the generation of water-powered electricity that has a generation capacity of no more than 1 megawatt and does not create a new impoundment.

(4) "Impoundment" means any artificial structure used to collect water in a pond, reservoir, or similar collection area for the purpose of water-powered generation of electricity.

(b) On or before December 15, 2009, the agency of natural resources, after opportunity for public review and comment, shall adopt by procedure an application process for the certification of hydroelectric projects in Vermont under Section 401 of the federal Clean Water Act.

(c) The application process adopted by the agency of natural resources under subsection (b) of this section may include an application form for a federal Clean Water Act Section 401 certification for a hydroelectric project that meets the requirements of the Vermont water pollution control permit rules. The application form may require information addressing:

(1) a description of the proposed hydroelectric project and the impact of the project on the watershed;

(2) the preliminary terms and conditions that an applicant shall be subject to if a federal Clean Water Act Section 401 certification is issued for a proposed hydroelectric project; and

(3) time frames for the agency of natural resources review of and response to an application for a federal Clean Water Act Section 401 certification of a hydroelectric project.

(d) In adopting the Clean Water Act Section 401 certification application process required by subsection (b) of this section, the agency may, consistent with its authority to waive certifications under 33 U.S.C. § 1341(a)(1), adopt an expedited certification process for:

(1) hydroelectric projects when data provided by an applicant provide reasonable assurance that the project will comply with the state water quality standards;

(2) hydroelectric projects utilizing conduits; hydroelectric projects without a bypass reach; and hydroelectric projects with a de minimis bypass reach, as defined by the agency of natural resources; and

(3) Previously certified hydroelectric projects operating in compliance with the terms of a Clean Water Act Section 401 certification as demonstrated by existing administrative, monitoring, reporting, or enforcement data.

Sec. 34c. AGENCY OF NATURAL RESOURCES REPORT ON APPLICATION PROCESS FOR CERTIFICATIONS OF HYDROELECTRIC PROJECTS

On or before January 15, 2010, the agency of natural resources shall submit to the senate committee on economic development, housing and general affairs, the house committee on commerce and economic development, the house committee on fish, wildlife and water resources, and the house and senate committees on natural resources and energy a copy of the application process required under 10 V.S.A. § 1006 for the certification of hydroelectric projects.

* * * STORMWATER PERMITTING * * *

Sec. 34d. EXTENSION OF SUNSET

Sec. 10 of No. 140 of the Acts of the 2003 Adj. Sess. (2004), as amended by Sec. 8 of No. 154 of the Acts of the 2005 Adj. Sess. (2006), as amended by Sec. 3 of No. 43 of the Acts of 2007, is further amended to read:

Sec. 10. SUNSET

(a) Sec. 2 of this act (interim permitting authority for regulated stormwater runoff), except for subsection 1264a(e) of Title 10, shall continue to be in effect until January 15, 2011 for projects that receive all or part of their funding through the American Recovery and Reinvestment Act (ARRA) of 2009, Pub.L. No. 111-5. For other projects, Sec. 2 of this act, except for subsection 1264a(e) of Title 10, shall be repealed on January 15, 2010.

(b) Sec. 4 of this act (local communities implementation fund) shall be repealed on September 30, 2012.

(c) Sec. 6 of this act (stormwater discharge permits during transition period) shall be repealed on January 15, ~~2010~~ 2011.

Sec. 34e. 24 V.S.A. § 4758 is amended to read:

§ 4758. LOAN PRIORITIES

(a) Periodically, and at least annually, the secretary shall prepare and certify to the bond bank a project priority list of those municipalities whose

publicly owned projects, or privately owned wastewater systems, are eligible for financing or assistance under this chapter. In determining financing availability for wastewater projects under this chapter, the secretary of the agency having jurisdiction shall apply the following criteria:

(1) the probable public benefit to be gained or preserved by the project to be financed;

(2) the long-term costs and the resulting benefits to be derived from the project. In determining benefits, induced growth from a project that is not consistent with a town, city, or village plan, duly adopted under chapter 117 of this title, will not be considered;

(3) the cost of comparable credit or financing alternatives available to the municipality;

(4) the existence of immediate public health, safety and welfare factors, and compliance therewith;

(5) the existence of an emergency constituting a threat to public health, safety and welfare; and

(6) the current area and population to be served by the proposed project.

(b) In determining financing availability for stormwater projects under this chapter, the secretary of the agency having jurisdiction shall apply the following criteria:

(1) that the project is specifically or generally described in Vermont's nonpoint source management plan;

(2) that the project will remedy or prevent the impairment of waters, and the severity of that existing or prevented impairment; and

(3) that the project is consistent with the applicable basin plan for the waters affected by the project.

(c) In determining financing availability for projects funded by federal monies available to the state from the American Recovery and Reinvestment Act (ARRA) of 2009, Pub.L. No. 111-5, the secretary shall assure that municipal stormwater projects in the stormwater-impaired waters of the state shall be given priority over other projects.

Sec. 34f. SUNSET OF PRIORITY FOR STORMWATER PROJECTS UNDER STATE ENVIRONMENTAL REVOLVING FUND

24 V.S.A. § 4758(c) (state environmental revolving fund financing priority for stormwater projects in impaired waters) is repealed January 15, 2012.

Sec. 34g. ALTERNATIVE GUIDANCE FOR STORMWATER PERMITTING; WIND FACILITIES

To facilitate responsible development of renewable energy projects in high-elevation settings, the Vermont department of environmental conservation shall consult with project developers and interested stakeholders and, by January 15, 2010 or in the process currently under way to update the Vermont stormwater management manual, whichever occurs first, amend its rules or the stormwater management manual, pursuant to chapter 25 of Title 3, to include alternative guidance for operational-phase stormwater permitting of renewable energy projects located in high-elevation settings. Such alternative guidance shall include consideration of measures that minimize the extent and footprint of stormwater-treatment practices so as to preserve vegetation and trees and limit disturbances; that reflect the fragile ecosystems, shallow soils, and sensitive streams found in high-elevation settings; and that reflect the temporary nature and infrequent use of construction and access roads to such projects.

* * * Communications Facilities Permitting * * *

Sec. 34h. 30 V.S.A. § 248a is amended to read:

§ 248a. CERTIFICATE OF PUBLIC GOOD FOR ~~MULTIPLE~~ COMMUNICATIONS FACILITIES

(a) Notwithstanding any other provision of law, if the applicant ~~in a single application~~ seeks approval for the construction or installation ~~within three years~~ of ~~three or more~~ telecommunications facilities ~~as part of an interconnected network~~ that are to be interconnected with other telecommunications facilities proposed or already in existence, the applicant may obtain a certificate of public good issued by the public service board under this section, which the board may grant if it finds that the facilities will promote the general good of the state consistent with subsection 202c(b) of this title. A single application may seek approval of one or more telecommunications facilities.

(b) For the purposes of this section:

(1) "Telecommunications facility" means ~~any~~ a communications facility that transmits and receives signals to and from a local, state, national, or international network used primarily for two-way communications for commercial, industrial, municipal, county, or state purposes and any associated support structure ~~extending more than 50 feet above the ground~~ that is proposed for construction or installation which is primarily for communications purposes ~~and which supports facilities that transmit and receive communications signals for commercial, industrial, municipal, county,~~

~~or state purposes~~, and any ancillary improvements that are proposed for construction or installation and are primarily intended to serve the communications facilities or support structure.

(2) ~~Telecommunications facilities are "part of an interconnected network" if those facilities would allow one or more communications services to be provided throughout a contiguous area of coverage created by means of the proposed facilities or by means of the proposed facilities in combination with other facilities already in existence~~ An applicant may seek approval of construction or installation of a telecommunications facility whether or not the telecommunications facility is attached to an existing structure.

(c) Before the public service board issues a certificate of public good under this section, it shall find that~~, in the aggregate~~ each of the following is true:

(1) ~~the~~ The proposed ~~facilities~~ facility will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, and the public health and safety, with due consideration having been given to the relevant criteria specified in subsection 1424a(d) and subdivisions 6086(a)(1) through (8) and (9)(K) of Title 10~~; and~~.

(2) Substantial deference has been given to the legal standards and criteria of any ordinance adopted under 24 V.S.A. § 2291(19) or bylaw adopted under 24 V.S.A. § 4414(12) by the municipality in which the facility is located.

(3) ~~unless~~ Unless there is good cause to find otherwise, substantial deference has been given to the land conservation measures in the plans of the affected municipalities and the recommendations of the municipal and regional planning commissions regarding the municipal and regional plans, respectively.

(d) When issuing a certificate of public good under this section, the board shall give ~~due consideration~~ substantial deference to all conditions in an existing state or local permit and shall harmonize the conditions in the certificate of public good with the existing permit conditions to the extent feasible.

(e) No less than 45 days prior to filing a petition for a certificate of public good under this section, the applicant shall serve written notice of an application to be filed with the board pursuant to this section to the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities; the secretary of the agency of natural resources; the commissioner of the department of public service and its director for public advocacy; and the landowners of record of property adjoining the project sites. In addition, at least one copy of each

application shall be filed with each of these municipal and regional planning commissions. Upon motion or otherwise, the public service board shall direct that further public or personal notice be provided if the board finds that such further notice will not unduly delay consideration of the merits and that additional notice is necessary for fair consideration of the application.

(f) Unless the public service board identifies that an application raises a ~~substantial~~ significant issue, the board shall issue a final determination on an application filed pursuant to this section within 90 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 90 days of the date on which the clerk of the board notifies the applicant that the filing is complete. If the board rules that an application raises a ~~substantial~~ significant issue, it shall issue a final determination on an application filed pursuant to this section within 180 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 180 days of the date on which the clerk of the board notifies the applicant that the filing is complete.

(g) Nothing in this section shall be construed to prohibit an applicant from executing a letter of intent or entering into a contract before the issuance of a certificate of public good under this section, provided that the obligations under that letter of intent or contract are made subject to compliance with the requirements of this section.

(h) An applicant using the procedures provided in this section shall not be required to obtain a ~~local zoning~~ permit or a permit amendment or other approval under the provisions of subdivision 2291(19) or chapter 117 of Title 24 or chapter 151 of Title 10 for the facilities subject to the application or to a certificate of public good issued pursuant to this section. ~~Ordinances adopted pursuant to subdivision 2291(19) of Title 24 or a municipal charter that would otherwise apply to the construction or installation of facilities subject to this section are preempted.~~ Disputes over jurisdiction under this section shall be resolved by the public service board, subject to appeal as provided by section 12 of this title. An applicant that has obtained or been denied a permit or permit amendment under the provisions of Title 24 or chapter 151 of Title 10 for the construction of a telecommunications facility may not apply for approval from the board for the same or substantially the same facility, except that an applicant may seek approval for a modification to such a facility.

(i) Effective July 1, ~~2010~~ 2011, no new applications for certificates of public good under this section may be considered by the board.

(j)(1) The board may, subject to such conditions as it may otherwise lawfully impose, issue a certificate of public good in accordance with the

provisions of this subsection and without the notice and hearings required by any provision other than subdivision (2) of this subsection if the board finds that such facilities will be of limited size and scope, and the petition does not raise a significant issue with respect to the substantive criteria of this section. If an applicant requests approval of multiple telecommunications facilities in a single application under this section, the board may issue a certificate of public good in accordance with the provisions of this subsection for all or some of the telecommunications facilities described in the petition.

(2)(A) Any party seeking to proceed under the procedures authorized by this subsection shall file a proposed certificate of public good and proposed findings of fact with its petition, and provide notice and a copy of the petition, proposed certificate of public good, and proposed findings of fact to the commissioner of the department of public service and its director for public advocacy, the secretary of the agency of natural resources, and each of the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities. The applicant shall give written notice of the proposed certificate to the landowners of record of property adjoining the project site or sites unless the board has previously determined on request of the applicant that good cause exists to waive or modify the notice requirement with respect to such landowners. Such notice shall request comment to the board within 21 days of the notice on the question of whether the petition raises a significant issue with respect to the substantive criteria of this section. If the board finds that a petition raises a significant issue with respect to the substantive criteria of this section, the board shall hear evidence on any such issue.

(B) Any waiver or modification of notice to adjoining landowners under this subsection shall be based on a determination that the landowners subject to the waiver or modification could not reasonably be affected by one or more of the proposed facilities, and that notice to such landowners would constitute a significant administrative burden without corresponding public benefit.

(C) If the board accepts a request to consider an application under the procedures of this subsection, then unless the public service board subsequently determines that an application raises a significant issue, the board shall issue a final determination on an application filed pursuant to this subsection within 45 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 45 days of the date on which the clerk of the board notifies the applicant that the filing is complete. If, subsequent to acceptance of an application under this subsection, the board rules that an application raises a significant issue, it shall issue a final determination on an application filed pursuant to this subsection within 90 days

of its filing or, if the original filing did not substantially comply with the public service board's rules, within 90 days of the date on which the clerk of the board notifies the applicant that the filing is complete.

(D) If the board denies a request to consider an application under the procedures of this subsection, a filing made under this subsection that the board has found to be complete shall be deemed to satisfy notice requirements of subsection (e) of this section, and the periods stated under subsection (f) of this section shall run from the date of the board's denial of such request.

(k) The public service board may issue rules or orders implementing and interpreting this section. In developing such rules and orders, the board shall seek to simplify the application and review process as appropriate, consistently with the requirements of this section.

Sec. 34i. 24 V.S.A. § 4412(8)(C) is amended to read:

(C) The regulation ~~of antennae that are part~~ of a telecommunications facility, as defined in 30 V.S.A. § 248a, shall be exempt from municipal ~~bylaw review~~ approval under this chapter when and to the extent jurisdiction is assumed by the public service board according to the provisions of that section.

Sec. 34j. 10 V.S.A. § 6027 is amended to read:

§ 6027. POWERS

* * *

(l) A district commission may reject an application under this chapter that misrepresents any material fact and may after notice and opportunity for hearing award reasonable attorney's fees and costs to any party or person who may have become a party but for the false or misleading information or who has incurred attorney's fees or costs in connection with the application.

Sec. 34k. 24 V.S.A. § 4455 is added to read:

§ 4455. REVOCATION

On petition by the municipality and after notice and opportunity for hearing, the environmental court may revoke a municipal land use permit issued under this chapter, including a permit for a telecommunications facility, on a determination that the permittee violated the terms of the permit or obtained the permit based on misrepresentation of material fact.

Sec. 34l. 24 V.S.A. § 4470a is added to read:

§ 4470a. MISREPRESENTATION; MATERIAL FACT

An administrative officer or appropriate municipal panel may reject an application under this chapter, including an application for a telecommunications facility, that misrepresents any material fact. After notice and opportunity for hearing in compliance with section 809 of Title 3, an appropriate municipal panel may award reasonable attorney's fees and costs to any party or person who may have become a party but for the false or misleading information or who has incurred attorney's fees or costs in connection with the application.

Sec. 34m. 30 V.S.A. § 202c is amended to read:

§ 202c. STATE TELECOMMUNICATIONS; POLICY AND PLANNING

(a) The general assembly finds that advances in telecommunications technology and changes in federal regulatory policy are rapidly reshaping telecommunications services, thereby promising the people and businesses of the state improved communication and access to information, while creating new challenges for maintaining a robust, modern telecommunications network in Vermont.

(b) Therefore, to direct the benefits of improved telecommunications technology to all Vermonters, it is the purpose of this section and section 202d of this title to:

(1) Strengthen the state's role in telecommunications planning.

(2) Support the universal availability of appropriate infrastructure and affordable services for transmitting voice and high-speed data.

(3) Support the availability of modern mobile wireless telecommunications services along the state's travel corridors and in the state's communities.

(4) Provide for high-quality, reliable telecommunications services for Vermont businesses and residents.

(5) Provide the benefits of future advances in telecommunications technologies to Vermont residents and businesses.

(6) Support competitive choice for consumers among telecommunications service providers.

(7) Support the application of telecommunications technology to maintain and improve governmental and public services, public safety, and the economic development of the state.

(8) Support, to the extent practical and cost-effective, deployment of broadband infrastructure that:

(A) Uses the best commercially available technology.

(B) Does not negatively affect the ability of Vermont to take advantage of future improvements in broadband technology or result in widespread installation of technology that becomes outmoded within a short period after installation.

Sec. 34n. 30 V.S.A. § 8060 is amended to read:

§ 8060. LEGISLATIVE FINDINGS AND PURPOSE

(a) The general assembly finds that:

(1) The availability of mobile telecommunications and broadband services is essential for promoting the economic development of the state, the education of its young people and life-long learning, the delivery of cost-effective health care, the public safety, and the ability of citizens to participate fully in society and civic life.

(2) Private entities have brought mobile telecommunications and broadband services to many households, businesses and locations in the state, but significant gaps remain.

(3) A new level of creative and innovative strategies (including partnerships and collaborations among and between state entities, nonprofit organizations, municipalities, the federal government, and the private sector) is necessary to extend and complete broadband coverage in the state, and to ensure that Vermont maintains a telecommunications infrastructure that allows residents and businesses to compete fairly in the national and global economy.

(4) When such partnerships and collaborations fail to achieve the goal of providing high-quality broadband access and service to all areas and households, or when some areas of the state fall behind significantly in the variety and quality of services readily available in the state, it is necessary for an authority of the state to support and facilitate the construction of infrastructure and access to broadband service through financial and other incentives.

(5) Small broadband enterprises now offering broadband service in Vermont have limited access to financial capital necessary for expansion of broadband service to unserved areas of the state. The general assembly recognizes these locally based broadband providers for their contributions to date in providing broadband service to unserved areas despite the limitations on their financial resources.

(6) The universal availability of adequate mobile telecommunications and broadband services promotes the general good of the state.

(7) Vermonters should be served by broadband infrastructure that, to the extent practical and cost-effective, uses the best commercially available technology and does not involve widespread installation of technology that becomes outmoded within a short period after installation.

(b) Therefore, it is the goal of the general assembly to ensure:

(1) that all residences and business in all regions of the state have access to affordable broadband services not later than the end of the year 2010~~:~~, and that this goal be achieved in a manner that, to the extent practical and cost-effective, does not negatively affect the future installation of the best commercially available broadband technology or result in widespread installation of technology that becomes outmoded within a short period after installation.

(2) the ubiquitous availability of mobile telecommunication services including voice and high-speed data throughout the state by the end of the year 2010.

(3) the investment in telecommunications infrastructure in the state which will support the best available and economically feasible service capabilities.

(4) that telecommunications and broadband infrastructure in all areas of the state is continuously upgraded to reflect the rapid evolution in the capabilities of available mobile telecommunications and broadband technologies, and in the capabilities of mobile telecommunications and broadband services needed by persons, businesses, and institutions in the state.

(5) the most efficient use of both public and private resources through state policies by encouraging the development of open access telecommunications infrastructure that can be shared by multiple service providers.

Sec. 34o. 30 V.S.A. § 8077 is amended to read:

§ 8077. ESTABLISHMENT OF MINIMUM TECHNICAL SERVICE CHARACTERISTIC OBJECTIVES

(a) The department of public service~~,~~ shall, as part of the state telecommunications plan prepared pursuant to section 202d of this title, identify minimum technical service characteristics which ought to be available as part of broadband services commonly sold to residential and small business users throughout the state. For the purposes of this chapter, "broadband" means high speed internet access. The department shall consider the

performance characteristics of broadband services needed to support current and emerging applications of broadband services. The department shall review and update the minimum characteristics established under this section no less than every three years starting in 2009. In the event such review is conducted separately from an update of the state telecommunications plan pursuant to subsection 202d(f) of this title, the department shall issue revised minimum characteristics as an amendment to the plan.

(b) The authority shall give priority in its activities toward projects which expand the availability of broadband services that meet the minimum technical services characteristics established by the state telecommunications plan.

(c) Until the department of public service adopts ~~a revision to the state telecommunications plan~~ minimum service characteristics under subsection (a) of this section, the authority shall give priority to the expansion of broadband services which deploy equipment capable of a data transmission rate of not less than three megabits per second and offer a service plan with a data transmission rate of not less than 1.5 megabits per second in at least one direction to unserved areas.

Sec. 34p. 10 V.S.A. § 6001(3)(D) is amended to read:

(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.

(ii) The construction of improvements for an electric generation or transmission facility that requires a certificate of public good under ~~section~~ 30 V.S.A. § 248 ~~or~~, a natural gas facility as defined in ~~subdivision~~ 30 V.S.A. § 248(a)(3), or a telecommunications facility issued a certificate of public good under 30 V.S.A. § 248a.

(iii) [Repealed.]

(iv) The construction of improvements for agricultural fairs that are open to the public for 60 days per year, or fewer, provided that any improvements constructed do not include one or more buildings.

(v) The construction of improvements for the exhibition or showing of equines at events that are open to the public for 60 days per year, or fewer, provided that any improvements constructed do not include one or more buildings.

* * * Act 250 Exemptions; ARRA-Funded Roads and Bridges * * *

Sec. 34q. 10 V.S.A. § 6081 is amended to read:

§ 6081. PERMITS REQUIRED; EXEMPTIONS

* * *

(d) For purposes of this section, the following construction of improvements to preexisting municipal, county, or state projects shall not be considered to be substantial changes~~, regardless of the acreage involved,~~ and shall not require a permit as provided under subsection (a) of this section:

(1) essential municipal, county, or state wastewater treatment facility enhancements that do not expand the capacity of the facility by more than 10 percent, excluding the extension of a wastewater collection system or an expansion of the service-area boundaries of a wastewater treatment facility.

(2) essential municipal ~~waterworks~~, county, or state water supply enhancements that do not expand the capacity of the facility by more than 10 percent.

(3) essential public school reconstruction or expansion that does not expand the student capacity of the school by more than 10 percent.

(4) essential municipal, county, or state building renovations or reconstruction ~~or expansion~~ that does not expand the floor space of the building by more than 10 percent.

(5) construction of improvements to preexisting municipal, county, or state roads and bridges, provided such construction receives all or part of its funding through the federal American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5.

(e) For purposes of this section, the replacement of preexisting municipal, county, or state water and sewer lines~~, as part of a municipality's regular maintenance or replacement~~ of existing facilities~~,~~ shall not be considered to be substantial changes and shall not require a permit as provided under subsection (a) of this section, provided that the replacement does not expand the service capacity of the relevant facility by more than 10 percent.

* * *

Sec. 34r. SUNSET

10 V.S.A. § 6081(d)(5) (Act 250 exemption for ARRA-funded road and bridge improvements) shall be repealed July 1, 2011. However, the construction of improvements commenced prior to July 1, 2011 shall not require a permit by operation of this section if such construction was exempt under 10 V.S.A. § 6081(d)(5).

* * * Permit Expediting for ARRA-Funded Projects * * *

Sec. 34s. PERMIT EXPEDITING; FEDERAL STIMULUS

Notwithstanding any other provision of law, an application for a state or local permit or other approval pertaining to a project that will receive all or part of its funding through the federal American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5 may be given priority over any other pending application.

* * * Agency of Natural Resources Report on General Permits * * *

Sec. 34t. GENERAL PERMITS; ENVIRONMENTAL TICKETING; SPECIFIC PROPOSAL REQUIRED

(a) As soon as possible, and no later than November 15, 2009, the agency of natural resources (ANR) shall submit to the committees listed in subsection (c) of this section draft legislation on enabling authority for each of the following:

(1) ANR's issuance of general permits pertaining to the following chapters of Title 10 and permits within those chapters: 23 (air pollution control) for stationary source construction and operation permits; 37 (water resources management) for aquatic nuisance control permits; 41 (regulation of stream flow) for stream alteration permits; 56 (public water supply) for construction permits; and 159 (waste management) for solid waste transfer station and recycling certifications and categorical certifications.

(2) Environmental ticketing related to violations of statutes and regulations implemented by ANR statutes and of 10 V.S.A. chapter 151.

(b) The submission required by subsection (a) of this section shall identify and include at least each of the following:

(1) Among the chapters and permits listed in subdivision (a)(1) of this section, the specific project categories and other activities that involve a high volume of permits and typically pose low risk to the environment and human health. ANR also shall detail the basis used to identify project categories and other activities that involve a high volume of permits and low risk to the environment and human health.

(2) Among the chapters and permits listed in subdivision (a)(1) of this section, the specific activities, permits, or programs that ANR proposes as appropriate for general permitting authority.

(3) The specific environmental violations that the agency proposes for enforcement in the judicial bureau, including the appropriate enforcing officer or officers for each violation.

(c) The submission required by this section shall be made to the house and senate committees on natural resources and energy and the house committee on fish, wildlife and water resources.

* * * Clean Energy Development Fund; Efficient Technologies; Governance * * *

Sec. 34u. 10 V.S.A. § 6523 is hereby amended to read:

§ 6523. VERMONT CLEAN ENERGY DEVELOPMENT FUND

* * *

(b) Definitions. For purposes of this section, the following definitions shall apply:

* * *

(4) "Emerging energy-efficient technologies" means technologies that are both precommercial but near commercialization and that have already entered the market but have less than five percent of current market share; that use less energy than existing technologies and practices to produce the same product or otherwise conserve energy and resources, regardless of whether or not they are connected to the grid; and that have additional non-energy benefits such as reduced environmental impact, improved productivity and worker safety, or reduced capital costs.

(5) "Renewable energy" has the meaning established under 30 V.S.A. § 8002(2), and shall include the following: solar photovoltaic and solar thermal energy; wind energy; geothermal heat pumps; farm, landfill, and sewer methane recovery; low emission, advanced biomass power, and combined heat and power technologies using biomass fuels such as wood, agricultural or food wastes, energy crops, and organic refuse-derived waste, but not municipal solid waste; advanced biomass heating technologies and technologies using biomass-derived fluid fuels such as biodiesel, bio-oil, and bio-gas.

(c) Purposes of fund. The purposes of the fund shall be to promote the development and deployment of cost-effective and environmentally sustainable electric power resources, and emerging energy-efficient technologies using funds received through the American Recovery and Reinvestment Act (ARRA) of 2009, Pub.L. No. 111-5, for the long-term benefit of Vermont electric customers, primarily with respect to renewable energy resources, and the use of combined heat and power technologies. The general assembly expects and intends that the public service board, public service department, and the state's power and efficiency utilities will actively implement the authority granted in Title 30 to acquire all reasonably available cost-effective energy efficiency resources and for the benefit of Vermont ratepayers and the power system.

(d) Expenditures authorized.

~~(1) This fund shall be administered by the department of public service to facilitate the development and implementation of clean energy resources.~~

~~(2) The department shall assure an open public process in the administration of the fund for the purposes established in this subchapter.~~

~~(3) By January 15 of each year, commencing in 2007, the department of public service shall provide to the house and senate committees on natural resources and energy, the senate committee on finance, and the house committee on commerce a report detailing the revenues collected and the expenditures made under this subchapter, together with recommended principles to be followed in the allocation of funds and a proposed five-year plan for future expenditures from the fund.~~

~~(4)~~(1) Projects for funding may include the following:

(A) projects that will sell power in commercial quantities;

(B) among those projects that will sell power in commercial quantities, funding priority will be given to those projects that commit to sell power to Vermont utilities on favorable terms;

(C) projects to benefit publicly owned or leased buildings;

(D) renewable energy projects on farms, which may include any or all costs incurred to upgrade to a three-phase line to serve a system on a farm;

(E) small scale renewable energy in Vermont residences and businesses;

(F) projects under the agricultural economic development special account established under 6 V.S.A. § 4710(g) to harvest biomass, convert biomass to energy, or produce biofuel;

(G) until December 31, 2008 only, super-efficient buildings; ~~and~~

(H) emerging energy-efficient technologies using funds received through ARRA; and

(I) effective projects that are not likely to be established in the absence of funding under the program.

~~(5)~~(2) If during a particular year, the ~~department~~ clean energy development board determines that there is a lack of high value projects eligible for funding, as identified in the five-year plan, or as otherwise identified, the ~~department~~ clean energy development board may consult with the public service board, and shall consider transferring funds to the energy

efficiency fund established under the provisions of 30 V.S.A. § 209(d). Such a transfer may take place only in response to an opportunity for a particularly cost-effective investment in energy efficiency, and only as a temporary supplement to funds collected under that subsection, not as replacement funding.

~~(6)~~(3) The sum of $20,000.00 shall be transferred annually from the clean energy development fund to the general fund to support the cost of the solar energy income tax credits.

(e) Management of fund.

(1)~~(A)~~ There is created the clean energy development ~~fund advisory committee~~ board, which shall consist of ~~the commissioner of public service, or a designee, and the chairs of the house and senate committees on natural resources and energy, or their designees.~~ the following nine directors:

(A) Three at-large directors appointed by the speaker of the house;

(B) Three at-large directors appointed by the president pro tempore of the senate.

(C) Two at-large directors appointed by the governor.

(D) The state treasurer, ex officio.

~~(B) There is created the clean energy development fund investment committee, which shall consist of seven persons appointed by the clean energy development fund advisory committee.~~

(2) ~~The commissioner of public service shall:~~

~~(A) by no later than October 30, 2006:~~

~~(i) develop a five year strategic plan and an annual program plan, both of which shall be developed with input from a public stakeholder process;~~

~~(ii) develop an annual operating budget;~~

~~(iii) develop proposed program designs to facilitate clean energy market and project development (including use of financial assistance, investments, competitive solicitations, technical assistance, and other incentive programs and strategies); and~~

~~(iv) submit the plans, budget, and program designs to the clean energy development fund advisory committee for review and to the clean energy development fund investment committee for approval;~~

~~(B) adopt rules by no later than January 1, 2007 to carry out the program approved under this subdivision;~~

~~(C) explore pursuing joint investments in clean energy projects with other state funds and private investors to increase the effectiveness of the clean energy development fund;~~

~~(D) acting jointly with the members of the clean energy development fund investment committee, make decisions with respect to specific grants and investments, after the plans, budget, and program designs have been approved by the clean energy development fund investment committee. This subdivision (D) shall be repealed upon the effective date of rules adopted under subdivision (2)(B) of this subsection.~~

~~(3)~~ During fiscal years after FY 2006, up to five percent of amounts appropriated to the public service department from the fund may be used for administrative costs related to the clean energy development fund and after FY 2007~~, another five percent of amounts appropriated to the public service department from the fund not to exceed $300,000.00 in any fiscal year shall be transferred to the secretary of the agency of agriculture, food, and markets for agricultural and farm-based energy project development activities~~.

(3) A quorum of the clean energy development board shall consist of five directors. The directors of the board shall select a chair and vice chair.

(4) In making appointments of at-large directors to the clean energy development board, the appointing authorities shall give consideration to citizens of the state with knowledge of relevant technology, regulatory law, infrastructure, finance, and environmental permitting. The at-large directors of the board shall serve terms of four years beginning July 1 of the year of appointment. However, one at-large director appointed by the speaker and one at-large director appointed by the president pro tempore shall serve an initial term of two years. Any vacancy occurring among the at-large directors shall be filled by the respective appointing authority and shall be filled for the balance of the unexpired term. A director may be reappointed.

(5) Except for those directors of the clean energy development board otherwise regularly employed by the state, the compensation of the directors shall be the same as that provided by subsection 1010(a) of Title 32. All directors of the clean energy development board, including those directors otherwise regularly employed by the state, shall receive their actual and necessary expenses when away from home or office upon their official duties.

(6) At least every three years, the clean energy development board shall commission a detailed financial audit by an independent third party of the fund and the activities of the fund manager, which shall make available to the auditor its books, records, and any other information reasonably requested by the board or the auditor for the purpose of the audit.

(7) In performing its duties, the clean energy development board may utilize the legal and technical resources of the department of public service or, alternatively, may utilize reasonable amounts from the clean energy development fund to retain qualified private legal and technical service providers. The department of pubic service shall provide the clean energy development board and its fund manager with administrative services.

(8) By January 15 of each year, commencing in 2010, the clean energy development board shall provide to the house and senate committees on natural resources and energy, the senate committee on finance, and the house committee on commerce and economic development a report detailing the revenues collected and the expenditures made under this subchapter.

(9) By January 15, 2010, after public notice and opportunity for comment, the clean energy development board shall update the fund's five-year strategic plan adopted in May 2007 with any changes to the criteria, principles, and other matters addressed in that plan, and submit the updated strategic plan to the house and senate committees on natural resources and energy, the senate committee on finance, and the house committee on commerce and economic development.

(10) At least quarterly, the clean energy development board shall hold a public meeting to review and discuss the status of the fund, fund projects, the performance of the fund manager, any reports, information, or inquiries submitted by the fund manager or the public, and any additional matters the clean energy development board deems necessary to fulfill its obligations under this section.

(f) Clean energy development fund manager. The clean energy development fund shall have a fund manager who shall be a state employee retained and supervised by the board and housed within the department of public service for administrative purposes.

Sec. 34v. TRANSITION; POSITION TRANSFER

(a) It is the intent of the general assembly that the seven members of the clean energy development fund investment committee appointed prior to the effective date of this act shall be eligible for appointment as directors of the clean energy development fund board for a full term or until the terms of their original appointments expire.

(b) Upon the effective date of this act, the fund manager currently retained for the clean energy development fund shall be deemed the fund manager retained by the clean energy development board pursuant to 10 V.S.A. § 6523(f). Upon appointment of the clean energy development board, the

position occupied by that fund manager shall be transferred to the board and become subject to the board's supervision.

* * * Stimulus Reimbursement for Utility Relocations * * *

Sec. 34w. 19 V.S.A. § 1607 is added to read:

§ 1607. FEDERAL REIMBURSEMENT FOR CERTAIN UTILITY RELOCATIONS

(a) As a result of appropriations for infrastructure enhancement and development contained in the American Recovery and Reinvestment Act (ARRA) of 2009, Pub.L. No. 111-5, and other federal transportation-aid programs, significant highway construction projects are expected to be constructed in the near future.

(b) To ensure that projects are not delayed or canceled because of the inability of utilities and municipalities to pay for utility relocation costs and to ensure that available federal funds are utilized on shovel-worthy projects, it is the intent of the general assembly to reimburse utilities with infrastructure, including municipally owned drinking water facilities and municipally owned wastewater infrastructure, up to 80 percent of the approved relocation costs, if the relocation is necessitated by a highway construction project funded by ARRA or other federal transportation-aid programs.

(c) Eligible relocation costs under subsection (b) of this section shall be reimbursed by the state agency or other entity primarily responsible for managing or directing the construction project on the condition that federal stimulus funds or other federal funds are available and eligible to pay for the relocation costs.

(d) The state and municipalities shall not be obligated to pay to utilities the state or local share of a federally funded project.

(e) The state shall not be obligated to pay the state or local share to a municipality for the relocation of municipal drinking water and municipal wastewater infrastructure.

* * * Energy Workforce Stimulus * * *

Sec. 34x. 16 V.S.A. chapter 37, subchapter 7 is added to read:

Subchapter 7. Energy Efficiency Training

§ 1594. ENERGY EFFICIENCY CURRICULUM

(a) The president of Vermont Technical College, director of the office of economic opportunity, commissioner of public service, commissioner of labor, assistant director for adult education, and Efficiency Vermont shall plan for

and develop curriculum modules and deliver energy efficiency and renewable energy education and training at all levels, in order to develop a highly skilled workforce in Vermont that is prepared to participate in a growing energy-oriented industry sector.

(b) In all applicable content areas, the curriculum modules shall be designed to meet, at a minimum, the certification standards of the Building Performance Institute, other widely recognized certification standards, or a Vermont-specific certification developed in a process led by Vermont Technical College in collaboration with the aforementioned parties.

(c) The curriculum modules shall be offered through the Center for Sustainable Practices at Vermont Technical College and, on a regional basis, through the regional technical centers and the comprehensive high schools, including adult technical education programs, under agreed-upon terms where they can be appropriately incorporated into the curriculum, which will help prepare students of all ages for careers in the energy-efficiency industry.

(d) The department of labor shall not fund any single-service contract for the implementation of the modules developed in subsection (a) of this section or for the delivery of electrical and plumbing training programs offered under this section.

(e) Vermont Technical College and the regional technical centers shall request state fiscal stabilization funds available through the American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5, as well as other state or federal workforce training funds available through the Vermont departments of education and of labor, and through the Vermont Energy Investment Corporation. If sufficient funds are not received, then the Vermont Technical College and the regional technical centers are not required to offer the education and training programs outlined in this section.

* * * Indirect Air Source: Repeal of Permit Requirements * * *

Sec. 34y. 10 V.S.A. § 556(i) is added to read:

(i) Notwithstanding any provisions of this section, any rule of the secretary requiring permits for the construction or modification of indirect sources, including any building, structure, facility, installation, or combination thereof that has or leads to associated mobile source activity as a result of which any air contaminant is or may be emitted, is hereby repealed.

Which was agreed to.

Thereupon, pending third reading of the bill, Senator Illuzzi moved to amend the bill as follows

* * * Green Growth Zones * * *

First: By adding a new section to be numbered Sec. 2a to read as follows:

Sec. 2a. GREEN GROWTH ZONES; PILOT PROJECTS

This section of the act establishing pilot projects for green growth zones has essentially been incorporated into H.446 (2009) by the Senate Committee on Natural Resources and Energy. The proposed program is entitled the Vermont village green renewable pilot program.

* * * Stormwater Permitting: Impaired Waters * * *

Second: By striking out Sec. 34d in its entirety and by inserting in lieu thereof a new Sec. 34d to read as follows:

Sec. 34d. EXTENSION OF SUNSET

Sec. 10 of No. 140 of the Acts of the 2003 Adj. Sess. (2004), as amended by Sec. 8 of No. 154 of the Acts of the 2005 Adj. Sess. (2006), as amended by Sec. 3 of No. 43 of the Acts of 2007, is further amended to read:

Sec. 10. SUNSET

(a) Sec. 2 of this act (interim permitting authority for regulated stormwater runoff), except for subsection 1264a(e) of Title 10, shall be repealed on January 15, ~~2010~~ 2012.

(b) Sec. 4 of this act (local communities implementation fund) shall be repealed on September 30, 2012.

(c) Sec. 6 of this act (stormwater discharge permits during transition period) shall be repealed on January 15, ~~2010~~ 2012.

* * * Telecommunications Permitting * * *

Third: In Sec. 34h, 30 V.S.A. § 248a, by striking out subsection (c) in its entirety and inserting in lieu thereof a new subsection (c) to read as follows:

(c) Before the public service board issues a certificate of public good under this section, it shall find that~~, in the aggregate~~:

(1) ~~the~~ The proposed ~~facilities~~ facility will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, and the public health and safety, with due consideration having been given to the relevant criteria specified in subsection 1424a(d) and subdivisions 6086(a)(1) through (8) and (9)(K) of Title 10~~; and~~.

(2) ~~unless~~ Unless there is good cause to find otherwise, substantial deference has been given to the land conservation measures in the plans of the affected municipalities and the recommendations of the municipal legislative

bodies and the municipal and regional planning commissions regarding the municipal and regional plans, respectively.

Fourth: In Sec. 34h, 30 V.S.A. § 248a, by striking out subsection (h) in its entirety and inserting in lieu thereof a new subsection (h) to read as follows:

(h) An applicant using the procedures provided in this section shall not be required to obtain a ~~local zoning~~ permit or a permit amendment or other approval under the provisions of chapter 117 of Title 24 or chapter 151 of Title 10 for the facilities subject to the application or to a certificate of public good issued pursuant to this section. Ordinances adopted pursuant to subdivision 2291(19) of Title 24 or a municipal charter that would otherwise apply to the construction or installation of facilities subject to this section are preempted. Disputes over jurisdiction under this section shall be resolved by the public service board, subject to appeal as provided by section 12 of this title. An applicant that has obtained or been denied a permit or permit amendment under the provisions of Title 24 or chapter 151 of Title 10 for the construction of a telecommunications facility may not apply for approval from the board for the same or substantially the same facility, except that an applicant may seek approval for a modification to such a facility.

* * * Act 250: Telecom and Hazardous Remediation * * *

Fifth: By striking out Sec. 34p in its entirety and inserting in lieu thereof a new Sec. 34p to read as follows:

Sec. 34p. 10 V.S.A. § 6001(3)(D) is amended to read:

(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.

(ii) The construction of improvements for an electric generation or transmission facility that requires a certificate of public good under ~~section~~ 30 V.S.A. § 248 ~~or~~, a natural gas facility as defined in ~~subdivision~~ 30 V.S.A. § 248(a)(3), or a telecommunications facility issued a certificate of public good under 30 V.S.A. § 248a.

(iii) [Repealed.]

(iv) The construction of improvements for agricultural fairs that are open to the public for 60 days per year, or fewer, provided that any improvements constructed do not include one or more buildings.

(v) The construction of improvements for the exhibition or showing of equines at events that are open to the public for 60 days per year, or fewer, provided that any improvements constructed do not include one or more buildings.

(vi) The construction of improvements for any one of the following:

(I) A remedial or removal action for which the secretary of natural resources has authorized disbursement under section 1283 of this title.

(II) Abating a release or threatened release, as directed by the secretary of natural resources under section 6615 of this title.

(III) A remedial or removal action directed by the secretary of natural resources under section 6615 of this title.

(IV) A corrective action authorized in a corrective action plan approved by the secretary of natural resources under section 6615b of this title.

(V) A corrective action authorized in a corrective action plan approved by the secretary of natural resources under subchapter 3 of chapter 159 of this title.

* * * General Permits and Environmental Ticketing * * *

Sixth: By striking out Sec. 34t (relating to studies on general permits and environmental ticketing) in its entirety and inserting in lieu thereof seven new sections to be numbered Secs. 35, 36, 37, 38, 39, 40, and 41 to read as follows:

Sec. 35. 10 V.S.A. chapter 165 is added to read:

CHAPTER 165. GENERAL PERMIT AUTHORITY

§ 7500. PURPOSE AND DEFINITIONS

(a) This chapter is intended to provide for the protection of human health and the environment while allowing the secretary to utilize general permits as appropriate to streamline permitting processes and gain administrative efficiencies.

(b) When used in this chapter:

(1) "Agency" means the agency of natural resources.

(2) "Commissioner" means the commissioner of the department or the commissioner's duly authorized representative.

(3) "Department" means the department of environmental conservation.

(4) "General permit" means a permit that applies to a class or category of discharges, emissions, disposal, facilities, or activities within a common geographic area, including the entire state or a region of the state. For a class or category to be eligible to be placed under a general permit under this chapter, the class or category must meet each of the following:

(A) The discharges, emissions, disposal, facilities, or activities must share the same or substantially similar qualities.

(B) Those qualities must be such that the requirements of statute and rule applicable to the discharges, emissions, disposal, facilities, or activities can be met and human health and the environment protected by imposition of the same or substantially similar permit conditions on the class or category.

(5) "Individual permit" means a permit that authorizes a specific discharge, emission, disposal, facility, or activity that contains terms and conditions that are specific to the discharge, emission, disposal, facility, or activity.

(6) "Secretary" means the secretary of the agency or the secretary's duly authorized representative.

§ 7501. GENERAL PERMITS

(a) When the secretary deems it to be appropriate and consistent with the purpose of this chapter, the secretary may issue a general permit under the following chapters, as specified, of this title: chapter 23 (air pollution control) for stationary source construction and operation permits; chapter 37 (water resources management) for aquatic nuisance control permits; chapter 41 (regulation of stream flow) for stream alteration permits; chapter 56 (public water supply) for construction permits; and chapter 159 (waste management) for solid waste transfer station and recycling certifications and categorical certifications.

(b) A general permit issued under this chapter shall contain those terms and conditions necessary to ensure that the category or class subject to the general permit will comply with the provisions of the statutes and the rules adopted under those statutes applicable to the category or class. These terms and conditions may include providing for specific emission or effluent limitations and levels of treatment technology; monitoring, recording, or reporting; the right of access for the secretary; and any additional conditions or requirements the secretary deems necessary to protect human health and the environment.

(c) This chapter is in addition to any other authority granted to the agency or department.

(d) The secretary may adopt rules to implement this chapter.

§ 7502. ISSUANCE OF GENERAL PERMITS; PUBLIC PARTICIPATION

(a) When, under section 7501 of this title, the secretary determines to issue a general permit, the secretary shall prepare a proposed general permit and shall provide for public notice of the permit in a manner designed to inform interested and potentially interested persons of the proposed general permit.

(1) Notice of the proposed general permit shall be circulated within each geographic area to which the permit would apply and shall include at least all of the following:

(A) Written notice to the clerk of each municipality within the geographic area.

(B) Written notice to each affected Vermont state agency and such other government agencies as the secretary deems appropriate.

(C) Publication of notice of the proposed permit in a newspaper or newspapers that circulate generally within each geographic area to which the permit would apply.

(D) Posting of notice and a copy of the proposed general permit prominently on the web page of the department.

(E) Mailing of notice and a copy of the proposed general permit to any individual, group, or organization upon request.

(F) The inclusion in any notice issued under this subsection of a summary of the proposed general permit, including a summary of the activities to which it would apply and its terms and conditions; the deadlines by which comments are to be submitted and a public information meeting requested; the procedure for submitting comments and requesting a public information meeting; the contact information for the agency or department concerning the proposed permit; and a statement of how a copy of the proposed general permit may be obtained.

(2) The secretary shall provide a period of not less than 30 days following the date of publication in a newspaper or newspapers of general circulation during which any person may submit written comments on the proposed general permit.

(b) The secretary shall provide an opportunity for any person, state, province, or country potentially affected by the proposed general permit to request a public informational meeting with respect to the proposed permit.

(1) The deadline for any request under this subsection shall be no earlier than the deadline for submitting written comments set under subdivision (a)(2) of this section. The secretary shall hold an informational meeting if there is a significant public interest in holding a meeting.

(2) The secretary shall provide public notice of any informational meeting in at least the same manner as public notice of the proposed general permit was given under subsection (a) of this section, except that the secretary need not set a new comment deadline or provide, with the notice of the meeting, a copy of the proposed general permit to any person or entity to which the secretary has already provided a copy.

(3) Any person shall be permitted to submit oral or written statements and data concerning the proposed general permit at the informational meeting.

(4) All statements, comments, and data presented at the meeting shall be retained by the secretary and considered in the formulation of the secretary's determinations regarding the final general permit.

(c) Whether or not requested, the secretary may hold a public informational meeting on a proposed general permit at any time prior to final decision on and issuance of the general permit. The provisions of subdivisions (b)(2) through (4) of this section shall apply to such a meeting.

(d) The secretary may finally adopt a general permit following consideration of any written comments submitted on the general permit and any statements, comments, and data presented at a public information meeting on the permit. Where the secretary decides, in finally adopting a proposed general permit, to overrule substantial arguments and considerations raised for or against the original proposal, the secretary's final adoption of the general permit shall include a responsiveness summary stating the reasons for the secretary's decision.

(e) On final adoption of a general permit, the secretary shall provide notice of the permit's final adoption and an accompanying responsiveness summary in at least the same manner as notice of the proposed general permit was issued under subdivision (a)(1) of this section, except that the secretary need not set or include further deadlines for comment or requesting an informational meeting.

§ 7503. AUTHORIZATION UNDER A GENERAL PERMIT

(a) Any person wishing to discharge, emit, dispose, or operate a facility or engage in activity subject to a general permit under this chapter shall file an application for authorization under the general permit on a form provided by the secretary. Each application shall be accompanied by a fee as specified by section 2822 of Title 3.

(b) For each application under this section, the applicant shall provide notice, on a form provided by the secretary, to the clerk of the municipality in which the discharge, emission, disposal, facility, or activity is located. The applicant shall provide a copy of this notice to the secretary, with such confirmation as the secretary deems adequate to demonstrate that the clerk has received the notice. Following receipt of that confirmation, the secretary shall provide an opportunity of at least ten working days for written comment regarding whether the application complies with the terms and conditions of the general permit under which coverage is sought.

(c) The secretary may grant an application for authorization to discharge, emit, dispose, operate a facility, or engage in activity to which a general permit under this chapter applies only after determining that each of the following applies:

(1) The filings required in subsections (a) and (b) of this section are complete.

(2) The discharge, emission, disposal, facility, or activity is eligible for coverage under and will meet the terms and conditions of the general permit.

(d) The secretary may:

(1) Allow a transfer from one person or entity to another of an authorization to discharge, emit, dispose, operate a facility, or engage in activity under a general permit issued under this chapter.

(2) Require notification to the secretary for changes to a discharge, emission, disposal, facility, or activity for which authorization has been issued under a general permit under this chapter.

(3) Under the procedures specified in subsection 814(c) of Title 3, revoke or suspend authorization to discharge, emit, dispose, operate a facility, or engage in activity under a general permit issued under this chapter.

§ 7504. REQUIRING AN INDIVIDUAL PERMIT

The secretary may require any applicant for or permittee authorized under a general permit issued under this chapter to apply for an individual permit. Any interested person may petition the secretary to take action under this section. The secretary may require an individual permit if any one of the following applies:

(1) The discharge, emission, disposal, facility, or activity is a significant contributor of pollution as determined by consideration of each of the following factors:

(A) The location of the discharge with respect to waters of the state of Vermont.

(B) The size and scope of the applicant's or permittee's activities or operation.

(C) The quantity and nature of the pollutants.

(D) Other relevant factors.

(2) The permittee is not in compliance with the terms and conditions of a general permit issued under this chapter.

(3) The application does not qualify for a general permit issued under this chapter.

(4) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of wastes or pollutants applicable to the discharge, emission, disposal, facility, or activity.

(5) Federal requirements have been adopted that conflict with one or more provisions of a general permit issued under this chapter.

§ 7505. REQUIRING AUTHORIZATION UNDER A GENERAL PERMIT

The secretary may require that a discharge, emission, disposal, facility, or activity for which issuance or reissuance of an individual permit is sought be subject to a general permit issued under this chapter if the secretary finds that the discharge, emission, disposal, facility, or activity is eligible for coverage under and will meet the terms and conditions of the general permit and that authorization of the discharge, emission, disposal, facility, or activity under a general permit will protect human health and the environment.

Sec. 36. REPORT AND SUNSET

(a) On April 1, 2011, and again on April 1, 2014, the secretary of natural resources shall submit a report to the senate committees on natural resources and on economic development, housing and general affairs, the house committees on natural resources and on commerce and economic development, and the governor regarding the implementation, compliance, and enforcement of general permits under chapter 165 of Title 10.

(b) Chapter 165 of Title 10 shall sunset on July 1, 2014; however, the sunset shall not affect any permit granted prior to July 1, 2014 under chapter 165 of Title 10.

* * * Environmental Ticketing * * *

Sec. 37. 10 V.S.A. § 8019 is added to read:

§ 8019. ENVIRONMENTAL TICKETING

(a) The secretary and the board each shall have the authority to adopt rules for the issuance of civil complaints for violations of their respective enabling statutes or rules adopted under those statutes that are enforceable in the judicial bureau pursuant to the provisions of chapter 29 of Title 4. Any proposed rule under this section shall include both the full and waiver penalty amounts for each violation. The maximum civil penalty for any violation brought under this section shall not exceed $3,000.00 exclusive of court fees.

(b) A civil complaint issued under this section shall preclude the issuing entity from seeking an additional monetary penalty for the violation specified in the complaint when any one of the following occurs: the waiver penalty is paid, judgment is entered after trial or appeal, or a default judgment is entered. Notwithstanding this preclusion, the agency and the board may issue additional complaints or initiate an action under chapter 201 of this title, including a monetary penalty when a violation is continuing or is repeated, and may also bring an enforcement action to obtain injunctive relief or remediation and, in such additional action, may recover the costs of bringing the additional action and the amount of any economic benefit the respondent obtained as a result of the underlying violation in accordance with 10 V.S.A. § 8010(b)(7) and (c)(1).

(c) The secretary or board chair and his or her duly authorized representative shall have the authority to amend or dismiss a complaint by so marking the complaint and returning it to the judicial bureau or by notifying the judge at the hearing.

(d) Subsequent to the issuance of a civil complaint under this section and the conclusion of any hearing and appeal regarding that complaint, the following shall be considered part of the respondent's record of compliance when calculating a penalty under section 8010 of this title:

(1) The respondent's payment of the full or waiver penalty stated in the complaint.

(2) The respondent's commission of a violation after the hearing before the judicial bureau on the complaint.

(3) The respondent's failure to appear or answer the complaint resulting in the entry of a default judgment.

(4) A finding, after appeal, that the respondent committed a violation.

Sec. 38. 4 V.S.A. § 1102 is amended to read:

§ 1102. JUDICIAL BUREAU; JURISDICTION

* * *

(b) The judicial bureau shall have jurisdiction of the following matters:

* * *

(17) Violations of the statutes listed in 10 V.S.A. § 8003, any rules or permits issued under those statutes, and any assurances of discontinuance or orders issued under chapter 201 of Title 10, provided that a rule has been adopted and a civil complaint issued concerning such a violation under 10 V.S.A. § 8019.

* * *

(d) Three hearing officers appointed by the court administrator shall determine waiver penalties to be imposed for violations within the judicial bureau's jurisdiction, except ~~that~~:

(1) Municipalities shall adopt full and waiver penalties for civil ordinance violations pursuant to section 1979 of Title 24. For purposes of municipal violations, the issuing law enforcement officer shall indicate the appropriate full and waiver penalty on the complaint.

(2) The agency of natural resources and the natural resources board shall include full and waiver penalties in each rule that is adopted under 10 V.S.A. § 8019. For purposes of environmental violations, the issuing entity shall indicate the appropriate full and waiver penalties on the complaint.

Sec. 39. 4 V.S.A. § 1106 is amended to read:

§ 1106. HEARING

* * *

(b) The hearing shall be held before a hearing officer and conducted in an impartial manner. The hearing officer may, by subpoena, compel the attendance and testimony of witnesses and the production of books and records. All witnesses shall be sworn. The burden of proof shall be on the state or municipality to prove the allegations by clear and convincing evidence. As used in this section, "clear and convincing evidence" means evidence which establishes that the truth of the facts asserted is highly probable. Certified copies of records supplied by the department of motor vehicles, the agency of natural resources, or the natural resources board and presented by the issuing officer or other person shall be admissible without testimony by a representative of the department of motor vehicles, the agency of natural resources, or the natural resources board.

* * *

(e) A state's attorney may dismiss or amend a complaint, except that dismissal or amendment of a complaint subject to subdivision 1102(b)(17) of this title shall be governed by 10 V.S.A. § 8019(c).

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

Sec. 40. 4 V.S.A. § 1107 is amended to read:

§ 1107. APPEALS

(a) A decision of the hearing officer may be appealed to the district court, except for a decision in a proceeding under subdivision 1102(b)(17) of this title. The proceeding before the district court shall be on the record, or at the option of the defendant, de novo. The defendant shall have the right to trial by jury. An appeal shall stay payment of a penalty and the imposition of points.

(b) ~~If a decision is appealed, the state's attorney of the county in which the violation occurred shall represent the state and the state's attorney, grand juror or municipal attorney shall represent the municipality~~ A decision of the hearing officer in a proceeding under subdivision 1102(b)(17) of this title may be appealed to the environmental court created under chapter 27 of this title. The proceedings before the environmental court shall be on the record. The defendant shall not have a right to a jury trial. An appeal shall stay the payment of a penalty.

(c) If a decision is appealed, the state's attorney of the county in which the violation occurred shall represent the state, and the state's attorney, grand juror, or municipal attorney shall represent the municipality. In an appeal to the environmental court from a decision under subdivision 1102(b)(17) of this title, an attorney from the agency of natural resources or the natural resources board shall represent the state.

(d) No appeal as of right exists to the supreme court. On motion made to the supreme court by a party, the supreme court may allow an appeal to be taken to it from the district court or environmental court.

Sec. 41. 20 V.S.A. § 2063 is amended to read:

§ 2063. CRIMINAL HISTORY RECORD FEES; CRIMINAL HISTORY RECORD CHECK FUND

* * *

(b) Requests made by criminal justice agencies for criminal justice purposes or other purposes authorized by state or federal law shall be exempt

from all record check fees. The following types of requests shall be exempt from the Vermont criminal record check fee:

* * *

(5) Requests made by environmental enforcement officers employed by the agency of natural resources.

* * *

* * * Act 250, Other Permitting, and Federal Stimulus * * *

Seventh: By striking out Secs. 34q and 34r in their entirety and inserting in lieu thereof new Secs. 34q and 34r to read as follows:

Sec. 34q. 10 V.S.A. § 6081(d) is amended to read:

(d) For purposes of this section, the following construction of improvements to preexisting municipal, county, or state projects shall not be considered to be substantial changes~~, regardless of the acreage involved,~~ and shall not require a permit as provided under subsection (a) of this section:

(1) ~~essential~~ municipal, county, or state wastewater treatment facility enhancements that do not expand the capacity of the facility by more than ~~10~~ 25 percent, excluding the extension of a wastewater collection system or an expansion of the service-area boundaries of a wastewater treatment facility.

(2) ~~essential~~ municipal ~~waterworks~~, county, or state water supply enhancements that do not expand the capacity of the facility by more than ~~10~~ 25 percent.

(3) ~~essential~~ public school reconstruction or expansion that does not expand the student capacity of the school by more than ~~10~~ 25 percent.

(4) ~~essential~~ municipal, county, or state building renovations or reconstruction ~~or expansion~~ that does not expand the floor space of the building by more than ~~10~~ 25 percent.

(5) construction of improvements to preexisting municipal, county, or state roads and bridges, provided such construction receives funding through the federal American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5.

Sec. 34r. SUNSET

Effective July 1, 2011, each occurrence of "25" in 10 V.S.A. § 6081(d) and (e) is amended to "10." Also effective July 1, 2011, 10 V.S.A. § 6086(d)(5) (exemption for ARRA-funded road and bridge improvements) shall cease to be effective. However, the construction of improvements commenced prior to

July 1, 2011 shall not require a permit by operation of this section if such construction was exempt under Sec. 34q of this act.

* * * Expedited Permitting: Federal Stimulus * * *

Eighth: By adding a new section to be numbered Sec. 42 to read as follows:

Sec. 42. PERMIT EXPEDITING; FEDERAL STIMULUS

(a) Notwithstanding any other provision of law, the following shall apply to an application for a permit, certificate, or other approval to the agency of natural resources, the agency of transportation, an appropriate municipal panel under 24 V.S.A. chapter 117, or a district environmental commission under 10 V.S.A. chapter 151 with respect to a project for municipal, county, or state purposes that will receive any of its funding through the federal American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5:

(1) The application shall be given priority over any other pending application.

(2) An appropriate municipal panel shall adjourn the hearing promptly after all parties have submitted evidence and argument and issue a decision within 45 days after the adjournment of the hearing, and failure of the panel to issue a decision within this period shall be deemed approval and shall be effective on the 46th day.

(3) A district commission shall adjourn the hearing promptly after all parties have submitted evidence and argument and issue a decision within 90 days after the adjournment of the hearing, and failure of the commission to issue a decision within this period shall be deemed approval and shall be effective on the 91st day.

(b) This section shall be repealed on July 1, 2012.

* * * Expired Permits and Federal Stimulus * * *

Ninth: By adding a new section to be numbered Sec. 43 to read as follows:

Sec. 43. EXPIRED PERMITS; FEDERAL STIMULUS

A permit, certificate, or approval that, by operation of law or other means, has lapsed or expired because the project subject to the permit, certificate, or approval has not been constructed shall be deemed effective if all of the following apply:

(1) The project subject to the permit, certificate, or other approval will receive any of its funding through the federal American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5.

(2) The permit, certificate, or other approval was issued within the five-year period preceding the date this section is enacted by the agency of natural resources, the agency of transportation, a municipality or appropriate municipal panel under 24 V.S.A. chapter 117, a district commission under 10 V.S.A. chapter 151, or an appellate court or other tribunal on appeal from such an agency, municipality, panel, or commission.

(3) No change is proposed to the project as approved by the permit, certificate, or other approval.

Tenth: In Sec. 34u, 10 V.S.A. § 6523, by striking out subsection (f) in its entirety and inserting in lieu thereof a new subsection (f) to read as follows:

(f) Clean energy development fund manager. The clean energy development fund shall have a fund manager who shall be a state employee retained and supervised by the board and housed within the office of the treasurer.

And by renumbering Sec. 35 to be numerically correct.

Thereupon, pending the question, Shall the bill be amended as recommended by Senator Illuzzi?, Senator Snelling moved that the question be divided and that the *third*, *fifth* and *sixth* amendments recommended by Senator Illuzzi be voted on separately.

Thereupon, the *first*, *second*, *fourth*, *seventh*, *eighth*, *ninth* and *tenth* recommendations of amendment were agreed to on a roll call, Yeas 21, Nays 4.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Brock, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Giard, Illuzzi, Kitchel, Kittell, Maynard, Mazza, Miller, Mullin, Nitka, Racine, Scott, Starr, White.

Those Senators who voted in the negative were: Hartwell, Lyons, McCormack, Snelling.

Those Senators absent or not voting were: Ayer, Bartlett, MacDonald, Sears, Shumlin (presiding).

Thereupon, the *third* recommendation of amendment was agreed to.

Thereupon, the *fifth* recommendation of amendment was agreed to.

Thereupon, the *sixth* recommendation of amendment was agreed to on a roll call, Yeas 19, Nays 6.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Brock, *Campbell, Carris, Choate, Doyle, Giard, Illuzzi, Kitchel, Kittell, Maynard, Mazza, Miller, Mullin, Nitka, Racine, Scott, Sears, Starr.

Those Senators who voted in the negative were: Flanagan, Hartwell, Lyons, McCormack, Snelling, White.

Those Senators absent or not voting were: Ayer, Bartlett, Cummings, MacDonald, Shumlin (presiding).

*Senator Campbell explained his vote as follows:

"I would like to be extremely clear that my decision to support the Economic Development Committee on this amendment was based heavily on the assurances by representatives of the Conservation Law Foundation (CLF) and the Vermont Natural Resources Council (VNRC) that such support would not negatively impact our environment, the integrity of Act 250 or our continued commitment to the protection of the precious natural resources of our great state."

Thereupon, pending third reading of the bill, Senator Miller, on behalf of the Committee on Economic Development, Housing and General Affairs, moved to amend the bill as follows:

* * * Downtown and Village Center Program Tax Credits * * *

First: By adding a new section to be numbered Sec. 25b to read as follows:

Sec. 25b. 32 V.S.A. § 5930ee is amended as follows:

§ 5930ee. LIMITATIONS

Beginning in fiscal year ~~2008~~ 2010 and thereafter, the state board may award tax credits to all qualified applicants under this subchapter, provided that:

(1) The total amount of tax credits awarded annually, together with sales tax reallocated under section 9819 of this title, does not exceed ~~$1,600,000.00~~ $1,700,000.00.

* * * Capital Seed Fund and Sustainable Jobs Fund * * *

Second: In Sec. 21, 10 V.S.A. § 291, by striking out subsection (f) in its entirety and inserting in lieu thereof a new subsection (f) to read as follows:

(f) In fiscal year 2010 and again in fiscal year 2011, in two installments of $4,000,000.00, an aggregate of $8,000,000.00 shall be appropriated from the state fiscal stabilization funds available under the American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5, to the entrepreneurs' seed capital fund for investment in eligible Vermont firms pursuant to this section. In fiscal year 2010, of the $4,000,000.00 appropriated in this subsection, $250,000.00 shall be transferred to the Vermont sustainable jobs fund program established in 10 V.S.A. § 328 to be used solely for start-up capital in the sustainable jobs fund's flexible capital fund program.

Third: By striking out Sec. 28 (sustainable jobs fund) in its entirety.

* * * Tech Loan Program: ARRA Funding * * *

Fourth: In Sec. 25, by striking out the following: "$1,000,000.00" in its entirety and by inserting in lieu thereof the following: $900,000.00 and by striking out the following: "$2,000,000.00" and inserting in lieu thereof the following: $1,800,000.00

* * * Vermont Jobs Fund: Interest-Rate Subsidies * * *

Fifth: By adding a new section to be numbered Sec. 25a. to read as follows:

Sec. 25a. VERMONT JOBS FUND; INTEREST-RATE SUBSIDIES

In fiscal year 2010 and again in fiscal year 2011, in two installments of $900,000.00, a total of $1,800,000.00 shall be appropriated from the state fiscal stabilization funds available under the American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5, to the Vermont economic development authority under section 223 of Title 10 to be used by the authority to provide interest-rate subsidies for the Vermont Jobs Fund.

* * * Small Business Loan Program * * *

Sixth: By striking out Sec. 27 in its entirety

* * * Farm to Plate: ARRA Funds * * *

Seventh: In Sec. 32, 10 V.S.A. § 330, by adding a new subsection (e) to read as follows:

(e) In fiscal year 2010, the amount of $100,000.00 shall be appropriated from the state fiscal stabilization funds available under the American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5, to the Vermont sustainable jobs fund program established in 10 V.S.A. § 328 to be used solely for the farm-to-plate investment program established under this section.

Which was agreed to.

Thereupon, pending third reading of the bill, Senator Illuzzi, on behalf of the Committee on Economic Development, Housing and General Affairs, moved to amend the bill as follows:

First: By re-numbering Sec. 1 as Sec. 1b and adding two new sections designated Sec. 1 and Sec. 1a to read as follows:

Sec. 1. FINDINGS

(1) Vermont has lost nearly 15,000 jobs since the cyclical peak in November of 2007, reaching an unemployment rate of 7.2 percent as of April 2009. Broader measures of underemployment, which include workers forced from full time to part time work and marginally attached workers, now exceed 9 percent in Vermont. Revised macro-economic projections anticipate that the Vermont rate of unemployment will reach 9 percent for the first time in more than 30 years.

(2) Initial claims for unemployment insurance have continued to rise, spiking in Vermont in recent months at record levels, with the weekly average of claims in January of 2009 reaching approximately 1,550.

(3) At the national level the unemployment rate has reached 8.5 percent and consumer spending, which accounts for more than two-thirds of all economic activity, has experienced its steepest reversal since the Great Depression, with inflation adjusted spending dropping by more than 10 percent in four of the last five months. Consumption taxes in Vermont are expected to recede accordingly, with sales and use revenues expected to be down 5 percent in fiscal year 2009 and meals and rooms receipts down 3 percent, with further declines expected in fiscal year 2010, which would comprise the first ever consecutive annual declines for these important revenue sources.

(4) Residential construction in Vermont has come to a virtual halt in Vermont, declining by nearly 70 percent. With weakness in Vermont second home markets mounting in the face of regional job losses, housing price declines are likely in the next four-to-seven quarters, with very low property price appreciation for an extended period of at least four-to-five years. This stagnation in property prices will ultimately have a significant impact on grand list growth and the tax base for the largest component of the education fund.

(5) Federal tax changes resulting from the American Recovery and Reinvestment Act of 2009 (ARRA), Pub.L. No. 111-5, while stimulating to the national economy, will result in reduced state tax revenues in approximately $ 9.1 million in fiscal year 2010.

(6) Despite the many difficulties in the national and Vermont economies at this time, there are several factors leaning against the prevailing winds that

offer hope for an emergent recovery. For one, United States and global fiscal and monetary policies are as stimulative as they have ever been, with even additional capacity and willingness if further measures are required to right the economy.

(7) For the first time in 55 years the Consumer Price Index is expected to post an annual decline in 2009, while inflation and related energy prices have been subdued, lowering consumer gas and heating bills, providing additional disposable income.

(8) Business inventories have been dramatically reduced, setting the stage for rapid gains in output and hiring, once demand resumes.

(9) With the passage of ARRA, Vermont is positioned to receive nearly one billion dollars in resources, which will be allocated to state and local government, to Vermont businesses, and to individuals. In addition, federal tax cuts will result in approximately $500 million in savings to Vermont businesses and individuals.

(10) Although state government is limited in its ability in the near-term to initiate new programs and expenditures due to revenue constraints, it can provide targeted support to programs best suited to capitalize on state and federal funding to leverage growth. The state can also improve existing programs, permitting processes, funding mechanisms, and other areas that affect economic development, in order to provide a more efficient and effective role for government to aid Vermont's businesses and individuals and lead the state in its economic recovery.

(11) In the long-term, once the current economic crisis inevitably subsides, Vermont will be prepared to move forward with a focused economic development strategy based on four principal, interrelated goals generated by the commission on the future of economic development:

(A) Vermont's businesses, educators, nongovernmental organizations, and government form a collaborative partnership that results in a highly skilled multigenerational workforce to support and enhance business vitality and individual prosperity.

(B) Vermont invests in its digital, physical, and human infrastructure as the foundation for all economic development.

(C) Vermont state government takes advantage of its small scale to create nimble, efficient, and effective policies and regulations that support business growth and the economic prosperity of all Vermonters.

(D) Vermont leverages its brand and scale to encourage a diverse economy that reflects and capitalizes on our rural character, entrepreneurial people, and reputation for environmental quality.

Sec. 1a. PURPOSE

(a) In the near-term, this act is intended to address the immediate economic crisis facing Vermont. The purposes of this act include the following:

(1) To preserve and create jobs and promote economic recovery.

(2) To assist those most impacted by the recession.

(3) To provide opportunities for investments needed to increase economic efficiency, entrepreneurship, and business growth in traditional and emerging sectors.

(4) To provide oversight and guidance for the expenditure of ARRA funds to ensure that the benefits of the federal stimulus extend to the broadest geographic and demographic range of Vermont businesses and individuals.

(b) In the long term, this act seeks to build a foundation for economic development through targeted investments, modifications, and improved efficiencies in economic development initiatives, environmental and energy permitting, and other state investment and regulatory programs that will provide long-term economic benefits. It is the intent of the general assembly to ultimately channel these economic development efforts through the principal goals and benchmarks identified by the commission on the future of economic development, using both new and existing resources from the state and federal levels to increase prosperity for all Vermonters.

Which was agreed to.

Thereupon, pending third reading of the bill, Senator Miller, on behalf of the Committee on Economic Development, Housing and General Affairs, moved to amend the bill as follows

* * * Pet Vendors * * *

First: By adding a new section to be numbered Sec. 4a to read as follows:

Sec. 4a. REGULATION OF THE SALE OF DOMESTIC PETS

Secs. 9–18 of S.137 (2009) as introduced have been incorporated into Secs. 11–17 of H.136 (2009), the fee bill, in a pending proposed Senate Finance amendment.

* * * Next Generation Workforce Development * * *

Second: In Sec. 6, subsection (b), after the first sentence, by adding a sentence to read as follows "This requirement shall not apply to training seminars lasting no more than two days."

Third: [Deleted]

Fourth: In Sec. 20, subsection (d), after the first full sentence, by adding the following: The departments shall retain Social Security numbers collected from the entities listed in subsection (b) of this section for no more than five years from the date of receipt by the departments.

* * * Time of Sale: Energy Efficiency Ratings * * *

Fifth: [Deleted]

* * * Commission on the Future of Economic Development * * *

Sixth: By adding a new section to be numbered Sec. 9d to read as follows:

Sec. 9d. COMMISSION ON THE FUTURE OF ECONOMIC DEVELOPMENT (CFED)

Regarding CFED, the Senate Committee on Economic Development, Housing and General Affairs endorsed the proposal in H.441 (2009), the big bill, which establishes and interim CFED subcommittee and otherwise suspends the statutory duties of the full commission until January 2010.

* * * Legislative Priorities for Stimulus * * *

Seventh: By adding a new section to be numbered Sec. 13a to read as follows:

Sec. 13a. LEGISLATIVE PRIORITIES FOR ARRA FUNDS

(a) With respect to federal monies available to the state of Vermont under the American Recovery and Reinvestment Act (ARRA) of 2009, Pub.L. 111-5, the general assembly establishes the following priorities as outlined in this section.

(b) Burlington International Airport (BTV). The general assembly recognizes the importance of maintaining and upgrading the programs and facilities at BTV, Vermont's primary commercial airport. BTV has an estimated economic impact of over a half billion dollars annually. The general assembly finds that the development of the following list of planned airport projects is a legislative priority:

(1) A new aviation technical center facility.

(2) A new customs border protection office.

(3) The following three south-end taxiway projects:

(A) Completion of taxiway K connection from the new general aviation apron to the end of runway 33;

(B) Rehabilitation of portions of taxiways C and G and construction of a new intersection; and

(C) Completion of a parallel taxiway G from existing taxiway C to runway 1-19.

(4) The building of a green roof on the parking structure.

(c) Agriculture. Agriculture is one of the major drivers of the state's economy. For that reason the general assembly recognizes the crucial role of agriculture in the state of Vermont and expresses the following priorities for federal funding that may become available through ARRA:

(1) The agency of agriculture, food and markets, Vermont agricultural credit corporation, and the Vermont housing and conservation board's farm viability program shall cooperate in seeking ARRA funding from the USDA Farm Service Agency, the USDA Rural Development Program, and other appropriate federal programs and shall prioritize applications for federal stimulus funding based on the goals established in this act. The agency shall further work to educate relevant entities about funding opportunities, provide technical application assistance to priority applicants, and develop a single, common application to be used by applicants for agency funding.

(2) The following are specific agriculture priorities and include the state entities to which funding for these priorities should be directed:

(A) Stabilization of spring planting with loans through the Vermont agricultural credit corporation and the Vermont economic development authority.

(B) Support for in-state slaughter and processing facilities through grants and technical assistance from the agency of agriculture, food and markets.

(C) Funding for regional food hubs and dairy transition through the Vermont housing and conservation board farm viability program and support for the Vermont farm-to-plate investment program, established by Sec. 111 of this act, through the Vermont sustainable jobs fund.

(D) Environmental protection and energy conservation including power modernization and methane digesters through grants and technical assistance from the agency of agriculture, food and markets.

(d) Municipal communications services. Since passage of an act relating to establishing the Vermont telecommunications authority and to advancing broadband and wireless communications infrastructure throughout the state of Vermont, No. 79 of the Acts of 2007, many Vermont towns and cities have affiliated themselves to promote, sponsor, develop, and provide a range of communications services to their respective inhabitants, governments, schools, and businesses. Through local volunteer initiatives, resources have been collected and directed toward the design, construction, operation, and management of publicly owned communications plants, with minimal dependency on the resources, finances, and credit of the state of Vermont. Access to various forms of public and private credit enhancement will assist towns and cities in further developing and constructing communications plant improvements through lower capital interest and financing costs. Under the ARRA, financial resources will be made available to the state that are suitable for application in assisting municipalities in their communications goals. With respect to these local efforts and the federal stimulus monies, the general assembly establishes the following priorities:

(1) Public projects and enterprises endorsed by the general assembly to receive direct and indirect benefits of ARRA initiatives shall include municipal communications plants whose economic feasibility, need, and readiness to serve Vermont's rural regions have been demonstrated, such as the North-link project launched by Northern Enterprises, Inc. in 2007, the broadband initiative of East Central Vermont Community Fiber, and replacement of the Burke Mountain power line owned and operated by Vermont Public Television.

(2) To the extent possible, allocation of ARRA initiatives available to Vermont shall include direct and indirect credit enhancement assistance to municipalities seeking capital to fund communications plant improvements.

(3) The development, promotion, construction, and operation of public communications plants is declared to be in the best interest of Vermont and an infrastructure priority among capital improvements eligible to receive benefits under the ARRA.

(e) Sterling College. Sterling College is the only independent, liberal arts college in Vermont's Northeast Kingdom. Its four major areas of study include conservation ecology; circumpolar studies; outdoor education and leadership; and sustainable agriculture. The college now has the opportunity to build a new and environmentally innovative residency and program center. Of the $500,000.00–$600,000.00 total cost of this project, $215,000.00 has already been secured or committed. The project's construction start date is mid-August and is projected to employ between 10 and 14 people, in various

capacities, for six months. Therefore, the general assembly finds that up to $350,000.00 in ARRA monies for this Sterling College project is a priority.

(f) Vermont Youth Conservation Corps (VYCC). By hiring young people to work on high-priority conservation projects, the VYCC seeks to instill in individuals the values of personal responsibility, hard work, education, and respect for the environment. The VYCC seeks to establish a new program, the Civilian Conservation Corps 2.0, which will enroll 100 young men and women between the ages of 18 and 24 to rehabilitate the Vermont state parks infrastructure and complete high-priority recreation, forest, wildlife, and other natural resource work. The general assembly finds that spending on such a project is a legislative priority.

* * * Stimulus Oversight Committee * * *

Eighth: [Deleted]

* * * Cloud Computing Study * * *

Ninth: By striking out Secs. 16 and 17 in their entirety and by inserting in lieu thereof a new Sec. 16 to read as follows:

Sec. 16. VIRTUALIZED INFORMATION TECHNOLOGY INFRASTRUCTURE; STUDY

(a) The legislative director of information technology and the commissioner of the department of information and innovation shall issue a request for proposals no later than July 1, 2009 to evaluate the viability of cloud computing and other virtualized infrastructure options for the state's information technology infrastructure as it pertains to the use of e-mail, spreadsheets, word processing, and calendars in the legislative, executive, and judicial branches of government. Evaluations shall consider the following:

(1) Current service level and scalability to future service needs;

(2) Physical and virtual data security and recovery;

(3) Potential for savings in software licensing and hardware investment in both the near and long term;

(4) Opportunities for improved systems performance and capacity;

(5) Specific vendors and relevant vendor policies; and

(6) Potential for legal and regulatory obstacles.

(b) The legislative director of information technology and the commissioner of the department of information and innovation shall submit the proposals to the legislative information technology committee established

under chapter 22 of Title on or before January 15, 2010. The director and the commissioner are respectively authorized to implement virtualized information technology.

(c) This section supersedes any similar cloud-computing proposal in H.441 (2009).

* * * Media and Film Sector in Vermont * * *

Tenth: By adding a new section to be numbered Sec. 16a to read as follows:

Sec. 16a. INITIATIVE TO BUILD A MEDIA AND FILM INDUSTRY IN VERMONT

(a)(1) Given its unique blend of creative, cultural, and educational resources, Vermont currently has an opportunity to become a destination for a new media and film industry.

(2) Vermont is home to authors, filmmakers, producers, and young people concentrating their educational and professional development in the emerging fields of communications, multi-media and film production, graphic and digital design, and performing arts.

(3) Vermont's natural and seasonal beauty and the charm and character of its towns and regions equals or surpasses other potential destinations for the media and film industry, and these strengths position Vermont as an ideal location for filming and producing movies, television, commercials, and other media.

(4) Vermont is home to at least five institutions of higher education that provide one or more degrees or certificate programs in media or film sectors, including Burlington College's cinema studies and film production program; Champlain College's communications and creative media division; the University of Vermont's film and television studies program; Marlboro College's undergraduate programs in media, visual and performing arts; and Castleton State College's concentrations in communication, mass media and digital media.

(b) Considering these substantial resources, it is the intent of the general assembly to encourage and promote the development of a strong and dynamic media and film sector within Vermont's creative economy.

(c) The Vermont film commission, in collaboration with the Vermont film and media coalition and, to the extent possible, the faculty and students of Burlington College, Champlain College, the University of Vermont, Marlboro College, and Castleton State College, shall propose a program to develop a media and film sector within Vermont's economy. The commission should

consider the most beneficial role the state can play in supporting the media and film sector, and should consider grants, public-private partnerships, and other appropriate financing mechanisms in order to promote this sector of the creative economy and to retain young Vermonters currently supported by the communications, film, and media programs at Vermont colleges and universities.

(d) On or before January 30, 2010, the commission is invited to deliver a presentation of its program proposal to the Senate committee on economic development, housing and general affairs and the House committee on commerce and economic development.

* * * Sales Tax Holiday Study * * *

Eleventh: By adding a new section to be numbered Sec. 16b to read as follows:

Sec. 16b. SALES TAX HOLIDAY

(a) Notwithstanding the provisions of chapter 233 of Title 32 and section 138 of Title 24, no sales and use tax or local option sales tax shall be imposed or collected on sales to individuals for personal use of items of tangible personal property at a sales price of $2,000.00 or less from July 11, 2009 through July 12, 2009.

(b) A vendor in good standing shall be entitled to claim reimbursement for its expenditures for reprogramming of cash registers and computer equipment which were in use at the place of business on and after July 11, 2009. Claims must be filed on or before November 1, 2009 with the department of taxes with receipts or such other documentation the department may require. The amount of reimbursement to each vendor shall not exceed the least of the three following amounts: the actual cost to the vendor of reprogramming its cash registers and computer equipment; $50.00; or $50,000.00 divided by the number of qualified vendor applicants.

(c) Any municipality with a local option sales tax affected by the sales tax holidays imposed by this section shall be reimbursed from the department of taxes for the amount of local option sales tax revenues lost to the municipality. The commissioner of taxes shall develop a methodology for determining such reimbursement. The commissioner shall also adjust the deposit in the PILOT special fund for lost deposits due to the sales tax holidays. Should the amount appropriated for these purposes under subsection (e) of this section be insufficient to fully reimburse the municipalities and adjust the PILOT special fund, reimbursements to municipalities shall take priority.

(d) In fiscal year 2010, $50,000.00 in general funds is appropriated for payments for reprogramming under subsection (b) of this section, and $100,000.00 in general funds is appropriated for reimbursement to municipalities and adjustments under subsection (c) of this section.

* * * Necessity/Condemnation Proceedings * * *

Twelfth: By adding a new section to be numbered Sec. 18a to read as follows:

Sec. 18a. NECESSITY DETERMINATIONS IN CONDEMNATION PROCEEDINGS

Secs. 77–85 (transferring authority to initiate highway condemnation proceedings from the transportation board to the agency of transportation and transferring authority to conduct necessity hearings from superior court to the transportation board) are contained in Secs. 96–99 of H.438 (2009), the transportation bill.

* * * TIF Amendments * * *

Thirteenth: By adding seven new sections to be numbered Secs. 19a-19g to read as follows:

Sec. 19a. 24 V.S.A. § 1891(7) is amended to read:

(7) "Financing" means the following types of debt and incurred or used by a municipality to pay for improvements in a tax increment financing district:

* * *

(F) Conventional bank loans.

(G) Certificates of participation, approved by the state treasurer.

(H) Lease-purchase, approved by the state treasurer.

(I) Revenue-anticipation notes, approved by the state treasurer.

Sec. 19b. 24 V.S.A. § 1894 is amended to read:

§ 1894. POWER AND LIFE OF DISTRICT

(a) Incurring indebtedness.

(1) A municipality may incur indebtedness against revenues of the tax increment financing district at any time during a period of up to 20 years following the creation of the district, if approved as required under subsection 5404a(h) of Title 32. The creation of the district shall occur at 12:01 a.m. on April 1 ~~of~~ following the year so voted by the legislative body of the municipality. Any indebtedness incurred during this 20-year period may be

retired over any period authorized by the legislative body of the municipality under section 1898 of this title.

(2) If no indebtedness is incurred within the first ~~five~~ ten years after creation of the district, no indebtedness may be incurred unless the municipality obtains reapproval from the Vermont economic progress council under subsection 5404a(h) of Title 32.

(3) The district shall continue until the date and hour the indebtedness is retired.

(b) Use of the education property tax increment. For any debt incurred ~~within the first five years~~ after the creation of the district, or ~~within the first five years~~ after reapproval by the Vermont economic progress council, but for no other debt, the education tax increment may be retained for up to 20 years beginning with the initial date of the creation of the district or on the date of the first debt incurred ~~within the first five years~~, at the discretion of the municipality. The assessed valuation of all taxable real property within the district, as defined in 24 V.S.A. § 1895, shall be re-certified if the municipality chooses to begin retaining the education tax increment more than five years beyond the initial creation of the district.

* * *

Sec. 19c. 24 V.S.A. § 1897(a) is amended to read:

(a) The legislative body may pledge and appropriate in equal proportion any part or all of the state and municipal tax increments received from properties contained within the tax increment financing district for the financing for improvements and for related costs in the same proportion by which the infrastructure or related costs directly serve the district at the time of approval of the project financing by the council, and in the case of infrastructure essential to the development of the district that does not reasonably lend itself to a proportionality formula, the council shall apply a rough proportionality and rational nexus test; provided, that if any tax increment utilization is approved pursuant to 32 V.S.A. § 5404a(f), no more than 75 percent of the state property tax increment and no less than an equal percent of the municipal tax increment may be used to service this debt. Bonds shall only be issued if the legal voters of the municipality, by a majority vote of all voters present and voting on the question at a special or annual municipal meeting duly warned for the purpose, give authority to the legislative body to pledge the credit of the municipality for these purposes. Notwithstanding any provision of any municipal charter, the legal voters of a municipality~~, by a single vote,~~ shall authorize the legislative body to pledge the credit of the municipality up to a specified maximum dollar amount for all debt obligations

to be financed with state property tax increment pursuant to approval by the Vermont economic progress council and subject to the provisions of this section and 32 V.S.A. § 5404a.

Sec. 19d. EFFECTIVE DATE

Secs. 19a, 19b, and 19c shall be retroactive to July 1, 2008.

Sec. 19e. 24 V.S.A. § 1902 is added to read:

§ 1902. OVERLAY OF PREEXISTING DISTRICT

(a) Purpose. Tax increment financing (TIF) is an indispensible tool to help finance public infrastructure. Private development that has followed has created hundreds of jobs for Vermonters; generated significant sales, rooms and meals, and income tax revenue for the state; and has helped stimulate the local, regional, and state economies.

(b) Pursuant to the provisions of this chapter, a municipality may create a new district that includes some or all properties contained within a preexisting district which is no longer eligible to incur debt.

(c) In such event the tax increment for the preexisting district for properties within both the preexisting and the new district shall be calculated as follows: the difference between the property taxes paid based upon the original taxable value (subject to the adjustment upon reappraisal provisions of 24 V.S.A. § 1896(b), where applicable) of real property within the preexisting district and the property taxes paid based upon the original taxable value (subject to the adjustment upon reappraisal provisions of 24 V.S.A. § 1896(b), where applicable) for that same real property as determined for the new district.

(d) Tax increment for the preexisting district, as calculated under this section, may be appropriated for the financing of debt incurred prior to the creation of the new district consistent with the provisions of this chapter. As provided in 24 V.S.A. § 1894(c)(3), the preexisting district shall expire when the indebtedness is retired.

Sec. 19f. REPEAL

Sec. 2i of No. 184 of the Acts of the 2005 Adj. Sess. (2006), as amended by Sec. 67 of No. 190 of the 2007 Adj. Sess. (2008), is repealed.

Sec. 19g. 24 V.S.A. § 1903 is added to read:

§ 1903. TAX INCREMENT FINANCING DISTRICTS; CAP

Notwithstanding any other provision of law, the Vermont economic progress council may not approve the use of education tax increment financing for more than ten tax increment financing districts and no more than one newly created tax increment financing district in any municipality within the period

of ten state fiscal years beginning July 1, 2008. Additionally, no more than one such newly created tax increment financing district shall be approved to use the overlay provisions of section 1902 of this subchapter. Thereafter no tax increment financing districts may be approved without further authorization by the general assembly.

* * * Entrepreneurs' Seed Capital Fund * * *

Fourteenth: In Sec. 21, 10 V.S.A. § 291, subdivision (b)(3), by striking out the following: "two shall be appointed by the speaker of the house, two shall be appointed by the president pro tempore of the senate, and one shall be appointed by the governor" and inserting in lieu thereof the following: two shall be appointed by the authority, two shall be appointed by the fund manager, and one shall be appointed jointly by the authority and the fund manager

* * * Licensed Lender Work Group * * *

Fifteenth: By adding a new section to be numbered Sec. 28a to read as follows:

Sec. 28a. STUDY ON THE APPLICATION OF VERMONT'S LICENSED-LENDER REQUIREMENTS TO CERTAIN COMMERCIAL LENDING PRACTICES

(a) The commissioner of banking, insurance, securities, and health care administration shall convene a work group to recommend amendments to Vermont's licensed-lender laws, chapter 73 of Title 8, for the purpose of facilitating limited instances of high-risk, secured commercial lending by specialized persons such as venture capital firms, individuals, and partnerships. The work group shall consider proposals such as a limited exemption or an expedited registration process that permits capital investments in and secure commercial loans to technology firms, in a responsible manner.

(b) Members of the work group shall include representatives from the Vermont Bankers Association, the Vermont Bar Association, the department of economic development, the Vermont economic development authority, and the entrepreneurial industry sector of Vermont.

(c) The commissioner shall report the work group's recommendations to the senate committees on economic development, housing and general affairs and on finance and the house committee on commerce and economic development no later than January 1, 2010.

* * * State Contracts: Compliance with State and Federal Law * * *

Sixteenth: By adding a new section to be numbered Sec. 29a to read as follows:

Sec. 29a. AGENCY OF ADMINISTRATION; EMERGENCY RULES; WORKERS' COMPENSATION; STATE CONTRACTS; COMPLIANCE WITH DAVIS-BACON

(a) The agency of administration shall adopt emergency rules to minimize the incidents of miscoding of employees in NCCI job codes and misclassification of the status of works as independent contractors rather than employees by state contractors on projects with a total project cost of more than $250,000.00 by requiring those contractors to provide all the following:

(1) Detailed information including information relating to past violations, convictions, suspensions, and any other information required by the department. This information shall be included with the project bid.

(2) A list of subcontractors on the job along with lists of the subcontractor's subcontractors.

(3) A payroll process by which during every pay period the contractor collects from the subcontractors or independent contractors a list of all workers who were on the jobsite during the pay period, the work performed by those workers on the jobsite, and a daily census of the jobsite. This information and similar information for the subcontractors regarding their subcontractors shall also be provided to the department of labor and to the department of banking, insurance, securities, and health care administration, upon request.

(4) Any rules adopted to minimize instances of misclassification through enhanced reporting and greater transparency shall not be unduly burdensome on small businesses and may be flexibly designed to account for the size of the contractor and subcontractor.

(b) The agency shall require that any contractor that violates classification requirements shall be prohibited from bidding on future state contracts for a period of time that corresponds to the seriousness of the classification violation.

(c) The agency shall assure that any state contract funded in whole or in part with American Recovery and Reinvestment Act of 2009 monies shall comply with the payment of prevailing wages as required by the Davis-Bacon Act. In the event Davis-Bacon wages in any county have not been updated in the previous three years, the applicable Davis-Bacon wage for a state contract shall be that of the Vermont county that has most recently updated its Davis-Bacon wages, where not in contravention with federal requirements.

* * * VHFA: Moral Obligation on Pledged Equity Funds * * *

Seventeenth: By adding a new section to be numbered Sec. 33a to read as follows:

Sec. 33a. VHFA; MORAL OBLIGATION ON PLEDGED EQUITY FUNDS

Secs. 113–117 of S.137 (2009) as introduced are included in Secs 46-50 of H.442 (2009) the miscellaneous tax bill, as passed the senate.

* * * Research and Development Tax Credit * * *

Eighteenth: By adding a new section to be numbered Sec. 34a to read as follows:

Sec. 34a. 32 V.S.A. chapter 151 subchapter 11L is added to read:

Subchapter 11L. Research and Development Tax Credit

§ 5930ii. ENHANCEMENT TO THE FEDERAL RESEARCH AND DEVELOPMENT TAX CREDIT

(a) A credit against the income tax liability imposed under this chapter for the taxable year shall be an amount equal to 30 percent of the amount of the federal tax credit received for the same taxable year for eligible research and development expenses under 26 U.S.C. § 41(a).

(b) Any excess credit under this subchapter not used for the taxable year in which the credit is earned may be carried forward for up to ten years.

(c) For purposes of this section, "eligible research and development expenses" means expenditures:

(1) made within the state of Vermont;

(2) that meet the definition contained in 26 U.S.C. § 41(b); and

(3) that have been claimed as eligible expenditures for the same taxable year for a federal tax credit under 26 U.S.C. § 41(a), provided that the taxable year begins on or after January 1, 2010.

* * * Reimbursement for Town Burials * * *

Nineteenth: By adding a new section to be numbered Sec. 34b to read as follows:

Sec. 34b. STATE REIMBURSEMENT FOR TOWN BURIALS

Sec. 120 of S.137 as introduced in 2009 is contained in Sec. 3 of H.26 (2009) as passed the Senate.

The Committee further recommends that after passage of the bill the title be amended to read as follows:

AN ACT RELATING TO VERMONT RECOVERY AND REINVESTMENT ACT OF 2009.

Thereupon, pending the question, Shall the bill be amended as recommended by Senator Miller, on behalf of the Committee on Economic Development, Housing and General Affairs?, Senator Mazza moved that the Senate recess until four o'clock and thirty minutes in the afternoon.

Which was agreed to.

Called to Order

At four o'clock and forty minutes the Senate was called to order by the President.

Message from the House No. 74

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

Mr. President:

I am directed to inform the Senate that:

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

S. 91. An act relating to operation of vessels on public waters.

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

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

S. 94. An act relating to licensing state forest land for maple sugar production.

And has concurred therein.

Message from the House No. 75

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

Mr. President:

I am directed to inform the Senate that:

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

S. 70. An act relating to clarifying the procedure for reinstatement of a driver's license based on total abstinence from alcohol and drugs.

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

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

J.R.S. 26. Joint resolution relating to the legalization of industrial hemp.

And has adopted the same in concurrence with proposal of amendment in the adoption of which the concurrence of the Senate is requested.

Consideration Resumed; Bill Amended; Consideration Postponed

S. 137.

Consideration was resumed on Senate bill entitled:

An act relating to the Vermont recovery and reinvestment act of 2009.

Thereupon, Senator Miller requested and was granted leave to withdraw the *eleventh* recommendation of amendment.

Thereupon, the pending question, Shall the bill be amended as recommended by Senator Miller, on behalf of the Committee on Economic Development, Housing and General Affairs?, Senator Cummings moved that the question be divided and that the *fourteen*, *sixteenth* and *eighteenth* recommendations of amendment be voted on separately.

Thereupon, the *first*, *second*, *fourth*, *sixth*, *seventh*, *ninth*, *tenth*, *twelfth*, *thirteenth*, *fifteenth*, *seventeenth* and *nineteenth* recommendations of amendment were agreed to.

Thereupon, the *fourteenth* recommendation of amendment was agreed to.

Senator Campbell Assumes the Chair

Thereupon, the *sixteenth* recommendation of amendment was agreed to on a roll call, Yeas 23, Nays 2.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Brock, Carris, Choate, Cummings, Flanagan, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Mullin, Nitka, Racine, Sears, Snelling, Starr, White.

Those Senators who voted in the negative were: Maynard, Scott.

Those Senators absent or not voting were: Ayer, Bartlett, Campbell (presiding), Doyle, Shumlin.

Thereupon, the *eighteenth* recommendation of amendment was disagreed to on a roll call, Yeas 12, Nays 13.

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

Roll Call

Those Senators who voted in the affirmative were: Brock, Flanagan, Giard, Illuzzi, Kittell, Miller, Mullin, Racine, Scott, Sears, Starr, White.

Those Senators who voted in the negative were: Ashe, Carris, Choate, Cummings, Hartwell, Kitchel, Lyons, MacDonald, Maynard, Mazza, McCormack, Nitka, Snelling.

Those Senators absent or not voting were: Ayer, Bartlett, Campbell (presiding), Doyle, Shumlin.

Thereupon, pending third reading of the bill, Senator Illuzzi, on behalf of the Committee on Economic Development, Housing and General Affairs, moved to amend the bill by as follows

First: By adding a new section to be numbered Sec. 44 to read as follows:

Sec. 44. 32 V.S.A. § 5930a(a) is amended as follows:

(a) There is created ~~an economic incentive review board~~ a Vermont economic progress council which shall be attached to the department of economic development for administrative support, including an executive director who shall be appointed by the governor with the advice and consent of the senate, who shall be knowledgeable in subject areas of the ~~board's~~ council's jurisdiction, and hold the status of an exempt state employee, and administrative staff employed in the state classified service. The ~~board~~ council shall consist of 11 members, nine of whom shall be residents of the state appointed by the governor with the advice and consent of the senate. The governor shall appoint residents to the ~~board~~ council who are knowledgeable and experienced in the subjects of community development and planning, education funding requirements, economic development, state fiscal affairs, property taxation, or entrepreneurial ventures, and shall make appointments to the ~~board~~ council insofar as possible as to provide representation to the various geographical areas of the state and municipalities of various sizes. Members of the ~~board~~ council appointed by the governor shall serve initial staggered terms with five members serving four-year terms, and four members serving two-year terms. All ~~board~~ council members' terms shall be four-year terms upon the

expiration of their initial terms and ~~board~~ council members may be reappointed to serve successive terms. All terms shall commence on April 1 of each odd-numbered year. The governor shall select a chair from among the ~~board's~~ council 's members. In addition the ~~board~~ council shall include one member selected by the speaker of the house, who shall be a member of the house; and one member selected by the committee on committees of the senate, who shall be a member of the senate. Legislative members shall be voting members. There shall also be two regional members from each region of the state; one shall be designated by the regional development corporation of the region and one shall be designated by the regional planning commission of the region. Regional members shall be nonvoting members and shall serve during consideration by the ~~board~~ council of applications from their respective regions. For attendance at meetings and for other official duties, appointed members shall be entitled to compensation for services and reimbursement of expenses as provided in section 1010 of this title, except that members who are members of the legislature shall be entitled to compensation for services and reimbursement for expenses as provided in section 406 of Title 2. A regional member who does not otherwise receive compensation and reimbursement for expenses from his or her regional development or planning organization shall also be entitled to compensation and reimbursement of expenses for attendance at meetings and for other official duties as provided in section 1010 of this title.

Second: By adding a new section to be numbered Sec. 45 to read as follows:

Sec. 45. REPEAL AND TRANSITION

(a) Sec. 35 of this act shall take effect upon passage, at which time the economic incentive review board shall be re-named the Vermont economic progress council. The council shall have the responsibilities and authority of the economic incentive review board with respect to administering and monitoring the Vermont employment growth incentives (VEGI) program and the tax increment financing program and property tax allocations under sections 2a through 2h of Act No. 184 of 2005 (Adj. Sess.). The Legislative Council is directed to make necessary revisions to the Vermont Statutes Annotated to reflect the changes made in Secs. 35 and 36 of this act.

And by renumbering the remaining sections to be numerically correct.

Which was agreed to.

Thereupon, the bill was read the third time and pending the question, Shall the bill pass?, on motion of Senator Mazza further consideration of the bill was postponed.

Rules Suspended; Proposal of Amendment; Bill Passed in Concurrence with Proposal of Amendment; Rules Suspended; Bill Messaged

H. 313.

Pending entry on the Calendar for notice, on motion of Senator Mazza, the rules were suspended and House bill entitled:

An act relating to near-term and long-term economic development.

Was taken up for immediate consideration.

Senator Illuzzi, for the Committee on Economic Development, Housing and General Affairs, to which the bill was referred, reported the bill without recommendation.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be read the third time?, Senator Mazza moved that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

(1) Vermont has lost nearly 15,000 jobs since the cyclical peak in November of 2007, reaching an unemployment rate of 7.2 percent as of April 2009. Broader measures of underemployment, which include workers forced from full time to part time work and marginally attached workers, now exceed 9 percent in Vermont. Revised macro-economic projections anticipate that the Vermont rate of unemployment will reach 9 percent for the first time in more than 30 years.

(2) Initial claims for unemployment insurance have continued to rise, spiking in Vermont in recent months at record levels, with the weekly average of claims in January of 2009 reaching approximately 1,550.

(3) At the national level the unemployment rate has reached 8.5 percent and consumer spending, which accounts for more than two-thirds of all economic activity, has experienced its steepest reversal since the Great Depression, with inflation adjusted spending dropping by more than 10 percent in four of the last five months. Consumption taxes in Vermont are expected to recede accordingly, with sales and use revenues expected to be down 5 percent in fiscal year 2009 and meals and rooms receipts down 3 percent, with further declines expected in fiscal year 2010, which would comprise the first ever consecutive annual declines for these important revenue sources.

(4) Residential construction in Vermont has come to a virtual halt in Vermont, declining by nearly 70 percent. With weakness in Vermont second

home markets mounting in the face of regional job losses, housing price declines are likely in the next four-to-seven quarters, with very low property price appreciation for an extended period of at least four-to-five years. This stagnation in property prices will ultimately have a significant impact on grand list growth and the tax base for the largest component of the education fund.

(5) Federal tax changes resulting from the American Recovery and Reinvestment Act of 2009 (ARRA), Pub.L. No. 111-5, while stimulating to the national economy, will result in reduced state tax revenues in approximately $ 9.1 million in fiscal year 2010.

(6) Despite the many difficulties in the national and Vermont economies at this time, there are several factors leaning against the prevailing winds that offer hope for an emergent recovery. For one, United States and global fiscal and monetary policies are as stimulative as they have ever been, with even additional capacity and willingness if further measures are required to right the economy.

(7) For the first time in 55 years the Consumer Price Index is expected to post an annual decline in 2009, while inflation and related energy prices have been subdued, lowering consumer gas and heating bills, providing additional disposable income.

(8) Business inventories have been dramatically reduced, setting the stage for rapid gains in output and hiring, once demand resumes.

(9) With the passage of ARRA, Vermont is positioned to receive nearly one billion dollars in resources, which will be allocated to state and local government, to Vermont businesses, and to individuals. In addition, federal tax cuts will result in approximately $500 million in savings to Vermont businesses and individuals.

(10) Although state government is limited in its ability in the near-term to initiate new programs and expenditures due to revenue constraints, it can provide targeted support to programs best suited to capitalize on state and federal funding to leverage growth. The state can also improve existing programs, permitting processes, funding mechanisms, and other areas that affect economic development, in order to provide a more efficient and effective role for government to aid Vermont's businesses and individuals and lead the state in its economic recovery.

(11) In the long-term, once the current economic crisis inevitably subsides, Vermont will be prepared to move forward with a focused economic development strategy based on four principal, interrelated goals generated by the commission on the future of economic development:

(A) Vermont's businesses, educators, nongovernmental organizations, and government form a collaborative partnership that results in a highly skilled multigenerational workforce to support and enhance business vitality and individual prosperity.

(B) Vermont invests in its digital, physical, and human infrastructure as the foundation for all economic development.

(C) Vermont state government takes advantage of its small scale to create nimble, efficient, and effective policies and regulations that support business growth and the economic prosperity of all Vermonters.

(D) Vermont leverages its brand and scale to encourage a diverse economy that reflects and capitalizes on our rural character, entrepreneurial people, and reputation for environmental quality.

Sec. 1a. PURPOSE

(a) In the near-term, this act is intended to address the immediate economic crisis facing Vermont. The purposes of this act include the following:

(1) To preserve and create jobs and promote economic recovery.

(2) To assist those most impacted by the recession.

(3) To provide opportunities for investments needed to increase economic efficiency, entrepreneurship, and business growth in traditional and emerging sectors.

(4) To provide oversight and guidance for the expenditure of ARRA funds to ensure that the benefits of the federal stimulus extend to the broadest geographic and demographic range of Vermont businesses and individuals.

(b) In the long term, this act seeks to build a foundation for economic development through targeted investments, modifications, and improved efficiencies in economic development initiatives, environmental and energy permitting, and other state investment and regulatory programs that will provide long-term economic benefits. It is the intent of the general assembly to ultimately channel these economic development efforts through the principal goals and benchmarks identified by the commission on the future of economic development, using both new and existing resources from the state and federal levels to increase prosperity for all Vermonters.

Sec. 1b. SPRINGFIELD REDEVELOPMENT; PILOT PROGRAM

(a) For purposes of this section:

(1) "Redevelopment area" means an area within the town of Springfield that: is identified by the town to accommodate a significant amount of industrial activity, high technology, or other job-producing activity; includes

one or more industrial facilities that have been vacant or substantially underutilized for more than ten years; has at least 15,000 square feet or a minimum of five acres if the site includes an older structure; and does not detract from the planned economic development of the downtown designated district.

(2) "Qualified business" means any business that intends to locate in or expand into the redevelopment area and:

(A) Is in compliance with applicable zoning and other local bylaws and requirements for locating in the redevelopment area.

(B) Is in compliance with applicable federal, state, and local regulations.

(C) Will employ at least ten new full-time employees in positions that are not retail sales within a year of approval.

(D) Will pay wages and benefits to all full-time employees that meet or exceed the prevailing compensation level for that particular employment.

(3) "Qualified redeveloper" means any taxpayer that purchases and redevelops an industrial building in the redevelopment area for sale or lease to a qualified business.

(4) "Secretary" means the secretary of commerce and community development.

(5) "Substantially underutilized" means a property or facility of which less than ten percent has been occupied for uses other than storage or warehousing for at least ten years and for which active and sustained marketing has produced no significant employment.

(b) There is created a redevelopment pilot program which shall be administered as follows:

(1) The town of Springfield may apply to the secretary for approval of a redevelopment area authorized by this section.

(2) Qualified businesses and qualified redevelopers may apply to the secretary for the benefits provided by this section.

(3) Approval of a redevelopment area under this section shall be for a period of ten years and may be extended by the secretary, upon application by the municipality, for one additional ten-year period.

(4) Applications from the town of Springfield for approval of a redevelopment area and from qualified businesses and qualified redevelopers for approval of benefits shall be made in accordance with guidelines established by the secretary.

(5) The secretary shall issue a written decision granting or denying an application within 45 days of receipt of a completed application. If the secretary denies an application, the decision shall state the reasons for the denial. The town of Springfield, a qualified business, or a qualified redeveloper denied approval may submit a new application at any time.

(6) Decisions of the secretary under this section are not subject to chapter 25 of Title 3 and shall be final and not reviewable.

(7) Beginning no later than 12 months after approval by the secretary, qualified businesses and qualified redevelopers shall annually submit a written report to the secretary verifying that the business continues to meet all the requirements of this section.

(8) The secretary is authorized to approve one redevelopment area in accordance with this section.

(c) Qualified businesses and qualified redevelopers located in a redevelopment area are eligible for the following benefits:

(1) The sales tax exemption provided under 32 V.S.A. § 9741(48) for the building materials, machinery, equipment, or trade fixtures purchased for use in the Springfield pilot zone or redevelopment area.

(2) A ten-year exemption from the education tax imposed under 32 V.S.A. § 5402 on the nonresidential value of the redeveloped property.

(3) An annual income tax credit equal to three percent of the total wages and salaries paid during the taxable year to employees for services performed within the Springfield pilot zone or redevelopment area.

(4) Priority given to applications by such businesses or redevelopers for state permits and other state approvals over any other pending application.

(5) Priority consideration by any state agency for eligibility for state or federal funding or other aid to industrial development based on a cost-benefit analysis.

(6) Priority consideration for financing programs available through the Vermont economic development authority under chapter 12 of this title.

(7) Technical support from the department of public safety and the division for historic preservation for the rehabilitation of older and historic buildings.

(d) Property tax exemptions under this section shall commence in the first tax year in which the qualified business or qualified redeveloper has made expenditures in the approved redevelopment area.

(e) Any benefits received by a qualified redeveloper related to the redevelopment, sale, or lease of improved space to a qualified business within a redevelopment area shall not be separately available to a qualified business that purchases or leases all or part of the facility improved by the redeveloper.

(f) Benefits shall not be available for either of the following:

(1) Retail sales activities; or

(2) Relocating a business within Vermont to a redevelopment area.

(g) Benefits granted to a qualified business or a qualified redeveloper may be terminated and recaptured by the secretary upon determination that the qualified business or a qualified redeveloper is no longer in compliance with, or has failed to meet, the requirements of this section. A decision to terminate or recapture benefits shall not be subject to chapter 25 of Title 3 and shall be final and not reviewable.

(h) The secretary, on or before January 15, 2011, and biennially thereafter, shall report to the general assembly on the progress of the redevelopment pilot program under this section and its impact on new economic development and the creation of new jobs.

Sec. 2. 32 V.S.A. § 9741(48) is added to read:

(48) Sales of building materials, machinery, equipment, or trade fixtures incorporated into an opportunity zone designated by the secretary of commerce and community development.

Sec. 3. 13 V.S.A. § 4014 is amended to read:

§ 4014. PURCHASE OF FIREARMS IN ~~CONTIGUOUS~~ OTHER STATES

Residents of the state of Vermont may purchase rifles and shotguns in ~~a~~ another state ~~contiguous to the state of Vermont~~ provided that such residents conform to the applicable provisions of the Gun Control Act of 1968, and regulations thereunder, as administered by the United States ~~Secretary of the Treasury~~ Bureau of Alcohol, Tobacco, Firearms and Explosives, and provided further that such residents conform to the provisions of law applicable to such purchase in the state of Vermont and in the ~~contiguous~~ state in which the purchase is made.

Sec. 4. 13 V.S.A. § 4015 is amended to read:

§ 4015. PURCHASE OF FIREARMS BY NONRESIDENTS

Residents of a state ~~contiguous to~~ other than the state of Vermont may purchase rifles and shotguns in the state of Vermont, provided that such residents conform to the applicable provisions of the Gun Control Act of 1968, and regulations thereunder, as administered by the United States ~~Secretary of the Treasury~~ Bureau of Alcohol, Tobacco, Firearms and Explosives, and provided further that such residents conform to the provisions of law applicable to such purchase in the state of Vermont and in the state in which such persons reside.

Sec. 5. REPEAL

Sec. 7(a)(3)(A) and (B) of No. 46 of the Acts of 2007 (specifying how monies appropriated for workforce development is to be apportioned between career exploration programs and alternative and intensive vocations/academic programs) is repealed.

Sec. 6. Sec. 6 of No. 46 of the Acts of 2007 is amended to read:

Sec. 6. WORKFORCE DEVELOPMENT LEADER~~; LEADERSHIP COMMITTEE; CREATED~~

(a) The commissioner of labor shall be the leader of workforce development strategy and accountability. The commissioner of labor shall consult with ~~and chair a subcommittee of the workforce development council consisting of the secretary of human services, the commissioner of economic development, the commissioner of education, four business members appointed by the governor, and a higher education member appointed by the governor. Membership on the subcommittee shall be coincident with the members' terms on the workforce development council~~ the workforce development council executive committee in developing the strategy, goals, and accountability measures. The workforce development council shall provide administrative support. The ~~subcommittee~~ executive committee shall assist the leader. The duties of the leader include all the following:

(1) developing a limited number of overarching goals and challenging measurable criteria for the workforce development system that supports the creation of good jobs to build and retain a strong, appropriate, and sustainable economic environment in Vermont;

(2) reviewing reports submitted by each entity that receives funding ~~under Act 46 of the Acts of 2007~~ from the Next Generation fund. The reports shall be submitted on a schedule determined by the executive committee and shall include all the following information:

(A) a description of the mission and programs relating to preparing individuals for employment and meeting the needs of employers for skilled workers;

(B) the measurable accomplishments that have contributed to achieving the overarching goals;

(C) identification of any innovations made to improve delivery of services;

(D) future plans that will contribute to the achievement of the goals;

(E) the successes of programs to establish working partnerships and collaborations with other organizations that reduce duplication or enhance the delivery of services, or both; and

(F) any other information that the committee may deem necessary and relevant.

(3) reviewing information pursuant to subdivision (2) of this section that is voluntarily provided by education and training organizations that are not required to report this information but want recognition for their contributions;

(4) issuing an annual report to the governor and the general assembly on or before December 1, which shall include a systematic evaluation of the accomplishments of the system and the participating agencies and institutions and all the following:

(A) a compilation of the systemwide accomplishments made toward achieving the overarching goals, specific notable accomplishments, innovations, collaborations, grants received, or new funding sources developed by participating agencies, institutions, and other education and training organizations;

(B) ~~an evaluation~~ identification of each provider's contributions toward achieving the overarching goals;

(C) identification of areas needing improvement, including time frames, expected annual participation, and contributions, and the overarching goals; and

(D) recommendations for the allocating of next generation funds and other public resources.

(5) developing an integrated workforce strategy that incorporates economic development, workforce development, and education to provide all Vermonters with the best education and training available in order to create a

strong, appropriate, and sustainable economic environment that supports a healthy state economy; and

(6) developing strategies for both the following:

(A) coordination of public and private workforce programs to assure that information is easily accessible to students, employees, and employers, and that all information and necessary counseling is available through one contact; and

(B) more effective communications between the business community and educational institutions, both public and private.

(b) Entities receiving grants through the workforce education and training fund (WETF) and the Vermont training program (VTP) shall provide the Social Security number of each individual who has successfully completed a training program funded through the WETF and the VTP within 30 days. This requirement shall not apply to training seminars lasting no more than two days. On or before July 1 of each year, the department of labor and the department of economic development shall process the information received within the most recent 12 months and prepare the report required in subdivision (a)(4) of this section. The report shall include a table that sets forth quarterly wage information received pursuant to 21 V.S.A. § 1314a at least 18 months following the date on which the individuals completed the program of study. The table shall include the number of individuals completing the program, the number of those individuals who are employed in Vermont, and the median quarterly income of those individuals.

(c) Other entities, including public and private institutions of higher education, postsecondary and secondary programs, and other training providers who wish to receive grants under the WETF and the VTP may do so by making a request in writing to the commissioner of labor and the commissioner of economic development who shall make a decision regarding inclusion of such programs and the process for the collection of the necessary data.

(d) Confidentiality. Notwithstanding any other provision of law, the departments of labor and of economic development shall collect the Social Security numbers of students for the purposes of this section. The departments shall retain Social Security numbers collected from the entities listed in subsection (b) of this section for no more than five years from the date of receipt by the departments. The departments shall retain Social Security numbers collected from the entities listed in subsection (b) of this section for no more than five years from the date of receipt by the departments. Access to the Social Security numbers provided to the department of labor and department of economic development shall be limited to those department individuals creating the table required in subsection (b) of this section and shall

be confidential. The departments shall prepare the tables in a way that ensures the confidentiality of all trainee and employer information. A department employee who intentionally communicates or otherwise makes available to the general public a Social Security number collected pursuant to this section or who otherwise disseminates the number for purposes other than those specified in this section shall be subject to the penalties of the Social Security Number Protection Act, subchapter 3 of chapter 62 of Title 9.

Sec. 7. REPEAL

The following are repealed:

(1) Sec. 7(d) of No. 46 of the Acts of 2007 (accountability);

(2) 10 V.S.A. § 543(g) (accountability); and

(3) Section 5.801.1 of No. 192 of the Acts of the 2007 Adj. Sess. (2008).

Sec. 8. WORK-BASED LEARNING REPORT

(a) On or before January 1, 2010, the career and technical education coordinator within the department of education, the commissioner of economic development or his or her designee, and the commissioner of labor or his or her designee, shall submit a report to the senate committee on economic development, housing and general affairs, the house committee on commerce and economic development, and the governor regarding work-based learning programs in Vermont.

(b) The report shall include an inventory of existing career and technical education (CTE) work-based learning programs and other non-CTE work-based learning opportunities, such as registered apprenticeships, high school internships, and postsecondary internships, as well as community-based learning programs. The report also shall include the amount and source of funding for each program; the number of personnel hired to administer each program; participation in each program; categorization of learning opportunities offered; and other relevant standards and outcomes. Finally, the report shall include recommendations relative to statewide and regional coordination; creation of timely skill standards based on emerging or growing industry sectors; credentials that articulate postsecondary training and education; and the expansion, restructuring, or elimination of existing programs.

Sec. 9. 16 V.S.A. chapter 37, subchapter 7 is added to read:

Subchapter 7. Energy Efficiency Training

§ 1594. ENERGY EFFICIENCY CURRICULUM

(a) The president of Vermont Technical College, director of the office of economic opportunity, commissioner of public service, commissioner of labor, assistant director for adult education, and Efficiency Vermont shall plan for and develop curriculum modules and deliver energy efficiency and renewable energy education and training at all levels, in order to develop a highly skilled workforce in Vermont that is prepared to participate in a growing energy-oriented industry sector.

(b) In all applicable content areas, the curriculum modules shall be designed to meet, at a minimum, the certification standards of the Building Performance Institute, other widely recognized certification standards, or a Vermont-specific certification developed in a process led by Vermont Technical College in collaboration with the aforementioned parties.

(c) The curriculum modules shall be offered through the Center for Sustainable Practices at Vermont Technical College and, on a regional basis, through the regional technical centers and the comprehensive high schools, including adult technical education programs, under agreed-upon terms where they can be appropriately incorporated into the curriculum, which will help prepare students of all ages for careers in the energy-efficiency industry.

(d) The department of labor shall not fund any single-service contract for the implementation of the modules developed in subsection (a) of this section or for the delivery of electrical and plumbing training programs offered under this section.

(e) Vermont Technical College and the regional technical centers shall request state fiscal stabilization funds available through the American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5, as well as other state or federal workforce training funds available through the Vermont departments of education and of labor, and through the Vermont Energy Investment Corporation. If sufficient funds are not received, then the Vermont Technical College and the regional technical centers are not required to offer the education and training programs outlined in this section.

Sec. 10. 32 V.S.A. § 5930b(b)(2) is amended to read:

(2) The council shall review each application in accordance with section 5930a of this title, except that the council may provide for ~~a preliminary~~ an initial approval pursuant to the conditions set forth in subsection 5930a(c),

followed by a final approval at a later date, before December 31 of the calendar year in which the economic activity commences.

Sec. 11. RETROACTIVE APPLICATION

Sec. 10 of this act shall apply retroactively to all applications received on or after January 1, 2007.

Sec. 12. 32 V.S.A. § 5930a is amended to read:

§ 5930a. VERMONT ECONOMIC PROGRESS COUNCIL

* * *

(b)(1) The Vermont economic progress council, within 60 days of receipt of a complete application, shall approve or deny the following economic incentives:

~~(1)~~(A) tax stabilization agreements and exemptions under subdivision 5404a(a)(2) of this title;

~~(2) applications for allocation to municipalities of a portion of education grand list value and municipal liability from new economic development under subsection 5404a(e) of this title;~~ and

~~(3)~~(B) Vermont employment growth incentives (VEGI) under section 5930b of this title.

(2) All incentives are subject to application of the incentive ratio as determined under subdivision 5930b(b)(3) of this title and no tax stabilization agreement~~,~~ or exemption ~~or allocation~~ shall be approved except in conjunction with the approval of an incentive under subdivision ~~(3)~~(1)(B) of this subsection.

* * *

(d) The council shall apply the cost-benefit model in reviewing applications under subdivisions (b)(1)~~, (2), and (3)~~ (A) and (B) of this section to determine the net fiscal benefit to the state. The cost-benefit model shall be a uniform and comprehensive methodology for assessing and measuring the projected net fiscal benefit or cost to the state of proposed economic development activities. Any modification of the cost-benefit model shall be subject to the approval of the joint fiscal committee. The cost-benefit analysis shall include consideration of the effect of the passage of time and inflation on the value of multi-year fiscal benefits and costs.

(1) In determining the projected net fiscal benefit or cost of the incentives considered under ~~subdivisions~~ subdivision (b)(1) ~~and (2)~~(A) of this section, the council shall calculate the net present value of the enhanced or

forgone statewide education tax revenues, reflecting both direct and indirect economic activity. If the council approves an incentive pursuant to this section, the net fiscal costs, if any, to the state shall be counted as if all those costs occurred in the year in which the council first approved the incentive and that cost shall reduce the amount of the annual authorization for such approvals established by the legislature for the applicable calendar year.

(2) In determining the projected net fiscal benefit or cost of the incentives considered under subdivision ~~(b)(3)~~ (b)(1)(B) of this section, the council shall calculate the net present value of the enhanced or forgone state tax revenues attributable to the incentives, reflecting both direct and indirect economic activity over the five-year award period. If the council approves an incentive, the net fiscal costs, if any, to the state shall be counted as if all of those costs occurred in the year in which the council first approved the incentive and that cost shall reduce the amount of the council's annual authorization for approval of economic incentives as established by the legislature for the applicable calendar year.

(e) Only a business may apply for approval under subdivision ~~(b)(3)~~ (b)(1)(B) of this section. A municipality and a business must apply jointly for approval of a tax stabilization agreement pursuant to ~~subdivisions~~ subdivision (b)(1) ~~and (2)~~(A) of this section.

* * *

Sec. 13. 32 V.S.A. § 5930b(f) is amended to read:

(f) The property of a business whose authority to earn, apply or retain incentives under this section has been revoked is ineligible for property tax stabilization under subdivision 5404a(a)(2) of this title ~~or allocation of property tax value under subsection 5404a(e) of this title for any education property tax grand list~~ after the date of revocation.

Sec. 13a. LEGISLATIVE PRIORITIES FOR ARRA FUNDS

(a) With respect to federal monies available to the state of Vermont under the American Recovery and Reinvestment Act (ARRA) of 2009, Pub.L. 111-5, the general assembly establishes the following priorities as outlined in this section.

(b) Burlington International Airport (BTV). The general assembly recognizes the importance of maintaining and upgrading the programs and facilities at BTV, Vermont's primary commercial airport. BTV has an estimated economic impact of over a half billion dollars annually. The general assembly finds that the development of the following list of planned airport projects is a legislative priority:

(1) A new aviation technical center facility.

(2) A new customs border protection office.

(3) The following three south-end taxiway projects:

(A) Completion of taxiway K connection from the new general aviation apron to the end of runway 33;

(B) Rehabilitation of portions of taxiways C and G and construction of a new intersection; and

(C) Completion of a parallel taxiway G from existing taxiway C to runway 1-19.

(4) The building of a green roof on the parking structure.

(c) Agriculture. Agriculture is one of the major drivers of the state's economy. For that reason the general assembly recognizes the crucial role of agriculture in the state of Vermont and expresses the following priorities for federal funding that may become available through ARRA:

(1) The agency of agriculture, food and markets, Vermont agricultural credit corporation, and the Vermont housing and conservation board's farm viability program shall cooperate in seeking ARRA funding from the USDA Farm Service Agency, the USDA Rural Development Program, and other appropriate federal programs and shall prioritize applications for federal stimulus funding based on the goals established in this act. The agency shall further work to educate relevant entities about funding opportunities, provide technical application assistance to priority applicants, and develop a single, common application to be used by applicants for agency funding.

(2) The following are specific agriculture priorities and include the state entities to which funding for these priorities should be directed:

(A) Stabilization of spring planting with loans through the Vermont agricultural credit corporation and the Vermont economic development authority.

(B) Support for in-state slaughter and processing facilities through grants and technical assistance from the agency of agriculture, food and markets.

(C) Funding for regional food hubs and dairy transition through the Vermont housing and conservation board farm viability program and support for the Vermont farm-to-plate investment program, established by Sec. 111 of this act, through the Vermont sustainable jobs fund.

(D) Environmental protection and energy conservation including power modernization and methane digesters through grants and technical assistance from the agency of agriculture, food and markets.

(d) Municipal communications services. Since passage of an act relating to establishing the Vermont telecommunications authority and to advancing broadband and wireless communications infrastructure throughout the state of Vermont, No. 79 of the Acts of 2007, many Vermont towns and cities have affiliated themselves to promote, sponsor, develop, and provide a range of communications services to their respective inhabitants, governments, schools, and businesses. Through local volunteer initiatives, resources have been collected and directed toward the design, construction, operation, and management of publicly owned communications plants, with minimal dependency on the resources, finances, and credit of the state of Vermont. Access to various forms of public and private credit enhancement will assist towns and cities in further developing and constructing communications plant improvements through lower capital interest and financing costs. Under the ARRA, financial resources will be made available to the state that are suitable for application in assisting municipalities in their communications goals. With respect to these local efforts and the federal stimulus monies, the general assembly establishes the following priorities:

(1) Public projects and enterprises endorsed by the general assembly to receive direct and indirect benefits of ARRA initiatives shall include municipal communications plants whose economic feasibility, need, and readiness to serve Vermont's rural regions have been demonstrated, such as the North-link project launched by Northern Enterprises, Inc. in 2007, the broadband initiative of East Central Vermont Community Fiber, and replacement of the Burke Mountain power line owned and operated by Vermont Public Television.

(2) To the extent possible, allocation of ARRA initiatives available to Vermont shall include direct and indirect credit enhancement assistance to municipalities seeking capital to fund communications plant improvements.

(3) The development, promotion, construction, and operation of public communications plants is declared to be in the best interest of Vermont and an infrastructure priority among capital improvements eligible to receive benefits under the ARRA.

(e) Sterling College. Sterling College is the only independent, liberal arts college in Vermont's Northeast Kingdom. Its four major areas of study include conservation ecology; circumpolar studies; outdoor education and leadership; and sustainable agriculture. The college now has the opportunity to build a new and environmentally innovative residency and program center. Of the $500,000.00–$600,000.00 total cost of this project, $215,000.00 has

already been secured or committed. The project's construction start date is mid-August and is projected to employ between 10 and 14 people, in various capacities, for six months. Therefore, the general assembly finds that up to $350,000.00 in ARRA monies for this Sterling College project is a priority.

(f) Vermont Youth Conservation Corps (VYCC). By hiring young people to work on high-priority conservation projects, the VYCC seeks to instill in individuals the values of personal responsibility, hard work, education, and respect for the environment. The VYCC seeks to establish a new program, the Civilian Conservation Corps 2.0, which will enroll 100 young men and women between the ages of 18 and 24 to rehabilitate the Vermont state parks infrastructure and complete high-priority recreation, forest, wildlife, and other natural resource work. The general assembly finds that spending on such a project is a legislative priority.

Sec. 14. [DELETED]

Sec. 15. SBA LOAN PROGRAMS; STIMULUS PROGRAMS

(a) Significant changes have been made to the Small Business Association (SBA) loan programs pursuant to the American Recovery and Reinvestment Act of 2009 (ARRA), Pub.L. No. 111-5. These changes create an opportune time for Vermont entrepreneurs seeking to start, expand, or acquire a small business. Time is of the essence, however, because the new opportunities created by ARRA will sunset at the end of 2009.

(b) The commissioner of economic development, in cooperation with the director of the Vermont district office of the United States SBA, shall work with small business lending companies such as the Vermont economic development authority, the Vermont small business development center, the Vermont bankers association, and the association of Vermont credit unions, to promote favorable SBA-loan program changes among potential borrowers.

(c) Some of the SBA-loan program changes under ARRA include a one-time opportunity at very low risk to lenders (90 percent guaranty) and very low cost for small businesses (no guarantee fee, prime at a low of 3.25 percent) to access lines of credit, contract financing (such as government contracts with the agency of transportation), export financing, and long-term fixed-asset financing of real estate and equipment.

Sec. 16. VIRTUALIZED INFORMATION TECHNOLOGY INFRASTRUCTURE; STUDY

(a) The legislative director of information technology and the commissioner of the department of information and innovation shall issue a request for proposals no later than July 1, 2009 to evaluate the viability of

cloud computing and other virtualized infrastructure options for the state's information technology infrastructure as it pertains to the use of e-mail, spreadsheets, word processing, and calendars in the legislative, executive, and judicial branches of government. Evaluations shall consider the following:

(1) Current service level and scalability to future service needs;

(2) Physical and virtual data security and recovery;

(3) Potential for savings in software licensing and hardware investment in both the near and long term;

(4) Opportunities for improved systems performance and capacity;

(5) Specific vendors and relevant vendor policies; and

(6) Potential for legal and regulatory obstacles.

(b) The legislative director of information technology and the commissioner of the department of information and innovation shall submit the proposals to the legislative information technology committee established under chapter 22 of Title on or before January 15, 2010. The director and the commissioner are respectively authorized to implement virtualized information technology.

(c) This section supersedes any similar cloud-computing proposal in H.441 (2009).

Sec. 16a. INITIATIVE TO BUILD A MEDIA AND FILM INDUSTRY IN VERMONT

(a)(1) Given its unique blend of creative, cultural, and educational resources, Vermont currently has an opportunity to become a destination for a new media and film industry.

(2) Vermont is home to authors, filmmakers, producers, and young people concentrating their educational and professional development in the emerging fields of communications, multi-media and film production, graphic and digital design, and performing arts.

(3) Vermont's natural and seasonal beauty and the charm and character of its towns and regions equals or surpasses other potential destinations for the media and film industry, and these strengths position Vermont as an ideal location for filming and producing movies, television, commercials, and other media.

(4) Vermont is home to at least five institutions of higher education that provide one or more degrees or certificate programs in media or film sectors, including Burlington College's cinema studies and film production program; Champlain College's communications and creative media division; the

University of Vermont's film and television studies program; Marlboro College's undergraduate programs in media, visual and performing arts; and Castleton State College's concentrations in communication, mass media and digital media.

(b) Considering these substantial resources, it is the intent of the general assembly to encourage and promote the development of a strong and dynamic media and film sector within Vermont's creative economy.

(c) The Vermont film commission, in collaboration with the Vermont film and media coalition and, to the extent possible, the faculty and students of Burlington College, Champlain College, the University of Vermont, Marlboro College, and Castleton State College, shall propose a program to develop a media and film sector within Vermont's economy. The commission should consider the most beneficial role the state can play in supporting the media and film sector, and should consider grants, public-private partnerships, and other appropriate financing mechanisms in order to promote this sector of the creative economy and to retain young Vermonters currently supported by the communications, film, and media programs at Vermont colleges and universities.

(d) On or before January 30, 2010, the commission is invited to deliver a presentation of its program proposal to the Senate committee on economic development, housing and general affairs and the House committee on commerce and economic development.

Sec. 17. [Deleted]

Sec. 18. 16 V.S.A. chapter 125, subchapter 5 is added to read:

Subchapter 5. Tax-Credit Bond Financing

§ 3597. TAX-CREDIT BOND FINANCING; QUALIFIED SCHOOL ACADEMY ZONES; QUALIFIED SCHOOL CONSTRUCTION BONDS

The American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, expanded existing and created new tax-credit bond programs available to public schools. Accordingly, school districts are authorized to issue bonds to finance public school building construction and rehabilitation, the purchase of equipment, the development of course materials, and teacher and personnel training, consistent with sections 1397E and 54F of the Internal Revenue Code, pertaining to qualified school academy zones and qualified school construction bonds.

Sec. 19. Sec. 45(b) of No. 200 of the Acts of the 2007 Adj. Sess. (2008) is amended to read:

(b)(1) Notwithstanding subsection (a) of Sec. 36 of No. 52 of the Acts of 2007, if a school district declares its intent to pay for the cost of a school construction project without state aid provided pursuant to chapter 123 of Title 16 and has received voter approval for the project on or after March 7, 2007, then the commissioner of education shall review the project as a preliminary application upon the district's request. In this case, the commissioner shall use the standards and processes of chapter 123 for determining preliminary approval, and shall deduct the portion of education spending that is approved from the calculation of excess spending under 32 V.S.A. § 5401(12). Preliminary approval received pursuant to this subsection is to be used solely for purposes of:

(A) calculating whether the district has exceeded the excess spending threshold ~~and neither~~; or

(B) enabling the district to proceed with a project using funds other than those provided under chapter 123 of Title 16, or both.

(2) Neither preliminary approval nor the provision of technical assistance indicates that the district will receive state aid for school construction or preliminary approval for that aid when school construction aid is again available. Notwithstanding subsection (a) of Sec. 36 of No. 52 of the Acts of 2007, upon the request of the district, the department shall provide technical assistance regarding the planning and implementation of school renovation and construction.

Sec. 19a. 24 V.S.A. § 1891(7) is amended to read:

(7) "Financing" means the following types of debt and incurred or used by a municipality to pay for improvements in a tax increment financing district:

* * *

(F) Conventional bank loans.

(G) Certificates of participation, approved by the state treasurer.

(H) Lease-purchase, approved by the state treasurer.

(I) Revenue-anticipation notes, approved by the state treasurer.

Sec. 19b. 24 V.S.A. § 1894 is amended to read:

§ 1894. POWER AND LIFE OF DISTRICT

(a) Incurring indebtedness.

(1) A municipality may incur indebtedness against revenues of the tax increment financing district at any time during a period of up to 20 years following the creation of the district, if approved as required under subsection 5404a(h) of Title 32. The creation of the district shall occur at 12:01 a.m. on April 1 ~~of~~ following the year so voted by the legislative body of the municipality. Any indebtedness incurred during this 20-year period may be retired over any period authorized by the legislative body of the municipality under section 1898 of this title.

(2) If no indebtedness is incurred within the first ~~five~~ ten years after creation of the district, no indebtedness may be incurred unless the municipality obtains reapproval from the Vermont economic progress council under subsection 5404a(h) of Title 32.

(3) The district shall continue until the date and hour the indebtedness is retired.

(b) Use of the education property tax increment. For any debt incurred ~~within the first five years~~ after the creation of the district, or ~~within the first five years~~ after reapproval by the Vermont economic progress council, but for no other debt, the education tax increment may be retained for up to 20 years beginning with the initial date of the creation of the district or on the date of the first debt incurred ~~within the first five years~~, at the discretion of the municipality. The assessed valuation of all taxable real property within the district, as defined in 24 V.S.A. § 1895, shall be re-certified if the municipality chooses to begin retaining the education tax increment more than five years beyond the initial creation of the district.

* * *

Sec. 19c. 24 V.S.A. § 1897(a) is amended to read:

(a) The legislative body may pledge and appropriate in equal proportion any part or all of the state and municipal tax increments received from properties contained within the tax increment financing district for the financing for improvements and for related costs in the same proportion by which the infrastructure or related costs directly serve the district at the time of approval of the project financing by the council, and in the case of infrastructure essential to the development of the district that does not reasonably lend itself to a proportionality formula, the council shall apply a rough proportionality and rational nexus test; provided, that if any tax increment utilization is approved pursuant to 32 V.S.A. § 5404a(f), no more than 75 percent of the state property tax increment and no less than an equal percent of the municipal tax increment may be used to service this debt. Bonds shall only be issued if the legal voters of the municipality, by a majority vote

of all voters present and voting on the question at a special or annual municipal meeting duly warned for the purpose, give authority to the legislative body to pledge the credit of the municipality for these purposes. Notwithstanding any provision of any municipal charter, the legal voters of a municipality~~, by a single vote,~~ shall authorize the legislative body to pledge the credit of the municipality up to a specified maximum dollar amount for all debt obligations to be financed with state property tax increment pursuant to approval by the Vermont economic progress council and subject to the provisions of this section and 32 V.S.A. § 5404a.

Sec. 19d. EFFECTIVE DATE

Secs. 19a, 19b, and 19c shall be retroactive to July 1, 2008.

Sec. 19e. 24 V.S.A. § 1902 is added to read:

§ 1902. OVERLAY OF PREEXISTING DISTRICT

(a) Purpose. Tax increment financing (TIF) is an indispensible tool to help finance public infrastructure. Private development that has followed has created hundreds of jobs for Vermonters; generated significant sales, rooms and meals, and income tax revenue for the state; and has helped stimulate the local, regional, and state economies.

(b) Pursuant to the provisions of this chapter, a municipality may create a new district that includes some or all properties contained within a preexisting district which is no longer eligible to incur debt.

(c) In such event the tax increment for the preexisting district for properties within both the preexisting and the new district shall be calculated as follows: the difference between the property taxes paid based upon the original taxable value (subject to the adjustment upon reappraisal provisions of 24 V.S.A. § 1896(b), where applicable) of real property within the preexisting district and the property taxes paid based upon the original taxable value (subject to the adjustment upon reappraisal provisions of 24 V.S.A. § 1896(b), where applicable) for that same real property as determined for the new district.

(d) Tax increment for the preexisting district, as calculated under this section, may be appropriated for the financing of debt incurred prior to the creation of the new district consistent with the provisions of this chapter. As provided in 24 V.S.A. § 1894(c)(3), the preexisting district shall expire when the indebtedness is retired.

Sec. 19f. REPEAL

Sec. 2i of No. 184 of the Acts of the 2005 Adj. Sess. (2006), as amended by Sec. 67 of No. 190 of the 2007 Adj. Sess. (2008), is repealed.

Sec. 19g. 24 V.S.A. § 1903 is added to read:

§ 1903. TAX INCREMENT FINANCING DISTRICTS; CAP

Notwithstanding any other provision of law, the Vermont economic progress council may not approve the use of education tax increment financing for more than ten tax increment financing districts and no more than one newly created tax increment financing district in any municipality within the period of ten state fiscal years beginning July 1, 2008. Additionally, no more than one such newly created tax increment financing district shall be approved to use the overlay provisions of section 1902 of this subchapter. Thereafter no tax increment financing districts may be approved without further authorization by the general assembly.

Sec. 20. FINDINGS AND PURPOSE

(a) Over the last decade, Vermont has made significant investments in business development and workforce training and, as a result, has begun to foster innovation and entrepreneurship and cultivate a skilled workforce.

(b) In order to fully reap the benefits of our prior investments, however, the general assembly finds that it is now time to expand upon our economic development initiatives. To that end, the general assembly seeks to encourage investments in young start-up companies specializing in technology, agricultural services and products, and clean energy with the goal of creating both jobs and economic prosperity in this state and of filling a gap in the capital financing spectrum for Vermont businesses.

Sec. 21. 10 V.S.A. chapter 14A is amended to read:

CHAPTER 14A. THE ~~VERMONT~~ ENTREPRENEURS' SEED CAPITAL FUND

§ 290. DEFINITIONS

For purposes of this chapter:

(1) "Follow-on investment" means any investment in a Vermont firm following the initial investment.

(2) "Fund manager" means the investment management firm responsible for creating the fund, securing capital commitments, and implementing the fund's investment strategy, consistent with the requirements of this section. The fund manager shall be paid a fee which reflects a percentage of the fund's capital under management and a performance-fee share based on the fund's economic performance, as determined by the authority.

(3) "Seed capital" means first, nonfamily, nonfounder investment in the form of equity or convertible securities issued by a firm which had, in the 12 months preceding the date of the funding commitment, annual gross sales of less than $3,000,000.00.

§ 291. ~~VERMONT~~ ENTREPRENEURS' SEED CAPITAL FUND; AUTHORIZATION; LIMITATIONS

(a) The Vermont economic development authority shall cause to be formed a private investment equity fund to be named "the ~~Vermont~~ entrepreneurs' seed capital fund" or "the fund" ~~is authorized~~ for the purpose of increasing the amount of investment capital provided to new Vermont firms or to existing Vermont firms for the purpose of expansion. The authority may contract with one or more persons for the operation of the fund as fund manager. Such contract shall contain the terms and conditions pursuant to which the fund shall be managed to meet the fund's objective of providing seed capital to Vermont firms. The terms of the contract shall require that, if the fund manager does not meet the investment criteria specified in the contract, the fund manager may not be awarded the performance fee established under subdivision (c)(2) of this section.

(b) The ~~Vermont seed capital~~ fund shall be formed as ~~either a business corporation or~~ a limited partnership pursuant to Title 11 and shall be subject to all the following:

(1) The ~~Vermont seed capital~~ fund shall not invest in any firm in which ~~a total of more than a 25 percent~~ any interest in that firm is held by an investor of the ~~Vermont seed capital~~ fund ~~combined with any interest held in the firm~~ or by the spouse ~~or dependent,~~ children, or other relative of the investor.

(2) The fund shall invest at least 40 percent of its total capital in initial investment in firms which had in the 12 months preceding the date of the funding commitment annual gross sales of less than $1,000,000.00 and may reserve the remainder of its capital for follow-on investments in these businesses, as appropriate.

(3) Before the fund makes any investments, the fund shall~~:~~

~~(A) If organized as a corporation, have and thereafter maintain a board of nine directors to be elected by the shareholders.~~

~~(B) If organized as a partnership,~~ have and maintain a board of ~~three~~ five advisors who shall be appointed ~~by the authority~~ as follows: two shall be appointed by the authority, two shall be appointed by the fund manager, and one shall be appointed jointly by the authority and the fund manager. The board of advisors shall represent solely the economic interest of the state with respect to the management of the fund and shall have no civil liability for the

financial performance of the fund. The board of advisors shall be advised of investments made by the fund and shall have access to all information held by the fund with respect to investments made by the fund.

~~(3)~~(4) The ~~Vermont seed capital~~ fund, within 120 days after the close of each fiscal year of its operations, shall issue a report that includes an audited financial statement certified by an independent certified public accountant. The report also shall include a compilation of the firm data required by subsection (d) of this section. These data shall be reported in a manner that does not disclose competitive or proprietary information, as determined by the authority. This report shall be distributed to the governor and the ~~legislative council~~ senate committee on economic development, housing and general affairs and the house committee on commerce and economic development and made available to the public. The report shall include a discussion of the fund's impact on the Vermont economy and employment.

~~(4)~~(5) The ~~Vermont seed capital~~ fund shall not make distributions of more than 75 percent of its net profit to its investors during its first five years of operation.

~~(5)~~(6) No person shall be allocated more than ~~10~~ 20 percent of the available tax credits. For the purposes of determining allocation, the attribution rules of Section 318 of the Internal Revenue Code in effect as of the effective date of this chapter shall apply.

~~(6)~~(7) The capitalization of the fund is not limited under this section; however, only the first ~~$5~~ $10 million ~~of capitalization of the Vermont seed capital fund~~ raised from Vermont taxpayers on or before January 1, ~~2014~~ 2020, shall be eligible for partial tax credits as specified in 32 V.S.A. § 5830b.

~~(7)~~(8) All investments and related business dealings using funds that qualify for partial tax credits under 32 V.S.A. § 5830b shall be subject to the following restrictions:

(A) The investments shall be restricted to Vermont firms, which for the purposes of this chapter means that their Vermont apportionment equals or exceeds 50 percent, using the apportionment rules under 32 V.S.A. § 5833, and they maintain headquarters and a principal facility in Vermont. Any funds invested in Vermont firms shall be used for the purpose of enhancing their Vermont ~~investments~~ operations. Investment shall be restricted to firms that export the majority of their products and services outside the state or add substantial value to products and materials within the state. In its investments, the fund shall give priority to new firms and existing firms that are developing new products, and shall take into consideration any impact on in-state

competition and also whether the investment will encourage economic activity that would not occur but for the fund investment.

(B) Each ~~Vermont seed capital~~ fund investment in any one firm, in any 12-month period shall be limited to a maximum of ten percent of the ~~Vermont seed capital~~ fund's capitalization and, for the life of the fund, to a maximum of 20 percent of the fund's total capitalization.

(C) At least two-thirds of the monies invested by the ~~Vermont seed capital~~ fund and qualifying for a tax credit under 32 V.S.A. § 5830b shall at all times be invested in the form of equity or convertible securities~~. This provision shall not prohibit~~ unless the fund manager determines it is reasonable and necessary to pursue temporarily the generally accepted business practice of earning interest on working funds deposited in relatively secure accounts such as savings and money market funds.

(c) Any firm receiving monies from the fund must report to the fund manager the following information regarding its activities in the state over the calendar year in which the investment occurred:

(1) The total amount of private investment received.

(2) The total number of persons employed as of December 31.

(3) The total number of jobs created and retained, which also shall indicate for each job the corresponding job classification, hourly wage and benefits, and whether it is part-time or full-time.

(4) Total annual payroll.

(5) Total sales revenue.

(d) The authority, in consultation with the fund manager, shall establish reasonable standards and procedures for evaluating potential recipients of fund monies. The authority shall make available to the general public a report of all firms that receive fund investments and also indicate the date of the investment, the amount of the investment, and a description of the firm's intended use of the investment. This report shall be updated at least quarterly.

(e) Information and materials submitted by a business receiving monies from the fund shall be available to the auditor of accounts in connection with the performance of duties under 32 V.S.A. § 163; provided, however, that the auditor of accounts shall not disclose, directly or indirectly, to any person any proprietary business information.

(f) In fiscal year 2010 and again in fiscal year 2011, in two installments of $4,000,000.00, an aggregate of $8,000,000.00 shall be appropriated from the state fiscal stabilization funds available under the American Recovery and

Reinvestment Act of 2009, Pub.L. No. 111-5, to the entrepreneurs' seed capital fund for investment in eligible Vermont firms pursuant to this section. In fiscal year 2010, of the $4,000,000.00 appropriated in this subsection, $250,000.00 shall be transferred to the Vermont sustainable jobs fund program established in 10 V.S.A. § 328 to be used solely for start-up capital in the sustainable jobs fund's flexible capital fund program.

Sec. 22. REPEAL

10 V.S.A. § 292 (providing for the initial organization of the Vermont seed capital fund) is repealed.

Sec. 23. 32 V.S.A. § 5830b is amended to read:

§ 5830b. TAX CREDITS; ~~VERMONT~~ ENTREPRENEURS' SEED CAPITAL FUND

(a) The initial capitalization of the Vermont entrepreneurs' seed capital fund ~~comprising a maximum $5~~, as established in 10 V.S.A. § 291, up to $10 million raised from Vermont taxpayers on or before January 1, ~~2014~~ 2020, shall entitle those taxpayers to a credit against the tax imposed by sections 5822, 5832, 5836, or 8551 of this title and by 8 V.S.A. § 6014. The credit may be claimed for the taxable year in which a contribution is made and each of the four succeeding taxable years. The amount of the credit for each year shall be the lesser of ~~four~~ ten percent of the taxpayer's contribution or 50 percent of the taxpayer's tax liability for that taxable year prior to the allowance of this credit; provided, however, that in no event shall the aggregate credit allowable under this section for all taxable years exceed ~~20~~ 50 percent of the taxpayer's contribution to the initial ~~$5~~ $10 million capitalization of the ~~Vermont seed capital~~ fund. The credit shall be nontransferable except as provided in subsection (b) of this section.

(b) If the taxpayer disposes of an interest in the ~~Vermont seed capital~~ fund within four years after the date on which the taxpayer acquired that interest, any unused credit attributable to the disposed-of interest is disallowed. This disallowance does not apply in the event of an involuntary transfer of the interest, including a transfer at death to any heir, devisee, legatee, or trustee, or in the event of a transfer without consideration to or in trust for the benefit of the taxpayer or one or more persons related to the taxpayer as spouse, descendant, parent, grandparent, or child.

Sec. 24. 10 V.S.A. chapter 12, subchapter 12 is added to read:

Subchapter 12. Technology Loan Program

§ 280aa. FINDINGS AND PURPOSE

(a) Technology-based companies are a vital source of innovation, employment, and economic growth in Vermont. The continued development and success of this increasingly important sector of Vermont's economy is dependent upon the availability of flexible, risk-based capital. Because the primary assets of technology-based companies sometimes consist almost entirely of intellectual property, such companies frequently do not have access to conventional means of raising capital, such as asset-based bank financing.

(b) To support the growth of technology-based companies and the resultant creation of high-wage employment in Vermont, a technology loan program is established under this subchapter.

§ 280bb. TECHNOLOGY LOAN PROGRAM

There is created a technology (TECH) loan program to be administered by the Vermont economic development authority. The program shall seek to meet the working capital and capital-asset financing needs of technology-based companies. The Vermont economic development authority shall establish such policies and procedures for the program as are necessary to carry out the purposes of this subchapter. The authority's lending criteria shall include consideration of in-state competition and whether a company has made reasonable efforts to secure capital in the private sector.

Sec. 25. TECHNOLOGY LOAN PROGRAM; APPROPRIATION; FEDERAL FUNDS

In fiscal year 2010 and again in fiscal year 2011, in two installments of $900,000.00, a total of $1,800,000.00 shall be appropriated from the state fiscal stabilization funds available under the American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5, to the Vermont economic development authority for use in the technology loan program established in this act.

Sec. 25a. VERMONT JOBS FUND; INTEREST-RATE SUBSIDIES

In fiscal year 2010 and again in fiscal year 2011, in two installments of $900,000.00, a total of $1,800,000.00 shall be appropriated from the state fiscal stabilization funds available under the American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5, to the Vermont economic development authority under section 223 of Title 10 to be used by the authority to provide interest-rate subsidies for the Vermont Jobs Fund.

Sec. 25b. 32 V.S.A. § 5930ee is amended as follows:

§ 5930ee. LIMITATIONS

Beginning in fiscal year ~~2008~~ 2010 and thereafter, the state board may award tax credits to all qualified applicants under this subchapter, provided that:

(1) The total amount of tax credits awarded annually, together with sales tax reallocated under section 9819 of this title, does not exceed ~~$1,600,000.00~~ $1,700,000.00.

Sec. 26. STUDY ON THE VEGI PROGRAM

The VEGI technical working group shall make recommendations to the general assembly regarding the following:

(1) whether the VEGI program should target job creation, in general, and not just the creation of new, high-paying jobs; and

(2) options that are consistent with the integrity of the VEGI cost-benefit model but allow for variation in wage thresholds based on regional prevailing wage rates and unemployment rates.

Sec. 27. [Deleted]

Sec. 28. STUDY ON THE APPLICATION OF VERMONT'S LICENSED-LENDER REQUIREMENTS TO CERTAIN COMMERCIAL LENDING PRACTICES

(a) The commissioner of banking, insurance, securities, and health care administration shall convene a work group to recommend amendments to Vermont's licensed-lender laws, chapter 73 of Title 8, for the purpose of facilitating limited instances of high-risk, secured commercial lending by specialized persons such as venture capital firms, individuals, and partnerships. The work group shall consider proposals such as a limited exemption or an expedited registration process that permits capital investments in and secure commercial loans to technology firms, in a responsible manner.

(b) Members of the work group shall include representatives from the Vermont Bankers Association, the Vermont Bar Association, the department of economic development, the Vermont economic development authority, and the entrepreneurial industry sector of Vermont.

(c) The commissioner shall report the work group's recommendations to the senate committees on economic development, housing and general affairs and on finance and the house committee on commerce and economic development no later than January 1, 2010.

Sec. 29. 21 V.S.A. § 384 is amended to read:

§ 384. PROHIBITION OF EMPLOYMENT

(a) An employer shall not employ an employee at a rate of less than $7.25, and, beginning January 1, 2007, and on each subsequent January 1, the minimum wage rate shall be increased by five percent or the percentage increase of the Consumer Price Index, CPI-U, U.S. city average, not seasonally adjusted, or successor index, as calculated by the U.S. Department of Labor or successor agency for the 12 months preceding the previous September 1, whichever is smaller, but in no event shall the minimum wage be decreased. The minimum wage shall be rounded off to the nearest $0.01. An employer in the hotel, motel, tourist place, and restaurant industry shall not employ a service or tipped employee at a basic wage rate less than $3.65 an hour, and beginning January 1, 2008, and on each January 1 thereafter, this basic tip wage rate shall be increased at the same percentage rate as the minimum wage rate. For the purposes of this subsection, "a service or tipped employee" means an employee of a hotel, motel, tourist place, or restaurant who customarily and regularly receives more than $120.00 per month in tips for direct and personal customer service. If the minimum wage rate established by the United States government is greater than the rate established for Vermont for any year, the minimum wage rate for that year shall be the rate established by the United States government.

(b) Notwithstanding subsection (a) of this section, an employer shall not pay an employee less than one and one-half times the regular wage rate for any work done by the employee in excess of 40 hours during a workweek. However, this subsection shall not apply to:

(1) Employees of any retail or service establishment. A "retail or service establishment" means an establishment 75 percent of whose annual volume of sales of goods or services, or of both, is not for resale and is recognized as retail sales or services in the particular industry.

(2) Employees of an establishment which is an amusement or recreational establishment, if:

(A) it does not operate for more than seven months in any calendar year, or

(B) during the preceding calendar year its average receipts for any six months of that year were not more than one-third of its average receipts for the other six months of the year.

(3) Employees of an establishment which is a hotel, motel, or restaurant.

(4) Employees of hospitals, public health centers, nursing homes, maternity homes, therapeutic community residences, and residential care homes as those terms are defined in Title 18, provided:

(A) the employer pays the employee on a biweekly basis; and

(B) the employer files an election to be governed by this section with the commissioner; and

(C) the employee receives not less than one and one-half times the regular wage rate for any work done by the employee:

(i) in excess of eight hours for any workday; or

(ii) in excess of 80 hours for any biweekly period.

(5) Those employees of a business engaged in the transportation of persons or property to whom the overtime provisions of the Federal Fair Labor Standards Act do not apply, but shall apply to all other employees of such businesses.

(6) Those employees of a political subdivision of this state.

(7) State employees~~,~~ who ~~shall be~~ are covered by the U.S. Federal Fair Labor Standards Act.

(c) However, an employer may deduct from the rates required in subsections (a) and (b) of this section the amounts for board, lodging, apparel, rent, or utilities paid or furnished or other items or services or such other conditions or circumstances as may be usual in a particular employer-employee relationship, including gratuities as determined by the wage order made under this subchapter.

Sec. 29a. AGENCY OF ADMINISTRATION; EMERGENCY RULES; WORKERS' COMPENSATION; STATE CONTRACTS; COMPLIANCE WITH DAVIS-BACON

(a) The agency of administration shall adopt emergency rules to minimize the incidents of miscoding of employees in NCCI job codes and misclassification of the status of works as independent contractors rather than employees by state contractors on projects with a total project cost of more than $250,000.00 by requiring those contractors to provide all the following:

(1) Detailed information including information relating to past violations, convictions, suspensions, and any other information required by the department. This information shall be included with the project bid.

(2) A list of subcontractors on the job along with lists of the subcontractor's subcontractors.

(3) A payroll process by which during every pay period the contractor collects from the subcontractors or independent contractors a list of all workers who were on the jobsite during the pay period, the work performed by those workers on the jobsite, and a daily census of the jobsite. This information and similar information for the subcontractors regarding their subcontractors shall also be provided to the department of labor and to the department of banking, insurance, securities, and health care administration, upon request.

(4) Any rules adopted to minimize instances of misclassification through enhanced reporting and greater transparency shall not be unduly burdensome on small businesses and may be flexibly designed to account for the size of the contractor and subcontractor.

(b) The agency shall require that any contractor that violates classification requirements shall be prohibited from bidding on future state contracts for a period of time that corresponds to the seriousness of the classification violation.

(c) The agency shall assure that any state contract funded in whole or in part with American Recovery and Reinvestment Act of 2009 monies shall comply with the payment of prevailing wages as required by the Davis-Bacon Act. In the event Davis-Bacon wages in any county have not been updated in the previous three years, the applicable Davis-Bacon wage for a state contract shall be that of the Vermont county that has most recently updated its Davis-Bacon wages, where not in contravention with federal requirements.

Sec. 30. ARRA AND UNEMPLOYMENT INSURANCE

(a) The American Recovery and Investment Act of 2009 (ARRA), Pub.L. No. 111-5, authorizes the federal government to transfer up to $13,918,000.00 into Vermont's unemployment insurance (UI) trust fund for UI modernization incentive payments.

(b) Vermont already qualifies for one-third of its allotted incentive payments because the state allows for the use of an alternative base period in determining UI eligibility. In order to qualify for the remaining two-thirds of its allotted incentive payments, Vermont's UI program must meet two of four expanded-coverage requirements.

(c) The state already meets one expanded-coverage requirement: namely, coverage of part-time workers. It is the intent of the general assembly to adopt one additional expanded-coverage requirement, namely the training program specified in Sec. 31 of this act, and to apply to the secretary of the United States Department of Labor for certification of UI modernization so that the state may receive its remaining allotment of incentive payments.

Sec. 31. 21 V.S.A. § 1423b is added to read:

§ 1423b. EXTENDED BENEFITS; APPROVED TRAINING PROGRAMS

(a) An individual who is otherwise eligible for benefits under this chapter, but who has exhausted his or her maximum benefit amount under section 1340 of this chapter shall be entitled to an additional 26 weeks of benefits in the same amount as the weekly benefit amount established in the individual's most recent benefit year if the individual is enrolled in and making satisfactory process in a state-approved training program as defined in subsection (b) of this section.

(b) A state-approved training program is any training program or job training program that meets all of the following criteria:

(1) It is authorized by the Workforce Investment Act of 1998.

(2) It is designed to assist individuals who have been separated from a declining occupation or who have been involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the individual's place of employment.

(3) It is designed to train the individual for entry into a high-demand occupation.

Sec. 32. 10 V.S.A. chapter 15A § 330 is added to read:

§ 330. THE FARM-TO-PLATE INVESTMENT PROGRAM; CREATION; GOALS; TASKS; METHODS

(a) Creation.

(1) The sustainable jobs fund program shall establish the Vermont farm-to-plate investment program to fulfill the goals and carry out the tasks described in this section.

(2) If at least $100,000.00 in funding is not made available for the purpose of this section, the sustainable jobs fund program is encouraged but no longer required to fulfill the provisions of this section.

(b) Goals. The goals of the farm-to-plate investment program are to:

(1) Increase economic development in Vermont's food and farm sector.

(2) Create jobs in the food and farm economy.

(3) Improve access to healthy local foods.

(c) Tasks.

(1) By June 30, 2010, the Vermont farm-to-plate investment program shall create a strategic plan for agricultural economic development, which may be periodically reviewed and updated, based upon the following:

(A) Inventory Vermont's food system infrastructure by gathering existing data, studies, and analysis about the components of Vermont's food system, including:

(i) The types of foods produced in Vermont, the number of producers of each type of food, the amount of each type of food produced, and the financial viability of each food-producing sector.

(ii) The types of food processors in Vermont, how much food produced in Vermont is purchased by Vermont processors, and the financial viability of the food processing sector in Vermont.

(iii) The current and potential markets in which Vermont food producers and processors can sell their products.

(iv) The extent of existing agricultural lands that could be expanded and the resources available to expand Vermont's food production.

(v) The potential for new farmers and food processors to enter the local food economy, the methods for new farmers to acquire land and other farm infrastructure, and the availability and barriers to farm and processing labor.

(vi) The potential for entirely new local products and the barriers to farmers and processors entering new markets.

(B) Identify gaps in the infrastructure and distribution systems and identify ways to address these gaps.

(2) By June 30, 2010, the Vermont farm-to-plate investment program shall distribute grant funding to support farm-to-table direct marketing, including farmers' markets and community-supported agriculture operations and to support regional community food hubs. Funding shall be provided only to applicants contributing at least 200 percent of the grant amount in matching funds.

(3) As an ongoing task, the farm-to-plate investment program shall use the information gathered for the strategic plan to identify methods and the funding necessary to strengthen the links among producers, processors, and markets including:

(A) Support of the work of existing farm-to-school programs to increase the purchase of local foods by Vermont schools, with a particular emphasis on procurement of nutrient-dense animal foods.

(B) Collaborating with the agency of agriculture, food and markets and the department of buildings and general services to increase procurement of local foods in accordance with 6 V.S.A. § 4601.

(C) Collaborating with the agency of agriculture, food and markets and the sustainable agriculture council to increase procurement of local foods by businesses and institutions.

(D) Supporting initiatives that improve direct marketing of foods from the farm to the consumer.

(E) Informing agricultural lenders of the information collected under subsection (c)(1) of this section in order to facilitate availability of agricultural financing.

(d) Methods. To accomplish the goals and carry out the ongoing tasks stated in this section, the Vermont farm-to-plate investment program may:

(1) Create an advisory panel with representatives from the agricultural and business communities.

(2) Hire or assign staff.

(3) Seek and accept funds from private and public entities.

(4) Utilize technical assistance, loans, grants, or other means approved by the board.

(e) In fiscal year 2010, the amount of $100,000.00 shall be appropriated from the state fiscal stabilization funds available under the American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5, to the Vermont sustainable jobs fund program established in 10 V.S.A. § 328 to be used solely for the farm-to-plate investment program established under this section.

Sec. 33. 10 V.S.A. § 329 is amended to read:

§ 329. ANNUAL REPORT

Prior to January 31 of each year, the corporation formed under section 328 of this title shall submit a report concerning its activities to the governor and the legislative committees on commerce, general affairs, natural resources, ways and means, finance, institutions, and appropriations. The report shall include the following information:

* * *

(5) A summary of work completed in the farm-to-plate investment program, including progress toward meeting the program goals, information regarding any advisory panel meetings, an accounting of all revenues and

expenses related to the program, and recommendations regarding future program activity. The report shall also include information regarding the status of state government procurement of local foods.

Sec. 34. 24 V.S.A. § 1898(b) is amended to read:

(b) A municipality shall have power to issue from time to time general obligation ~~and~~ bonds, revenue bonds ~~from time to time~~, or revenue bonds also backed by the municipality's full faith and credit in its discretion to finance the undertaking of any improvements wholly or partly within such district. If revenue bonds are issued, such bonds shall be made payable, as to both principal and interest, solely from the income proceeds, revenues, tax increments and funds of the municipality derived from, or held in connection with its undertaking and carrying out of improvements under this chapter. So long as any such bonds of a municipality are outstanding the local governing body may deduct, in any one or more years from any net increase in the aggregate taxable valuation of land and improvements in all areas covered by their district the amount necessary to produce tax revenues equal to the current debt service on such bonds, assuming the previous year's total tax rate and full collection. Only the balance, if any, of such net increase shall be taken into account in computing the sums which may be appropriated for other purposes under applicable tax rate limits. But all the taxable property in all areas covered by the district, including the whole of such net increase, shall be subject to the same total tax rate as other taxable property, except as may be otherwise provided by law. Such net increase shall be computed each year by subtracting, from the current aggregate valuation of the land and improvements in all areas covered by the district, the sum of the aggregate valuations of land and improvements in each such area on the date the district was approved under this section. An area shall be deemed to be covered as a district until the date all the indebtedness incurred by the municipality to finance the applicable improvements have been paid. Notwithstanding any provisions in this chapter to the contrary, any provision of a municipal charter of any municipality which specifies a different debt limit, or which requires a greater vote to authorize bonds, or which prescribes a different computation of appropriations under tax rate limits, or which is otherwise inconsistent with this subsection, shall apply.

Sec. 34a. FINDINGS

The general assembly finds and declares that:

(1) The generation of renewable power within Vermont is critical to the economic development, energy independence, and financial security of the state.

(2) Section 401 of the federal Clean Water Act, 33 U.S.C. § 1341, requires any applicant for a federal permit that may involve a discharge to

navigable waters to obtain certification from the state that the permitted activity does not violate the state's water quality standards.

(3) As set forth in 10 V.S.A. § 1004, the secretary of natural resources is the agent that the U.S. Environmental Protection Agency delegated to conduct Clean Water Act § 401 certifications in the state of Vermont.

(4) The secretary of natural resources should be required to adopt procedures establishing an application process for certification of hydroelectric projects in a timely manner that allows for the predictable and affordable development of small-scale hydroelectric power projects.

Sec. 34b. 10 V.S.A. § 1006 is added to read:

§ 1006. CERTIFICATION OF HYDROELECTRIC PROJECTS; APPLICATION PROCESS

(a) As used in this section:

(1) "Bypass reach" means that area in a waterway between the initial point where water has been diverted through turbines or other mechanical means for the purpose of water-powered generation of electricity and the point at which water is released into the waterway below the turbines or other mechanical means of electricity generation.

(2) "Conduit" means any tunnel, canal, pipeline, aqueduct, flume, ditch, or similar constructed water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.

(3) "Hydroelectric project" means a facility, site, or conduit planned or operated for the generation of water-powered electricity that has a generation capacity of no more than 1 megawatt and does not create a new impoundment.

(4) "Impoundment" means any artificial structure used to collect water in a pond, reservoir, or similar collection area for the purpose of water-powered generation of electricity.

(b) On or before December 15, 2009, the agency of natural resources, after opportunity for public review and comment, shall adopt by procedure an application process for the certification of hydroelectric projects in Vermont under Section 401 of the federal Clean Water Act.

(c) The application process adopted by the agency of natural resources under subsection (b) of this section may include an application form for a federal Clean Water Act Section 401 certification for a hydroelectric project that meets the requirements of the Vermont water pollution control permit rules. The application form may require information addressing:

(1) a description of the proposed hydroelectric project and the impact of the project on the watershed;

(2) the preliminary terms and conditions that an applicant shall be subject to if a federal Clean Water Act Section 401 certification is issued for a proposed hydroelectric project; and

(3) time frames for the agency of natural resources review of and response to an application for a federal Clean Water Act Section 401 certification of a hydroelectric project.

(d) In adopting the Clean Water Act Section 401 certification application process required by subsection (b) of this section, the agency may, consistent with its authority to waive certifications under 33 U.S.C. § 1341(a)(1), adopt an expedited certification process for:

(1) hydroelectric projects when data provided by an applicant provide reasonable assurance that the project will comply with the state water quality standards;

(2) hydroelectric projects utilizing conduits; hydroelectric projects without a bypass reach; and hydroelectric projects with a de minimis bypass reach, as defined by the agency of natural resources; and

(3) Previously certified hydroelectric projects operating in compliance with the terms of a Clean Water Act Section 401 certification as demonstrated by existing administrative, monitoring, reporting, or enforcement data.

Sec. 34c. AGENCY OF NATURAL RESOURCES REPORT ON APPLICATION PROCESS FOR CERTIFICATIONS OF HYDROELECTRIC PROJECTS

On or before January 15, 2010, the agency of natural resources shall submit to the senate committee on economic development, housing and general affairs, the house committee on commerce and economic development, the house committee on fish, wildlife and water resources, and the house and senate committees on natural resources and energy a copy of the application process required under 10 V.S.A. § 1006 for the certification of hydroelectric projects.

Sec. 34d. EXTENSION OF SUNSET

Sec. 10 of No. 140 of the Acts of the 2003 Adj. Sess. (2004), as amended by Sec. 8 of No. 154 of the Acts of the 2005 Adj. Sess. (2006), as amended by Sec. 3 of No. 43 of the Acts of 2007, is further amended to read:

Sec. 10. SUNSET

(a) Sec. 2 of this act (interim permitting authority for regulated stormwater runoff), except for subsection 1264a(e) of Title 10, shall be repealed on January 15, ~~2010~~ 2012.

(b) Sec. 4 of this act (local communities implementation fund) shall be repealed on September 30, 2012.

(c) Sec. 6 of this act (stormwater discharge permits during transition period) shall be repealed on January 15, ~~2010~~ 2012.

Sec. 34e. 24 V.S.A. § 4758 is amended to read:

§ 4758. LOAN PRIORITIES

(a) Periodically, and at least annually, the secretary shall prepare and certify to the bond bank a project priority list of those municipalities whose publicly owned projects, or privately owned wastewater systems, are eligible for financing or assistance under this chapter. In determining financing availability for wastewater projects under this chapter, the secretary of the agency having jurisdiction shall apply the following criteria:

(1) the probable public benefit to be gained or preserved by the project to be financed;

(2) the long-term costs and the resulting benefits to be derived from the project. In determining benefits, induced growth from a project that is not consistent with a town, city, or village plan, duly adopted under chapter 117 of this title, will not be considered;

(3) the cost of comparable credit or financing alternatives available to the municipality;

(4) the existence of immediate public health, safety and welfare factors, and compliance therewith;

(5) the existence of an emergency constituting a threat to public health, safety and welfare; and

(6) the current area and population to be served by the proposed project.

(b) In determining financing availability for stormwater projects under this chapter, the secretary of the agency having jurisdiction shall apply the following criteria:

(1) that the project is specifically or generally described in Vermont's nonpoint source management plan;

(2) that the project will remedy or prevent the impairment of waters, and the severity of that existing or prevented impairment; and

(3) that the project is consistent with the applicable basin plan for the waters affected by the project.

(c) In determining financing availability for projects funded by federal monies available to the state from the American Recovery and Reinvestment Act (ARRA) of 2009, Pub.L. No. 111-5, the secretary shall assure that municipal stormwater projects in the stormwater-impaired waters of the state shall be given priority over other projects.

Sec. 34f. SUNSET OF PRIORITY FOR STORMWATER PROJECTS UNDER STATE ENVIRONMENTAL REVOLVING FUND

24 V.S.A. § 4758(c) (state environmental revolving fund financing priority for stormwater projects in impaired waters) is repealed January 15, 2012.

Sec. 34g. ALTERNATIVE GUIDANCE FOR STORMWATER PERMITTING; WIND FACILITIES

To facilitate responsible development of renewable energy projects in high-elevation settings, the Vermont department of environmental conservation shall consult with project developers and interested stakeholders and, by January 15, 2010 or in the process currently under way to update the Vermont stormwater management manual, whichever occurs first, amend its rules or the stormwater management manual, pursuant to chapter 25 of Title 3, to include alternative guidance for operational-phase stormwater permitting of renewable energy projects located in high-elevation settings. Such alternative guidance shall include consideration of measures that minimize the extent and footprint of stormwater-treatment practices so as to preserve vegetation and trees and limit disturbances; that reflect the fragile ecosystems, shallow soils, and sensitive streams found in high-elevation settings; and that reflect the temporary nature and infrequent use of construction and access roads to such projects.

Sec. 34h. 30 V.S.A. § 248a is amended to read:

§ 248a. CERTIFICATE OF PUBLIC GOOD FOR ~~MULTIPLE~~ COMMUNICATIONS FACILITIES

(a) Notwithstanding any other provision of law, if the applicant ~~in a single application~~ seeks approval for the construction or installation ~~within three years~~ of ~~three or more~~ telecommunications facilities ~~as part of an interconnected network~~ that are to be interconnected with other telecommunications facilities proposed or already in existence, the applicant may obtain a certificate of public good issued by the public service board

under this section, which the board may grant if it finds that the facilities will promote the general good of the state consistent with subsection 202c(b) of this title. A single application may seek approval of one or more telecommunications facilities.

(b) For the purposes of this section:

(1) "Telecommunications facility" means ~~any~~ a communications facility that transmits and receives signals to and from a local, state, national, or international network used primarily for two-way communications for commercial, industrial, municipal, county, or state purposes and any associated support structure ~~extending more than 50 feet above the ground~~ that is proposed for construction or installation which is primarily for communications purposes ~~and which supports facilities that transmit and receive communications signals for commercial, industrial, municipal, county, or state purposes~~, and any ancillary improvements that are proposed for construction or installation and are primarily intended to serve the communications facilities or support structure.

(2) ~~Telecommunications facilities are "part of an interconnected network" if those facilities would allow one or more communications services to be provided throughout a contiguous area of coverage created by means of the proposed facilities or by means of the proposed facilities in combination with other facilities already in existence~~ An applicant may seek approval of construction or installation of a telecommunications facility whether or not the telecommunications facility is attached to an existing structure.

(c) Before the public service board issues a certificate of public good under this section, it shall find that~~, in the aggregate~~:

(1) ~~the~~ The proposed ~~facilities~~ facility will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, and the public health and safety, with due consideration having been given to the relevant criteria specified in subsection 1424a(d) and subdivisions 6086(a)(1) through (8) and (9)(K) of Title 10~~; and~~.

(2) ~~unless~~ Unless there is good cause to find otherwise, substantial deference has been given to the land conservation measures in the plans of the affected municipalities and the recommendations of the municipal legislative bodies and the municipal and regional planning commissions regarding the municipal and regional plans, respectively.

(d) When issuing a certificate of public good under this section, the board shall give ~~due consideration~~ substantial deference to all conditions in an existing state or local permit and shall harmonize the conditions in the

certificate of public good with the existing permit conditions to the extent feasible.

(e) No less than 45 days prior to filing a petition for a certificate of public good under this section, the applicant shall serve written notice of an application to be filed with the board pursuant to this section to the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities; the secretary of the agency of natural resources; the commissioner of the department of public service and its director for public advocacy; and the landowners of record of property adjoining the project sites. In addition, at least one copy of each application shall be filed with each of these municipal and regional planning commissions. Upon motion or otherwise, the public service board shall direct that further public or personal notice be provided if the board finds that such further notice will not unduly delay consideration of the merits and that additional notice is necessary for fair consideration of the application.

(f) Unless the public service board identifies that an application raises a ~~substantial~~ significant issue, the board shall issue a final determination on an application filed pursuant to this section within 90 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 90 days of the date on which the clerk of the board notifies the applicant that the filing is complete. If the board rules that an application raises a ~~substantial~~ significant issue, it shall issue a final determination on an application filed pursuant to this section within 180 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 180 days of the date on which the clerk of the board notifies the applicant that the filing is complete.

(g) Nothing in this section shall be construed to prohibit an applicant from executing a letter of intent or entering into a contract before the issuance of a certificate of public good under this section, provided that the obligations under that letter of intent or contract are made subject to compliance with the requirements of this section.

(h) An applicant using the procedures provided in this section shall not be required to obtain a ~~local zoning~~ permit or a permit amendment or other approval under the provisions of chapter 117 of Title 24 or chapter 151 of Title 10 for the facilities subject to the application or to a certificate of public good issued pursuant to this section. Ordinances adopted pursuant to subdivision 2291(19) of Title 24 or a municipal charter that would otherwise apply to the construction or installation of facilities subject to this section are preempted. Disputes over jurisdiction under this section shall be resolved by the public service board, subject to appeal as provided by section 12 of this

title. An applicant that has obtained or been denied a permit or permit amendment under the provisions of Title 24 or chapter 151 of Title 10 for the construction of a telecommunications facility may not apply for approval from the board for the same or substantially the same facility, except that an applicant may seek approval for a modification to such a facility.

(i) Effective July 1, ~~2010~~ 2011, no new applications for certificates of public good under this section may be considered by the board.

(j)(1) The board may, subject to such conditions as it may otherwise lawfully impose, issue a certificate of public good in accordance with the provisions of this subsection and without the notice and hearings required by any provision other than subdivision (2) of this subsection if the board finds that such facilities will be of limited size and scope, and the petition does not raise a significant issue with respect to the substantive criteria of this section. If an applicant requests approval of multiple telecommunications facilities in a single application under this section, the board may issue a certificate of public good in accordance with the provisions of this subsection for all or some of the telecommunications facilities described in the petition.

(2)(A) Any party seeking to proceed under the procedures authorized by this subsection shall file a proposed certificate of public good and proposed findings of fact with its petition, and provide notice and a copy of the petition, proposed certificate of public good, and proposed findings of fact to the commissioner of the department of public service and its director for public advocacy, the secretary of the agency of natural resources, and each of the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities. The applicant shall give written notice of the proposed certificate to the landowners of record of property adjoining the project site or sites unless the board has previously determined on request of the applicant that good cause exists to waive or modify the notice requirement with respect to such landowners. Such notice shall request comment to the board within 21 days of the notice on the question of whether the petition raises a significant issue with respect to the substantive criteria of this section. If the board finds that a petition raises a significant issue with respect to the substantive criteria of this section, the board shall hear evidence on any such issue.

(B) Any waiver or modification of notice to adjoining landowners under this subsection shall be based on a determination that the landowners subject to the waiver or modification could not reasonably be affected by one or more of the proposed facilities, and that notice to such landowners would constitute a significant administrative burden without corresponding public benefit.

(C) If the board accepts a request to consider an application under the procedures of this subsection, then unless the public service board subsequently determines that an application raises a significant issue, the board shall issue a final determination on an application filed pursuant to this subsection within 45 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 45 days of the date on which the clerk of the board notifies the applicant that the filing is complete. If, subsequent to acceptance of an application under this subsection, the board rules that an application raises a significant issue, it shall issue a final determination on an application filed pursuant to this subsection within 90 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 90 days of the date on which the clerk of the board notifies the applicant that the filing is complete.

(D) If the board denies a request to consider an application under the procedures of this subsection, a filing made under this subsection that the board has found to be complete shall be deemed to satisfy notice requirements of subsection (e) of this section, and the periods stated under subsection (f) of this section shall run from the date of the board's denial of such request.

(k) The public service board may issue rules or orders implementing and interpreting this section. In developing such rules and orders, the board shall seek to simplify the application and review process as appropriate, consistently with the requirements of this section.

Sec. 34i. 24 V.S.A. § 4412(8)(C) is amended to read:

(C) The regulation ~~of antennae that are part~~ of a telecommunications facility, as defined in 30 V.S.A. § 248a, shall be exempt from municipal ~~bylaw review~~ approval under this chapter when and to the extent jurisdiction is assumed by the public service board according to the provisions of that section.

Sec. 34j. 10 V.S.A. § 6027 is amended to read:

§ 6027. POWERS

* * *

(l) A district commission may reject an application under this chapter that misrepresents any material fact and may after notice and opportunity for hearing award reasonable attorney's fees and costs to any party or person who may have become a party but for the false or misleading information or who has incurred attorney's fees or costs in connection with the application.

Sec. 34k. 24 V.S.A. § 4455 is added to read:

§ 4455. REVOCATION

On petition by the municipality and after notice and opportunity for hearing, the environmental court may revoke a municipal land use permit issued under this chapter, including a permit for a telecommunications facility, on a determination that the permittee violated the terms of the permit or obtained the permit based on misrepresentation of material fact.

Sec. 34l. 24 V.S.A. § 4470a is added to read:

§ 4470a. MISREPRESENTATION; MATERIAL FACT

An administrative officer or appropriate municipal panel may reject an application under this chapter, including an application for a telecommunications facility, that misrepresents any material fact. After notice and opportunity for hearing in compliance with section 809 of Title 3, an appropriate municipal panel may award reasonable attorney's fees and costs to any party or person who may have become a party but for the false or misleading information or who has incurred attorney's fees or costs in connection with the application.

Sec. 34m. 30 V.S.A. § 202c is amended to read:

§ 202c. STATE TELECOMMUNICATIONS; POLICY AND PLANNING

(a) The general assembly finds that advances in telecommunications technology and changes in federal regulatory policy are rapidly reshaping telecommunications services, thereby promising the people and businesses of the state improved communication and access to information, while creating new challenges for maintaining a robust, modern telecommunications network in Vermont.

(b) Therefore, to direct the benefits of improved telecommunications technology to all Vermonters, it is the purpose of this section and section 202d of this title to:

(1) Strengthen the state's role in telecommunications planning.

(2) Support the universal availability of appropriate infrastructure and affordable services for transmitting voice and high-speed data.

(3) Support the availability of modern mobile wireless telecommunications services along the state's travel corridors and in the state's communities.

(4) Provide for high-quality, reliable telecommunications services for Vermont businesses and residents.

(5) Provide the benefits of future advances in telecommunications technologies to Vermont residents and businesses.

(6) Support competitive choice for consumers among telecommunications service providers.

(7) Support the application of telecommunications technology to maintain and improve governmental and public services, public safety, and the economic development of the state.

(8) Support, to the extent practical and cost-effective, deployment of broadband infrastructure that:

(A) Uses the best commercially available technology.

(B) Does not negatively affect the ability of Vermont to take advantage of future improvements in broadband technology or result in widespread installation of technology that becomes outmoded within a short period after installation.

Sec. 34n. 30 V.S.A. § 8060 is amended to read:

§ 8060. LEGISLATIVE FINDINGS AND PURPOSE

(a) The general assembly finds that:

(1) The availability of mobile telecommunications and broadband services is essential for promoting the economic development of the state, the education of its young people and life-long learning, the delivery of cost-effective health care, the public safety, and the ability of citizens to participate fully in society and civic life.

(2) Private entities have brought mobile telecommunications and broadband services to many households, businesses and locations in the state, but significant gaps remain.

(3) A new level of creative and innovative strategies (including partnerships and collaborations among and between state entities, nonprofit organizations, municipalities, the federal government, and the private sector) is necessary to extend and complete broadband coverage in the state, and to ensure that Vermont maintains a telecommunications infrastructure that allows residents and businesses to compete fairly in the national and global economy.

(4) When such partnerships and collaborations fail to achieve the goal of providing high-quality broadband access and service to all areas and households, or when some areas of the state fall behind significantly in the variety and quality of services readily available in the state, it is necessary for an authority of the state to support and facilitate the construction of

infrastructure and access to broadband service through financial and other incentives.

(5) Small broadband enterprises now offering broadband service in Vermont have limited access to financial capital necessary for expansion of broadband service to unserved areas of the state. The general assembly recognizes these locally based broadband providers for their contributions to date in providing broadband service to unserved areas despite the limitations on their financial resources.

(6) The universal availability of adequate mobile telecommunications and broadband services promotes the general good of the state.

(7) Vermonters should be served by broadband infrastructure that, to the extent practical and cost-effective, uses the best commercially available technology and does not involve widespread installation of technology that becomes outmoded within a short period after installation.

(b) Therefore, it is the goal of the general assembly to ensure:

(1) that all residences and business in all regions of the state have access to affordable broadband services not later than the end of the year 2010~~:~~, and that this goal be achieved in a manner that, to the extent practical and cost-effective, does not negatively affect the future installation of the best commercially available broadband technology or result in widespread installation of technology that becomes outmoded within a short period after installation.

(2) the ubiquitous availability of mobile telecommunication services including voice and high-speed data throughout the state by the end of the year 2010.

(3) the investment in telecommunications infrastructure in the state which will support the best available and economically feasible service capabilities.

(4) that telecommunications and broadband infrastructure in all areas of the state is continuously upgraded to reflect the rapid evolution in the capabilities of available mobile telecommunications and broadband technologies, and in the capabilities of mobile telecommunications and broadband services needed by persons, businesses, and institutions in the state.

(5) the most efficient use of both public and private resources through state policies by encouraging the development of open access telecommunications infrastructure that can be shared by multiple service providers.

Sec. 34o. 30 V.S.A. § 8077 is amended to read:

§ 8077. ESTABLISHMENT OF MINIMUM TECHNICAL SERVICE CHARACTERISTIC OBJECTIVES

(a) The department of public service~~,~~ shall, as part of the state telecommunications plan prepared pursuant to section 202d of this title, identify minimum technical service characteristics which ought to be available as part of broadband services commonly sold to residential and small business users throughout the state. For the purposes of this chapter, "broadband" means high speed internet access. The department shall consider the performance characteristics of broadband services needed to support current and emerging applications of broadband services. The department shall review and update the minimum characteristics established under this section no less than every three years starting in 2009. In the event such review is conducted separately from an update of the state telecommunications plan pursuant to subsection 202d(f) of this title, the department shall issue revised minimum characteristics as an amendment to the plan.

(b) The authority shall give priority in its activities toward projects which expand the availability of broadband services that meet the minimum technical services characteristics established by the state telecommunications plan.

(c) Until the department of public service adopts ~~a revision to the state telecommunications plan~~ minimum service characteristics under subsection (a) of this section, the authority shall give priority to the expansion of broadband services which deploy equipment capable of a data transmission rate of not less than three megabits per second and offer a service plan with a data transmission rate of not less than 1.5 megabits per second in at least one direction to unserved areas.

Sec. 34p. 10 V.S.A. § 6001(3)(D) is amended to read:

(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.

(ii) The construction of improvements for an electric generation or transmission facility that requires a certificate of public good under ~~section~~ 30 V.S.A. § 248 ~~or~~, a natural gas facility as defined in ~~subdivision~~ 30 V.S.A. § 248(a)(3), or a telecommunications facility issued a certificate of public good under 30 V.S.A. § 248a.

(iii) [Repealed.]

(iv) The construction of improvements for agricultural fairs that are open to the public for 60 days per year, or fewer, provided that any improvements constructed do not include one or more buildings.

(v) The construction of improvements for the exhibition or showing of equines at events that are open to the public for 60 days per year, or fewer, provided that any improvements constructed do not include one or more buildings.

(vi) The construction of improvements for any one of the following:

(I) A remedial or removal action for which the secretary of natural resources has authorized disbursement under section 1283 of this title.

(II) Abating a release or threatened release, as directed by the secretary of natural resources under section 6615 of this title.

(III) A remedial or removal action directed by the secretary of natural resources under section 6615 of this title.

(IV) A corrective action authorized in a corrective action plan approved by the secretary of natural resources under section 6615b of this title.

(V) A corrective action authorized in a corrective action plan approved by the secretary of natural resources under subchapter 3 of chapter 159 of this title.

Sec. 34q. 10 V.S.A. § 6081(d) is amended to read:

(d) For purposes of this section, the following construction of improvements to preexisting municipal, county, or state projects shall not be considered to be substantial changes~~, regardless of the acreage involved,~~ and shall not require a permit as provided under subsection (a) of this section:

(1) ~~essential~~ municipal, county, or state wastewater treatment facility enhancements that do not expand the capacity of the facility by more than ~~10~~ 25 percent, excluding the extension of a wastewater collection system or an expansion of the service-area boundaries of a wastewater treatment facility.

(2) ~~essential~~ municipal ~~waterworks~~, county, or state water supply enhancements that do not expand the capacity of the facility by more than ~~10~~ 25 percent.

(3) ~~essential~~ public school reconstruction or expansion that does not expand the student capacity of the school by more than ~~10~~ 25 percent.

(4) ~~essential~~ municipal, county, or state building renovations or reconstruction ~~or expansion~~ that does not expand the floor space of the building by more than ~~10~~ 25 percent.

(5) construction of improvements to preexisting municipal, county, or state roads and bridges, provided such construction receives funding through the federal American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5.

Sec. 34r. SUNSET

Effective July 1, 2011, each occurrence of "25" in 10 V.S.A. § 6081(d) and (e) is amended to "10". Also effective July 1, 2011, 10 V.S.A. § 6086(d)(5) (exemption for ARRA-funded road and bridge improvements) shall cease to be effective. However, the construction of improvements commenced prior to July 1, 2011 shall not require a permit by operation of this section if such construction was exempt under Sec. 34q of this act.

Sec. 34s. PERMIT EXPEDITING; FEDERAL STIMULUS

Notwithstanding any other provision of law, an application for a state or local permit or other approval pertaining to a project that will receive all or part of its funding through the federal American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5 may be given priority over any other pending application.

Sec. 34t. [Deleted]

Sec. 34u. 10 V.S.A. § 6523 is hereby amended to read:

§ 6523. VERMONT CLEAN ENERGY DEVELOPMENT FUND

* * *

(b) Definitions. For purposes of this section, the following definitions shall apply:

* * *

(4) "Emerging energy-efficient technologies" means technologies that are both precommercial but near commercialization and that have already entered the market but have less than five percent of current market share; that use less energy than existing technologies and practices to produce the same product or otherwise conserve energy and resources, regardless of whether or not they are connected to the grid; and that have additional non-energy benefits such as reduced environmental impact, improved productivity and worker safety, or reduced capital costs.

(5) "Renewable energy" has the meaning established under 30 V.S.A. § 8002(2), and shall include the following: solar photovoltaic and solar thermal

energy; wind energy; geothermal heat pumps; farm, landfill, and sewer methane recovery; low emission, advanced biomass power, and combined heat and power technologies using biomass fuels such as wood, agricultural or food wastes, energy crops, and organic refuse-derived waste, but not municipal solid waste; advanced biomass heating technologies and technologies using biomass-derived fluid fuels such as biodiesel, bio-oil, and bio-gas.

(c) Purposes of fund. The purposes of the fund shall be to promote the development and deployment of cost-effective and environmentally sustainable electric power resources, and emerging energy-efficient technologies using funds received through the American Recovery and Reinvestment Act (ARRA) of 2009, Pub.L. No. 111-5, for the long-term benefit of Vermont electric customers, primarily with respect to renewable energy resources, and the use of combined heat and power technologies. The general assembly expects and intends that the public service board, public service department, and the state's power and efficiency utilities will actively implement the authority granted in Title 30 to acquire all reasonably available cost-effective energy efficiency resources and for the benefit of Vermont ratepayers and the power system.

(d) Expenditures authorized.

~~(1) This fund shall be administered by the department of public service to facilitate the development and implementation of clean energy resources.~~

~~(2) The department shall assure an open public process in the administration of the fund for the purposes established in this subchapter.~~

~~(3) By January 15 of each year, commencing in 2007, the department of public service shall provide to the house and senate committees on natural resources and energy, the senate committee on finance, and the house committee on commerce a report detailing the revenues collected and the expenditures made under this subchapter, together with recommended principles to be followed in the allocation of funds and a proposed five-year plan for future expenditures from the fund.~~

~~(4)~~(1) Projects for funding may include the following:

(A) projects that will sell power in commercial quantities;

(B) among those projects that will sell power in commercial quantities, funding priority will be given to those projects that commit to sell power to Vermont utilities on favorable terms;

(C) projects to benefit publicly owned or leased buildings;

(D) renewable energy projects on farms, which may include any or all costs incurred to upgrade to a three-phase line to serve a system on a farm;

(E) small scale renewable energy in Vermont residences and businesses;

(F) projects under the agricultural economic development special account established under 6 V.S.A. § 4710(g) to harvest biomass, convert biomass to energy, or produce biofuel;

(G) until December 31, 2008 only, super-efficient buildings; ~~and~~

(H) emerging energy-efficient technologies using funds received through ARRA; and

(I) effective projects that are not likely to be established in the absence of funding under the program.

~~(5)~~(2) If during a particular year, the ~~department~~ clean energy development board determines that there is a lack of high value projects eligible for funding, as identified in the five-year plan, or as otherwise identified, the ~~department~~ clean energy development board may consult with the public service board, and shall consider transferring funds to the energy efficiency fund established under the provisions of 30 V.S.A. § 209(d). Such a transfer may take place only in response to an opportunity for a particularly cost-effective investment in energy efficiency, and only as a temporary supplement to funds collected under that subsection, not as replacement funding.

~~(6)~~(3) The sum of $20,000.00 shall be transferred annually from the clean energy development fund to the general fund to support the cost of the solar energy income tax credits.

(e) Management of fund.

(1)~~(A)~~ There is created the clean energy development ~~fund advisory committee~~ board, which shall consist of ~~the commissioner of public service, or a designee, and the chairs of the house and senate committees on natural resources and energy, or their designees.~~ the following nine directors:

(A) Three at-large directors appointed by the speaker of the house;

(B) Three at-large directors appointed by the president pro tempore of the senate.

(C) Two at-large directors appointed by the governor.

(D) The state treasurer, ex officio.

~~(B) There is created the clean energy development fund investment committee, which shall consist of seven persons appointed by the clean energy development fund advisory committee.~~

(2) ~~The commissioner of public service shall:~~

~~(A) by no later than October 30, 2006:~~

~~(i) develop a five year strategic plan and an annual program plan, both of which shall be developed with input from a public stakeholder process;~~

~~(ii) develop an annual operating budget;~~

~~(iii) develop proposed program designs to facilitate clean energy market and project development (including use of financial assistance, investments, competitive solicitations, technical assistance, and other incentive programs and strategies); and~~

~~(iv) submit the plans, budget, and program designs to the clean energy development fund advisory committee for review and to the clean energy development fund investment committee for approval;~~

~~(B) adopt rules by no later than January 1, 2007 to carry out the program approved under this subdivision;~~

~~(C) explore pursuing joint investments in clean energy projects with other state funds and private investors to increase the effectiveness of the clean energy development fund;~~

~~(D) acting jointly with the members of the clean energy development fund investment committee, make decisions with respect to specific grants and investments, after the plans, budget, and program designs have been approved by the clean energy development fund investment committee. This subdivision (D) shall be repealed upon the effective date of rules adopted under subdivision (2)(B) of this subsection.~~

~~(3)~~ During fiscal years after FY 2006, up to five percent of amounts appropriated to the public service department from the fund may be used for administrative costs related to the clean energy development fund and after FY 2007~~, another five percent of amounts appropriated to the public service department from the fund not to exceed $300,000.00 in any fiscal year shall be transferred to the secretary of the agency of agriculture, food, and markets for agricultural and farm-based energy project development activities~~.

(3) A quorum of the clean energy development board shall consist of five directors. The directors of the board shall select a chair and vice chair.

(4) In making appointments of at-large directors to the clean energy development board, the appointing authorities shall give consideration to citizens of the state with knowledge of relevant technology, regulatory law, infrastructure, finance, and environmental permitting. The at-large directors of the board shall serve terms of four years beginning July 1 of the year of

appointment. However, one at-large director appointed by the speaker and one at-large director appointed by the president pro tempore shall serve an initial term of two years. Any vacancy occurring among the at-large directors shall be filled by the respective appointing authority and shall be filled for the balance of the unexpired term. A director may be reappointed.

(5) Except for those directors of the clean energy development board otherwise regularly employed by the state, the compensation of the directors shall be the same as that provided by subsection 1010(a) of Title 32. All directors of the clean energy development board, including those directors otherwise regularly employed by the state, shall receive their actual and necessary expenses when away from home or office upon their official duties.

(6) At least every three years, the clean energy development board shall commission a detailed financial audit by an independent third party of the fund and the activities of the fund manager, which shall make available to the auditor its books, records, and any other information reasonably requested by the board or the auditor for the purpose of the audit.

(7) In performing its duties, the clean energy development board may utilize the legal and technical resources of the department of public service or, alternatively, may utilize reasonable amounts from the clean energy development fund to retain qualified private legal and technical service providers. The department of pubic service shall provide the clean energy development board and its fund manager with administrative services.

(8) By January 15 of each year, commencing in 2010, the clean energy development board shall provide to the house and senate committees on natural resources and energy, the senate committee on finance, and the house committee on commerce and economic development a report detailing the revenues collected and the expenditures made under this subchapter.

(9) By January 15, 2010, after public notice and opportunity for comment, the clean energy development board shall update the fund's five-year strategic plan adopted in May 2007 with any changes to the criteria, principles, and other matters addressed in that plan, and submit the updated strategic plan to the house and senate committees on natural resources and energy, the senate committee on finance, and the house committee on commerce and economic development.

(10) At least quarterly, the clean energy development board shall hold a public meeting to review and discuss the status of the fund, fund projects, the performance of the fund manager, any reports, information, or inquiries submitted by the fund manager or the public, and any additional matters the clean energy development board deems necessary to fulfill its obligations under this section.

(f) Clean energy development fund manager. The clean energy development fund shall have a fund manager who shall be a state employee retained and supervised by the board and housed within the office of the treasurer.

Sec. 34v. TRANSITION; POSITION TRANSFER

(a) It is the intent of the general assembly that the seven members of the clean energy development fund investment committee appointed prior to the effective date of this act shall be eligible for appointment as directors of the clean energy development fund board for a full term or until the terms of their original appointments expire.

(b) Upon the effective date of this act, the fund manager currently retained for the clean energy development fund shall be deemed the fund manager retained by the clean energy development board pursuant to 10 V.S.A. § 6523(f). Upon appointment of the clean energy development board, the position occupied by that fund manager shall be transferred to the board and become subject to the board's supervision.

Sec. 34w. 19 V.S.A. § 1607 is added to read:

§ 1607. FEDERAL REIMBURSEMENT FOR CERTAIN UTILITY RELOCATIONS

(a) As a result of appropriations for infrastructure enhancement and development contained in the American Recovery and Reinvestment Act (ARRA) of 2009, Pub.L. No. 111-5, and other federal transportation-aid programs, significant highway construction projects are expected to be constructed in the near future.

(b) To ensure that projects are not delayed or canceled because of the inability of utilities and municipalities to pay for utility relocation costs and to ensure that available federal funds are utilized on shovel-worthy projects, it is the intent of the general assembly to reimburse utilities with infrastructure, including municipally owned drinking water facilities and municipally owned wastewater infrastructure, up to 80 percent of the approved relocation costs, if the relocation is necessitated by a highway construction project funded by ARRA or other federal transportation-aid programs.

(c) Eligible relocation costs under subsection (b) of this section shall be reimbursed by the state agency or other entity primarily responsible for managing or directing the construction project on the condition that federal stimulus funds or other federal funds are available and eligible to pay for the relocation costs.

(d) The state and municipalities shall not be obligated to pay to utilities the state or local share of a federally funded project.

(e) The state shall not be obligated to pay the state or local share to a municipality for the relocation of municipal drinking water and municipal wastewater infrastructure.

Sec. 34x. 16 V.S.A. chapter 37, subchapter 7 is added to read:

Subchapter 7. Energy Efficiency Training

§ 1594. ENERGY EFFICIENCY CURRICULUM

(a) The president of Vermont Technical College, director of the office of economic opportunity, commissioner of public service, commissioner of labor, assistant director for adult education, and Efficiency Vermont shall plan for and develop curriculum modules and deliver energy efficiency and renewable energy education and training at all levels, in order to develop a highly skilled workforce in Vermont that is prepared to participate in a growing energy-oriented industry sector.

(b) In all applicable content areas, the curriculum modules shall be designed to meet, at a minimum, the certification standards of the Building Performance Institute, other widely recognized certification standards, or a Vermont-specific certification developed in a process led by Vermont Technical College in collaboration with the aforementioned parties.

(c) The curriculum modules shall be offered through the Center for Sustainable Practices at Vermont Technical College and, on a regional basis, through the regional technical centers and the comprehensive high schools, including adult technical education programs, under agreed-upon terms where they can be appropriately incorporated into the curriculum, which will help prepare students of all ages for careers in the energy-efficiency industry.

(d) The department of labor shall not fund any single-service contract for the implementation of the modules developed in subsection (a) of this section or for the delivery of electrical and plumbing training programs offered under this section.

(e) Vermont Technical College and the regional technical centers shall request state fiscal stabilization funds available through the American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5, as well as other state or federal workforce training funds available through the Vermont departments of education and of labor, and through the Vermont Energy Investment Corporation. If sufficient funds are not received, then the Vermont Technical College and the regional technical centers are not required to offer the education and training programs outlined in this section.

Sec. 34y. 10 V.S.A. § 556(i) is added to read:

(i) Notwithstanding any provisions of this section, any rule of the secretary requiring permits for the construction or modification of indirect sources, including any building, structure, facility, installation, or combination thereof that has or leads to associated mobile source activity as a result of which any air contaminant is or may be emitted, is hereby repealed.

Sec. 35. 10 V.S.A. chapter 165 is added to read:

CHAPTER 165. GENERAL PERMIT AUTHORITY

§ 7500. PURPOSE AND DEFINITIONS

(a) This chapter is intended to provide for the protection of human health and the environment while allowing the secretary to utilize general permits as appropriate to streamline permitting processes and gain administrative efficiencies.

(b) When used in this chapter:

(1) "Agency" means the agency of natural resources.

(2) "Commissioner" means the commissioner of the department or the commissioner's duly authorized representative.

(3) "Department" means the department of environmental conservation.

(4) "General permit" means a permit that applies to a class or category of discharges, emissions, disposal, facilities, or activities within a common geographic area, including the entire state or a region of the state. For a class or category to be eligible to be placed under a general permit under this chapter, the class or category must meet each of the following:

(A) The discharges, emissions, disposal, facilities, or activities must share the same or substantially similar qualities.

(B) Those qualities must be such that the requirements of statute and rule applicable to the discharges, emissions, disposal, facilities, or activities can be met and human health and the environment protected by imposition of the same or substantially similar permit conditions on the class or category.

(5) "Individual permit" means a permit that authorizes a specific discharge, emission, disposal, facility, or activity that contains terms and conditions that are specific to the discharge, emission, disposal, facility, or activity.

(6) "Secretary" means the secretary of the agency or the secretary's duly authorized representative.

§ 7501. GENERAL PERMITS

(a) When the secretary deems it to be appropriate and consistent with the purpose of this chapter, the secretary may issue a general permit under the following chapters, as specified, of this title: chapter 23 (air pollution control) for stationary source construction and operation permits; chapter 37 (water resources management) for aquatic nuisance control permits; chapter 41 (regulation of stream flow) for stream alteration permits; chapter 56 (public water supply) for construction permits; and chapter 159 (waste management) for solid waste transfer station and recycling certifications and categorical certifications.

(b) A general permit issued under this chapter shall contain those terms and conditions necessary to ensure that the category or class subject to the general permit will comply with the provisions of the statutes and the rules adopted under those statutes applicable to the category or class. These terms and conditions may include providing for specific emission or effluent limitations and levels of treatment technology; monitoring, recording, or reporting; the right of access for the secretary; and any additional conditions or requirements the secretary deems necessary to protect human health and the environment.

(c) This chapter is in addition to any other authority granted to the agency or department.

(d) The secretary may adopt rules to implement this chapter.

§ 7502. ISSUANCE OF GENERAL PERMITS; PUBLIC PARTICIPATION

(a) When, under section 7501 of this title, the secretary determines to issue a general permit, the secretary shall prepare a proposed general permit and shall provide for public notice of the permit in a manner designed to inform interested and potentially interested persons of the proposed general permit.

(1) Notice of the proposed general permit shall be circulated within each geographic area to which the permit would apply and shall include at least all of the following:

(A) Written notice to the clerk of each municipality within the geographic area.

(B) Written notice to each affected Vermont state agency and such other government agencies as the secretary deems appropriate.

(C) Publication of notice of the proposed permit in a newspaper or newspapers that circulate generally within each geographic area to which the permit would apply.

(D) Posting of notice and a copy of the proposed general permit prominently on the web page of the department.

(E) Mailing of notice and a copy of the proposed general permit to any individual, group, or organization upon request.

(F) The inclusion in any notice issued under this subsection of a summary of the proposed general permit, including a summary of the activities to which it would apply and its terms and conditions; the deadlines by which comments are to be submitted and a public information meeting requested; the procedure for submitting comments and requesting a public information meeting; the contact information for the agency or department concerning the proposed permit; and a statement of how a copy of the proposed general permit may be obtained.

(2) The secretary shall provide a period of not less than 30 days following the date of publication in a newspaper or newspapers of general circulation during which any person may submit written comments on the proposed general permit.

(b) The secretary shall provide an opportunity for any person, state, province, or country potentially affected by the proposed general permit to request a public informational meeting with respect to the proposed permit.

(1) The deadline for any request under this subsection shall be no earlier than the deadline for submitting written comments set under subdivision (a)(2) of this section. The secretary shall hold an informational meeting if there is a significant public interest in holding a meeting.

(2) The secretary shall provide public notice of any informational meeting in at least the same manner as public notice of the proposed general permit was given under subsection (a) of this section, except that the secretary need not set a new comment deadline or provide, with the notice of the meeting, a copy of the proposed general permit to any person or entity to which the secretary has already provided a copy.

(3) Any person shall be permitted to submit oral or written statements and data concerning the proposed general permit at the informational meeting.

(4) All statements, comments, and data presented at the meeting shall be retained by the secretary and considered in the formulation of the secretary's determinations regarding the final general permit.

(c) Whether or not requested, the secretary may hold a public informational meeting on a proposed general permit at any time prior to final decision on and issuance of the general permit. The provisions of subdivisions (b)(2) through (4) of this section shall apply to such a meeting.

(d) The secretary may finally adopt a general permit following consideration of any written comments submitted on the general permit and any statements, comments, and data presented at a public information meeting on the permit. Where the secretary decides, in finally adopting a proposed general permit, to overrule substantial arguments and considerations raised for or against the original proposal, the secretary's final adoption of the general permit shall include a responsiveness summary stating the reasons for the secretary's decision.

(e) On final adoption of a general permit, the secretary shall provide notice of the permit's final adoption and an accompanying responsiveness summary in at least the same manner as notice of the proposed general permit was issued under subdivision (a)(1) of this section, except that the secretary need not set or include further deadlines for comment or requesting an informational meeting.

§ 7503. AUTHORIZATION UNDER A GENERAL PERMIT

(a) Any person wishing to discharge, emit, dispose, or operate a facility or engage in activity subject to a general permit under this chapter shall file an application for authorization under the general permit on a form provided by the secretary. Each application shall be accompanied by a fee as specified by section 2822 of Title 3.

(b) For each application under this section, the applicant shall provide notice, on a form provided by the secretary, to the clerk of the municipality in which the discharge, emission, disposal, facility, or activity is located. The applicant shall provide a copy of this notice to the secretary, with such confirmation as the secretary deems adequate to demonstrate that the clerk has received the notice. Following receipt of that confirmation, the secretary shall provide an opportunity of at least ten working days for written comment regarding whether the application complies with the terms and conditions of the general permit under which coverage is sought.

(c) The secretary may grant an application for authorization to discharge, emit, dispose, operate a facility, or engage in activity to which a general permit under this chapter applies only after determining that each of the following applies:

(1) The filings required in subsections (a) and (b) of this section are complete.

(2) The discharge, emission, disposal, facility, or activity is eligible for coverage under and will meet the terms and conditions of the general permit.

(d) The secretary may:

(1) Allow a transfer from one person or entity to another of an authorization to discharge, emit, dispose, operate a facility, or engage in activity under a general permit issued under this chapter.

(2) Require notification to the secretary for changes to a discharge, emission, disposal, facility, or activity for which authorization has been issued under a general permit under this chapter.

(3) Under the procedures specified in subsection 814(c) of Title 3, revoke or suspend authorization to discharge, emit, dispose, operate a facility, or engage in activity under a general permit issued under this chapter.

§ 7504. REQUIRING AN INDIVIDUAL PERMIT

The secretary may require any applicant for or permittee authorized under a general permit issued under this chapter to apply for an individual permit. Any interested person may petition the secretary to take action under this section. The secretary may require an individual permit if any one of the following applies:

(1) The discharge, emission, disposal, facility, or activity is a significant contributor of pollution as determined by consideration of each of the following factors:

(A) The location of the discharge with respect to waters of the state of Vermont.

(B) The size and scope of the applicant's or permittee's activities or operation.

(C) The quantity and nature of the pollutants.

(D) Other relevant factors.

(2) The permittee is not in compliance with the terms and conditions of a general permit issued under this chapter.

(3) The application does not qualify for a general permit issued under this chapter.

(4) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of wastes or pollutants applicable to the discharge, emission, disposal, facility, or activity.

(5) Federal requirements have been adopted that conflict with one or more provisions of a general permit issued under this chapter.

§ 7505. REQUIRING AUTHORIZATION UNDER A GENERAL PERMIT

The secretary may require that a discharge, emission, disposal, facility, or activity for which issuance or reissuance of an individual permit is sought be subject to a general permit issued under this chapter if the secretary finds that the discharge, emission, disposal, facility, or activity is eligible for coverage under and will meet the terms and conditions of the general permit and that authorization of the discharge, emission, disposal, facility, or activity under a general permit will protect human health and the environment.

Sec. 36. REPORT AND SUNSET

(a) On April 1, 2011, and again on April 1, 2014, the secretary of natural resources shall submit a report to the senate committees on natural resources and on economic development, housing and general affairs, the house committees on natural resources and on commerce and economic development, and the governor regarding the implementation, compliance, and enforcement of general permits under chapter 165 of Title 10.

(b) Chapter 165 of Title 10 shall sunset on July 1, 2014; however, the sunset shall not affect any permit granted prior to July 1, 2014 under chapter 165 of Title 10.

Sec. 37. 10 V.S.A. § 8019 is added to read:

§ 8019. ENVIRONMENTAL TICKETING

(a) The secretary and the board each shall have the authority to adopt rules for the issuance of civil complaints for violations of their respective enabling statutes or rules adopted under those statutes that are enforceable in the judicial bureau pursuant to the provisions of chapter 29 of Title 4. Any proposed rule under this section shall include both the full and waiver penalty amounts for each violation. The maximum civil penalty for any violation brought under this section shall not exceed $3,000.00 exclusive of court fees.

(b) A civil complaint issued under this section shall preclude the issuing entity from seeking an additional monetary penalty for the violation specified in the complaint when any one of the following occurs: the waiver penalty is paid, judgment is entered after trial or appeal, or a default judgment is entered. Notwithstanding this preclusion, the agency and the board may issue additional complaints or initiate an action under chapter 201 of this title, including a monetary penalty when a violation is continuing or is repeated, and may also bring an enforcement action to obtain injunctive relief or remediation and, in such additional action, may recover the costs of bringing the additional action and the amount of any economic benefit the respondent obtained as a result of the underlying violation in accordance with 10 V.S.A. § 8010(b)(7) and (c)(1).

(c) The secretary or board chair and his or her duly authorized representative shall have the authority to amend or dismiss a complaint by so marking the complaint and returning it to the judicial bureau or by notifying the judge at the hearing.

(d) Subsequent to the issuance of a civil complaint under this section and the conclusion of any hearing and appeal regarding that complaint, the following shall be considered part of the respondent's record of compliance when calculating a penalty under section 8010 of this title:

(1) The respondent's payment of the full or waiver penalty stated in the complaint.

(2) The respondent's commission of a violation after the hearing before the judicial bureau on the complaint.

(3) The respondent's failure to appear or answer the complaint resulting in the entry of a default judgment.

(4) A finding, after appeal, that the respondent committed a violation.

Sec. 38. 4 V.S.A. § 1102 is amended to read:

§ 1102. JUDICIAL BUREAU; JURISDICTION

* * *

(b) The judicial bureau shall have jurisdiction of the following matters:

* * *

(17) Violations of the statutes listed in 10 V.S.A. § 8003, any rules or permits issued under those statutes, and any assurances of discontinuance or orders issued under chapter 201 of Title 10, provided that a rule has been adopted and a civil complaint issued concerning such a violation under 10 V.S.A. § 8019.

* * *

(d) Three hearing officers appointed by the court administrator shall determine waiver penalties to be imposed for violations within the judicial bureau's jurisdiction, except ~~that~~:

(1) Municipalities shall adopt full and waiver penalties for civil ordinance violations pursuant to section 1979 of Title 24. For purposes of municipal violations, the issuing law enforcement officer shall indicate the appropriate full and waiver penalty on the complaint.

(2) The agency of natural resources and the natural resources board shall include full and waiver penalties in each rule that is adopted under 10 V.S.A.

§ 8019. For purposes of environmental violations, the issuing entity shall indicate the appropriate full and waiver penalties on the complaint.

Sec. 39. 4 V.S.A. § 1106 is amended to read:

§ 1106. HEARING

* * *

(b) The hearing shall be held before a hearing officer and conducted in an impartial manner. The hearing officer may, by subpoena, compel the attendance and testimony of witnesses and the production of books and records. All witnesses shall be sworn. The burden of proof shall be on the state or municipality to prove the allegations by clear and convincing evidence. As used in this section, "clear and convincing evidence" means evidence which establishes that the truth of the facts asserted is highly probable. Certified copies of records supplied by the department of motor vehicles, the agency of natural resources, or the natural resources board and presented by the issuing officer or other person shall be admissible without testimony by a representative of the department of motor vehicles, the agency of natural resources, or the natural resources board.

* * *

(e) A state's attorney may dismiss or amend a complaint, except that dismissal or amendment of a complaint subject to subdivision 1102(b)(17) of this title shall be governed by 10 V.S.A. § 8019(c).

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

Sec. 40. 4 V.S.A. § 1107 is amended to read:

§ 1107. APPEALS

(a) A decision of the hearing officer may be appealed to the district court, except for a decision in a proceeding under subdivision 1102(b)(17) of this title. The proceeding before the district court shall be on the record, or at the option of the defendant, de novo. The defendant shall have the right to trial by jury. An appeal shall stay payment of a penalty and the imposition of points.

(b) ~~If a decision is appealed, the state's attorney of the county in which the violation occurred shall represent the state and the state's attorney, grand juror or municipal attorney shall represent the municipality~~ A decision of the hearing officer in a proceeding under subdivision 1102(b)(17) of this title may be appealed to the environmental court created under chapter 27 of this title. The proceedings before the environmental court shall be on the record. The

defendant shall not have a right to a jury trial. An appeal shall stay the payment of a penalty.

(c) If a decision is appealed, the state's attorney of the county in which the violation occurred shall represent the state, and the state's attorney, grand juror, or municipal attorney shall represent the municipality. In an appeal to the environmental court from a decision under subdivision 1102(b)(17) of this title, an attorney from the agency of natural resources or the natural resources board shall represent the state.

(d) No appeal as of right exists to the supreme court. On motion made to the supreme court by a party, the supreme court may allow an appeal to be taken to it from the district court or environmental court.

Sec. 41. 20 V.S.A. § 2063 is amended to read:

§ 2063. CRIMINAL HISTORY RECORD FEES; CRIMINAL HISTORY RECORD CHECK FUND

* * *

(b) Requests made by criminal justice agencies for criminal justice purposes or other purposes authorized by state or federal law shall be exempt from all record check fees. The following types of requests shall be exempt from the Vermont criminal record check fee:

* * *

(5) Requests made by environmental enforcement officers employed by the agency of natural resources.

* * *

Sec. 42. PERMIT EXPEDITING; FEDERAL STIMULUS

(a) Notwithstanding any other provision of law, the following shall apply to an application for a permit, certificate, or other approval to the agency of natural resources, the agency of transportation, an appropriate municipal panel under 24 V.S.A. chapter 117, or a district environmental commission under 10 V.S.A. chapter 151 with respect to a project for municipal, county, or state purposes that will receive any of its funding through the federal American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5:

(1) The application shall be given priority over any other pending application.

(2) An appropriate municipal panel shall adjourn the hearing promptly after all parties have submitted evidence and argument and issue a decision within 45 days after the adjournment of the hearing, and failure of the panel to

issue a decision within this period shall be deemed approval and shall be effective on the 46th day.

(3) A district commission shall adjourn the hearing promptly after all parties have submitted evidence and argument and issue a decision within 90 days after the adjournment of the hearing, and failure of the commission to issue a decision within this period shall be deemed approval and shall be effective on the 91st day.

(b) This section shall be repealed on July 1, 2012.

Sec. 43. EXPIRED PERMITS; FEDERAL STIMULUS

A permit, certificate, or approval that, by operation of law or other means, has lapsed or expired because the project subject to the permit, certificate, or approval has not been constructed shall be deemed effective if all of the following apply:

(1) The project subject to the permit, certificate, or other approval will receive any of its funding through the federal American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5.

(2) The permit, certificate, or other approval was issued within the five-year period preceding the date this section is enacted by the agency of natural resources, the agency of transportation, a municipality or appropriate municipal panel under 24 V.S.A. chapter 117, a district commission under 10 V.S.A. chapter 151, or an appellate court or other tribunal on appeal from such an agency, municipality, panel, or commission.

(3) No change is proposed to the project as approved by the permit, certificate, or other approval.

Sec. 44. 32 V.S.A. § 5930a(a) is amended as follows:

(a) There is created ~~an economic incentive review board~~ a Vermont economic progress council which shall be attached to the department of economic development for administrative support, including an executive director who shall be appointed by the governor with the advice and consent of the senate, who shall be knowledgeable in subject areas of the ~~board's~~ council's jurisdiction, and hold the status of an exempt state employee, and administrative staff employed in the state classified service. The ~~board~~ council shall consist of 11 members, nine of whom shall be residents of the state appointed by the governor with the advice and consent of the senate. The governor shall appoint residents to the ~~board~~ council who are knowledgeable and experienced in the subjects of community development and planning, education funding requirements, economic development, state fiscal affairs, property taxation, or entrepreneurial ventures, and shall make appointments to

the ~~board~~ council insofar as possible as to provide representation to the various geographical areas of the state and municipalities of various sizes. Members of the ~~board~~ council appointed by the governor shall serve initial staggered terms with five members serving four-year terms, and four members serving two-year terms. All ~~board~~ council members' terms shall be four-year terms upon the expiration of their initial terms and ~~board~~ council members may be reappointed to serve successive terms. All terms shall commence on April 1 of each odd-numbered year. The governor shall select a chair from among the ~~board's~~ council 's members. In addition the ~~board~~ council shall include one member selected by the speaker of the house, who shall be a member of the house; and one member selected by the committee on committees of the senate, who shall be a member of the senate. Legislative members shall be voting members. There shall also be two regional members from each region of the state; one shall be designated by the regional development corporation of the region and one shall be designated by the regional planning commission of the region. Regional members shall be nonvoting members and shall serve during consideration by the ~~board~~ council of applications from their respective regions. For attendance at meetings and for other official duties, appointed members shall be entitled to compensation for services and reimbursement of expenses as provided in section 1010 of this title, except that members who are members of the legislature shall be entitled to compensation for services and reimbursement for expenses as provided in section 406 of Title 2. A regional member who does not otherwise receive compensation and reimbursement for expenses from his or her regional development or planning organization shall also be entitled to compensation and reimbursement of expenses for attendance at meetings and for other official duties as provided in section 1010 of this title.

Sec. 45. REPEAL AND TRANSITION

(a) Sec. 44 of this act shall take effect upon passage, at which time the economic incentive review board shall be re-named the Vermont economic progress council. The council shall have the responsibilities and authority of the economic incentive review board with respect to administering and monitoring the Vermont employment growth incentives (VEGI) program and the tax increment financing program and property tax allocations under sections 2a through 2h of Act No. 184 of 2005 (Adj. Sess.). The Legislative Council is directed to make necessary revisions to the Vermont Statutes Annotated to reflect the changes made in Secs. 44 and 45 of this act.

Sec. 46. EFFECTIVE DATE

This act shall be effective upon passage.

Which was agreed to on a roll call, Yeas 23, Nays 1.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Brock, Carris, Choate, Cummings, Flanagan, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Maynard, Mazza, McCormack, Miller, Mullin, Racine, Scott, Sears, Starr, White.

The Senator who voted in the negative was: Snelling.

Those Senators absent or not voting were: Ayer, Bartlett, Campbell (presiding), Doyle, Nitka, Shumlin.

Thereupon, pending the question, Shall the bill be read the third time?, Senator Racine moved to amend the proposal of amendment by adding a new section to be numbered Sec. 46 to read as follows:

Sec. 46. 32 V.S.A. chapter 151 subchapter 11L is added to read:

Subchapter 11L. Research and Development Tax Credit

§ 5930ii. ENHANCEMENT TO THE FEDERAL RESEARCH AND DEVELOPMENT TAX CREDIT

(a) A credit against the income tax liability imposed under this chapter for the taxable year shall be an amount equal to 30 percent of the amount of the federal tax credit received for the same taxable year for eligible research and development expenses under 26 U.S.C. § 41(a).

(b) Any excess credit under this subchapter not used for the taxable year in which the credit is earned may be carried forward for up to ten years.

(c) For purposes of this section, "eligible research and development expenses" means expenditures:

(1) made within the state of Vermont;

(2) that meet the definition contained in 26 U.S.C. § 41(b); and

(3) that have been claimed as eligible expenditures for the same taxable year for a federal tax credit under 26 U.S.C. § 41(a), provided that the taxable year begins on or after January 1, 2010.

Which was agreed to on a roll call, Yeas 13, Nays 12.

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

Roll Call

Those Senators who voted in the affirmative were: Brock, Flanagan, Giard, Illuzzi, Kittell, Maynard, Miller, Mullin, Racine, Scott, Sears, Starr, White.

Those Senators who voted in the negative were: Ashe, Carris, Choate, Cummings, Hartwell, Kitchel, Lyons, MacDonald, Mazza, McCormack, Nitka, Snelling.

Those Senators absent or not voting were: Ayer, Bartlett, Campbell (presiding), Doyle, Shumlin.

Thereupon, the pending question, Shall the bill read the third time?, was agreed to.

Thereupon, on motion of Senator Mazza, the rules were suspended and the bill was placed on all remaining stages of its passage in concurrence with proposal of amendment.

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment on a roll call, Yeas 23, Nays 2.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Brock, Carris, Choate, Cummings, Flanagan, Giard, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Maynard, Mazza, McCormack, Miller, Mullin, Nitka, Racine, Scott, Sears, Starr, White.

Those Senators who voted in the negative were: Hartwell, Snelling.

Those Senators absent or not voting were: Ayer, Bartlett, Campbell (presiding), Doyle, Shumlin.

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

Bill Passed in Concurrence with Proposal of Amendment

H. 427.

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

An act relating to making miscellaneous amendments to education law.

Rules Suspended; Bill Committed

H. 446.

Pending entry on the Calendar for notice, on motion of Senator Mazza, the rules were suspended and House bill entitled:

An act relating to renewable energy and energy efficiency.

Was taken up for immediate consideration.

Thereupon, pending the reading of the reports of the Committee on Natural Resources and Energy and of the Committee on Finance, Senator Mazza moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Appropriations with the reports of the Committee on Natural Resources and Energy and the Committee on Finance *intact*,

Which was agreed to.

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

H. 431.

House bill entitled:

An act relating to miscellaneous adjustments to the public retirement systems.

Was taken up.

Thereupon, pending third reading of the bill, Senator White moved that the Senate propose to the House that the bill be amended as follows:

First: By adding a new section to be numbered Sec. 4a to read as follows:

Sec. 4a. 3 V.S.A. § 473(c)(4) is amended to read:

(4)~~(A)~~ Until the unfunded accrued liability~~, excluding the portion described in subdivision (B) of this subdivision (4),~~ is liquidated, the basic accrued liability contribution shall be the annual payment required to liquidate the unfunded accrued liability over a period of 30 years from July 1, ~~1988~~ 2008, provided that the amount of each annual basic accrued liability contribution after June 30, ~~1988~~ 2009 shall be five percent greater than the preceding annual basic accrued liability contribution. Any variation in the contribution of normal, basic, unfunded accrued liability or additional unfunded accrued liability contributions from those recommended by the actuary and any actuarial gains and losses shall be added or subtracted to the unfunded accrued liability and amortized over the remainder of the 30-year period.

~~(B) Until the additional unfunded accrued liability created as of July 1, 2008, by the implementation of a group F cost-of-living adjustment equal to the full increase or decrease, to the nearest one-tenth of a percent of the Consumer Price Index for the preceding fiscal year as provided in subsection 470(b) of this title, is liquidated, the additional accrued liability contribution, shall be the annual payment required to liquidate the additional unfunded accrued liability over a period of 30 years from July 1, 2008, provided that the amount of each annual additional accrued liability contribution made after June 30, 2009 shall be five percent greater than the preceding annual additional accrued liability contribution.~~

Second: By adding a new section to be numbered Sec. 4b to read as follows:

Sec. 4b. 3 V.S.A. § 479a is amended to read:

§ 479a. STATE EMPLOYEES' POSTEMPLOYMENT BENEFITS ~~PENSION~~ TRUST FUND

(a) ~~An irrevocable~~ A "state employees' postemployment benefits ~~pension~~ trust fund" is hereby created for the purpose of accumulating and providing reserves to support retiree postemployment benefits for members, and to make distributions from the fund for current and future postemployment benefits for retirees, of the Vermont state employees' retirement system, excluding pensions and benefits otherwise appropriated by statute and for the payment of reasonable and proper expenses of administering the fund and related benefit plans. The fund shall not be part of the retirement system, but is intended to comply with and be a tax exempt governmental trust under section 115 of the Internal Revenue Code of 1986, as amended.

(b) Into the state employees' postemployment benefits ~~pension~~ trust fund shall be deposited:

(1) All assets remitted to the state as a subsidy on behalf of the members of the Vermont state employees' retirement system for employer-sponsored qualified prescription drug plans pursuant to the Medicare Prescription Drug Improvement and Modernization Act of 2003.

(2) Any appropriations by the general assembly ~~to pay toward~~ for the purposes of paying current and future retiree postemployment benefits for members of the Vermont state employees' retirement system.

(3) Amounts contributed or otherwise made available by members of the system or their beneficiaries for the purpose of paying current or future postemployment benefits costs.

(c) The state employees' postemployment benefits ~~pension~~ trust fund shall be administered by the state treasurer. The treasurer may invest monies in the state employees' postemployment benefits ~~pension~~ trust fund in accordance with the provisions of section 434 of Title 32. All balances in the state employees' postemployment benefits ~~pension~~ trust fund at the end of the fiscal year shall be carried forward. Interest earned shall remain in the state employees' postemployment benefits ~~pension~~ trust fund. The treasurer's annual financial report to the governor and the general assembly shall contain an accounting of receipts, disbursements, and earnings of the state employees' postemployment benefits ~~pension~~ trust fund.

(d) All funds of the state employees' postemployment benefits trust fund shall be held in one or more trusts, custodial accounts treated as trusts, or a combination thereof. Contributions to the fund shall be irrevocable and it shall be impossible at any time prior to the satisfaction of all liabilities, with respect to employees and their beneficiaries, for any part of the corpus or income of the fund to be used for, or diverted to, purposes other than the payment of retiree postemployment benefits to members and their beneficiaries and reasonable expenses of administering the fund and related benefit plans.

Third: By adding a new section to be numbered Sec. 6a to read as follows:

Sec. 6a. 16 V.S.A. § 1944(c)(4) is amended to read:

(4) Until the unfunded accrued liability is liquidated, the accrued liability contribution shall be the annual payment required to liquidate the unfunded accrued liability over a period of 30 years from July 1, ~~2006~~ 2008, provided that the amount of each annual accrued liability contribution after June 30, ~~2006~~ 2009 shall be five percent greater than the preceding annual accrued liability contribution. Any variation in the contribution of normal or unfunded accrued liability contributions from those recommended by the actuary and any actuarial gains and losses shall be added or subtracted to the unfunded accrued liability and amortized over the remainder of the 30-year period.

Fourth: By adding a new section to be numbered Sec. 12a to read as follows:

Sec. 12a. 24 V.S.A. § 5064(c)(4) is amended to read:

(4) For each actuarial valuation completed on or after July 1, 2009, the accrued liability contribution rate shall be computed for each membership group based on the actuarial assumptions and methodology adopted by the retirement board as the rate percent of the earnable compensation of the employees in such membership group which, if applied to expected future earnings of current and future employees of such membership group, would be expected to liquidate the membership group's unfunded accrued liability on or

before June 30, ~~2018~~ 2038. The product of a membership group's accrued liability rate and its total earnable compensation shall be referred to as that membership group's "accrued liability contribution."

Which was agreed to.

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

Bill Passed in Concurrence with Proposal of Amendment

H. 435.

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

An act relating to palliative care.

Proposal of Amendment; Third Reading Ordered

H. 152.

Senator Hartwell, for the Committee on Natural Resources and Energy, to which was referred House bill entitled:

An act relating to encouraging biomass energy production.

Reported recommending that the Senate propose to the House to amend the bill in Sec. 1 by striking out the word "and" where it appears after the semicolon in subdivision (c)(2)(D) and by adding subdivisions (c)(2)(F) and (G) to read as follows:

(F) biomass procurement standards should require third-party certification; and

(G) a standard should be developed that would require biomass electricity generating facilities to provide for a fuel efficiency of at least 50 percent over the course of a full year.

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

Senator Snelling, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Natural Resources and Energy.

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

Rules Suspended; Bills Messaged

On motion of Senator Mazza, the rules were suspended, and the following bills were severally ordered messaged to the House forthwith:

H. 427, H. 431, H. 435.

Senate Concurrent Resolutions

The following joint concurrent resolutions, having been placed on the consent calendar on the preceding legislative day, and no Senator having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, are hereby adopted on the part of the Senate:

By Senators Miller, Ashe, Ayer, Bartlett, Brock, Campbell, Carris, Choate, Cummings, Doyle, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, Maynard, Mazza, McCormack, Mullin, Nitka, Racine, Scott, Sears, Shumlin, Snelling, Starr and White,

By Representative Aswad and others,

S.C.R. 25.

Senate concurrent resolution congratulating faculty and students at Burlington High School on the 2008-2009 11th grade's achievements in adequate yearly progress testing in mathematics and reading.

By Senators Bartlett and Snelling,

By Representative Nease,

S.C.R. 26.

Senate concurrent resolution congratulating the Vermont Studio Center on its 25th anniversary.

House Concurrent Resolutions

The following joint concurrent resolutions having been placed on the consent calendar on the preceding legislative day, and no Senator having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, are hereby adopted in concurrence:

By Representative Lenes and others,

By Senator Lyons,

H.C.R. 143.

House concurrent resolution congratulating Benjamin Bond of Champlain Valley Union High School on his being named a 2009 Vermont student winner of the Siemens Award for Advanced Placement.

By Representatives O'Donnell and Hube,

H.C.R. 144.

House concurrent resolution congratulating Caroline Heydinger on winning second place at the American Legion national high school oratorical contest.

By Representative Waite-Simpson and others,

H.C.R. 145.

House concurrent resolution congratulating the 2009 Essex High School *We the People . . . The Citizen and the Constitution* state championship class.

By All Members of the House,

By All Members of the Senate,

H.C.R. 146.

House concurrent resolution congratulating the Vermont Student Assistance Corporation's Career and Education Outreach program on its 40th anniversary.

By All Members of the House,

By All Members of the Senate,

H.C.R. 147.

House concurrent resolution designating June 1 as Vermont Employer Support of the Guard and Reserve Day.

By Representatives Mook and Miller,

H.C.R. 148.

House concurrent resolution congratulating Erlon (Bucky) Broomhall on his induction into the Vermont Ski Museum Hall of Fame.

By Representative Head and others,

H.C.R. 149.

House concurrent resolution congratulating Marion Voorheis of South Burlington High School on being named the 2009 Vermont high school teacher winner of the Siemens Award for Advanced Placement.

By Representative Lenes and others,

By All Members of the Senate,

H.C.R. 150.

House concurrent resolution congratulating the 2009 University of Vermont Catamounts nationally third-ranked men's ice hockey team.

By Representative Turner and others,

H.C.R. 151.

House concurrent resolution congratulating Milton Junior-Senior High School co-principal Anne Blake on her receipt of the 2009 Robert F. Pierce Award.

By Representative Obuchowski and others,

H.C.R. 152.

House concurrent resolution congratulating New England Kurn Hattin Homes Principal Tom Fahner on being named the Vermont Principals' Association John Winton National Middle Level Principal-of-the-Year.

By Representative Morrissey and others,

By Senators Hartwell and Sears,

H.C.R. 153.

House concurrent resolution honoring Gene E. Irons for three decades of extraordinary service as a Bennington Museum trustee.

By Representative Morrissey and others,

By Senators Hartwell and Sears,

H.C.R. 154.

House concurrent resolution in memory of David S. Jareckie of Bennington.

Rules Suspended; Consideration Interrupted by Adjournment

H. 446.

Pending entry on the Calendar for notice, on motion of Senator Mazza, the rules were suspended and Senate bill entitled:

An act relating to renewable energy and energy efficiency.

Was taken up for immediate consideration on a division of the Senate, Yeas 15, Nays 5.

Thereupon, pending the reading of the report of the Committee on Natural Resources and Energy, Senator Mazza moved that the Senate adjourn until eight o'clock and fifteen minutes in the morning.

Which was agreed to.

TUESDAY, MAY 5, 2009

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

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the House No. 76

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

Mr. President:

I am directed to inform the Senate that:

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

H. 452. An act relating to the approval of amendments to the charter of the village of Essex Junction.

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

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

S. 111. An act relating to legislative apportionment board appointments.

And has passed the same in concurrence.

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

S. 89. An act relating to stabilization of prices paid to Vermont dairy farmers.

S. 125. An act relating to expanding the sex offender registry.

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

The House has adopted House concurrent resolutions of the following titles:

H.C.R. 143. House concurrent resolution congratulating Benjamin Bond of Champlain Valley Union High School on his being named a 2009 Vermont student winner of the Siemens Award for Advanced Placement.

H.C.R. 144. House concurrent resolution congratulating Caroline Heydinger on winning second place at the American Legion national high school oratorical contest.

H.C.R. 145. House concurrent resolution congratulating the 2009 Essex High School *We the People . . . The Citizen and the Constitution* state championship class.

H.C.R. 146. House concurrent resolution congratulating the Vermont Student Assistance Corporation's Career and Education Outreach program on its 40th anniversary.

H.C.R. 147. House concurrent resolution designating June 1 as Vermont Employer Support of the Guard and Reserve Day.

H.C.R. 148. House concurrent resolution congratulating Erlon (Bucky) Broomhall on his induction into the Vermont Ski Museum Hall of Fame.

H.C.R. 149. House concurrent resolution congratulating Marion Voorheis of South Burlington High School on being named the 2009 Vermont high school teacher winner of the Siemens Award for Advanced Placement.

H.C.R. 150. House concurrent resolution congratulating the 2009 University of Vermont Catamounts nationally third-ranked men's ice hockey team.

H.C.R. 151. House concurrent resolution congratulating Milton Junior-Senior High School co-principal Anne Blake on her receipt of the 2009 Robert F. Pierce Award.

H.C.R. 152. House concurrent resolution congratulating New England Kurn Hattin Homes Principal Tom Fahner on being named the Vermont Principals' Association John Winton National Middle Level Principal-of-the-Year.

H.C.R. 153. House concurrent resolution honoring Gene E. Irons for three decades of extraordinary service as a Bennington Museum trustee.

H.C.R. 154. House concurrent resolution in memory of David S. Jareckie of Bennington.

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

Bill Referred to Committee on Appropriations

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:

H. 192.

An act relating to electronic benefit machines for farmers' markets.

Bill Referred

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

H. 452.

An act relating to the approval of amendments to the charter of the village of Essex Junction.

To the Committee on Government Operations.

Consideration Resumed; Proposal of Amendment;

H. 446.

Consideration was resumed on House bill entitled:

An act relating to renewable energy and energy efficiency.

Senator Lyons, for the Committee on Natural Resources and Energy, to which the bill was referred, reported recommending that the Senate propose to the House that the bill be amended as follows:

First: In Sec. 4, 30 V.S.A. § 8005(b)(2), in the third sentence, after the words "shall be" where they twicely appear, by inserting the following: 10 to

Second: In Sec. 4, 30 V.S.A. § 8005(b)(2)(A), by striking out subdivision (v) in its entirety

Third: In Sec. 4, 30 V.S.A. § 8005(b)(2)(B)(i)(I), by striking out the second sentence in its entirety and inserting in lieu thereof the following:

In conducting such an economic analysis the board shall:

(aa) Include a generic assumption that reflects reasonably available tax credits and other incentives provided by federal and state governments and other sources applicable to the category of generation technology. For the purpose of this subdivision (2)(B), the term "tax credits and other incentives" excludes tradeable renewable energy credits.

(bb) Consider different generic costs for subcategories of different plant capacities within each category of generation technology.

Fourth: In Sec. 4, 30 V.S.A. § 8005(b)(2)(B)(i)(II), after the words "rate of return" where they twicely appear, by inserting the words on equity

Fifth: In Sec. 4, 30 V.S.A. § 8005(b)(2)(B)(i)(III), after the words "such adjustment" by inserting the words to the generic costs and rate of return on equity determined under subdivisions (2)(B)(I) and (II) of this subsection

Sixth: In Sec. 4, 30 V.S.A. § 8005(b)(2)(C), in the first sentence, after the word "and" where it first appears, by inserting the words on or before

Seventh: In Sec. 4, 30 V.S.A. § 8005(b)(2)(C), in the third sentence, by striking out the word "subdivisions" and inserting in lieu thereof the word subdivision and by striking out the following: "–(iii)"

Eighth: In Sec. 4, 30 V.S.A. § 8005(b)(2)(C), in the third sentence, by striking out the words "on March 1 of the following year" and inserting in lieu thereof the words two months after the price has been reestablished

Ninth: In Sec. 4, 30 V.S.A. § 8005(b)(2), by striking out the new subdivision "(E)" in its entirety and by relettering subdivision "(F)" to be subdivision (E)

Tenth: In Sec. 4, 30 V.S.A. § 8005(b)(4), after the word "provider" by inserting the words and third party developer

Eleventh: In Sec. 4, 30 V.S.A. § 8005(g)(2), in the second sentence, by striking out the date "July 15" and inserting in lieu thereof the date September 30

Twelfth: In Sec. 4, 30 V.S.A. § 8005(g), by inserting a new subdivision (4) to read as follows:

(4) The SPEED facilitator shall transfer all capacity rights attributable to the plant capacity associated with the electricity purchased under standard offer contracts to the Vermont retail electricity providers in accordance with their pro rata share of the costs for such electricity as determined under subdivision (2) of this subsection.

Thirteenth: In Sec. 4, 30 V.S.A. § 8005(g), by renumbering the existing subdivision (4) as subdivision (5) and, in that subdivision, by striking out the words "in accordance with the rate design otherwise applicable to costs included in that revenue requirement" and inserting in lieu thereof the words as directed by the board

Fourteenth: In Sec. 4, 30 V.S.A. § 8005(j), by striking out the words "constitute combined heat and power, producing both electric power and thermal energy, with" and inserting in lieu thereof the word have and by striking out the number "70" and inserting in lieu thereof the number 50

Fifteenth: In Sec. 5, 10 V.S.A. § 6523(d)(4), after the words "may include" by inserting the following: , and in the case of subdivision (4)(E)(ii) of this subsection shall include continuous funding for as long as funds are available, and in subdivision (E), after the words "Vermont residences" by inserting the following: , institutions, and after the word "businesses" by inserting a colon followed by:

(i) generally; and

(ii) through the small-scale renewable energy incentive program

Sixteenth: In Sec. 5, 10 V.S.A. § 6523(f), after the word "disbursed" by inserting the following: to achieve a savings goal of 10 million source BTUs per $1,000.00 spent and shall be disbursed

Seventeenth: In Sec. 14, 30 V.S.A. § 209(h)(4)(B), by striking out the second and third sentences and inserting in lieu thereof the following:

The board shall determine procedures for savings verification. Such procedures shall be consistent with savings verification procedures established for entities appointed under subdivision (d)(2) of this section.

Eighteenth: In Sec. 14, 30 V.S.A. § 209(h)(4)(C), (H), (I), and (K), by striking out each occurrence of the word "department" and inserting in lieu thereof the word board

Nineteenth: In Sec. 14, 30 V.S.A. § 209(h)(4)(F), by inserting the words board and after the first occurrence of the word "the" and by striking out the second occurrence of the word "department" and inserting in lieu thereof the word board

Twentieth: In Sec. 14, 30 V.S.A. § 209(h)(4)(G), in the first sentence, by striking out the words "department shall report to the board and" and inserting in lieu thereof the words board shall report to

Twenty-first: In Sec. 14, 30 V.S.A. § 209(h)(4), by striking out subdivision (J) in its entirety and relettering the remaining subdivisions to be alphabetically correct

Twenty-second: In Sec. 14, 30 V.S.A. § 209(h)(4)(J) as relettered by the 25th instance of amendment, in the second sentence, by striking out the words "and the participant"

Twenty-third: In Sec 14, 30 V.S.A. § 209(h)(4)(K) as relettered by the 25th amendment, by striking out "(h)(4)(K)" and inserting in lieu thereof (h)(4)(J)

Twenty-fourth: By striking out Sec. 15 in its entirety and inserting in lieu thereof Secs. 15 and 15a through 15k to read as follows:

* * * Vermont Village Green Renewable Pilot Program * * *

Sec. 15. FINDINGS AND PURPOSE

The general assembly finds all of the following:

(1) The use of fossil fuels for heat and power contributes to emissions of greenhouse gases and climate change.

(2) Fossil fuel prices in recent years have been highly volatile, and significant potential exists for those prices to reach rates that are equal to or greater than the exceptionally high prices seen within the last few years.

(3) Payments for fossil fuels by Vermonters involve the movement of significant sums of money outside the state and the country to pay for heating fuel, draining Vermont's economy.

(4) The state of Vermont seeks to ensure that Vermonters obtain a greater measure of control over the environmental impacts of energy use and energy costs.

(5) The state of Vermont seeks to increase its efforts to limit its emissions of greenhouse gases.

(6) Community energy infrastructure that uses renewable fuels can reduce the environmental impacts of energy use and provide a community with the opportunity to obtain heat and potentially power at stable prices that reduce the economic risks associated with fossil fuels. Local energy purchases recirculate money in the Vermont economy and can provide businesses with competitive energy rates.

(7) The state of Vermont seeks to establish incentives for communities to host energy generation that is renewable and efficiently utilized and that provides heat and potentially power to groups of commercial, industrial, or residential uses, or combinations of such uses, within the community.

Sec. 15a. 30 V.S.A. chapter 93 is added to read:

CHAPTER 93. VERMONT VILLAGE GREEN RENEWABLE PILOT PROGRAM

§ 8100. DEFINITIONS

In this chapter:

(1) "Board" means the public service board created under section 3 of this title.

(2) "Certification" or "certified," except when part of the phrase "third party certified," refers to certification of a Vermont village green renewable project by the department under subsection 8101(b) of this title.

(3) "Combined heat and power " or "CHP" shall have the meaning stated in 10 V.S.A. § 6523(b), except that:

(A) CHP excludes facilities using fossil fuel.

(B) CHP using woody biomass as a fuel must achieve, for that fuel, no less than a 50-percent net annual efficiency of energy utilized and, during

the heating season, a minimum energy conversion efficiency of 70 percent considering all energy inputs and outputs at normal load.

(4) "Department" means the department of public service created under section 1 of this title.

(5) "District heating" means a system for distributing heat generated in a centralized location within a host community to multiple residential, commercial, or industrial uses within that community or a combination of such uses. The source of heat may be a dedicated heat-only facility using renewable energy as a fuel or waste heat from electrical generation that uses renewable energy as a fuel to form a CHP system.

(6) "District power" means a system for distributing electricity generated in a centralized location within a host community to multiple residential, commercial, or industrial uses in that community or a combination of such uses. The electricity must be produced using renewable energy as a fuel source and may include CHP.

(7) "Host community" means the municipality in which a Vermont village green renewable project is to be located.

(8) "Renewable energy" shall have the meaning stated in 10 V.S.A. § 6523(b)(4), except that renewable energy using woody biomass as a fuel must achieve, for that fuel, no less than a 50-percent net annual efficiency of energy utilized and, during the heating season, a minimum energy conversion efficiency of 70 percent considering all energy inputs and outputs at normal load.

(9) "Vermont village green renewable project" means district heating, either with or without district power, to serve a downtown development district designated as such pursuant to 24 V.S.A. § 2793 or a growth center designated as such pursuant to 24 V.S.A. § 2793c. As long as the end uses served by the project are within such a district or center, the generation of heat and power may be outside the district or center.

§ 8101. PILOT PROGRAM; CERTIFICATION

(a) The Vermont village green renewable pilot program is created to consist of no more than two Vermont village green renewable projects, one each in the city of Montpelier and in the town of Randolph. Another municipality may seek certification under this chapter in the event either the city of Montpelier or the town of Randolph or both decline to seek or are denied certification.

(b) On application of a host community, the department may certify a Vermont village green renewable project under this chapter on finding each of the following:

(1) The host community proposes a Vermont village green renewable project.

(2) The host community has submitted an application to the board that includes each of the following:

(A) A description and map of the proposed Vermont village green renewable project, showing its location within the host community.

(B) A complete description of the existing industrial, commercial, or residential uses to be served by the Vermont village green renewable project, of how the project will serve those uses, and of the billing, payment, and customer service arrangements.

(C) A letter submitted by the host community in support of the application and, if the host community has a town plan, the letter shall confirm that the proposed project is consistent with that plan.

(D) A letter issued by the appropriate regional planning commission indicating that the regional impacts of the proposed project and selected site have been considered and that the project conforms with the applicable regional plan.

(E) A letter from the Vermont downtown development board, as described under 24 V.S.A. § 2792(f), that the development board has been notified of the Vermont village green renewable project.

(3) The Vermont village green renewable project is consistent with the purposes of the clean energy development fund as established in 10 V.S.A. § 6523.

(4) The host community will invest in the Vermont village green renewable project the incentive created under section 8102 of this title and has provided a plan that demonstrates that such investment will be made.

(5) The Vermont village green renewable project, if it uses woody biomass as a fuel, will use procurement standards, management practices, and a supply chain that are third party certified using a performance-based audit.

(6) The Vermont village green renewable project will comply with all applicable national ambient air quality standards and air pollution control regulations of the agency of natural resources. If, during 2009, the U.S. Environmental Protection Agency proposes updated emissions standards applicable to wood-fueled boilers to be used in connection with the project, the project shall comply with such proposed standards.

(7) The Vermont village green renewable project meets all applicable requirements of this chapter.

(c) Notwithstanding any other provision of law, certification under this section shall not be subject to the provisions of 3 V.S.A. chapter 25 and shall not be subject to appeal.

(d) A host community does not need to obtain certification unless it seeks its Vermont village green renewable project to be eligible for incentives under section 8102 of this title or rates for electricity as provided under subsection 8104(c) of this title. Certification shall not be required to qualify for net metering under section 219a of this title.

§ 8102. SALES AND USE TAX EXEMPTION

All materials and equipment purchased for the construction and installation of a Vermont village green renewable project shall be exempt from the sales and use tax established under chapter 233 of Title 32. Such exemption shall apply only to equipment and materials, the primary purpose of which is use in such construction and installation and shall not apply to materials and equipment purchased after the project goes into service. The commissioner of the department of taxes or the commissioner's designee may require that a host community file a certificate or affidavit of exemption, in the same manner as provided under 32 V.S.A. § 9745(a), with respect to materials and equipment for which exemption is claimed under this section.

§ 8103. HEAT AVAILABILITY

All of the heat generated by a Vermont village green renewable project shall be made available to the commercial, industrial, and residential users identified in the host community's application to the board under subsection 8101(b) of this title.

§ 8104. RATES FOR ELECTRICITY

(a) All or a portion of the electricity generated by a Vermont village green renewable project, if it includes district power, shall be made available to the commercial, industrial, and residential users identified in the host community's application to the board under subsection 8101(b) of this title.

(b) If a Vermont village green renewable project includes district power and does not qualify or opt for treatment as a net metering system under section 219a of this title:

(1) On petition of the host community, the board after notice and opportunity for hearing shall create a rate class for the commercial, industrial, and residential uses served by the project, the rates for which class at a minimum shall be consistent with the following principle: An end user shall pay the same share of the distribution utility's fixed costs as a similar end user not served by the project.

(2) Excess electricity may be sold to the distribution utility at the market rate or by contract.

§ 8105. REPORTING

(a) A host community for which a Vermont village green renewable project has been certified under this chapter shall file a report to the board and the commissioner of public service by December 31 of each year following certification. The report shall contain such information as is required by the board and the commissioner. The report shall include at a minimum sufficient information for the commissioner of public service to submit the report required by subsection (b) of this section.

(b) Beginning March 1, 2010, and annually thereafter, the commissioner of public service shall submit a report to the senate committees on economic development, housing and general affairs, on finance, and on natural resources and energy, the house committees on ways and means, on commerce and economic development, and on natural resources and energy, and the governor which shall include an update on progress made in the development of the Vermont village green renewable projects authorized under this chapter. The report also shall include an analysis of the costs and benefits of the projects as well as any recommendations consistent with the purposes of this chapter.

* * * Voluntary Energy Conservation * * *

Sec. 15b. 24 V.S.A. § 2291a is added to read:

§ 2291a. RENEWABLE ENERGY DEVICES

Notwithstanding any provision of law to the contrary, no municipality, by ordinance, resolution, or other enactment, shall prohibit or have the effect of prohibiting the installation of solar collectors, clotheslines, or other energy devices based on renewable resources. This section shall not apply to patio railings in condominiums, cooperatives, or apartments.

Sec. 15c. 24 V.S.A. § 4413(g) is added to read:

(g) Notwithstanding any provision of law to the contrary, a bylaw adopted under this chapter shall not prohibit or have the effect of prohibiting the installation of solar collectors, clotheslines, or other energy devices based on renewable resources.

Sec. 15d. 27 V.S.A. § 544 is added to read:

§ 544. ENERGY DEVICES BASED ON RENEWABLE RESOURCES

(a) No deed restrictions, covenants, or similar binding agreements running with the land shall prohibit or have the effect of prohibiting solar collectors, clotheslines, or other energy devices based on renewable resources from being

installed on buildings erected on the lots or parcels covered by the deed restrictions, covenants, or binding agreements. A property owner may not be denied permission to install solar collectors or other energy devices based on renewable resources by any entity granted the power or right in any deed restriction, covenant, or similar binding agreement to approve, forbid, control, or direct alteration of property with respect to residential dwellings. For purposes of this subsection, that entity may determine the specific location where solar collectors may be installed on the roof within an orientation to the south or within 45° east or west of due south, provided that this determination does not impair the effective operation of the solar collectors.

(b) In any litigation arising under the provisions of this section, the prevailing party shall be entitled to costs and reasonable attorney's fees.

(c) The legislative intent in enacting this section is to protect the public health, safety, and welfare by encouraging the development and use of renewable resources in order to conserve and protect the value of land, buildings, and resources by preventing measures which will have the ultimate effect, whether or not intended, of driving the costs of owning and operating commercial or residential property beyond the capacity of private owners to maintain. This section shall not apply to patio railings in condominiums, cooperatives, or apartments.

* * * Clean Energy Assessment Districts * * *

Sec. 15e. FINDINGS

The general assembly finds that it is in the public interest for municipalities to finance renewable energy projects and energy efficiency projects in light of the goals set forth in section 578 of Title 10 (greenhouse gas reduction goals), section 580 of Title 10 (25 by 25 state goal), and section 581 of Title 10 (building efficiency goals).

Sec. 15f. 24 V.S.A. § 1751(3) is amended to read:

(3) "Improvement," shall include, apart from its ordinary signification~~,~~:

(A) ~~the~~ The acquiring of land for municipal purposes, the construction of, extension of, additions to, or remodeling of buildings or other improvements thereto, also furnishings, equipment or apparatus to be used for or in connection with any existing or new improvement, work, department or other corporate purpose, and also shall include the purchase or acquisition of other capital assets, including licenses and permits, in connection with any existing or new improvement benefiting the municipal corporation, and all costs incurred by the municipality in connection with the construction or acquisition of the improvement and the financing thereof, including without

limitation capitalized interest, underwriters discount, the funding of reserves and the payment of contributions to establish eligibility and participation with respect to loans made from any state revolving fund, to the extent such payment is consistent with federal law;

(B) Pursuant to subchapter 2 of chapter 87 of this title, projects relating to renewable energy, as defined in subdivision 8002(2) of Title 30, or to eligible energy efficiency projects undertaken by owners of real property within the boundaries of the town, city, or incorporated village. Energy efficiency projects shall be those that are eligible under section 3267 of this title.

Sec. 15g. 24 V.S.A. § 2291 is amended to read:

§ 2291. ENUMERATION OF POWERS

For the purpose of promoting the public health, safety, welfare, and convenience, a town, city, or incorporated village shall have the following powers:

* * *

(23) Acting individually or in concert with other towns, cities, or incorporated villages and pursuant to subchapter 2 of chapter 87 of this title, to incur indebtedness for or otherwise finance by any means permitted under chapter 53 of this title projects relating to renewable energy, as defined in subdivision 8002(2) of Title 30, or to eligible energy efficiency projects undertaken by owners of real property within the boundaries of the town, city, or incorporated village. Energy efficiency projects shall be those that are eligible under section 3267 of this title.

Sec. 15h. SUBCHAPTER DESIGNATION

24 V.S.A. chapter 87 §§ 3251–3256 shall be designated as:

Subchapter 1. General Provisions

Sec. 15i. 24 V.S.A. § 3252 is amended to read:

§ 3252. PURPOSE OF ASSESSMENTS

Special assessments may be made for the purchase, construction, repair, reconstruction, or extension of a water system or sewage system, or any other public improvement which is of benefit to a limited area of a municipality to be served by the improvement, including those projects authorized under subchapter 2 of this chapter.

Sec. 15j. 24 V.S.A. chapter 87, subchapter 2 is added to read:

Subchapter 2. Clean Energy Assessments

§ 3261. CLEAN ENERGY ASSESSMENT DISTRICTS; APPROVAL OF VOTERS

(a) The legislative body of a town, city, or incorporated village may submit to the voters of the municipality the question of whether to designate the municipality as a clean energy assessment district. In a clean energy assessment district, only those property owners who have entered into written agreements with the municipality under section 3262 of this title would be subject to a special assessment, as set forth in section 3255 of this title.

(b) Upon a vote of approval by a majority of the qualified voters of the municipality voting at an annual or special meeting duly warned for that purpose, the municipality may incur indebtedness for or otherwise finance projects relating to renewable energy, as defined in subdivision 8002(2) of Title 30, or to eligible projects relating to energy efficiency as defined by section 3267 of this title, undertaken by owners of real property within the boundaries of the town, city, or incorporated village.

§ 3262. WRITTEN AGREEMENTS; CONSENT OF PROPERTY OWNERS; ENERGY SAVINGS ANALYSIS

(a) Upon an affirmative vote made pursuant to section 3261 of this title and the performance of an energy savings analysis pursuant to subsection (b) of this section, an owner of real property within the boundaries of a clean energy assessment district may enter into a written agreement with the municipality that shall constitute the owner's consent to be subject to a special assessment, as set forth in section 3255 of this title. A participating municipality shall follow underwriting criteria, consistent with responsible underwriting and credit standards as established by the department of banking, insurance, securities, and health care administration, and shall establish other qualifying criteria to provide an adequate level of assurance that property owners will have the ability to meet assessment payment obligations. A participating municipality shall refuse to enter into a written agreement with a property owner who fails to meet the underwriting or other qualifying criteria.

(b) Prior to entering into a written agreement, a property owner shall have an analysis performed to quantify the project costs and energy savings and estimated carbon impacts of the proposed energy improvements, including an annual cash-flow analysis. This analysis shall be conducted by the entities appointed as energy efficiency utilities under subdivision 209(d)(2) of Title 30, or conducted by another entity deemed qualified by the participating

municipality. All analyses shall be reviewed and approved by the entities appointed as energy efficiency utilities.

(c) A written agreement shall provide that:

(1) the length of time allowed for the property owner to repay the assessment shall not exceed the life expectancy of the project. In instances where multiple projects have been installed, the length of time shall not exceed the average lifetime of all projects, weighted by cost. Lifetimes of projects shall be determined by the entities appointed as energy efficiency utilities under subdivision 209(d)(2) of Title 30 or another qualified technical entity designated by a participating municipality;

(2) At the time of a transfer of property ownership excepting foreclosure, the past due balances of any special assessment under this subchapter shall be due for payment, but future payments shall continue as a lien on the property.

(3) A participating municipality shall disclose to participating property owners the risks associated with participating in the program, including risks related to the failure of participating property owners to make payments and the risk of foreclosure.

(d) A written agreement and the analysis performed pursuant to subsection (b) of this section shall be filed with the clerk of the municipality for recording in the land records of the municipality and shall be disclosed to potential buyers prior to transfer of property of ownership. Personal financial information provided to a municipality by a participating property owner or potential participating property owner shall not be subject to disclosure as set forth in subdivision 317(c)(7) of Title 1.

(e) At least 30 days prior to entering into a written agreement, the property owner shall provide to the holders of any existing mortgages on the property notice of his or her intent to enter into the written agreement.

(f) The total amount of assessments under this subchapter shall not exceed more than 15 percent of the assessed value of the property. The combined amount of the assessment plus any outstanding mortgage obligations for the property shall not exceed 90 percent of the assessed value of that property.

(g) In the case of an agreement with the resident owner of a dwelling, as defined in section 103(v) of the federal Truth in Lending Act:

(1) the assessments to be repaid under the agreement, when calculated as the repayment of a loan, shall not violate chapter 4 of Title 9;

(2) the maximum length of time for the owner to repay the loan shall not exceed 20 years; and

(3) the maximum amount to be repaid for the project shall not exceed $30,000.00 or 15 percent of the assessed value of the property, whichever is less.

§ 3263. COSTS OF OPERATION OF DISTRICT

The owners of real property who have entered into written agreements with the municipality under section 3262 of this title shall be obligated to cover the costs of operating the district. A municipality may use other available funds to operate the district.

§ 3264. RIGHTS OF PROPERTY OWNERS

A property owner who has entered into a written agreement with the municipality under section 3262 of this title may enter into a private agreement for the installation or construction of a project relating to renewable energy, as defined in subdivision 8002(2) of Title 30, or relating to energy efficiency as defined by section 3267 of this title.

§ 3265. LIABILITY OF MUNICIPALITY

(a) A municipality that incurs indebtedness for or otherwise finances projects under this subchapter shall not be liable for the failure of performance of a project.

(b) A municipality that incurs indebtedness for bonding under this subchapter shall pledge the full faith and credit of the municipality.

§ 3266. INTERMUNICIPAL AGREEMENTS

Two or more municipalities, by resolution of their respective legislative bodies or boards, may establish and enter into agreements for incurring indebtedness or otherwise financing projects under this subchapter.

§ 3267. ELIGIBLE ENERGY EFFICIENCY PROJECTS

Those entities appointed as energy efficiency utilities under subsection 209(d) of Title 30 shall develop a list of eligible energy efficiency projects and shall make the list available to the public on or before July 1 of each year.

§ 3268. RELEASE OF LIEN

(a) A municipality shall release a participating property owner of the lien on the property against which the assessment under this subchapter is made upon:

(1) Full payment of the value of the assessment; or

(2) Demand from a party who has filed an action for foreclosure on a participating property.

(b) If a municipality releases a participating property owner of a lien upon demand from a party who has filed an action for foreclosure and the participating property owner redeems the property, the municipality shall reinstate the lien on the property against which the assessment under this subchapter is made.

(c) Notice of the release or reinstatement of the lien shall be filed with the clerk of the municipality for recording in the land records of the municipality.

§ 3269. RESERVE FUND

(a) A participating municipality may create a reserve fund for use in the event of a foreclosure upon an assessed property. The reserve fund shall be funded by participating property owners at a level sufficient to provide for the payment of any past due balances on assessments under this subchapter and any remaining principal balances on those assessments in the event of a foreclosure upon a participating property.

(b) The reserve fund shall be capitalized in accordance with standards and procedures approved by the commissioner of banking, insurance, securities, and health care administration to cover expected foreclosures based on good lending practice experience.

(c) The municipality shall disclose in advance to each interested property owner the amount of that property owner's required payment into the reserve fund. Once disclosed, the amount of the reserve fund payment shall not change over the life of the assessment.

Sec. 15k. 24 V.S.A. § 4592 is amended to read:

§ 4592. SUPPLEMENTARY POWERS

The bank, in addition to any other powers granted in this chapter, has the following powers:

* * *

(8) To the extent permitted under its contracts with the holders of bonds or notes of the bank, to consent to any modification of the rate of interest, time and payment of any installment of principal or interest, security or any other term of bond or note, contract or agreement of any kind to which the bank is a party; ~~and~~

(9) To issue its bonds or notes which are secured by neither the reserve fund nor the revenue bond reserve fund, but which may be secured by such other funds and accounts as may be authorized by the bank from time to time;

(10) To issue bonds, other forms of indebtedness, or other financing obligations for projects relating to renewable energy, as defined in subdivision

8002(2) of Title 30, or to energy efficiency projects under subchapter 2 of chapter 87 of this title. Bonds shall be supported by both the general obligation and the assessment payment revenues of the participating municipality.

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

Senator Campbell Assumes the Chair

Senator Cummings, for the Committee on Finance, to which the bill was referred, reported recommending that the Senate propose to the House that the bill be amended as recommended by the Committee on Natural Resources and Energy, and that the bill be further amended as follows:

First: In Sec. 4, 30 V.S.A. § 8005(b)(2)(D), by striking out the following: ", subject to the provisions of subdivision (2)(E) of this subsection"

Second: In Sec. 6, 30 V.S.A. § 218(f), by striking out subdivisions (2) and (3) in their entirety and inserting in lieu thereof the following:

(2) The board is authorized to provide to an electric distribution utility subject to rate regulation under this chapter an incentive rate of return on equity or other reasonable incentive on any capital investment made by such utility in a renewable energy generation facility sited in Vermont.

And by renumbering subdivision (4) to (3)

Third: In Secs. 9 and 9a, 32 V.S.A. §§ 5822(d) and 5930z, by striking out each occurrence of the following: "any public or private program that assists in providing capital investment for a renewable energy project" and inserting in lieu thereof the following: the clean energy development created under 10 V.S.A. § 6523

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

Senator Kitchel, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill ought to pass in concurrence with proposals of amendment as recommended by the Committee on Natural Resources and Energy and the Committee on Finance.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the proposal of amendment of the Committee on Natural Resources and Energy was agreed to.

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Finance?, Senator

Cummings requested and was granted leave to withdraw the Committee on Finance *third* proposal of amendment.

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Finance?, Senator Cummings moved to amend the proposal of amendment of the Committee on Finance as follows:

First: By striking out Sec. 9 in its entirety and inserting lieu thereof a new section to be numbered Sec. 9 to read as follows:

Sec. 9. 32 V.S.A. § 5822(d) is amended to read:

(d) A taxpayer shall be entitled to a credit against the tax imposed under this section of 24 percent of each of the credits allowed against the taxpayer's federal income tax for the taxable year as follows: elderly and permanently totally disabled credit, investment tax credit attributable to the Vermont-property portion of the investment, and child care and dependent care credits. A taxpayer shall also be entitled to a credit against the tax imposed under this section of 76 percent of the Vermont-property portion of the business solar energy investment tax credit component of the federal investment tax credit allowed against the taxpayer's federal income tax for the taxable year under Section 48 of the Internal Revenue Code; provided, however, that a taxpayer who receives any grants or similar funding from the clean energy development fund created under 10 V.S.A. § 6523 is not eligible to claim the business solar energy tax credit for that project; and provided, further that the tax credit will only apply to project costs not covered by any grants or similar funding from any public or private program that assists in providing capital investment for a renewable energy project. Any unused business solar energy investment tax credit under this section may be carried forward for no more than five years following the first year in which the credit is claimed.

Second: By striking out Sec. 9a in its entirety and inserting in lieu thereof a new Sec. 9a to read:

Sec. 9a. 32 V.S.A. § 5930z is amended to read:

§ 5930z. PASS-THROUGH OF FEDERAL ENERGY CREDIT FOR CORPORATIONS

(a) A taxpayer of this state shall be eligible for a credit against the tax imposed under section 5832 of this title in an amount equal to 100 percent of the Vermont-property portion of the business solar energy investment tax credit component of the federal investment tax credit allowed against the taxpayer's federal income tax for the taxable year under Section 48 of the Internal Revenue Code; provided, however, that a taxpayer who receives any

grants or similar funding from the clean energy development fund created under 10 V.S.A. § 6523 is not eligible to claim the business solar energy tax credit for that project; and provided, further that the tax credit will only apply to project costs not covered by any grants or similar funding from any public or private program that assists in providing capital investment for a renewable energy project.

Which was agreed to.

Thereupon, the pending question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Finance, as amended?, was agreed to.

Thereupon, pending the question Shall the bill be read the third time?, Senator Cummings moved to amend the Senate proposal of amendment by adding a new Sec. 15b to read as follows:

Sec. 15b. 32 V.S.A. § 9741(47) is added to read:

(47) The sale and use of all materials and equipment purchased for the construction and installation of a Vermont village green renewable project pursuant to chapter 93 of Title 30; provided, however, that such exemption shall apply only to equipment and materials the primary purpose of which is use in construction and installation and shall not apply to materials and equipment after the project goes into service. The commissioner of the department of taxes or the commissioner's designee may require that a host community file a certificate or affidavit of exemption, in the same manner as provided under 32 V.S.A. § 9745(a), with respect to materials and equipment for which exemption is claimed under this section.

And by renumbering all remaining sections to be numerically correct.

Which was agreed to.

President Assumes the Chair

Senator Campbell Assumes the Chair

Thereupon, pending the question, Shall the bill be read a third time?, Senator Mullin moved to amend the Senate proposal of amendment, in Sec. 4, 30 V.S.A. § 8002(b)(2)(B), by adding the following after subdivision (III):

(IV) The board shall consider the least cost provision of energy services as defined in subdivision 218c(a)(1) of this title and the impact on electric rates.

Which was disagreed to on a roll call, Yeas 11, Nays 13.

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

Roll Call

Those Senators who voted in the affirmative were: Brock, Choate, Doyle, Giard, Kitchel, Maynard, Mazza, Miller, Mullin, Nitka, Scott.

Those Senators who voted in the negative were: Ashe, Carris, Cummings, Flanagan, Hartwell, Kittell, Lyons, MacDonald, McCormack, Racine, Sears, Starr, White.

Those Senators absent or not voting were: Ayer, Bartlett, Campbell (presiding), Illuzzi, Shumlin, Snelling.

Thereupon, pending the question, Shall the bill be read a third time?, Senators Starr and Kitchel moved to amend the Senate proposal of amendment by inserting a new section to be numbered Sec. 8a to read as follows:

Sec. 8a. ANR WIND GUIDELINES; REEXAMINATION

No later than March 1, 2010, the department of public service and the agency of natural resources jointly shall perform each of the following:

(1) Reexamine the agency's draft "Guidelines for the Review and Evaluation of Potential Natural Resources Impacts from Utility-Scale Wind Energy Facilities in Vermont" (the Guidelines). Such reexamination shall include an opportunity for public comment.

(2) Consider and, as appropriate, make revisions to the Guidelines. Such consideration shall include whether to make any revisions needed to conform the Guidelines to the findings and recommendations of the Vermont Commission on Wind Energy Regulatory Policy (Dec. 15, 2004) (the Recommendations).

(3) Applying the Guidelines as may be revised under subsection (2) of this section and the Recommendations, identify three sites on which it is feasible, economically and environmentally, to site commercial scale wind energy generation facilities.

(4) Conduct and complete a public engagement process with respect to the potential installation of wind energy generation facilities on the sites identified under subdivision (3) of this section.

(5) Report to the senate and house committees on natural resources and energy on the course, conduct, and results of the reexamination, consideration, site identification, and public engagement process required by this section, attaching any revisions made to the Guidelines, describing each of the sites identified and the public engagement process, and summarizing the reasons for actions taken or not taken and the public comments received.

Thereupon, pending the question, Shall the Senate proposal of amendment, be amended as recommended by Senators Starr and Kitchel?, Senator Starr requested and was granted leave to withdraw the proposal of amendment.

Thereupon, third reading of the bill was ordered on a roll call, Yeas 16, Nays 10.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Carris, Cummings, Flanagan, Giard, Hartwell, Kittell, Lyons, MacDonald, McCormack, Miller, Nitka, Racine, Shumlin, Starr, White.

Those Senators who voted in the negative were: Brock, Choate, Doyle, Kitchel, Maynard, Mazza, *Mullin, Scott, Sears, Snelling.

Those Senators absent or not voting were: Ayer, Bartlett, Campbell (presiding), Illuzzi.

*Senator Mullin explained his vote as follows:

"Although I support diversifying our portfolio and doing everything we can to develop new renewable sources, I cannot vote for a bill that refuses to even consider the impact on ratepayers."

Senator Shumlin Assumes the Chair

House Proposal of Amendment Concurred In

S. 86.

House proposal of amendment to Senate bill entitled:

An act relating to the administration of trusts.

Was taken up.

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

Sec. 1. Title 14A is added to read:

TITLE 14A. TRUSTS

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

§ 101. SHORT TITLE

This title may be cited as the Vermont Trust Code.

§ 102. SCOPE

This title applies to express trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust. This title shall not apply to trusts described in the following provisions of Vermont Statutes Annotated: chapter 16 of Title 3, chapter 151 of Title 6, chapters 103, 204, and 222 of Title 8, chapters 11A, 12, and 59 of Title 10, chapter 7 of Title 11A, chapter 11 of Title 15, chapters 55, 90, and 131 of Title 16, chapters 121, 177, and 225 of Title 18, chapter 9 of Title 21, chapters 65, 119, 125, and 133 of Title 24, chapters 5 and 7 of Title 27, chapter 11 of Title 28, chapter 16 of Title 29, and chapters 84 and 91 of Title 30.

§ 103. DEFINITIONS

In this title:

(1) "Action," with respect to an act of a trustee, includes a failure to act.

(2) "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on the effective date of this title.

(3) "Beneficiary" means a person that:

(A) has a present or future beneficial interest in a trust, vested or contingent; or

(B) in a capacity other than that of trustee, holds a power of appointment over trust property.

(4) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in subsection 405(a) of this title.

(5) "Conservator" shall have the same meaning as "Guardian of the property" under subdivision 7(A)(ii) of this section.

(6) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

(7)(A) "Guardian."

(i) "Guardian of the person" means a person appointed by the probate court to make decisions regarding the support, care, education, health, and welfare of a minor or adult individual.

(ii) "Guardian of the property" means a person appointed by the probate court to administer the estate of a minor or adult individual.

(B) Neither term includes a guardian ad litem.

(8) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

(9) "Jurisdiction," with respect to a geographic area, includes a state or country.

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

(11) "Power of withdrawal" means a presently exercisable general power of appointment other than a power:

(A) exercisable by a trustee and limited by an ascertainable standard; or

(B) exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

(12) "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

(13)(A) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined, is:

(i) a "first tier" beneficiary as a distributee or permissible distributee of trust income or principal;

(ii) a "second tier" beneficiary who would be a first tier beneficiary of trust income or principal if the interests of the distributees described in subdivision (A) of this subdivision (13) terminated on that date without causing the trust to terminate; or

(iii) a "final beneficiary" who would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(B) Notwithstanding subdivisions (i) and (ii) of subdivision (A) of this subdivision (13), a second tier beneficiary or a final beneficiary shall not be a "qualified beneficiary" if the beneficiary's interest in the trust:

(i) is created by the exercise of a power of appointment and the exercise of the power of appointment is not irrevocable; or

(ii) may be eliminated by an amendment to the trust.

(14) "Revocable," as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

(15) "Settlor" means a person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.

(16) "Spendthrift provision" means a term of a trust which restrains both voluntary and involuntary transfer of a beneficiary's interest.

(17) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes a Native American tribe or band recognized by federal law or formally acknowledged by a state.

(18) "Terms of a trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

(19) "Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.

(20) "Trustee" includes an original, additional, and successor trustee, and a cotrustee.

§ 104. KNOWLEDGE

(a) Subject to subsection (b) of this section, a person has knowledge of a fact if the person:

(1) has actual knowledge of it;

(2) has received a notice or notification of it; or

(3) from all the facts and circumstances known to the person at the time in question, has reason to know it.

(b) An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust, or would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information.

§ 105. DEFAULT AND MANDATORY RULES

(a) Except as otherwise provided in the terms of the trust, this title governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

(b) The terms of a trust prevail over any provision of this title except:

(1) the requirements for creating a trust;

(2) the duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries;

(3) the requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;

(4) the power of the probate court to modify or terminate a trust under sections 410 through 416 of this title;

(5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in chapter 5 of this title;

(6) the power of the probate court under section 702 of this title to require, dispense with, or modify or terminate a bond;

(7) the power of the probate court under subsection 708(b) of this title to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;

(8) the effect of an exculpatory term under section 1008 of this title;

(9) the rights under sections 1010 through 1013 of this title of a person other than a trustee or beneficiary;

(10) periods of limitation for commencing a judicial proceeding;

(11) the power of the probate court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; and

(12) the subject matter jurisdiction of the probate court and venue for commencing a proceeding as provided in sections 203 and 204 of this title.

§ 106. COMMON LAW OF TRUSTS; PRINCIPLES OF EQUITY

The common law of trusts and principles of equity supplement this title, except to the extent modified by this title or another statute of this state.

§ 107. GOVERNING LAW

The meaning and effect of the terms of a trust are determined by:

(1) the law of the jurisdiction designated in the terms unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue; or

(2) in the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue.

§ 108. PRINCIPAL PLACE OF ADMINISTRATION

(a) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if:

(1) a trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction; or

(2) all or part of the administration occurs in the designated jurisdiction.

(b) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries.

(c) Without precluding the right of the probate court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection (b) of this section, may transfer the trust's principal place of administration to another state or to a jurisdiction outside the United States.

(d) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration not less than 60 days before initiating the transfer. The notice of proposed transfer must include:

(1) the name of the jurisdiction to which the principal place of administration is to be transferred;

(2) the address and telephone number at the new location at which the trustee can be contacted;

(3) an explanation of the reasons for the proposed transfer;

(4) the date on which the proposed transfer is anticipated to occur; and

(5) the date, not less than 60 days after the giving of the notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.

(e) The authority of a trustee under this section to transfer a trust's principal place of administration terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

(f) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to section 704 of this title.

§ 109. METHODS AND WAIVER OF NOTICE

(a) Notice to a person under this title or the sending of a document to a person under this title must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, commercial delivery service, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed electronic message.

(b) Notice otherwise required under this title or a document otherwise required to be sent under this title need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

(c) Notice under this title or the sending of a document under this title may be waived by the person to be notified or sent the document.

(d) Notice of a judicial proceeding must be given as provided in the applicable rules of court procedure.

§ 110. OTHERS TREATED AS QUALIFIED BENEFICIARIES

(a) Whenever notice to qualified beneficiaries of a trust is required under this title, the trustee shall also give notice to any other beneficiary who has sent the trustee a request for notice.

(b)(1) A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a qualified beneficiary under this title if the charitable organization, on the date the charitable organization's qualification is being determined, is:

(A) a "first tier" beneficiary as a distributee or permissible distributee of trust income or principal;

(B) a "second tier" beneficiary who would be a first tier beneficiary of trust income or principal if the interests of the distributees described in subdivision (1)(A) of this subsection (b) terminated on that date without causing the trust to terminate; or

(C) a "final beneficiary" who would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(2) Notwithstanding subdivision (1) of this subsection (b), a second tier beneficiary or a final beneficiary whose interest in the trust is created by the exercise of a power of appointment, and the exercise of the power of appointment is not irrevocable, shall not have the rights of a "qualified beneficiary."

(c) A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in section 408 or 409 of this title has the rights of a qualified beneficiary under this title.

(d) The attorney general of this state has the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in this state.

§ 111. NONJUDICIAL SETTLEMENT AGREEMENTS

(a) For purposes of this section, "interested persons" means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the probate court.

(b) Except as otherwise provided in subsection (c) of this section, interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

(c) A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the probate court under this title or other applicable law.

(d) Matters that may be resolved by a nonjudicial settlement agreement include:

(1) the interpretation or construction of the terms of the trust;

(2) the approval of a trustee's report or accounting;

(3) direction to a trustee to perform or to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;

(4) the resignation or appointment of a trustee and the determination of a trustee's compensation;

(5) transfer of a trust's principal place of administration; and

(6) liability of a trustee for an action relating to the trust.

(e) Any interested person may request the probate court to approve a nonjudicial settlement agreement to determine whether the representation as provided in chapter 3 of this title was adequate, and to determine whether the agreement contains terms and conditions the probate court could have properly approved.

§ 112. RULES OF CONSTRUCTION

The rules of construction that apply in this state to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property.

CHAPTER 2. JUDICIAL PROCEEDINGS

§ 201. ROLE OF COURT IN ADMINISTRATION OF TRUST

(a) The probate court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.

(b) A trust is not subject to continuing judicial supervision unless ordered by the probate court.

(c) A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights.

(d) Upon motion of any party in a probate action concerning the administration of a trust under the provisions of this title, the presiding probate judge shall permit an appeal to be taken to the superior court from any interlocutory order or ruling if the judge finds that the order or ruling involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal may materially advance the termination of the litigation.

§ 202. JURISDICTION OVER TRUSTEE AND BENEFICIARY

(a) By accepting the trusteeship of a trust having its principal place of administration in this state or by moving the principal place of administration

to this state, the trustee submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(b) With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the courts of this state regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(c) This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary, or other person receiving property from the trust.

§ 203. SUBJECT MATTER JURISDICTION

(a) The probate court has exclusive jurisdiction of proceedings in this state brought by a trustee or beneficiary concerning the administration of a trust.

(b) The probate court has concurrent jurisdiction with other courts of this state of other proceedings involving a trust.

§ 204. VENUE

(a) Except as otherwise provided in subsection (b) of this section, venue for a judicial proceeding involving a trust is in the probate district of this state in which the trust's principal place of administration is or will be located and, if the trust is created by will and the estate is not yet closed, in the probate district in which the decedent's estate is being administered.

(b) If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in a probate district of this state in which a beneficiary resides, in a probate district in which any trust property is located, and if the trust is created by will, in the probate district in which the decedent's estate was or is being administered.

§ 205. MATTERS IN EQUITY

The probate court may hear and determine in equity all matters relating to trusts in this title.

CHAPTER 3. REPRESENTATION

§ 301. REPRESENTATION; BASIC EFFECT

(a) Notice to a person who may represent and bind another person under this chapter has the same effect as if notice were given directly to the other person.

(b) The consent of a person who may represent and bind another person under this chapter is binding on the person represented unless the person

represented objects to the representation before the consent would otherwise have become effective.

(c) Except as otherwise provided in sections 411 and 602 of this title, a person who under this chapter may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

§ 302. REPRESENTATION BY HOLDER OF GENERAL TESTAMENTARY POWER OF APPOINTMENT

To the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.

§ 303. REPRESENTATION BY FIDUCIARIES AND PARENTS

To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

(1) a guardian of the property may represent and bind the estate that the guardian controls;

(2) a guardian of the person may represent and bind the ward if a guardian of the ward's estate has not been appointed;

(3) an agent having authority to act with respect to the particular question or dispute may represent and bind the principal;

(4) a trustee may represent and bind the beneficiaries of the trust;

(5) a personal representative of a decedent's estate may represent and bind persons interested in the estate; and

(6) a parent may represent and bind the parent's minor or unborn child if a guardian for the child has not been appointed.

§ 304. REPRESENTATION BY PERSON HAVING SUBSTANTIALLY IDENTICAL INTEREST

Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest with respect to the particular question between the representative and the person represented.

§ 305. APPOINTMENT OF REPRESENTATIVE

(a) If the probate court determines that an interest is not represented under this chapter, or that the otherwise available representation might be inadequate, the probate court may appoint a representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown. A representative may be appointed to represent several persons or interests.

(b) A representative may act on behalf of the individual represented with respect to any matter arising under this title, whether or not a judicial proceeding concerning the trust is pending.

(c) In making decisions, a representative may consider general benefit accruing to the living members of the individual's family.

CHAPTER 4. CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST

§ 401. METHODS OF CREATING TRUST

A trust may be created:

(1) by transfer of property to another person as trustee or to the trust in the trust's name during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;

(2) by declaration by the owner of property that the owner holds identifiable property as trustee;

(3) by exercise of a power of appointment in favor of a trustee;

(4) pursuant to a statute or judgment or decree that requires property to be administered in the manner of an express trust;

(5)(A) by an agent or attorney-in-fact under a power of attorney that expressly grants authority to create the trust; or

(B) by an agent or attorney-in-fact under a power of attorney that grants the agent or attorney-in-fact the authority to act in the management and disposition of the principal's property that is as broad or comprehensive as the principal could exercise for himself or herself and that does not expressly exclude the authority to create a trust, provided that any trust so created does not include any authority or powers that are otherwise prohibited by section 3504 of title 14. An agent or attorney-in-fact may petition the probate court to determine whether a power of attorney described in this subdivision grants the agent or attorney-in-fact authority that is as broad or comprehensive as that which the principal could exercise for himself or herself.

§ 402. REQUIREMENTS FOR CREATION

(a) A trust is created only if:

(1) the settlor has capacity to create a trust;

(2) the settlor indicates an intention to create the trust;

(3) the trust has a definite beneficiary or is:

(A) a charitable trust;

(B) a trust for the care of an animal, as provided in section 408 of this title; or

(C) a trust for a noncharitable purpose, as provided in section 409 of this title;

(4) the trustee has duties to perform; and

(5) the same person is not the sole trustee and current and sole beneficiary.

(b) A settlor is deemed to have the capacity to create a trust if:

(1) the trust is created by an agent of the settlor under a power of attorney as described in subdivision 401(5) of this title; and

(2) the settlor had capacity to create a trust at the time the power of attorney was executed.

(c) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(d) A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

§ 403. TRUSTS CREATED IN OTHER JURISDICTIONS

A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation:

(1) the settlor was domiciled, had a place of abode, or was a citizen;

(2) a trustee was domiciled or had a place of business; or

(3) any trust property was located.

§ 404. TRUST PURPOSES

A trust may be created only to the extent its purposes are lawful, not contrary to public policy, and possible to achieve. A trust and its terms must be for the benefit of its beneficiaries.

§ 405. CHARITABLE PURPOSES; ENFORCEMENT

(a) A charitable trust may be created for the relief of poverty; the advancement of education or religion; the promotion of health, scientific, literary, benevolent, governmental, or municipal purposes; or other purposes the achievement of which is beneficial to the community.

(b) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary or if the designated charitable purpose cannot be completed or no longer exists, the trustee, if authorized by the terms of the trust, or if not, the probate court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor's intention to the extent it can be ascertained.

(c) The settlor of a charitable trust, the attorney general, a cotrustee, or a person with a special interest in the charitable trust may maintain a proceeding to enforce the trust.

§ 406. CREATION OF TRUST INDUCED BY FRAUD, DURESS, OR UNDUE INFLUENCE

A trust is void to the extent its creation was induced by fraud, duress, or undue influence.

§ 407. EVIDENCE OF ORAL TRUST

Except as required by a statute other than this title, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear and convincing evidence.

§ 408. TRUST FOR CARE OF ANIMAL

(a) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the probate court. A person having an interest in the welfare of the animal may request the probate court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the probate court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

§ 409. NONCHARITABLE TRUST WITHOUT ASCERTAINABLE BENEFICIARY

Except as otherwise provided in section 408 of this title or by another statute, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than 21 years.

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the probate court.

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the probate court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

§ 410. MODIFICATION OR TERMINATION OF TRUST; PROCEEDINGS FOR APPROVAL OR DISAPPROVAL

(a) In addition to the methods of termination prescribed by sections 411 through 414 of this title, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve.

(b) A proceeding to approve or disapprove a proposed modification or termination under sections 411 through 416 of this title, or trust combination or division under section 417 of this title, may be commenced by a trustee or beneficiary, and a proceeding to approve or disapprove a proposed modification or termination under section 411 of this title may be commenced by the settlor. The settlor of a charitable trust may maintain a proceeding to modify the trust under section 413 of this title.

§ 411. MODIFICATION OR TERMINATION OF NONCHARITABLE IRREVOCABLE TRUST BY CONSENT

(a) A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. If, upon petition, the probate court finds that the settlor and all beneficiaries consent to the modification or termination of a noncharitable irrevocable trust, the probate court shall approve the modification or termination even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's modification or termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; by the settlor's guardian of the property with the approval of the probate court supervising the guardianship if an agent is not so authorized; or by the settlor's guardian of the person with the approval of the probate court supervising the guardianship if an agent is not so authorized and a guardian of the property has not been appointed.

(b) A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the probate court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the probate court concludes that modification is not inconsistent with a material purpose of the trust.

(c) A spendthrift provision in the terms of the trust is not presumed to constitute a material purpose of the trust.

(d) Upon termination of a trust under subsection (a) or (b) of this section, the trustee shall distribute the trust property as agreed by the beneficiaries.

(e) If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection (a) or (b) of this section, the modification or termination may be approved by the probate court if the probate court is satisfied that:

(1) if all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and

(2) the interests of a beneficiary who does not consent will be adequately protected.

§ 412. MODIFICATION OR TERMINATION BECAUSE OF UNANTICIPATED CIRCUMSTANCES OR INABILITY TO ADMINISTER TRUST EFFECTIVELY

(a) The probate court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.

(b) The probate court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration.

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property as directed by the probate court or otherwise in a manner consistent with the purposes of the trust.

§ 413. CY PRES

(a) Except as otherwise provided in subsection (b) of this section, if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful:

(1) the trust does not fail, in whole or in part;

(2) the trust property does not revert to the settlor or the settlor's successors in interest; and

(3) the probate court, on motion of any trustee, or any interested person, or the attorney general, may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes.

(b) A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the probate court under subsection (a) of this section to apply cy pres to modify or terminate the trust only if, when the provision takes effect:

(1) the trust property is to revert to the settlor and the settlor is still living; or

(2) fewer than 21 years have elapsed since the date of the trust's creation.

§ 414. MODIFICATION OR TERMINATION OF UNECONOMIC TRUST

(a) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than $100,000.00 may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

(b) The probate court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property as directed by the probate court or otherwise in a manner consistent with the purposes of the trust.

(d) This section does not apply to an easement for conservation or preservation.

§ 415. REFORMATION TO CORRECT MISTAKES

The probate court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

§ 416. MODIFICATION TO ACHIEVE SETTLOR'S TAX OBJECTIVES

The probate court may modify the terms of a trust to achieve the settlor's tax objectives if the modification is not contrary to the settlor's probable intention. The probate court may provide that the modification has retroactive effect.

§ 417. COMBINATION AND DIVISION OF TRUSTS

After notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust.

CHAPTER 5. CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

§ 501. RIGHTS OF BENEFICIARY'S CREDITOR OR ASSIGNEE

To the extent a beneficiary's interest is not protected by a spendthrift provision, the probate court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The probate court may limit the award to such relief as is appropriate under the circumstances.

§ 502. SPENDTHRIFT PROVISION

(a) A spendthrift provision is valid only if it restrains both voluntary and involuntary transfer of a beneficiary's interest.

(b) A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust," or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.

(c) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this chapter, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.

§ 503. EXCEPTIONS TO SPENDTHRIFT PROVISION

(a) In this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another state.

(b) A spendthrift provision is unenforceable against:

(1) a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance;

(2) a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust; and

(3) a claim of this state or the United States to the extent a statute of this state or federal law so provides.

(c) A claimant against which a spendthrift provision cannot be enforced may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary. The court may limit the award to such relief as is appropriate under the circumstances.

§ 504. DISCRETIONARY TRUSTS; EFFECT OF STANDARD

(a) In this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another state.

(b) Except as otherwise provided in subsection (c) of this section, whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if:

(1) the discretion is expressed in the form of a standard of distribution; or

(2) the trustee has abused the discretion.

(c) To the extent a trustee has not complied with a standard of distribution or has abused a discretion:

(1) a distribution may be ordered by the court to satisfy a judgment or court order against the beneficiary for support or maintenance of the beneficiary's child, spouse, or former spouse; and

(2) the court shall direct the trustee to pay to the child, spouse, or former spouse such amount as is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.

(d) This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.

§ 505. CREDITOR'S CLAIM AGAINST SETTLOR

(a) Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

(1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

(2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach shall not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution. This subdivision shall not apply to an irrevocable "special needs trust" established for a disabled person as described in 42 U.S.C. Section 1396p(d)(4) or similar federal law governing the transfer to such a trust.

(3) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

(b) For purposes of this section:

(1) during the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power; and

(2) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in Section 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986, or Section 2503(b) of the Internal Revenue Code of 1986, in each case as in effect on the effective date of this title.

§ 506. OVERDUE DISTRIBUTION

(a) In this section, "mandatory distribution" means a distribution of income or principal which the trustee is required to make to a beneficiary under the terms of the trust, including a distribution upon termination of the trust. The term does not include a distribution subject to the exercise of the trustee's discretion even if:

(1) the discretion is expressed in the form of a standard of distribution; or

(2) the terms of the trust authorizing a distribution couple language of discretion with language of direction.

(b) Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date.

§ 507. PERSONAL OBLIGATION OF TRUSTEE

Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

CHAPTER 6. REVOCABLE TRUSTS

§ 601. CAPACITY OF SETTLOR OF REVOCABLE TRUST

The capacity of a settlor required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

§ 602. REVOCATION OR AMENDMENT OF REVOCABLE TRUST

(a) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before the effective date of this title.

(b) If a revocable trust is created or funded by more than one settlor:

(1) to the extent the trust consists of community property or property held by tenants by the entirety when added to the trust, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses;

(2) to the extent the trust consists of property other than community property or property held by tenants by the entirety when added to the trust,

each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution; and

(3) upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall notify the other settlors of the revocation or amendment.

(c) The settlor may revoke or amend a revocable trust:

(1) by substantial compliance with a method provided in the terms of the trust; or

(2) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

(A) executing a later will or codicil that expressly refers to and revokes or amends the trust or specifically devises or bequeaths specific property that would otherwise have passed according to the terms of the trust, or

(B) any other method manifesting clear and convincing evidence of the settlor's intent.

(d) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs, but with respect to community property or property held by tenants by the entirety when added to the trust under subdivision (b)(1) of this section, the trustee shall deliver one-half of the property to each spouse unless the governing instrument specifically states otherwise.

(e) A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power.

(f) A guardian of the property of the settlor or, if no guardian of the property has been appointed, a guardian of the person of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the probate court supervising the guardianship.

(g) A trustee who does not have actual knowledge that a trust has been revoked or amended is not liable for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

§ 603. SETTLOR'S POWERS; POWERS OF WITHDRAWAL

(a) While a trust is revocable, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

(b) During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

§ 604. LIMITATION ON ACTION CONTESTING VALIDITY OF REVOCABLE TRUST; DISTRIBUTION OF TRUST PROPERTY

(a) A person may commence a judicial proceeding to contest the validity of a trust that was revocable immediately before the settlor's death within the earlier of:

(1) three years after the settlor's death; or

(2) four months after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding.

(b) Upon the death of the settlor of a trust that was revocable immediately before the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless:

(1) the trustee has actual knowledge of a pending judicial proceeding contesting the validity of the trust; or

(2) a potential contestant has notified the trustee in writing of a possible judicial proceeding to contest the trust, and a judicial proceeding is commenced within 60 days after the contestant sent the notification.

(c) A beneficiary of a trust that is determined to have been invalid in whole or in part is liable to return any distribution received to the extent that the invalidity applies to the distribution.

CHAPTER 7. OFFICE OF TRUSTEE

§ 701. ACCEPTING OR DECLINING TRUSTEESHIP

(a) Except as otherwise provided in subsection (c) of this section, a person designated as trustee accepts the trusteeship:

(1) by substantially complying with a method of acceptance provided in the terms of the trust; or

(2) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

(b) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.

(c) A person designated as trustee, without accepting the trusteeship, may:

(1) act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to the designated cotrustee, or, if none, to the successor trustee, or, if none, to a qualified beneficiary; and

(2) inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

§ 702. TRUSTEE'S BOND

(a) A trustee shall give bond to secure performance of the trustee's duties only if the probate court finds that a bond is required by the terms of the trust and the probate court has not dispensed with the requirement, or the probate court finds by clear and convincing evidence that a bond is needed to protect the interests of the beneficiaries.

(b) The probate court may specify the amount of a bond, its liabilities, and whether sureties are necessary. The probate court may modify or terminate a bond at any time.

§ 703. COTRUSTEES

(a) Cotrustees who are unable to reach a unanimous decision may act by majority decision.

(b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

(c) A cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity, or the cotrustee has properly delegated the performance of the function to another trustee.

(d) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(e) A trustee may not delegate to a cotrustee the performance of a function the settlor reasonably expected the trustees to perform jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

(f) Except as otherwise provided in subsection (g) of this section, a trustee who does not join in an action of another trustee is not liable for the action.

(g) Each trustee shall exercise reasonable care to:

(1) prevent a cotrustee from committing a serious breach of trust; and

(2) compel a cotrustee to redress a serious breach of trust.

(h) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified in writing any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

§ 704. VACANCY IN TRUSTEESHIP; APPOINTMENT OF SUCCESSOR

(a) A vacancy in a trusteeship occurs if:

(1) a person designated as trustee rejects the trusteeship;

(2) a person designated as trustee cannot be identified or does not exist;

(3) a trustee resigns;

(4) a trustee is disqualified or removed;

(5) a trustee dies; or

(6) a guardian is appointed for an individual serving as trustee.

(b) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

(c) A vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:

(1) by a person designated in the terms of the trust to act as successor trustee;

(2) by a person appointed by unanimous agreement of the qualified beneficiaries; or

(3) by a person appointed by the probate court.

(d) A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority:

(1) by a person designated in the terms of the trust to act as successor trustee; or

(2) by a person appointed by the probate court.

(e) Whether or not a vacancy in a trusteeship exists or is required to be filled, the probate court may appoint an additional trustee or special fiduciary whenever the probate court considers the appointment necessary for the administration of the trust.

§ 705. RESIGNATION OF TRUSTEE

(a) A trustee may resign:

(1) upon at least 30 days' notice in writing to all cotrustees and to the qualified beneficiaries except those qualified beneficiaries under a revocable trust which the settlor has the capacity to revoke; or

(2) with the approval of the probate court.

(b) In approving a resignation, the probate court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

(c) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

§ 706. REMOVAL AND REPLACEMENT OF TRUSTEE

(a) The settlor, a cotrustee, or a beneficiary may request the probate court to remove a trustee under subsection (b) of this section or to replace a trustee under subsection (c) of this section. A trustee may be removed by the probate court on its own initiative.

(b) The probate court may remove a trustee if:

(1) the trustee is obviously unsuitable;

(2) the trustee has committed a serious breach of trust;

(3) lack of cooperation among cotrustees substantially impairs the administration of the trust;

(4) because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries;

(5) there has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the probate court finds that removal of the trustee best serves the interests of all of the beneficiaries and is

not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

(6) for any cause, if the interests of the trust estate require it.

(c) The probate court may remove an existing trustee, and appoint a replacement trustee subject to the provisions of section 704 of this title, if the probate court finds that a change in trustee would be in keeping with the intent of the settlor. In deciding whether to replace a trustee under this subsection, the probate court may consider the following factors:

(1) Whether removal would substantially improve or benefit the administration of the trust;

(2) The relationship between the grantor and the trustee as it existed at the time the trust was created;

(3) Changes in the nature of the trustee since the creation of the trust;

(4) The relationship between the trustee and the beneficiaries;

(5) The responsiveness of the trustee to the beneficiaries;

(6) The experience and skill level of the trustee;

(7) The investment performance of the trustee;

(8) The charges for services performed by the trustee; and

(9) Any other relevant factors pertaining to the administration of the trust.

(d) A probate court may order trustees who are replaced pursuant to an action brought under subsection (c) of this section to reimburse the trust for attorney's fees and court costs paid by the trust relating to the action.

(e) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the probate court may order such appropriate relief under subsection 1001(b) of this title as may be necessary to protect the trust property or the interests of the beneficiaries.

§ 707. DELIVERY OF PROPERTY BY FORMER TRUSTEE

(a) Unless a cotrustee remains in office or the probate court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.

(b) A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to it.

§ 708. COMPENSATION OF TRUSTEE

(a) If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

(b) If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the probate court may allow more or less compensation if:

(1) the duties of the trustee are substantially different from those contemplated when the trust was created; or

(2) the compensation specified by the terms of the trust would be unreasonably low or high.

(c)(1) Factors for the probate court to consider in deciding upon a trustee's compensation shall include:

(A) the size of the trust;

(B) the nature and number of the assets;

(C) the results obtained;

(D) the time and responsibility required;

(E) the expertise required;

(F) any management or sale of real property or closely held business interests;

(G) any involvement in litigation to protect the trust property;

(H) the fee customarily charged in the locality for similar services;

(I) the experience, reputation, and ability of the person performing the services;

(J) the effect that the particular employment may have on the ability of the person employed to engage in other employment;

(K) the time limitations imposed by the trustee or by the circumstances; and

(L) other relevant factors.

(2) The order of the factors in this subsection does not imply their relative importance.

§ 709. REIMBURSEMENT OF EXPENSES

(a) A trustee is entitled to be reimbursed out of the trust property, with reasonable interest as appropriate, for:

(1) expenses that were properly incurred in the administration of the trust; and

(2) to the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

(b) An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

CHAPTER 8. DUTIES AND POWERS OF TRUSTEE

§ 801. DUTY TO ADMINISTER TRUST

Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this title.

§ 802. DUTY OF LOYALTY

(a) A trustee shall administer the trust solely in the interests of the beneficiaries.

(b) Subject to the rights of persons dealing with or assisting the trustee as provided in section 1012 of this title, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

(1) the transaction was authorized by the terms of the trust;

(2) the transaction was approved by the probate court;

(3) the beneficiary did not commence a judicial proceeding within the time allowed by section 1005 of this title;

(4) the beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with section 1009 of this title;

(5) the transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee;

(6) the transaction was consented to in writing by a settlor of the trust while the trust was revocable.

(c) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

(1) the trustee's spouse;

(2) the trustee's descendants, siblings, parents, or their spouses;

(3) an agent or attorney of the trustee; or

(4) a corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(d) A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee obtains an advantage is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.

(e) A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

(f) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment is fairly priced and otherwise complies with the prudent investor rule of chapter 9 of this title. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee must include in the trustee's annual report the rate and method by which that compensation was determined.

(g) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

(h) This section does not preclude the following transactions, if fair to the beneficiaries:

(1) an agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

(2) payment of reasonable compensation to the trustee;

(3) a transaction between a trust and another trust, decedent's estate, or guardianship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(4) a deposit of trust money in a regulated financial-service institution operated by the trustee; or

(5) an advance by the trustee of money for the protection of the trust.

(i) The probate court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

§ 803. IMPARTIALITY

If a trust has two or more beneficiaries, the trustee shall act impartially in administering the trust, giving due regard to the beneficiaries' respective interests.

§ 804. PRUDENT ADMINISTRATION

A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

§ 805. COSTS OF ADMINISTRATION

In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust, and the skills of the trustee.

§ 806. TRUSTEE'S SKILLS

A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, shall use those special skills or expertise.

§ 807. DELEGATION BY TRUSTEE

(a) A trustee may delegate duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

(1) selecting an agent;

(2) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

(3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(c) A trustee who complies with subsection (a) of this section is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

(d) By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

§ 808. POWERS TO DIRECT

(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

§ 809. CONTROL AND PROTECTION OF TRUST PROPERTY

A trustee shall take reasonable steps to take control of and protect the trust property.

§ 810. RECORDKEEPING AND IDENTIFICATION OF TRUST PROPERTY

(a) A trustee shall keep adequate records of the administration of the trust.

(b) A trustee shall keep trust property separate from the trustee's own property.

(c) Except as otherwise provided in subsection (d) of this section, a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

(d) If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.

§ 811. ENFORCEMENT AND DEFENSE OF CLAIMS

A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.

§ 812. COLLECTING TRUST PROPERTY

A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee, and to redress a breach of trust known to the trustee to have been committed by a former trustee.

§ 813. DUTY TO INFORM AND REPORT

(a) A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust. Notice does not need to be provided to the attorney general by the trustee of a charitable trust under this section except upon request by the attorney general or as provided in subsection (f) of this section.

(b) A trustee:

(1) upon request of a beneficiary, shall promptly furnish to the beneficiary a copy of the trust instrument;

(2) within 60 days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone number;

(3) within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument, and of the right to a trustee's report as provided in subsection (c) of this section; and

(4) shall notify the qualified beneficiaries in advance of any change in the method or rate of the trustee's compensation.

(c) A trustee shall send to the distributees or permissible distributees of trust income or principal, and to other beneficiaries who request it, at least

annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets, and, if feasible, their respective market values. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be sent to the qualified beneficiaries by the former trustee. A personal representative may send the qualified beneficiaries a report on behalf of a deceased trustee, and a guardian or a duly authorized agent under a power of attorney may send the qualified beneficiaries a report on behalf of an incapacitated trustee.

(d) A beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

(e) Subdivisions (b)(2) and (3) of this section do not apply to a trustee who accepts a trusteeship before the effective date of this title, to an irrevocable trust created before the effective date of this title, or to a revocable trust that becomes irrevocable before the effective date of this title.

(f)(1) A person seeking relief regarding a charitable trust under this subsection shall notify the attorney general upon filing a petition to:

(A) select a charitable purpose or charitable beneficiary as provided in subsection 405(b) of this title;

(B) enforce a charitable trust as provided in subsection 405(c) of this title;

(C) remove or replace a trustee of a charitable trust as provided in section 706 of this title; or

(D) remedy a breach of trust as provided in section 1001 of this title.

(2) Notice does not have to be given under this subsection if the trustee reasonably believes that the assets of the trust are less than $10,000.00.

§ 814. DISCRETIONARY POWERS; TAX SAVINGS

(a) Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute," "sole," or "uncontrolled," the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(b) Subject to subsection (d) of this section, and unless the terms of the trust expressly indicate that a rule in this subsection does not apply:

(1) a person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard; and

(2) a trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

(c) A power whose exercise is limited or prohibited by subsection (b) of this section may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the probate court may appoint a special fiduciary with authority to exercise the power.

(d) Subsection (b) of this section does not apply to:

(1) a power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in Section 2056(b)(5) or 2523(e) of the Internal Revenue Code of 1986, as in effect on the effective date of this title, was previously allowed;

(2) any trust during any period that the trust may be revoked or amended by its settlor; or

(3) a trust if contributions to the trust qualify for the annual exclusion under Section 2503(c) of the Internal Revenue Code of 1986, as in effect on the effective date of this title.

§ 815. GENERAL POWERS OF TRUSTEE

(a) A trustee, without authorization by the probate court, may exercise:

(1) powers conferred by the terms of the trust; and

(2) except as limited by the terms of the trust:

(A) all powers over the trust property which an unmarried competent owner has over individually owned property;

(B) any other powers appropriate to achieve the proper investment, management, and distribution of the trust property; and

(C) any other powers conferred by this title.

(b) The exercise of a power is subject to the fiduciary duties prescribed by this chapter.

§ 816. SPECIFIC POWERS OF TRUSTEE

Without limiting the authority conferred by section 815 of this title, a trustee may:

(1) collect trust property and accept or reject additions to the trust property from a settlor or any other person;

(2) acquire or sell property, for cash or on credit, at public or private sale;

(3) exchange, partition, or otherwise change the character of trust property;

(4) deposit trust money in an account in a regulated financial service institution;

(5) borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

(6) with respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;

(7) with respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:

(A) vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;

(B) hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;

(C) pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and

(D) deposit the securities with a depositary or other regulated financial service institution;

(8) with respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries;

(9) enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

(10) grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;

(11) insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;

(12) abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;

(13) with respect to possible liability for violation of environmental law:

(A) inspect or investigate property the trustee holds or has been asked to hold or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest for the purpose of determining the application of environmental law with respect to the property;

(B) take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

(C) decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

(D) compromise claims against the trust which may be asserted for an alleged violation of environmental law; and

(E) pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;

(14) pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

(15) pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;

(16) exercise elections with respect to federal, state, and local taxes;

(17) select a mode of payment under any employee benefit or retirement plan or account, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;

(18) make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;

(19) pledge trust property to guarantee loans made by others to the beneficiary;

(20) appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;

(21) pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

(A) paying it to the beneficiary's guardian of the property or, if the beneficiary does not have a guardian of the property, the beneficiary's guardian of the person;

(B) paying it to the beneficiary's custodian under the Uniform Gifts to Minors Act, and, for that purpose, creating a custodianship; or

(C) managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;

(22) on distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;

(23) resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

(24) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

(25) sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers; and

(26) on termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it.

§ 817. DISTRIBUTION UPON TERMINATION

(a) Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within 30 days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

(b) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.

(c) A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:

(1) it was induced by improper conduct of the trustee; or

(2) the beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.

CHAPTER 9. UNIFORM PRUDENT INVESTOR ACT AND UNITRUSTS

§ 901. PRUDENT INVESTOR RULE

(a) Except as otherwise provided in subsection (b) of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this chapter.

(b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

§ 902. STANDARD OF CARE; PORTFOLIO STRATEGY; RISK AND RETURN OBJECTIVES

(a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio

as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

(1) general economic conditions;

(2) the possible effect of inflation or deflation;

(3) the expected tax consequences of investment decisions or strategies;

(4) the role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;

(5) the expected total return from income and the appreciation of capital;

(6) other resources of the beneficiaries;

(7) needs for liquidity, regularity of income, and preservation or appreciation of capital; and

(8) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) A trustee may invest in any kind of property or type of investment consistent with the standards of this chapter.

§ 903. DIVERSIFICATION

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

§ 904. DUTIES AT INCEPTION OF TRUSTEESHIP

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust and with the requirements of this chapter.

§ 905. REVIEWING COMPLIANCE

Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

§ 906. LANGUAGE INVOKING STANDARD OF THIS CHAPTER

The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this chapter: "investments permissible by law for investment of trust funds," "legal investments," "authorized investments," "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital," "prudent man rule," "prudent trustee rule," "prudent person rule," and "prudent investor rule."

§ 907. TOTAL RETURN UNITRUSTS

(a) In this section:

(1) "Disinterested person" means a person who is not a "related or subordinate party" (as defined in Section 672(c) of the Internal Revenue Code of 1986, as in effect on the effective date of this title (referred to in this section as the "I.R.C.")) with respect to the person then acting as trustee of the trust and excludes the settlor of the trust and any interested trustee.

(2) "Income trust" means a trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to one or more persons, either in fixed proportions or in amounts or proportions determined by the trustee and regardless of whether the trust directs or permits the trustee to distribute the principal of the trust to one or more such persons.

(3) "Interested distributee" means a person to whom distributions of income or principal can currently be made who has the power to remove the existing trustee and designate as successor a person who may be a "related or subordinate party" (as defined in I.R.C. § 672(c)) with respect to such distributee.

(4) "Interested trustee" means any or all of the following:

(A) An individual trustee to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were then to terminate and be distributed;

(B) Any trustee who may be removed and replaced by an interested distributee;

(C) An individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.

(5) "Total return unitrust" means an income trust which has been converted under and meets the provisions of this section.

(6) "Settlor" means an individual who created an inter vivos or a testamentary trust.

(7) "Unitrust amount" means an amount computed as a percentage of the fair market value of the trust.

(b) A trustee, other than an interested trustee, or when two or more persons are acting as trustee, a majority of the trustees who are not an interested trustee (in either case referred to in this subsection as "trustee"), may, in its sole discretion and without the approval of the probate court:

(1) Convert an income trust to a total return unitrust;

(2) Reconvert a total return unitrust to an income trust; or

(3) Change the percentage used to calculate the unitrust amount and the method used to determine the fair market value of the trust if:

(A) The trustee adopts a written policy for the trust providing:

(i) In the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income;

(ii) In the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts; or

(iii) That the percentage used to calculate the unitrust amount and the method used to determine the fair market value of the trust will be changed as stated in the policy;

(B) The trustee sends written notice of its intention to take such action, along with copies of such written policy and this section, to:

(i) The settlor of the trust, if living;

(ii) All qualified beneficiaries; and

(iii) All persons acting as trust protectors or trust advisors of the trust;

(C) At least one person receiving such notice in each tier described in subdivision 103(13) of this title is legally competent; and

(D) No person receiving such notice objects, by written instrument delivered to the trustee, to the proposed action of the trustee within 30 days of receipt of such notice.

(c) If there is no trustee of the trust other than an interested trustee, the interested trustee or, when two or more persons are acting as trustee and are interested trustees, a majority of such interested trustees may, in its sole discretion and without the approval of the probate court:

(1) Convert an income trust to a total return unitrust;

(2) Reconvert a total return unitrust to an income trust; or

(3) Change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust or both if:

(A) The trustee adopts a written policy for the trust providing:

(i) In the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income;

(ii) In the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts; or

(iii) That the percentage used to calculate the unitrust amount and the method used to determine the fair market value of the trust will be changed as stated in the policy;

(B) The trustee appoints a disinterested person who, in its sole discretion but acting in a fiduciary capacity, determines for the trustee:

(i) The percentage to be used to calculate the unitrust amount;

(ii) The method to be used in determining the fair market value of the trust; and

(iii) Which assets, if any, are to be excluded in determining the unitrust amount;

(C) The trustee sends written notice of its intention to take such action, along with copies of such written policy and this section, and the determinations of the disinterested person to:

(i) The settlor of the trust, if living;

(ii) All qualified beneficiaries; and

(iii) All persons acting as trust protector or trust advisor of the trust;

(D) At least one person receiving such notice in each tier described in subdivision 103(13) of this title (first tier, second tier and final beneficiaries) is legally competent; and

(E) No person receiving such notice objects, by written instrument delivered to the trustee, to the proposed action or the determinations of the disinterested person within 30 days of receipt of such notice.

(d) A trustee who desires to: convert an income trust to a total return unitrust; reconvert a total return unitrust to an income trust, or change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust but does not have the ability or elects not to do it under the provisions of subsection (b) or (c) of this section, the trustee may petition the probate court for such order as the trustee deems appropriate. If there is only one trustee of such trust and such trustee is an interested trustee or in the event there are two or more trustees of such trust and a majority of them are interested trustees, the probate court, in its own discretion or on the petition of such trustee or trustees or any person interested in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present such information to the probate court as shall be necessary to enable the probate court to make its determinations hereunder.

(e) The fair market value of the trust shall be determined at least annually, using such valuation date or dates or averages of valuation dates as are deemed appropriate. Assets for which a fair market value cannot be readily ascertained shall be valued using such valuation methods as are deemed reasonable and appropriate. Assets used by a trust beneficiary, such as a residence property or tangible personal property, may be excluded from fair market value for computing the unitrust amount.

(f) The percentage to be used in determining the unitrust amount shall be a reasonable current return from the trust, in any event not less than three percent nor more than five percent, taking into account the intentions of the settlor of the trust as expressed in the governing instrument, the needs of the beneficiaries, general economic conditions, projected current earnings and appreciation for the trust, and projected inflation and its impact on the trust.

(g) A trustee may act pursuant to subsection (b) or (c) of this section with respect to a trust for which both income and principal have been permanently set aside for charitable purposes under the governing instrument and for which a federal estate or gift tax deduction has been taken, provided that:

(1) Instead of sending written notice as provided in subsection (b) or (c) of this section, the trustee shall send such written notice to the named charity or charities then entitled to receive income of the trust and, if no named charity

or charities are entitled to receive all of such income, to the attorney general of this state;

(2) Subdivision (b)(3)(C) or (c)(3)(D) of this section (relating to legal competence of qualified beneficiaries), as the case may be, shall not apply to such action; and

(3) In each taxable year, the trustee shall distribute the greater of the unitrust amount or the amount required by I.R.C. § 4942.

(h) Following the conversion of an income trust to a total return unitrust, the trustee:

(1) Shall consider the unitrust amount as paid from net accounting income determined as if the trust were not a unitrust;

(2) Shall then consider the unitrust amount as paid from ordinary income not allocable to net accounting income;

(3) After calculating the trust's capital gain net income described in I.R.C. § 1222(9), may consider the unitrust amount as paid from net short-term capital gain described in I.R.C. § 1222(5) and then from net long-term capital gain described in I.R.C. § 1222(7); and

(4) Shall then consider the unitrust amount as coming from the principal of the trust.

(i) In administering a total return unitrust, the trustee may, in its sole discretion but subject to the provisions of the governing instrument, determine:

(1) The effective date of the conversion;

(2) The timing of distributions (including provisions for prorating a distribution for a short year in which a beneficiary's right to payments commences or ceases);

(3) Whether distributions are to be made in cash or in kind or partly in cash and partly in kind;

(4) If the trust is reconverted to an income trust, the effective date of such reconversion; and

(5) Such other administrative issues as may be necessary or appropriate to carry out the purposes of this section.

(j) Conversion to a total return unitrust under the provisions of this section shall not affect any other provision of the governing instrument, if any, regarding distributions of principal.

(k) In the case of a trust for which a marital deduction has been taken for federal tax purposes under I.R.C. § 2056 or § 2523, the spouse otherwise entitled to receive the net income of the trust shall have the right, by written instrument delivered to the trustee, to compel the reconversion during that spouse's lifetime of the trust from a total return unitrust to an income trust, notwithstanding anything in this section to the contrary.

(l) This section shall be construed as pertaining to the administration of a trust and shall be available to any trust that is administered in Vermont under Vermont law or to any trust, regardless of its place of administration, whose governing instrument provides that Vermont law governs matters of construction or administration unless:

(1) The governing instrument reflects an intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust;

(2) The trust is a pooled income fund described in I.R.C. § 642(c)(5) or a charitable-remainder trust described in I.R.C. § 664(d);

(3) The governing instrument expressly prohibits use of this section by specific reference to the section or expressly states the settlor's intent that net income not be calculated as a unitrust amount. A provision in the governing instrument that "The provisions of 14A V.S.A. § 907, as amended, or any corresponding provision of future law, shall not be used in the administration of this trust" or "My trustee shall not determine the distributions to the income beneficiary as a unitrust amount" or similar words reflecting such intent shall be sufficient to preclude the use of this section.

(m) Any trustee or disinterested person who in good faith takes or fails to take any action under this section shall not be liable to any person affected by such action or inaction, regardless of whether such person received written notice as provided in this section and regardless of whether such person was under a legal disability at the time of the delivery of such notice. Such person's exclusive remedy shall be to obtain an order of the probate court directing the trustee to convert an income trust to a total return unitrust, to reconvert from a total return unitrust to an income trust, or to change the percentage used to calculate the unitrust amount.

§ 908. EXPRESS TOTAL RETURN UNITRUSTS

(a) The following provisions shall apply to a trust that, by its governing instrument, requires or permits the distribution, at least annually, of a unitrust amount equal to a fixed percentage of not less than three nor more than five percent per year of the fair market value of the trust's assets, valued at least

annually, such trust to be referred to in this section as an "express total return unitrust."

(b) The unitrust amount for an express total return unitrust may be determined by reference to the fair market value of the trust's assets in one year or more than one year.

(c) Distribution of such a fixed percentage unitrust amount is considered a distribution of all of the income of the express total return unitrust.

(d) An express total return unitrust may provide a mechanism for changing the unitrust percentage similar to the mechanism provided under section 907 of this title, based upon the factors noted therein, and may provide for a conversion from a unitrust to an income trust or a reconversion of an income trust to a unitrust similar to the mechanism under section 907 of this title.

(e) If an express total return unitrust does not specifically or by reference to section 907 of this title deny a power to change the unitrust percentage or to convert to an income trust, then the trustee shall have such power.

(f) The distribution of a fixed percentage of not less than three percent nor more than five percent reasonably apportions the total return of an express total return unitrust.

(g) The trust instrument may grant discretion to the trustee to adopt a consistent practice of treating capital gains as part of the unitrust distribution, to the extent that the unitrust distribution exceeds the net accounting income, or it may specify the ordering of such classes of income.

(h) Unless the terms of the trust specifically provide otherwise, a distribution of the unitrust amount from an express total return unitrust shall be considered to have been made from the following sources in order of priority:

(1) From net accounting income determined as if the trust were not a unitrust;

(2) From ordinary income not allocable to net accounting income;

(3) After calculating the trust's capital gain net income as described in the Internal Revenue Code of 1986 (as in effect on the effective date of this title and referred to in this section as the "I.R.C."), § 1222(9), from net realized short-term capital gain as described in I.R.C. § 1222(5) and then from net realized long-term capital gain described in I.R.C. § 1222(7); and

(4) From the principal of the trust.

(i) The trust instrument may provide that:

(1) Assets for which a fair market value cannot be readily ascertained shall be valued using such valuation methods as are deemed reasonable and appropriate; and

(2) Assets used by a trust beneficiary, such as a residence property or tangible personal property, may be excluded from the net fair market value for computing the unitrust amount.

CHAPTER 10. LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEE

§ 1001. REMEDIES FOR BREACH OF TRUST

(a) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.

(b) To remedy a breach of trust that has occurred or may occur, the probate court may:

(1) compel the trustee to perform the trustee's duties;

(2) enjoin the trustee from committing a breach of trust;

(3) compel the trustee to redress a breach of trust by paying money, restoring property, or other means;

(4) order a trustee to account;

(5) appoint a special fiduciary to take possession of the trust property and administer the trust;

(6) suspend the trustee;

(7) remove the trustee as provided in section 706 of this title;

(8) reduce or deny compensation to the trustee;

(9) subject to section 1012 of this title, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or

(10) order any other appropriate relief.

§ 1002. DAMAGES FOR BREACH OF TRUST

(a) A trustee who commits a breach of trust is liable to the beneficiaries affected for the greater of:

(1) the amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; or

(2) the profit the trustee made by reason of the breach.

(b) Except as otherwise provided in this subsection, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

§ 1003. DAMAGES IN ABSENCE OF BREACH

(a) A trustee is accountable to an affected beneficiary for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust. Nothing in this section limits a trustee's right to reasonable compensation under section 708 of this title.

(b) Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.

§ 1004. ATTORNEY'S FEES AND COSTS

In a judicial proceeding involving the administration of a trust, the probate court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

§ 1005. LIMITATION OF ACTION AGAINST TRUSTEE

(a) A beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust.

(b) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows or has reason to know of the potential claim or that the beneficiary had a duty to inquire further and the response to such an inquiry would have disclosed the potential claim. If written notice is given to the trustee by a beneficiary or representative within the time for commencing an action under subsection (a) of this section stating that the beneficiary or representative has received insufficient information from the trustee's report to determine whether to commence an action for breach of trust, the time for commencing an action shall be extended by six months. If no proceeding is commenced within the extended time, it shall be conclusively presumed that the report adequately disclosed the existence of any potential claim.

(c) If subsection (a) of this section does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within three years after the first to occur of:

(1) the removal, resignation, or death of the trustee;

(2) the termination of the beneficiary's interest in the trust; or

(3) the termination of the trust.

(d) Subsections (a) through (c) of this section shall not apply to the filing of a petition in probate court by the attorney general for breach of trust against the trustee of a charitable trust with a principal place of administration in this state. The attorney general may file a petition within three years after the potential claim arises.

§ 1006. RELIANCE ON TRUST INSTRUMENT

A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

§ 1007. EVENT AFFECTING ADMINISTRATION OR DISTRIBUTION

If the happening of an event, including, but not limited to, marriage, divorce, performance of educational requirements, attainment of a specified age, or death, affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge.

§ 1008. EXCULPATION OF TRUSTEE

(a) A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that it:

(1) relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries; or

(2) was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.

(b) An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that the exculpatory term is fair under the circumstances and that its existence and contents were adequately communicated to the settlor.

§ 1009. BENEFICIARY'S CONSENT, RELEASE, OR RATIFICATION

A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from

liability for the breach, or ratified the transaction constituting the breach, unless:

(1) the consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or

(2) at the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach.

§ 1010. LIMITATION ON PERSONAL LIABILITY OF TRUSTEE

(a) Except as otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee in making the contract disclosed the fiduciary capacity. The addition of the phrase "trustee" or "as trustee" or a similar designation to the signature of a trustee on a written contract is considered prima facie evidence of a disclosure of fiduciary capacity.

(b) A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault.

(c) A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administering a trust, may be asserted in a judicial proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim.

§ 1011. INTEREST AS GENERAL PARTNER

(a) Except as otherwise provided in subsection (c) of this section or unless personal liability is imposed in the contract, a trustee who holds, in a fiduciary capacity, an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract. The requirement of disclosure in the contract will be satisfied if the trustee signs the contract or signs another writing which is contemporaneously delivered to the other parties to the contract in a manner that clearly evidences that the trustee executed the contract in a fiduciary capacity.

(b) Except as otherwise provided in subsection (c) of this section, a trustee who holds an interest as a general partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault.

(c) The immunity provided by this section does not apply if an interest in the partnership is held by the trustee in a capacity other than that of trustee or is held by the trustee's spouse or one or more of the trustee's descendants, siblings, or parents, or the spouse of any of them.

(d) If the trustee of a revocable trust holds an interest as a general partner, the settlor is personally liable for contracts and other obligations of the partnership as if the settlor were a general partner.

§ 1012. PROTECTION OF PERSON DEALING WITH TRUSTEE

(a) A person other than a beneficiary who in good faith assists a trustee or who in good faith and for value deals with a trustee without knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised the power.

(b) A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.

(c) A person who in good faith delivers assets to a trustee need not ensure their proper application.

(d) A person other than a beneficiary who in good faith assists a former trustee or who in good faith and for value deals with a former trustee without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.

(e) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

§ 1013. CERTIFICATION OF TRUST

(a) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee of a trust at any time after execution or creation of a trust may execute a certificate of trust that sets forth less than all of the provisions of a trust instrument and any amendments to the instrument. The certificate of trust may be used as evidence of authority to sell, convey, pledge, mortgage, lease, or transfer title to any interest in real or personal property. The certificate of trust shall be upon the representation of the trustee that the statements contained in the certificate of trust are true and correct. The signature of the trustee must be under oath before a notary public or other official authorized to administer oaths. The certificate of trust must include:

(1) the name of the trust, if one is given;

(2) the date of the trust instrument;

(3) the name of each grantor or settlor;

(4) the name of each original trustee;

(5) the name and address of each trustee empowered to act under the trust instrument at the time of execution of the certificate;

(6) an abstract of the provisions of the trust instrument authorizing the trustee to act in the manner contemplated by the instrument;

(7) a statement that the trust instrument has not been revoked or amended as to the authorizing provisions, and a statement that the trust exists;

(8) a statement that no provisions of the trust instrument limit the authority so granted; and

(9) a statement as to whether the trust is supervised by any court and, if so, a statement that all necessary approval has been obtained for the trustees to act.

(b) A certificate of trust executed under subsection (a) of this section may be recorded in the municipal land records where the land identified in the certificate of trust or any attachment to it is located. When it is so recorded or filed for recording, or in the case of personal property, when it is presented to a third party, the certificate of trust serves to document the existence of the trust, the identity of the trustee, the powers of the trustee and any limitations on those powers, and other matters set forth in the certificate of trust, as though the full trust instrument had been recorded, filed, or presented.

(c) A certificate of trust is conclusive proof as to the matters contained in the certificate, and any party may rely upon the continued effectiveness of the certificate unless:

(1) a party dealing with the trustee or trustees has actual knowledge of facts to the contrary;

(2) the certificate is amended or revoked under subsection (d) of this section; or

(3) the full trust instrument including all amendments is recorded or filed.

(d) Amendment or revocation of a certificate of trust may be made only by a written instrument executed by the trustee of a trust. Amendment or revocation of a certificate of trust is not effective as to a party unless that party has actual notice of the amendment or revocation. For purposes of this subsection, "actual notice" means that a written instrument of amendment or revocation has been received by the party or, in the case of real property, that

either a written instrument of amendment or revocation has been received by the party or that a written instrument of amendment or revocation identifying the real property involved has been recorded in the municipal land records where the real property is located.

(e) A certification of trust may be signed or otherwise authenticated by any trustee.

(f) A certification of trust need not contain the dispositive terms of a trust.

(g) A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments which designate the trustee and confer upon the trustee the power to act in the pending transaction. Nothing in this subsection shall be construed to require a trustee to furnish the entire trust instrument to the recipient of a certification of trust.

(h) A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

(i) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

CHAPTER 11. TRUST PROTECTORS AND TRUST ADVISORS

§ 1101. TRUST ADVISORS AND TRUST PROTECTORS

(a) A trust protector or trust advisor is any person, other than a trustee, who under the terms of the trust, an agreement of the qualified beneficiaries authorized by the terms of the trust, or a court order has a power or duty with respect to a trust, including, without limitation, one or more of the following powers:

(1) the power to modify or amend the trust instrument to achieve favorable tax status or respond to changes in any applicable federal, state, or other tax law affecting the trust, including any rulings, regulations, or other guidance implementing or interpreting such laws;

(2) the power to amend or modify the trust instrument to take advantage of changes in the rule against perpetuities, laws governing restraints on alienation, or other state laws restricting the terms of the trust, the distribution of trust property, or the administration of the trust;

(3) the power to appoint a successor trust protector or trust advisor;

(4) the power to review and approve a trustee's trust reports or accountings;

(5) the power to change the governing law or principal place of administration of the trust;

(6) the power to remove and replace any trust advisor or trust protector for the reasons stated in the trust instrument;

(7) the power to remove a trustee, cotrustee, or successor trustee for the reasons stated in the trust instrument, and to appoint a successor;

(8) the power to consent to a trustee's or cotrustee's action or inaction in making distributions to beneficiaries;

(9) the power to increase or decrease any interest of the beneficiaries in the trust, to grant a power of appointment to one or more trust beneficiaries, or to terminate or amend any power of appointment granted in the trust; however, a modification, amendment, or grant of a power of appointment may not grant a beneficial interest in a charitable trust with only charitable beneficiaries to any noncharitable interest or purpose and may not grant a beneficial interest in any trust to the trust protector or trust advisor or to the estate or for the benefit of the creditors of such trust protector or such trust advisor;

(10) the power to perform a specific duty or function that would normally be required of a trustee or cotrustee;

(11) the power to advise the trustee or cotrustee concerning any beneficiary;

(12) the power to consent to a trustee's or cotrustee's action or inaction relating to investments of trust assets; and

(13) the power to direct the acquisition, disposition, or retention of any trust investment.

(b) The exercise of a power by a trust advisor or a trust protector shall be exercised in the sole and absolute discretion of the trust advisor or trust protector and shall be binding on all other persons.

§ 1102. TRUST ADVISORS AND TRUST PROTECTORS AS FIDUCIARIES

(a) A trust advisor or trust protector is a fiduciary with respect to each power granted to such trust advisor or trust protector. In exercising any power or refraining from exercising any power, a trust advisor or trust protector shall act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(b) A trust advisor or trust protector is an excluded fiduciary with respect to each power granted or reserved exclusively to any one or more other trustees, trust advisors, or trust protectors.

§ 1103. TRUST ADVISOR AND TRUST PROTECTOR SUBJECT TO COURT JURISDICTION

By accepting appointment to serve as a trust advisor or trust protector, the trust advisor or the trust protector submits personally to the jurisdiction of the courts of this state even if investment advisory agreements or other related agreements provide otherwise, and the trust advisor or trust protector may be made a party to any action or proceeding relating to a decision, action, or inaction of the trust advisor or trust protector.

§ 1104. NO DUTY TO REVIEW ACTIONS OF TRUSTEE, TRUST ADVISOR, OR TRUST PROTECTOR

(a) Whenever, pursuant to the terms of a trust, an agreement of the qualified beneficiaries authorized by the terms of the trust, or a court order, an excluded fiduciary is to follow the direction of a trustee, trust advisor, or trust protector with respect to investment decisions, distribution decisions, or other decisions of the non-excluded fiduciary, then, except to the extent that the terms of the trust, the agreement of the qualified beneficiaries, or the court order provide otherwise, the excluded fiduciary shall have no duty to:

(1) monitor the conduct of the trustee, trust advisor, or trust protector;

(2) provide advice to the trustee, trust advisor, or trust protector or consult with the trustee, trust advisor, or trust protector; or

(3) communicate with or warn or apprise any beneficiary or third party concerning instances in which the excluded fiduciary would or might have exercised the excluded fiduciary's own discretion in a manner different from the manner directed by the trustee, trust advisor, or trust protector.

(b) Absent clear and convincing evidence to the contrary, the actions of the excluded fiduciary pertaining to matters within the scope of the trustee's, trust advisor's, or trust protector's authority including confirming that the trustee's, trust advisor's, or trust protector's directions have been carried out, recording and reporting actions taken at the trustee's, trust advisor's, or trust protector's direction, or taking action pursuant to section 813 of this title, shall be presumed to be administrative actions taken by the excluded fiduciary solely to allow the excluded fiduciary to perform those duties assigned to the excluded fiduciary under the terms of the trust, the agreement of the qualified beneficiaries, or the court order, and such administrative actions shall not be deemed to constitute an undertaking by the excluded fiduciary to monitor the

trustee, trust advisor, or trust protector or otherwise participate in actions within the scope of the trustee's, trust advisor's, or trust protector's authority.

§ 1105. FIDUCIARY'S LIABILITY FOR ACTION OR INACTION OF TRUSTEE, TRUST ADVISOR, AND TRUST PROTECTOR

An excluded fiduciary is not liable for:

(1) any loss resulting from any action or inaction of a trustee, trust advisor, or trust protector; or

(2) any loss that results from the failure of a trustee, trust advisor, or trust protector to take any action proposed by the excluded fiduciary where such action requires the authorization of the trustee, trust advisor, or trust protector, provided that an excluded fiduciary who had a duty to propose such action timely sought but failed to obtain the authorization.

CHAPTER 12. MISCELLANEOUS PROVISIONS

§ 1201. UNIFORMITY OF APPLICATION AND CONSTRUCTION

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

§ 1202. ELECTRONIC RECORDS AND SIGNATURES

The provisions of this title governing the legal effect, validity, or enforceability of electronic records or electronic signatures and of contracts formed or performed with the use of such records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7002) and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

§ 1203. SEVERABILITY CLAUSE

If any provision of this title or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this title which can be given effect without the invalid provision or application, and to this end the provisions of this title are severable.

§ 1204. APPLICATION TO EXISTING RELATIONSHIPS

(a) Except as otherwise provided in this title, on the effective date of this title:

(1) this title applies to all trusts created before, on, or after its effective date;

(2) this title applies to all judicial proceedings concerning trusts commenced on or after its effective date;

(3) this title applies to judicial proceedings concerning testamentary trusts commenced before its effective date except that accountings shall continue to be due from the trustees of such trusts in the same manner and in the same frequency as required by the probate court prior to this title unless otherwise ordered by the probate court;

(4) this title applies to all other judicial proceedings concerning trusts commenced before its effective date unless the probate court finds that application of a particular provision of this title would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of this title does not apply and the superseded law applies;

(5) any rule of construction or presumption provided in this title applies to trust instruments executed before the effective date of this title unless there is a clear indication of a contrary intent in the terms of the trust; and

(6) an act done before the effective date of this title is not affected by this title.

(b) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before the effective date of this title, that statute continues to apply to the right even if it has been repealed or superseded.

Sec. 2. 4 V.S.A. § 111a is amended to read:

§ 111a. DESIGNATION AND JURISDICTION OF SUPERIOR COURT

Until otherwise provided by law or by judicial rules adopted by the supreme court not inconsistent with law, a court designated as the superior court, to be presided over by a superior judge or a judge designated under section 74 of this title, shall be held in each county of this state. The setting of terms of the superior court shall be as was heretofore provided for the county courts under section 115 of this title. The jurisdiction of the superior court shall be the same as heretofore provided by law for the county courts in the Vermont Statutes Annotated, with the exception of actions relating to the administration of trusts as provided in section 311 of this title and as provided in Title 14A.

Sec. 3. 4 V.S.A. § 311 is amended to read:

§ 311. JURISDICTION GENERALLY

The probate court shall have jurisdiction of the probate of wills, the settlement of estates, the administration of trusts created by will pursuant to

Title 14A, trusts of absent person's estates, charitable, cemetery and philanthropic trusts, irrevocable trusts created by inter vivos agreements solely for the purpose of removal and replacement of trustees pursuant to subsection 2314(c) of Title 14, the appointment of guardians, and of the powers, duties and rights of guardians and wards, proceedings concerning chapter 231 of Title 18, accountings of attorneys in fact where no guardian has been appointed and the agent has reason to believe the principal is incompetent, relinquishment for adoption, adoptions, uniform gifts to minors, changes of name, issuance of new birth certificates, amendment of birth certificates, correction or amendment of marriage certificates, correction or amendment of death certificates, emergency waiver of premarital medical certificates, proceedings relating to cemetery lots, trusts relating to community mausoleums or columbariums, civil actions brought under subchapter 3 of chapter 107 of Title 18 relating to disposition of remains, proceedings relating to the conveyance of a homestead interest of a spouse under a legal disability, the issuance of declaratory judgments, issuance of certificates of public good authorizing the marriage of persons under 16 years of age, appointment of administrators to discharge mortgages held by deceased mortgagees, appointment of trustees for persons confined under sentences of imprisonment, fixation of compensation and expenses of boards of arbitrators of death taxes of Vermont domiciliaries, and as otherwise provided by law.

Sec. 4. 4 V.S.A. § 311a is amended to read:

§ 311a. VENUE GENERALLY

For proceedings authorized to probate courts, venue shall lie as provided in Title 14A for the administration of trusts, and otherwise in a district of the court as follows:

(1) Decedent's estate for a resident of this state: in the district where the decedent resided at the time of death.

(2) Decedent's estate for a nonresident of this state: in any district where estate of the decedent is situated.

(3) Appointment of a conservator for the estate of an absent person:

(A) in the district of the absent person's last legal domicile; or

(B) if a nonresident of this state, in any district where estate of the absent person is situated.

(4) Trust estate created by will: in the district where the decedent's will is allowed.

(5) Appointment of a trustee for the estate of an absent person:

(A) in the district of the absent person's last legal domicile; or

(B) if the absent person has no domicile in this state, in any district where property of the absent person is situated; or

(C) in any district of residence of a fiduciary or representative of an estate having possession and control of property the absent person received by virtue of a legacy or as an heir of an estate.

(6) Charitable, cemetery and philanthropic trusts:

(A) in the district where the trustee resides; or

(B) in the district where the creation of the trust is recorded.

(7) Appointment of a guardian of a person resident in this state:

(A) in the district where the ward resides at the time of appointment; except

(B) when the guardian is appointed for a minor who is interested in a decedent's estate as an heir, devisee or legatee or representative of either, in the district where the decedent's estate is being probated.

(8) Appointment of a guardian for a nonresident minor: in the district where the minor owns or has an interest in real estate.

(9) Termination or modification of a guardianship or change of a guardian:

(A) in the district of the appointing court; or

(B) in the district where the ward resides.

~~(10) Estate of a nonresident testamentary trust: in the district where the estate is situated.~~

(11) Estate of a nonresident charitable or philanthropic testamentary trust:

(A) in any district where the legacy or gift is to be paid or distributed; or

(B) in any district where the beneficiary or beneficiaries reside or are located.

(12) Appointment of a guardian as to the estate of a nonresident subject to guardianship in this state or under guardianship in another state: in any district where estate of the nonresident ward or prospective ward is situated.

(13) Change of residential placement for a ward under total or limited guardianship:

(A) in the district of the appointing court; or

(B) in the district where the ward resides.

(14) Petition to determine title to property in the name of a person deceased seven or more years without probate of a decedent estate: in the district where the property is situated.

(15) Uniform gifts to minors:

(A) petition to expend custodial property for a minor's support, education or maintenance: in the district where the minor resides;

(B) petition for permission to resign or for designation of a successor custodian: in the district where the minor resides.

(16) Relinquishment for adoption:

(A) in the district where a written relinquishment is executed; or

(B) in the district where a licensed child placing agency to which written relinquishment is made has its principal office.

(17) Adoption:

(A) if the adopting person or persons are residents of this state, in the district where they reside; or

(B) if the adopting person or persons are nonresidents, in a court of competent jurisdiction where they reside; or

(C) if the prospective adoptee is a minor who has been relinquished or committed to the department of social and rehabilitation services or a licensed child placing agency, in the district where the department or agency is located or has its principal office.

(18) Change of name: in the district where the person resides.

(19) Issuance of new or amended birth certificate: in the district where the birth occurred.

(20) Correction or amendment of a marriage certificate: in the district where the original certificate is filed.

(21) Correction or amendment of a death certificate: in the district where the original certificate is filed.

(22) Emergency waiver of premarital medical certificate: in the district where application is made for the marriage license.

(23) Proceedings relating to cemetery lots: in the district where the cemetery lot is located.

(24) Trusts relating to community mausoleums or columbariums: in the district where the community mausoleum or columbarium is located.

(25) Petition for license to convey homestead interest of an insane spouse: in the district where the homestead is situated.

(26) Declaratory judgments (unless otherwise provided in Title 14A for proceedings relating to the administration of trusts):

(A) if any related proceeding is then pending in any probate court, in that district;

(B) if no proceeding is pending:

(i) in the district where the petitioner resides; or

(ii) if a decedent's estate, a guardian or ward, or trust governed by Title 14 is the subject of the proceeding, in any district where venue lies for a proceeding thereon.

(27) Issuance of certificates of public good authorizing the marriage of persons under 16 years of age: in the district or county where either applicant resides, if either is a resident of the state; otherwise in the district or county in which the marriage is sought to be consummated.

(28) Appointment of a trustee for a person confined under a sentence of imprisonment: in the district or county in which the person resided at the time of sentence, or in the district or county in which the sentence was imposed.

(29) Proceedings concerning chapter 231 of Title 18: in the district where the principal resides or in the district where the principal is a patient admitted to a health care facility.

(30) Proceedings under subchapter 3 of chapter 107 of Title 18, in the district where the decedent resided at the time of death or where the remains are currently located.

Sec. 5. 12 V.S.A. § 4251 is amended to read:

§ 4251. ACTIONS FOR ACCOUNTING—JURY

The superior courts shall have original jurisdiction, exclusive of the district court, in actions for an accounting other than accountings involved in the administration of trusts under Title 14A. When the defendant in such an action brought in one of the following ways pleads in defense an answer which, if true, makes him or her not liable to account, the issue thus raised may be tried to a jury:

(1) By one joint tenant, tenant in common or coparcener, his or her administrator or executor against the other, his or her administrator or

executor, as bailiff for receiving more than his or her just proportion of any estate or interest;

(2) By an administrator or executor against his or her coadministrator or coexecutor, who neglects to pay the debts and funeral charges of the intestate or testator, in proportion to the estate in his or her hands, and he or she may recover such proportion of such estate as is just;

(3) By an executor, being a residuary legatee, against the coexecutor to recover his or her equal and ratable part of the estate in the hands of such coexecutor;

(4) By a residuary legatee against the executor;

(5) On book account.

Sec. 6. 14 V.S.A. § 202 is amended to read:

§ 202. WHEN PARTIES BOUND BY OTHERS

In judicial proceedings involving trusts under this title or estates of decedents, minors, or persons under guardianship, the following apply:

(1) Persons are bound by orders binding others in the following cases:

(A) Orders binding the sole holder or all co-holders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

(B) To the extent there is no conflict of interest between them or among persons represented, orders binding a guardian bind the person whose estate he or she controls; orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary and in proceedings involving creditors or other third parties; and orders binding a personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate. If there is no conflict of interest and no guardian has been appointed, a parent may represent his or her minor child.

(C) An unborn or unascertained person who is not otherwise represented is bound by an order to the extent his or her interest is adequately represented by another party having a substantially identical interest in the proceeding.

(2) At any point in a proceeding, a probate court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or

unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.

(3) Parties shall be those persons so defined by the rules of probate procedure.

Sec. 7. 14 V.S.A. § 2301 is amended to read:

~~§ 2301. TRUSTEES; BOND; WHEN REQUIRED~~

~~Before entering upon the duties of office, a trustee appointed in a will shall file a petition and give a bond with surety to the probate court for the benefit of persons interested in the trust estate and conditioned for the faithful performance of duties. Unless the court deems it proper to require a bond with surety, only the individual bond of the trustees shall be required in a case in which the testator in the will appointing the trustee has directed that no bond, or a bond without surety, be required.~~

Sec. 8. 14 V.S.A. § 2302 is amended to read:

~~§ 2302. CONDITIONS~~

~~The conditions of the bond shall be as follows:~~

~~(1) To make a true inventory of the real estate and goods, chattels, rights and credits belonging to him as trustee, and which shall come to his possession or knowledge, and to return the same to the probate court at such time as the court directs;~~

~~(2) To manage and dispose of such estate and effects, and faithfully discharge his trust in relation to the same, according to law and the will of the testator;~~

~~(3) To render an account of the property in his hands, and of the management and disposition of the same within one year, and at other times when required by the probate court;~~

~~(4) To settle his accounts with the probate court at the expiration of his trust, and to pay over and deliver the estate and effects remaining in his hands, or due from him on such settlement to the persons entitled to the same, according to law and the will of the testator.~~

Sec. 9. 14 V.S.A. § 2304 is amended to read:

~~§ 2304. BOND WHEN MORE THAN ONE TRUSTEE~~

~~When two or more persons are appointed trustees by a will, the probate court may take a separate bond from each, with sureties, or a joint bond from all, with sureties.~~

Sec. 10. 14 V.S.A. § 2311 is amended to read:

~~§ 2311. TRUSTEES OF NONRESIDENT DECEDENTS; NONRESIDENT TRUSTEE; DECREE~~

~~When a nonresident testator has devised or bequeathed property, a minor portion of which is in this state, to a nonresident trustee for the benefit of nonresident beneficiaries, and a trustee under the will has been appointed in the state of the testator's domicile, and the domiciliary estate fully settled, the probate court in this state, on petition of the nonresident trustee and after notice to the commissioner of taxes, upon final settlement, may decree the trust property in this state to the nonresident trustee to be administered as a part of the foreign testamentary trust.~~

Sec. 11. 14 V.S.A. § 2312 is amended to read:

~~§ 2312. TRUSTEE FAILING TO GIVE BOND; EFFECT~~

~~A person appointed a trustee who neglects to give a bond when required and within the time directed by the probate court, shall be considered as having declined the trust.~~

Sec. 12. 14 V.S.A. § 2313 is amended to read:

~~§ 2313. RESIGNATION, REMOVAL AND APPOINTMENT OF TRUSTEES; TRUSTEE MAY DECLINE OR RESIGN~~

~~A trustee may decline or resign his trust, when the probate court deems it proper to allow the same.~~

Sec. 13. 14 V.S.A. § 2314 is amended to read:

~~§ 2314. TRUSTEE MAY BE REMOVED; SPECIAL FIDUCIARY; PETITION FOR REMOVAL BY BENEFICIARY OR CO-TRUSTEE~~

~~(a) When a trustee becomes incapacitated or otherwise unable to discharge the trust, or is obviously unsuitable, and when, for any cause, the interests of the trust estate require it, after giving notice as provided by the rules of probate procedure, the probate court may remove the trustee.~~

~~(b) When a trustee fails to perform duties required by law, the rules of probate procedure or order of the probate court, the court may suspend the~~

~~trustee from further duties and appoint a special fiduciary to assume temporarily the powers and duties of the trustee replaced. A special fiduciary shall give a bond as is otherwise required in the proceeding.~~

~~(c) A co-trustee or a majority of the beneficiaries to whom or for whose use the current net income of the trust estate is at the time authorized or required to be paid or applied and who shall at the time be at least 18 years of age who believe that an existing trustee should be replaced by a more suitable trustee may petition the court for a replacement. The court may grant the petition, remove an existing trustee, and appoint a replacement trustee if, after giving notice as provided by the Vermont Rules of Probate Procedure, the court finds that a change in trustee would be in keeping with the intent of the grantor. In deciding whether to replace a trustee, the court may consider the following factors:~~

~~(1) Whether removal would substantially improve or benefit the administration of the trust.~~

~~(2) The relationship between the grantor and the trustee as it existed at the time the trust was created.~~

~~(3) Changes in the nature of the trustee since the creation of the trust.~~

~~(4) The relationship between the trustee and the beneficiaries.~~

~~(5) The responsiveness of the trustee to the beneficiaries.~~

~~(6) The experience and skill level of the trustee.~~

~~(7) The investment performance of the trustee.~~

~~(8) The charges for services performed by the trustee.~~

~~(9) Any other relevant factors pertaining to the administration of the trust.~~

~~(d) As used in subsection (c) of this section:~~

~~(1) "Beneficiary" means a person who:~~

~~(A) has a present or future beneficial interest in a trust, vested or contingent; or~~

~~(B) in a capacity other than that of trustee, holds a power of appointment over trust property.~~

~~(2) "Court" means the probate court of the district in which the grantor resides or resided before dying or moving out of state, or where a co-trustee resides, or where a beneficiary resides.~~

~~(3) "Grantor" means a person, including a testator, who creates or contributes property to a trust. If more than one person creates or contributes property to a trust, each person is a grantor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.~~

~~(4) "Settler" and "grantor" have the same meaning.~~

~~(5) "Trust" means an express trust created by a trust instrument, including a will, whereby a trustee has the duty to administer a trust asset for the benefit of a named or otherwise described income or principal beneficiary, or both; "trust" does not include a resulting or constructive trust, a business trust which provides for certificates to be issued to the beneficiary, an investment trust, a voting trust, a security instrument, a trust created by the judgment or decree of a court, a liquidation trust, or a trust for the primary purpose of paying dividends, interest, interest coupons, salaries, wages, pensions or profits, or employee benefits of any kind, an instrument wherein a person is nominee or escrowee for another, a trust created in deposits in any financial institution as defined in 8 V.S.A. § 10205(5), or other trust the nature of which does not admit of general trust administration.~~

~~(6) "Trustee" means an original, added, or successor trustee or co-trustee.~~

~~(c) A court may order trustees who are replaced pursuant to an action brought under this section to reimburse the trust for attorney fees and court costs paid by the trust relating to the action.~~

Sec. 14. 14 V.S.A. § 2315 is amended to read:

~~§ 2315. ADDITIONAL TRUSTEE MAY BE APPOINTED~~

~~When the interests of the trust estate require it and upon notice as provided by the rules of probate procedure the probate court may appoint an additional trustee, who shall act jointly with the other or others and be subject to the same conditions.~~

Sec. 15. 14 V.S.A. § 2316 is amended to read:

~~§ 2316. VACANCY, NEW TRUSTEE APPOINTED~~

~~When a person appointed trustee declines or resigns the trust, dies, or is removed before the object for which appointment was made is accomplished, and where adequate provision is not made by the will to fill the vacancy, after notice as provided by the rules of probate procedure, the probate court may appoint a new trustee to act alone or jointly with the others.~~

Sec. 16. 14 V.S.A. § 2317 is amended to read:

~~§ 2317. AUTHORITY OF NEW TRUSTEE; CONVEYANCE TO~~

~~The trustee so appointed shall have the same authority as if originally appointed by the testator or the probate court and the trust estate shall vest in him in the same manner. The probate court may order such conveyances to be made by the former trustee, or his representatives, or by the remaining trustees, as are necessary or proper to vest in the new trustee, either alone or jointly with others, the estate and effects which are to be held in trust.~~

Sec. 17. 14 V.S.A. § 2319 is amended to read:

~~§ 2319. BOND~~

~~A trustee appointed by the probate court shall give a bond as provided for a trustee appointed by a will with such necessary changes as the court directs.~~

Sec. 18. 14 V.S.A. § 2320 is amended to read:

~~§ 2320. DUTIES OF TRUSTEES AND SETTLEMENT OF ACCOUNT; INVENTORY AND APPRAISAL~~

~~In accordance with the rules of probate procedure, trustees shall make and return an inventory, when an inventory is required, and the estate shall be appraised as provided in case of a decedent's estate.~~

Sec. 19. 14 V.S.A. § 2321 is amended to read:

~~§ 2321. DUTIES OF TRUSTEES; PROPERTY KEPT SEPARATE~~

~~In the management of the trust estate, trustees shall perform the duties specified in their bonds and shall keep separate and distinct all moneys, property or securities received by them in the capacity of trustees.~~

Sec. 20. 14 V.S.A. § 2322 is amended to read:

~~§ 2322. LICENSE; SALE AND INVESTMENT OF ESTATE; SUPPORT OF FAMILY~~

~~On motion, the probate court may authorize or require the trustee to sell all or a part of the real estate, stock or other personal estate belonging to the trust estate, when it appears to the court to be beneficial to the trust estate and to the parties interested therein, or necessary or desirable in order to carry out the terms of the trust, and with moneys in the hands of the trustee, invest the proceeds of such sale in real estate or in such other manner as the court judges most beneficial to those interested in such trust estate. The court may make further order or decree for the managing, investing or disposing of the trust fund as the case requires, consistent with the trust. In case of an absent person, the probate court may make such order for the support of the family as it~~

~~deems necessary.~~

Sec. 21. 14 V.S.A. § 2323 is amended to read:

~~§ 2323. SALE OF REAL PROPERTY; ORDER OF COURT; REGULATIONS~~

~~The order of the probate court licensing the sale of real estate belonging to a trust estate shall be made under the following regulations:~~

~~(1) On motion, the probate court shall schedule a hearing and notice shall be given as provided by the rules of probate procedure;~~

~~(2) At the hearing, the petitioner shall produce evidence of the value of the real estate to be sold, the interest of the trust estate therein, and of the necessity or desirability of such sale;~~

~~(3) Before license is granted, and if the probate court requires, the trustee shall give an additional bond with sufficient sureties for a suitable amount, conditioned that the trustee will account for the proceeds of the sale, according to law, and shall also be sworn to sell the real estate as in the trustee's judgment will be most beneficial to the trust estate; and a certificate of the oath, made by the authority administering it, shall be returned to the court before the license issues;~~

~~(4) If the foregoing requisites are complied with, the probate court may order the sale of the real estate of the trust estate, or its interest in the same, or that part thereof as the court deems necessary, at public or private sale, and shall furnish the trustee with a certified copy of its order;~~

~~(5) If the probate court directs a public sale, the order shall designate the mode of giving notice of the time and place thereof, and the sale shall be held in one of the towns where the real estate is located;~~

~~(6) The order of sale shall state that the requisites mentioned in subdivisions (1)-(3) of this section have been complied with, and a copy thereof shall be recorded, previous to the sale, in the office where a deed of that real estate is required to be recorded.~~

Sec. 22. 14 V.S.A. § 2324 is amended to read:

~~§ 2324. ACCOUNTS, TIME~~

~~Trustees shall annually render a full account of the management of trust estates, showing their receipts, disbursements and charges therein and the condition of such estates. Notice of the accounting shall be given as provided by the rules of probate procedure. The decision of the court therein shall have~~

~~the same effect as in case of settlement of accounts by executors or administrators.~~

Sec. 23. 14 V.S.A. § 2325 is amended to read:

~~§ 2325. EXAMINATIONS OF TRUSTEE~~

~~The probate court shall examine a trustee upon oath as to the correctness of the account before it is allowed by the court, but may dispense with an examination when objection is not made to the account.~~

Sec. 24. 14 V.S.A. § 2326 is amended to read:

~~§ 2326. RIGHT OF SURETY ON ACCOUNTING~~

~~Upon the filing of a trustee's account, a person interested as surety in respect to the account may intervene as a party with the same rights as are given to the surety of an administrator.~~

Sec. 25. 14 V.S.A. § 2328 is amended to read:

~~§ 2328. TRUSTS, DEVISE OR BEQUEST FOR CHARITY, CY PRES~~

~~If a trust for charity is or becomes illegal, impossible or impracticable of enforcement or if a devise or bequest for charity, at the time it was intended to become effective, is illegal, impossible or impracticable of enforcement and if the settlor or testator manifested a general intention to devote the property to charity, the superior court, on motion of any trustee, or any interested person, or the attorney general of the state, may order an administration of the trust, devise or bequest as nearly as possible to fulfill the general charitable intention of the settlor or testator.~~

Sec. 26. 14 V.S.A. § 2501 is amended to read:

§ 2501. CHARITABLE, CEMETERY, AND PHILANTHROPIC TRUSTS; ANNUAL REPORTS

Every trustee or board of trustees, incorporated or unincorporated, who holds in trust, within this state, property given, devised, or bequeathed ~~for benevolent, charitable, humane or philanthropic purposes, including~~ to cemetery associations or societies and towns which hold funds for cemetery purposes, and who administers or is under a duty to administer the same in whole or in part for such purposes, annually, on or before the first day of September, shall make a written report to the probate court showing the property so held and administered, the receipts and expenditures in connection therewith, the whole number of beneficiaries thereof and such other information as the probate court may require.

Sec. 27. 27 V.S.A. § 352 is amended to read:

~~§ 352. CERTIFICATE OF TRUST~~

~~(a) The settlor or trustee of a trust, at any time after execution or creation of a trust, may execute a certificate of trust that sets forth less than all of the provisions of a trust instrument and any amendments to the instrument. The certificate of trust may be used as evidence of authority to sell, convey, pledge, mortgage, lease, or transfer title to any interest in real or personal property. The certificate of trust shall be upon the representation of the settlors, grantors, or trustees that the statements contained in the certificate of trust are true and correct. The signature of the grantors or trustees must be under oath before a notary public or other official authorized to administer oaths. The certificate of trust must include:~~

~~(1) the name of the trust, if one is given;~~

~~(2) the date of the trust instrument;~~

~~(3) the name of each grantor or settlor;~~

~~(4) the name of each original trustee;~~

~~(5) the name and address of each trustee empowered to act under the trust instrument at the time of execution of the certificate;~~

~~(6) an abstract of the provisions of the trust instrument authorizing the trustee to act in the manner contemplated by the instrument;~~

~~(7) a statement that the trust instrument has not been revoked or amended as to the authorizing provisions;~~

~~(8) a statement that no provisions of the trust instrument limit the authority so granted; and~~

~~(9) a statement as to whether the trust is supervised by any court and, if so, a statement that all necessary approval has been obtained for the trustees to act.~~

~~(b) A certificate of trust executed under subsection (a) of this section may be recorded in the land records of the municipality where the land identified in the certificate of trust or any attachment to it is situated. When it is so recorded or filed for recording, or in the case of personal property, when it is presented to a third party, the certificate of trust serves to document the existence of the trust, the identity of the trustees, the powers of the trustees and any limitations on those powers, and other matters set forth in the certificate of trust, as though the full trust instrument had been recorded, filed, or presented.~~

~~(c) A certificate of trust is conclusive proof as to the matters contained in it, and any party may rely upon the continued effectiveness of the certificate unless:~~

~~(1) a party dealing with the trustee or trustees has actual knowledge of facts to the contrary;~~

~~(2) the certificate is amended or revoked under subsection (d) of this section; or~~

~~(3) the full trust instrument is recorded, filed, or presented.~~

~~(d) Amendment or revocation of a certificate of trust may be made only by a written instrument executed by the settlor or trustee of a trust. Amendment or revocation of a certificate of trust is not effective as to a party unless that party has actual notice of the amendment or revocation. For purposes of this subsection, "actual notice" means that a written instrument of amendment or revocation has been received by the party or, in the case of real property, that either a written instrument of amendment or revocation has been received by the party or that a written instrument of amendment or revocation identifying the real property involved has been recorded in the municipal land records where the real property is situated.~~

Sec. 28. EFFECTIVE DATE

This act shall take effect on July 1, 2009.

Sec. 29. REPEAL

9 V.S.A. §§ 4651-4662 (Uniform Prudent Investor Act) are repealed.

Sec. 30. 32 V.S.A. § 1434 is amended to read:

§ 1434. PROBATE COURTS

(a) The following entry fees shall be paid to the probate court for the benefit of the state, except for subdivision (17) of this subsection which shall be for the benefit of the county in which the fee was collected:

* * *

(9) ~~Testamentary trusts of $20,000.00 or less~~ For all trust petitions, other than those described in subdivision (11) of this subsection, where the corpus of the trust at the time the petition is filed is $100,000.00 or less, including petitions to modify or terminate a trust, to remove or substitute a trustee or trustees, or seeking remedies for breach of trust	~~$50.00~~ 150.00

(10) ~~Testamentary trusts of more than~~	~~$20,000.00~~
For all trust petitions, other than those described in subdivision (11) of this subsection, where the corpus of the trust is more than $100,000.00, including petitions to modify or terminate a trust, to remove or substitute a trustee or trustees, or seeking remedies for breach of trust	~~$100.00~~ $250.00
(11) Annual accounts on ~~testamentary~~ trusts ~~of more than $20,000.00~~	$30.00

* * *

(21) ~~Petitions for the removal of a trustee pursuant to 14 V.S.A. § 2314(c) of trusts of $20,000.00 or less~~	~~$50.00~~
~~(22)Petitions for removal of a trustee pursuant to 14 V.S.A. § 2314(c) of trusts more than $20,000.00~~	~~$100.00~~
~~(23)~~ Petitions concerning advance directives pursuant to 18 V.S.A. § 9718	$75.00

* * *

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

Proposals of Amendment; Third Reading Ordered; Rules Suspended; Bill Passed in Concurrence with Proposals of Amendment

H. 24.

Senator Kittell, for the Committee on Health and Welfare, to which was referred House bill entitled:

An act relating to insurance coverage for colorectal cancer screening.

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

First: In Sec. 1, in subsection (a), by striking out the word "third" and inserting in lieu thereof the word fourth

Second: In Sec. 2, 8 V.S.A. § 4100g, in subsection (d), by striking out the figure "$25.00" and inserting in lieu thereof the figure $100.00

Third: In Sec. 2, 8 V.S.A. § 4100g, in subsection (e), by striking out the figure "$25.00" and inserting in lieu thereof the figure $100.00

Fourth: By striking out Secs. 3 and 4 in their entirety and renumbering the remaining sections to be numerically correct

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, the proposals of amendment were collectively agreed to, and third reading of the bill was ordered.

Thereupon, on motion of Senator Mazza, the rules were suspended and the bill was placed on all remaining stages of its passage in concurrence with proposals of amendment.

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

Proposal of Amendment; Third Reading Ordered; Rules Suspended; Bill Passed in Concurrence with Proposal of Amendment

H. 171.

Senator Cummings, for the Committee on Finance, to which was referred House bill entitled:

An act relating to home mortgage protection for Vermonters.

Reported recommending that the Senate propose to the House to amend the bill in Sec. 2, 12 V.S.A. § 4532a, by adding a new subsection (c) to read as follows:

(c) Acceptance of a foreclosure complaint by the court clerk that, due to a good faith error or omission by the plaintiff or the clerk, does not contain the certification required in subsection (a) of this section, shall not invalidate the foreclosure proceeding, provided that the plaintiff files the required notice with the commissioner within 10 days of obtaining knowledge of the error or omission.

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

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the proposal of amendment was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Brock moved that the Senate propose to the House to further amend the bill in Sec. 1, 8 V.S.A. § 2204(a)(5), by striking out the following: "The

applicant, and each officer and director of the applicant" and inserting in lieu thereof the following: The applicant and each officer, director and control person of the applicant

Which was agreed to.

Thereupon, the pending question, Shall the bill be read a third time?, was decided in the affirmative.

Thereupon, on motion of Senator Mullin, the rules were suspended and the bill was placed on all remaining stages of its passage in concurrence with proposal of amendment.

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

Proposal of Amendment; Third Reading Ordered; Rules Suspended; Bill Passed in Concurrence with Proposal of Amendment

H. 405.

Senator Doyle, for the Committee on Education, to which was referred House bill entitled:

An act relating to K-12 and higher education partnerships.

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

Sec. 1. POLICY, FINDINGS, AND PURPOSE

(a) It is the policy of the state of Vermont to make available as many opportunities as possible for Vermont students to succeed in their Pre-K-12 education, to encourage and facilitate high school students to progress toward higher education, and to prepare postsecondary students to succeed.

(b) Completing high school cannot be considered the minimum educational attainment. As stated by President Obama in his address before Congress on February 24, 2009, every American should "commit to at least one year or more of higher education or career training. This can be community college or a four-year school; vocational training or an apprenticeship. But whatever the training may be, every American will need to get more than a high school diploma. And dropping out of high school is no longer an option. It's not just quitting on yourself, it's quitting on your country — and this country needs and values the talents of every American. That is why we will provide the

support necessary to … meet a new goal: By 2020, America will once again have the highest proportion of college graduates in the world."

(c) For Vermont to thrive economically it must develop, attract, and retain a well-educated and highly skilled citizenry, who will in turn enable the development, recruitment, and retention of successful businesses and support healthy communities.

(d) Higher levels of educational attainment translate into higher earnings and tax revenues, increased civic engagement and community contributions, better overall health, decreased dependency on government services, and an improved quality of life.

(e) To increase educational attainment among Vermonters, educational partnerships between higher education and the Pre-K-12 educational system are crucial to increasing postsecondary aspirations, increasing the enrollment of Vermont high school graduates in higher education programs, increasing the postsecondary degree completion rates of Vermont students, and increasing public awareness of the economic, intellectual, and societal benefits of higher education.

(f) To track student performance throughout a student's academic career and to understand better the programs and services that increase educational attainment and reduce performance disparities between students of different socioeconomic backgrounds, it is essential that Vermont implement a statewide Pre-K-12 longitudinal data system.

Sec. 2. STRATEGIES TO EXPAND EDUCATIONAL OPPORTUNITIES

(a) The Vermont state colleges, the University of Vermont, the association of Vermont independent colleges, the Vermont Student Assistance Corporation, and the department of education (collectively, the "working group") shall work together to develop strategies to expand educational opportunities for Vermont students to succeed in elementary and secondary school and to be prepared to succeed in postsecondary education as well. The working group, which shall be chaired by the Vermont state colleges, shall consult with representatives of institutions of higher education and of the Pre-K-12 education system, and with the workforce development, business, and industry communities.

(b) On or before January 15, 2010, the working group shall submit a report to the general assembly detailing its recommended strategies. When developing its recommendations, the working group shall consider and evaluate:

(1) Evidence-based educational models in Vermont and elsewhere, including early college programs, alternatives to a senior year, Pre-K-12

laboratory schools, statewide career awareness and postsecondary aspiration programs, and alternative school calendars.

(2) Partnerships between higher education and the Pre-K-12 system to improve instruction and increase postsecondary aspiration, preparedness, continuation, and completion rates.

(3) Potential funding sources for implementing its recommendations.

Sec. 3. ELECTRONIC STUDENT LONGITUDINAL DATA SYSTEM

The commissioner of education shall:

(1) Examine and evaluate student longitudinal data systems that are currently available and select one system to implement statewide. To the extent possible, the selected system shall be aligned with postsecondary data systems to create a statewide Pre-K-16 longitudinal data system. In addition, it shall comply with the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g), the Health Insurance Portability and Accountability Act (Pub. Law No. 104-191 §§ 262,264: 45 C.F.R. §§ 160-164), and any other applicable state or federal privacy law or regulation and shall conform to generally recognized data security standards.

(2) Apply for competitive grant monies through the American Recovery and Reinvestment Act of 2009, Title XIII, Institute of Education Sciences, to fund implementation of a statewide Pre-K-12 longitudinal data system serving each school district, supervisory union, and technical center service region.

(3) To the extent funds are available, begin phased implementation of the data system no later than January 1, 2010, to be complete in all districts in the state by January 1, 2017.

(4) Report to the senate and house committees on education on or before January 15, 2010 regarding:

(A) The total grant dollars received, if any.

(B) The design and scope of the system.

(C) The implementation plan for the system, including transitional planning.

(D) Barriers to full implementation and recommendations for legislative or other action to ensure that all districts are able to participate.

(E) Options available to meet the purposes of this section if the state's application for grant funding was unsuccessful.

(5) Report to the senate and house committees on education on or before January 15, 2011 regarding implementation of this section and in January of each subsequent year until implementation is complete.

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

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

Thereupon, on motion of Senator Doyle, the rules were suspended and the bill was placed on all remaining stages of its passage in concurrence with proposal of amendment.

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

President Assumes the Chair

Proposals of Amendment; Third Reading Ordered; Rules Suspended; Bill Passed in Concurrence with Proposals of amendment

H. 447.

Senator Lyons, for the Committee on Natural Resources and Energy, to which was referred House bill entitled:

An act relating to wetlands protection.

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

First: In Sec. 3, 10 V.S.A. § 902(6)(B), by striking out the following: "determined to be" where it appears and inserting in lieu thereof the following: identified in rules of the board as

Second: In Sec. 5, 10 V.S.A. §913(b)(1)(C), by striking out the following: "of this subsection" where it appears and inserting in lieu thereof the following: of this subdivision (1)

Third: In Sec. 8, 10 V.S.A. § 8003(a)(5), by striking out the following: "relating to" where it appears and inserting in lieu thereof the following: relating to

Fourth: By striking out Sec. 13 in its entirety and inserting in lieu thereof a new Sec. 13 to read as follows:

Sec. 13. No. 183 of 1931 is amended to read:

~~Section 1. Change of name. The pond situated in the town of Bristol, commonly called Bristol Pond, is hereby named and designated as Winona Lake.~~

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, the proposals of amendment were collectively agreed to, and third reading of the bill was ordered.

Thereupon, on motion of Senator Shumlin, the rules were suspended and the bill was placed on all remaining stages of its passage in concurrence with proposals of amendment.

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

House Proposal of Amendment Concurred In

S. 69.

House proposal of amendment to Senate bill entitled:

An act relating to digital campaign finance filings.

Was taken up.

The House proposes to the Senate to amend the bill by adding a new section to be numbered Sec. 2 to read as follows:

Sec. 2. SECRETARY OF STATE; DIGITAL CAMPAIGN FINANCE FORM FILINGS; REPORT

The secretary of state shall file a report with the house and senate committees on government operations by February 5, 2010 that details the design of the system for filing digital campaign finance forms, the cost implications of the system, and a timeline for implementing the system.

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

Proposals of Amendment Amended; Bill Passed in Concurrence with Proposals of Amendment

H. 152.

House bill entitled:

An act relating to encouraging biomass energy production.

Was taken up.

Thereupon, pending third reading of the bill, Senator Kittell moved that the Senate proposal of amendment be amended as follows:

First: In Sec. 1, subsection (c), by striking out the words "house committee on agriculture" where it appears and inserting in lieu thereof the following: house and senate committees on agriculture

Second: In Sec. 1, subsection (d), by striking out the words "house committee on agriculture" where it appears and inserting in lieu thereof the following: house and senate committees on agriculture

Which was agreed to.

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

Third Readings Ordered

H. 448.

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

An act relating to codification and approval of amendments to the charter of the village of Swanton.

Reported that the bill ought to pass in concurrence.

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

H. 451.

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

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

Reported that the bill ought to pass in concurrence.

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

Proposal of Amendment; Third Reading Ordered; Rules Suspended; Bill Passed in Concurrence with Proposal of Amendment

H. 80.

Senator Racine, for the Committee on Health and Welfare, to which was referred House bill entitled:

An act relating to the use of chloramine as a disinfectant in public water systems.

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

Sec. 1. ENGINEERING EVALUATION OF PUBLIC WATER SYSTEM DISINFECTION TREATMENT OPTIONS

The agency of natural resources shall, subject to available federal funding, conduct an engineering evaluation of public water systems in the state that have made or will be required to make modifications to their disinfection practices in order to comply with the U.S. Environmental Protection Agency's Stage 2 Disinfectant and Disinfection Byproducts Rule. The engineering evaluation shall be completed by an independent third party. The engineering evaluation shall include, to the extent possible under available federal funding:

(1) a comparative assessment of disinfectant treatment options;

(2) an analysis of the technical feasibility of implementing each of the assessed treatment options;

(3) an evaluation of whether implementation of an assessed treatment option will result in simultaneous compliance with all federal and state rules;

(4) an estimate of the capital, operating, and maintenance costs associated with implementation of each assessed treatment option; and

(5) an assessment of whether the capacity of a public water system restricts implementation of an assessed treatment option or would require additional operating requirements.

(b) On or before January 15, 2010, the agency shall report the results of the engineering evaluation required by this section to the senate committee on health and welfare, the senate committee on natural resources and energy, the house committee on fish, wildlife and water resources, and the house committee on human services.

Sec. 2. EFFECTIVE DATE

This act shall take effect upon passage.

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

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

Thereupon, on motion of Senator Shumlin, the rules were suspended and the bill was placed on all remaining stages of its passage in concurrence with proposal of amendment.

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

Rules Suspended; Bills Passed

H. 448.

Pending entry on the Calendar for action tomorrow, on motion of Senator Shumlin, the rules were suspended and House bill entitled:

An act relating to codification and approval of amendments to the charter of the village of Swanton.

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

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

H. 451.

Pending entry on the Calendar for action tomorrow, on motion of Senator Shumlin, the rules were suspended and House bill entitled:

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

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

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

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

S. 89.

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

An act relating to stabilization of prices paid to Vermont dairy farmers.

Was taken up for immediate consideration.

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

Sec. 1. VERMONT MILK COMMISSION; PRODUCER PRICE STABILIZATION

(a) The general assembly finds that the recent precipitous drop in producer prices is causing a tremendous burden on Vermont dairy producers and the industry at large, and that this burden must be alleviated as quickly as possible.

(b) The general assembly followed the proceedings of the Vermont milk commission during the summer and fall of 2008 and finds that the commissioner has held the public hearings required by chapter 161 of Title 6.

Sec. 2. 6 V.S.A. § 2924(c) is amended to read:

(c) Public hearings. In order to be informed of the status of the state's dairy industry, the commission shall hold a public hearing~~:~~ at least annually and whenever the chair deems it necessary.

~~(1) At least annually.~~

~~(2) Whenever the price paid to producers, including the federal market order price and any over-order premiums, on average, has been reduced by five percent or more over the last month or by 10 percent or more over the last three months.~~

~~(3) Whenever the retail price, on average, has increased by more than 10 percent per gallon within a three-month period or 15 percent per gallon within a 12-month period.~~

~~(4) Whenever the cost of production increases by 10 percent or more within a period of three to 12 months.~~

~~(5) Whenever a loss or substantial lessening of the supply of fluid dairy products of proper quality in a specified market has occurred or is likely to occur and that the public health is menaced, jeopardized, or likely to be impaired or deteriorated by the loss or substantial lessening of the supply of fluid dairy products of proper quality in a specified market.~~

Sec. 3. ANTI-TRUST INQUIRY; REPORT BY THE ATTORNEY GENERAL

(a) Findings. The attorney general shall, in cooperation, where possible, with attorneys general from other states, undertake a study of the northeast fluid milk market, and the Vermont segment of that market, and further work

with the United States Congress and the United States attorney general to investigate possible anticompetitive practices in the dairy industry.

(b) By January 15, 2010, the attorney general shall report back to the house and senate committees on agriculture with the findings and recommendations of the study required by this section.

Sec. 4. 6 V.S.A. chapter 157 is amended to read:

CHAPTER 157. BONDS

§ 2881. CONDITIONS AND AMOUNT; FAILURE TO FILE

(a) Except as provided in section 2882 of this title, no handler shall purchase milk ~~or cream~~ from Vermont producers or milk cooperatives, and the secretary shall not issue a handler's license, unless the handler furnishes the secretary a good and sufficient surety bond, executed by a surety company duly authorized to transact business in this state in an amount ~~which, at the conclusion of five equal annual increases in bond coverage, is on January 1~~ equal to 50 percent for all species other than cattle, and 100 percent for cattle, of the maximum amount due all milk producers in the state who sell milk to the handler for a 41-day period during the previous 12 months. He or she may accept, in lieu of such bond, a guaranteed irrevocable letter of credit ~~in such sum as he or she deems sufficient~~. The bonds shall be taken for the ~~sole~~ benefit of milk producers ~~of such milk handlers~~ and milk cooperatives in this state. At any time in his or her discretion, the secretary may require such handlers to file detailed statements of the business transacted by them in this state, and at any time may require them to give such additional bonds as he or she deems necessary. If the handler refuses or neglects to file the detailed statements or to give bonds required by the secretary, the secretary may suspend the license of the handler until he or she complies with the secretary's orders. The secretary ~~shall~~ shall report to the attorney general the name of any handler doing business in this state without a license or after suspension of its license by the secretary and the attorney general shall forthwith bring injunction proceedings against the handler. Renewals of bonds specified in this section shall be furnished the secretary 60 days before the effective date of the bond. If the handler fails to file the bonds as required, the secretary shall forthwith publish the name of the handler in four newspapers of general circulation in the state for a period of three consecutive days and notify, by registered mail, producers supplying such handler.

(b) ~~A handler shall be exempt from providing the financial security required by this section for payments the handler makes to a producer who is a member of a milk cooperative which guarantees its members' milk checks. To receive this exemption, a handler shall notify the secretary of each such~~

~~producer and the secretary shall validate the cooperative membership of the producer.~~

§ 2882. EXEMPTIONS FROM FILING BOND

(a) A ~~handler who purchases or receives milk or cream from producers~~ milk cooperative or a nonprofit cooperative association organized under Vermont law or similar laws in other states shall not be required to furnish surety as provided in section 2881 of this title ~~if the handler is a nonprofit cooperative association organized under Vermont statutes or under similar laws in other states~~ for payments made to a milk cooperative or to a producer who is a member of a milk cooperative.

(b) A handler who does not purchase milk ~~or cream~~ from Vermont producers or milk cooperatives shall not be required to furnish surety as provided under section 2881 of this title.

(c) A handler who pays a milk cooperative for milk in advance or at the time of delivery shall not be required to furnish surety as provided under section 2881 of this title. Every milk cooperative selling milk to handlers who pay for milk in advance or at the time of delivery shall, on January 1 and July 1 of each year, notify the secretary in writing of the identity of each handler and shall promptly notify the secretary, in writing, of any changes to the most recent notification.

(d) A handler who purchases fewer than 150,000 pounds of milk per month from a milk cooperative shall not be required to furnish surety as provided under section 2881 of this title.

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

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

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

Senator Starr
Senator Giard
Senator Kittell

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

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

Rules Suspended; Committee Relieved of Further Consideration; Bill Committed

H. 222.

On motion of Senator Shumlin, the rules were suspended, and H. 222 was taken up for immediate consideration, for the purpose of relieving the Committee on Rules from further consideration of the bill. Thereupon, on motion of Senator Shumlin, the Committee on Rules was relieved of House bill entitled:

An act relating to senior protection and financial services,

and the bill was committed to the Committee on Finance.

Committees of Conference Appointed

S. 7.

An act to prohibit the use of lighted tobacco products in the workplace.

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

Senator Mullin
Senator Choate
Senator Racine

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

S. 26.

An act relating to recovery of profits from crime.

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

Senator Mullin
Senator Campbell
Senator Sears

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

H. 15.

An act relating to aquatic nuisance control.

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

Senator McCormack
Senator Snelling
Senator Hartwell

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

H. 86.

An act relating to the regulation of professions and occupations.

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

Senator Doyle
Senator Brock
Senator White

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

Rules Suspended; Bills Messaged

On motion of Senator Shumlin, the rules were suspended, and the following bills were severally ordered messaged to the House forthwith:

S. 7, S. 26, H. 24, H. 80, H. 152, H. 171, H. 405, H. 447, H. 448, H. 451.

Rules Suspended; Bills Delivered

On motion of Senator Shumlin, the rules were suspended, and the following bills were severally ordered delivered to the Governor forthwith:

S. 69, S. 86.

Recess

On motion of Senator Shumlin the Senate recessed until four o'clock and thirty minutes.

Called to Order

At four o'clock and forty minutes the Senate was called to order by the President *pro tempore*.

Message from the Governor

A message was received from His Excellency, the Governor, by Heidi Tringe, Secretary of Civil and Military Affairs, as follows:

Mr. President:

I am directed by the Governor to inform the Senate that on the fifth day of May, 2009, he approved and signed a bill originating in the Senate of the following title:

S. 27. An act relating to tastings and sale of wines, fortified wines and spirits.

Report of Committee of Conference Accepted and Adopted on the Part of the Senate

H. 91.

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

To the Senate and House of Representatives:

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

An act relating to technical corrections to the juvenile judicial proceedings act of 2008 .

Respectfully reports that it has met and considered the same and recommends that the Senate recede from its proposal of amendment, and that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 15 V.S.A. § 1107 is amended to read:

§ 1107. FILING ORDERS WITH LAW ENFORCEMENT PERSONNEL; DEPARTMENT OF PUBLIC SAFETY PROTECTION ORDER DATABASE

(a) Police departments, sheriff's departments, and state police district offices shall establish procedures for filing abuse prevention orders issued under this chapter, chapter 69 of Title 33, chapter 178 of Title 12, protective orders relating to contact with a child issued under section 5115 of Title 33, and foreign abuse prevention orders and for making their personnel aware of the existence and contents of such orders.

(b) Any court in this state that issues an abuse prevention order under section 1104 or 1103 of this chapter, or that files a foreign abuse prevention order in accordance with subsection 1108(d) of this chapter, or that issues a protective order relating to contact with a child under section 5115 of Title 33, shall transmit a copy of the order to the department of public safety protection order database.

Sec. 2. 33 V.S.A. § 5123 is added to read:

§ 5123. TRANSPORTATION OF A CHILD

(a) The commissioner of the department for children and families shall ensure that all reasonable and appropriate measures consistent with public safety are made to transport or escort a child subject to this chapter in a manner that:

(1) reasonably avoids physical and psychological trauma;

(2) respects the privacy of the child; and

(3) represents the least restrictive means necessary for the safety of the child.

(b) The commissioner of the department for children and families shall have the authority to select the person or persons who may transport a child under the commissioner's care and custody.

(c) The commissioner shall assure supervisory review of every decision to transport a child using mechanical restraints. When transportation with restraints for a particular child is approved, the reasons for the approval shall be documented in writing.

(d) It is the policy of the state of Vermont that mechanical restraints are not routinely used on children subject to this chapter unless circumstances dictate that such methods are necessary.

Sec. 3. 33 V.S.A. § 5232 is amended to read:

§ 5232. DISPOSITION ORDER

(a) If a child is found to be a delinquent child, the court shall make such orders at disposition as may provide for:

(1) the child's supervision, care, and rehabilitation;

(2) the protection of the community;

(3) accountability to victims and the community for offenses committed; and

(4) the development of competencies to enable the child to become a responsible and productive member of the community.

(b) In carrying out the purposes outlined in subsection (a) of this section, the court may:

* * *

(6) Issue an order of permanent guardianship pursuant to section 2664 of Title 14.

* * *

Sec. 4. EFFECTIVE DATE

This act shall take effect upon passage.

ALICE W. NITKA
RICHARD W. SEARS

Committee on the part of the Senate

SANDY HAAS
PAT O'DONNELL
ANN D. PUGH

Committee on the part of the House

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

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

H. 297.

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

An act relating to approval of the adoption of the charter of the Morristown Corners Water Corporation.

Was taken up for immediate consideration.

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

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

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

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

Senate Resolution Adopted

S.R. 13.

Senate resolution entitled:

Senate resolution urging the Agency of Natural Resources to retain delegated authority to administer the federal Clean Water Act in Vermont

Having been placed on the Calendar for action, was taken up and adopted.

Rules Suspended; Bill Committed

H. 444.

Pending entry on the Calendar for notice, on motion of Senator Mazza, the rules were suspended and House bill entitled:

An act relating to health care reform.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Health and Welfare, Senator Mazza moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Appropriations with the reports of the Committee on Health and Welfare and the Committee on Finance *intact*,

Which was agreed to.

Rules Suspended; Proposal of Amendment; Bill Passed in Concurrence with Proposal of Amendment

H. 446.

Pending entry on the Calendar for action, on motion of Senator Mazza, the rules were suspended and Senate bill entitled:

An act relating to renewable energy and energy efficiency.

Was taken up for immediate consideration.

Thereupon, pending third reading of the bill, Senator Lyons moved that the Senate proposal of amendment be amended as follows:

First: By striking out the *seventeenth* proposal of amendment in its entirety.

Second: In Sec. 15a, by striking out § 8102 (sales and use tax exemption) in its entirety and inserting in lieu thereof:

§ 8102. INCENTIVES; CUSTOMER CONNECTIONS

Notwithstanding any other provision of law, the clean energy development fund created under 10 V.S.A. § 6523 shall provide at least $100,000.00 in

incentives to customers who will connect to a certified Vermont village green renewable project. Any such incentive shall be applied by the customer to the cost of constructing the customer's connection to the project.

Third: By striking out Sec. 15b (amendment to Title 32 regarding sales and use tax) in its entirety.

And by renumbering the proposals of amendment and the sections of the bill to be numerically correct.

Which was agreed to.

Thereupon, pending third reading of the bill, Senator Cummings moved that the Senate proposal of amendment be amended in Secs. 9 and 9a, after the words "further that" where they occur in each Sec., by inserting the following: , for investments made on or after October 1, 2009,

Which was agreed to.

Thereupon, pending third reading of the bill, Senators Kitchel and Miller moved that the Senate proposal of amendment be amended by inserting a new section to be numbered Sec. 14a to read as follows:

Sec. 14a. 30 V.S.A. § 209(d)(4) is amended to read:

(4) The charge established by the board pursuant to subdivision (3) of this subsection shall be in an amount determined by the board by rule or order that is consistent with the principles of least cost integrated planning as defined in section 218c of this title. As circumstances and programs evolve, the amount of the charge shall be reviewed for unrealized energy efficiency potential and shall be adjusted as necessary in order to realize all reasonably available, cost-effective energy efficiency savings. In setting the amount of the charge and its allocation, the board shall determine an appropriate balance among the following objectives; provided, however, that particular emphasis shall be accorded to the first four of these objectives: reducing the size of future power purchases; reducing the generation of greenhouse gases; limiting the need to upgrade the state's transmission and distribution infrastructure; minimizing the costs of electricity; providing efficiency and conservation as a part of a comprehensive resource supply strategy; providing the opportunity for all Vermonters to participate in efficiency and conservation programs; and the value of targeting efficiency and conservation efforts to locations, markets or customers where they may provide the greatest value. ~~The~~ No later than December 31, 2009, the board, by rule or order, shall establish a process by which a customer who pays an average annual energy efficiency charge under subdivision (3) of this subsection of at least $5,000.00 may apply to the board to self-administer energy efficiency through the use of an energy savings account which shall contain a percentage of the customer's energy efficiency

charge payments as determined by the board. The remaining portion of the charge shall be used for systemwide energy benefits. The board in its rules or order shall establish criteria for approval of these applications.

And by renumbering the sections of the bill to be numerically correct.

Which was agreed to.

President Assumes the Chair

Thereupon, pending third reading of the bill, Senator Starr moved that the Senate proposal of amendment be amended by inserting a new section to be numbered Sec. 8a to read as follows:

Sec. 8a. ANR WIND GUIDELINES; REEXAMINATION

No later than March 1, 2010, the department of public service and the agency of natural resources jointly shall perform each of the following:

(1) Consider and, as appropriate, make revisions to the agency of natural resources' "Guidelines for the Review and Evaluation of Potential Natural Resources Impacts from Utility-Scale Wind Energy Facilities in Vermont" (the Guidelines). Such consideration shall include whether to make any revisions needed to conform the Guidelines to the findings and recommendations of the Vermont Commission on Wind Energy Regulatory Policy (Dec. 15, 2004) (the Recommendations).

(2) Applying the Guidelines as may be revised under subsection (2) of this section and the Recommendations, identify three sites on which it is feasible, economically and environmentally, to site commercial scale wind energy generation facilities.

(3) Conduct and complete a public engagement process with respect to the potential installation of wind energy generation facilities on the sites identified under subdivision (3) of this section.

(4) Report to the senate and house committees on natural resources and energy on the course, conduct, and results of the reexamination, consideration, site identification, and public engagement process required by this section, attaching any revisions made to the Guidelines, describing each of the sites identified and the public engagement process, and summarizing the reasons for actions taken or not taken and the public comments received.

Which was disagreed to.

Thereupon, the bill was read the third time and passed in concurrence with proposals of amendment on a roll call, Yeas 16, Nays 10.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Campbell, Carris, Cummings, Flanagan, Giard, Hartwell, Kittell, Lyons, MacDonald, McCormack, Miller, Nitka, Racine, Shumlin, White.

Those Senators who voted in the negative were: Brock, Choate, Doyle, Kitchel, Maynard, Mazza, Mullin, Scott, Sears, Starr.

Those Senators absent and not voting were: Ayer, Bartlett, Illuzzi, Snelling.

Senator Shumlin Assumes the Chair

House Proposal of Amendment Concurred In

S. 2.

House proposal of amendment to Senate bill entitled:

An act relating to offenders with a mental illness or other functional impairment.

Was taken up.

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

Sec. 1. 28 V.S.A. § 701a is amended to read:

§ 701a. SEGREGATION OF INMATES WITH A SERIOUS ~~MENTAL ILLNESS~~ FUNCTIONAL IMPAIRMENT

(a) The commissioner shall adopt rules pursuant to chapter 25 of Title 3 regarding the classification, treatment, and segregation of an inmate with a serious ~~mental illness~~ functional impairment as defined ~~in subdivision 906(1)~~ and identified under subchapter 6 of this ~~title~~ chapter; provided that the length of stay in segregation for an inmate with a serious ~~mental illness~~ functional impairment:

(1) Shall not exceed 15 days if the inmate is segregated for disciplinary reasons.

(2) Shall not exceed 30 days if the inmate requested the segregation, except that the inmate may remain segregated for successive 30-day periods following assessment by a qualified mental health professional and approval of a physician for each extension.

(3) Shall not exceed 30 days if the inmate is segregated for any reason other than the reasons set forth in subdivision (1) or (2) of this subsection, except that the inmate may remain segregated for successive 30-day periods following a due process hearing for each extension, which shall include assessment by a qualified mental health professional and approval of a physician.

(b) For purposes of this title, and despite other names this concept has been given in the past or may be given in the future, "segregation" means a form of separation from the general population which may or may not include placement in a single occupancy cell and which is used for disciplinary, administrative, or other reasons.

(c) On or before the 15th day of each month, the department's health services director shall provide to the joint legislative corrections oversight committee a report that, while protecting inmate confidentiality, lists each inmate who was in segregation during the preceding month by a unique indicator and identifies the reason the inmate was placed in segregation, the length of the inmate's stay in segregation, whether the inmate has a serious ~~mental illness, or is otherwise on the department's mental health roster, and, if so, the nature of the mental illness~~ functional impairment. The report shall also indicate any incident of self harm or attempted suicide by inmates in segregation. The ~~committee chair~~ department shall ensure that a copy of the report is forwarded to the Vermont defender general and the executive director of Vermont Protection and Advocacy, Inc. on a monthly basis. At the request of the committee, the director shall also provide information about the nature of the functional impairments of inmates placed in segregation or services provided to these inmates. In addition, at least annually, the department shall provide a report on all inmates placed in segregation who were receiving mental health services.

Sec 2. 28 V.S.A. chapter 11, subchapter 6 is amended to read:

Subchapter 6. Services for Inmates with Serious

~~Mental Illness~~ Functional Impairment

§ 906. DEFINITIONS

As used in this subchapter:

(1) "Serious ~~mental illness~~ functional impairment" means:

(A) a ~~substantial~~ disorder of thought, mood, perception, orientation, or memory~~, any of~~ as diagnosed by a qualified mental health professional, which ~~grossly~~ substantially impairs judgment, behavior, capacity to recognize reality,

or ability to meet the ordinary demands of life and which substantially impairs the ability to function within the correctional setting; or

(B) a developmental disability, traumatic brain injury or other organic brain disorder, or various forms of dementia or other neurological disorders, as diagnosed by a qualified mental health professional, which substantially impairs the ability to function in the correctional setting.

(2) "~~Mental~~ Qualified mental health professional" means a person with professional training, experience, and demonstrated competence in the treatment of mental illness or serious functional impairments who is a physician, psychiatrist, psychologist, social worker, nurse, or other qualified person determined by the commissioner of mental health.

(3) "Mental illness or disorder" means a condition that falls under any Axis I diagnostic categories or the following Axis II diagnostic categories as listed in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders DSM-IV-TR Fourth Edition (Text Revision), as updated from time to time: borderline personality disorder, histrionic personality disorder, mental retardation, obsessive-compulsive personality disorder, paranoid personality disorder, schizoid personality disorder, or schizotypal personality disorder.

(4) "Screening" means an initial survey, which shall be trauma-informed, to identify whether an inmate has immediate treatment needs or is in need of further evaluation.

§ 907. MENTAL HEALTH SERVICE FOR INMATES; POWERS AND RESPONSIBILITIES OF COMMISSIONER

The commissioner shall administer a program of trauma-informed mental health services which shall be available to all inmates and shall provide adequate staff to support the program. The program shall provide the following services:

(1) Within 24 hours of admittance to a correctional facility all inmates shall be screened for any signs of ~~serious~~ mental illness or disorder, or serious functional impairment. If as a result of the screening it is determined that the inmate is receiving services under the developmental services waiver or is currently receiving community rehabilitation and treatment services, he or she will automatically be designated as having a serious functional impairment.

(2) A thorough trauma-informed evaluation, conducted in a timely and reasonable fashion by a qualified mental health professional, which includes a review of available medical and psychiatric records. The evaluation shall be made of each inmate who:

(A) has a history of ~~serious~~ mental illness or disorder;

(B) has received community rehabilitation and treatment services; or

(C) ~~who~~ shows signs or symptoms of ~~serious~~ mental illness or disorder or of serious functional impairment at the initial screening or as observed subsequent to entering the ~~department in a timely and reasonable fashion. The evaluation shall be conducted by a mental health professional who is qualified by training and experience to provide diagnostic, rehabilitative, treatment or therapeutic services to persons with serious mental illness. The evaluation shall include review of available medical and psychiatric records~~ facility.

(3) The development and implementation of an individual treatment plan, when a clinical diagnosis by a qualified mental health professional indicates an inmate is suffering from ~~serious~~ mental illness or disorder or from serious functional impairment. The treatment plan shall be developed in accordance with best practices and explained to the inmate by a qualified mental health professional.

(4) Access to a variety of services and levels of care consistent with the treatment plan to inmates suffering ~~serious~~ mental illness or disorder or serious functional impairment. These services shall include, as appropriate, the following:

(A) Follow-up evaluations.

(B) Crisis intervention.

(C) Crisis beds.

(D) Residential care within a correctional institution.

(E) Clinical services provided within the general population of the correctional facility.

(F) Services provided in designated special needs units.

(G) As a joint responsibility with the department of mental health and the department of disabilities, aging, and independent living, and working with ~~community mental health centers~~ designated agencies, the implementation of discharge planning ~~for community services~~ which coordinates access to services for which the offender is eligible, developed in a manner that is guided by best practices and consistent with the reentry case plan developed under subsection 1(b) of this title.

(H) Other services that the department of corrections, the department of disabilities, aging, and independent living, and the department of mental health jointly determine to be appropriate.

(5) ~~Procedures to actively~~ Proactive procedures to seek and identify any inmate who has not received the enhanced screening, evaluation, and access to mental health services appropriate for inmates suffering from a ~~serious~~ mental illness or disorder or a serious functional impairment.

(6) Special training to medical and correctional staff to enable them to identify and initially deal with inmates with a ~~serious~~ mental illness or disorder or a serious functional impairment. This training shall include the following:

(A) Recognition of signs and symptoms of ~~serious~~ mental illness or disorder or a serious functional impairment in the inmate population.

(B) Recognition of signs and symptoms of chemical dependence and withdrawal.

(C) Recognition of adverse reactions to psychotropic medication.

(D) Recognition of improvement in the general condition of the inmate.

(E) Recognition of mental retardation.

(F) Recognition of mental health emergencies and specific instructions on contacting the appropriate professional care provider and taking other appropriate action.

(G) Suicide potential and prevention.

(H) Precise instructions on procedures for mental health referrals.

(I) Any other training determined to be appropriate.

* * *

Sec. 3. REPORT

The agency of human services shall convene a working group which shall report quarterly to the corrections oversight committee on the analysis and implementation of systemwide changes for enhanced integration of services for seriously functionally impaired persons provided by the judiciary, agency human services, and community agencies.

Sec. 4. SUNSET

Sec. 3 of this act shall be repealed on July 1, 2012.

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

House Proposal of Amendment Concurred In with Amendment

S. 129.

House proposal of amendment to Senate bill entitled:

An act relating to containing health care costs by decreasing variability in health care spending and utilization.

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:

* * * Variation in Health Care Utilization * * *

Sec. 1. STUDY OF HEALTH CARE UTILIZATION

(a)(1) The commissioner of banking, insurance, securities, and health care administration shall analyze variations in the use of health care provided both by hospitals and by physicians treating Vermont residents as measured across the appropriate geographic unit or units. The commissioner shall contract with the Vermont program for quality in health care (VPQHC) pursuant to 18 V.S.A. § 9416 and may contract or consult with other qualified professionals or entities as needed to assist in the analysis and recommendations. To the extent possible, the analysis shall include information already available in medical literature and the Vermont quality report.

(2) The purpose of the analysis is to identify treatments or procedures for which the utilization rate varies significantly among geographic regions within Vermont, where the utilization rates are changing faster in one geographic region than another, to determine the reasons for the variations and changes in utilization, and to recommend solutions to contain health care costs by appropriately reducing variation, including by promoting the use of equally or more effective, lower-cost treatments and therapies provided by all health care professionals licensed in the state. The commissioner may examine the utilization rates of comparable, out-of-state hospitals or entities and regions if necessary to complete this analysis.

(3) The secretary of human services shall collaborate with the commissioner of banking, insurance, securities, and health care administration in the analysis required by this section. To the extent that the agency has data to contribute to the analysis that may not be shared directly, the agency shall provide the analysis to the commissioner of banking, insurance, securities, and health care administration.

(4) The commissioner and the secretary may begin the analysis with the following services:

(A) whose utilization is governed largely by patient preference, including:

(i) cataract surgery;

(ii) joint replacement;

(iii) back surgery; and

(iv) elective cardiac and vascular procedures.

(B) whose utilization appears to be governed largely by the available supply of the service, including:

(i) total physician visits, including to specialists and primary care physicians;

(ii) medical admissions to hospitals, including number of inpatient days and outpatient visits, including emergency room visits;

(iii) ambulatory-sensitive conditions;

(iv) advanced imaging;

(v) diagnostic tests; and

(vi) minor procedures.

(b)(1) In fiscal year 2010, the commissioner of banking, insurance, securities, and health care administration shall collect the same amount under subsection 9416(c) of Title 18 as was collected in state fiscal year 2009 for the expenses incurred under that section.

(2) In fiscal year 2010, the commissioner of banking, insurance, securities, and health care administration may redistribute up to $150,000.00 of the amount collected under subsection 9416(c) of Title 18 in order to ensure that the analyses and report required by this section are completed.

(c) No later than January 15, 2010, the secretary of human services and the commissioner of banking, insurance, securities, and health care administration shall provide a report to the house committee on health care and the senate committee on health and welfare containing a summary of their analysis of health care utilization, including explanations for variations or increases in spending and recommendations for containing health care costs by reducing variation, including promoting the use of equally or more effective lower cost treatment alternatives, prevention, or other methods of appropriately changing utilization.

Sec. 2. UTILIZATION REVIEW AND REMEDIATION PLAN

No later than January 15, 2010, using the analysis required in Sec. 1 of this act as the primary source of analysis, the commissioner of banking, insurance, securities, and health care administration shall consult with the Vermont Association of Hospitals and Health Systems, Inc., the Vermont Medical Society, insurers, and others to recommend:

(1) A process to ensure appropriate utilization in treatments or procedures across Vermont, including:

(A) identifying inappropriately low or high utilization in a geographic region for which there is a method of changing utilization;

(B) prioritizing variation identified in a geographic region by considering the impact a change in inappropriately low or high variations could have on cost or quality and the potential to develop strategies to rectify inappropriate variations;

(C) determining the causes of inappropriately low or high utilization identified pursuant to the process developed under this subdivision in a particular geographic region;

(D) providing the information gathered pursuant to the process developed under this subdivision to the health care professionals and facilities in the geographic region and in a publicly available format; and

(E) monitoring the health care professionals and facilities in the geographic region's progress.

(2) Modifications, if any, to existing regulatory processes, including the certificate of need process or the annual hospital budget process.

(3) Solutions to reduce inappropriate low or high utilization, including initiatives to improve public health and change reimbursement methodologies.

(4) Incentives for hospitals and health care professionals to change inappropriately low or high utilization.

* * * Administrative Cost* * *

Sec. 3. HEALTH PLAN ADMINISTRATIVE COST REPORT

(a) No later than December 15, 2009, the commissioner of banking, insurance, securities, and health care administration, in collaboration with the secretary of human services and the commissioner of human resources, shall provide a health plan administrative cost report to the health care reform commission, the house committee on health care, and the senate committee on health and welfare.

(b) The report shall:

(1) identify a common methodology based on the current rules for insurer reports to the department of banking, insurance, securities, and health care administration for calculating costs of administering a health plan in order to provide useful comparisons between the administrative costs of:

(A) private insurers;

(B) entities administering self-insured health plans, including the state employees' and retirees' health benefit plans; and

(C) offices or departments in the agency of human services; and

(2) compare administrative costs across the entities in Vermont providing health benefit plans.

* * * Shared Decision-making * * *

Sec. 4. SHARED DECISION-MAKING DEMONSTRATION PROJECT

(a) No later than January 15, 2010, the secretary of administration or designee shall present a plan to the house committees on health care and on human services and the senate committee on health and welfare for a shared decision-making demonstration project to be integrated with the Blueprint for Health. The purpose of shared decision-making shall be to improve communication between patients and health care professionals about equally or more effective treatment options where the determining factor in choosing a treatment is the patient's preference. The secretary shall consider existing resources and systems in Vermont as well as other shared decision-making models. The plan shall analyze potential barriers to health care professionals participating in shared decision-making, including existing law on informed consent, and recommend solutions or incentives to encourage participation by health care professionals in the demonstration project.

(b) "Shared decision-making" means a process in which the health care professional and patient or patient's representative discuss the patient's health condition or disease, the treatment options available for that condition or disease, the benefits and harms of each treatment option, information on the limits of scientific knowledge on patient outcomes from the treatment options, and the patient's values and preferences for treatment with the use of a patient decision aid.

* * *Health Care Quality* * *

Sec. 5. BISHCA; REVIEW OF HEALTH QUALITY INITIATIVES

(a) The commissioner of banking, insurance, securities, and health care administration, in collaboration with the Vermont program for quality in health

care, shall conduct a review of health care quality organizations in other states and countries to identify and evaluate quality improvement strategies, initiatives, and best practices. The review shall determine how other jurisdictions conduct health care quality reviews, including what types of organizations are providing health care quality analysis, the content of the analysis, the methods used by the organization to do the analysis, and other relevant information.

(b) No later than January 15, 2010, the commissioner shall provide a report to the house committee on health care and the senate committee on health and welfare, including his or her findings, a comparison of Vermont's program with other jurisdictions, and any recommendations for modifying the program.

* * * Accountable Care Organization Pilot Project * * *

Sec. 6. ACCOUNTABLE CARE ORGANIZATION WORK GROUP

(a) It is the intent of the general assembly that all Vermonters receive affordable and appropriate health care at the appropriate time, and that health care costs be contained over time. In order to achieve this goal and to ensure the success of health care reform, it is essential to pursue innovative approaches to a system of health care delivery that integrates health care at a community level and contains costs through community-based payment reform, such as developing an accountable care organization. It is also the intent of the general assembly to ensure sufficient state involvement and action in designing and implementing an accountable care organization in order to comply with federal anti-trust provisions by replacing competition between payers and others with state regulation and supervision.

(b)(1)(A) The commission on health care reform shall convene a work group to support the development of an application by at least one Vermont network of community health care providers for participation in a national accountable care organization (ACO) state learning collaborative sponsored by the Dartmouth Institute for Health Policy and Clinical Practice and the Brookings Institution with the intent that at least one ACO pilot project be implemented in Vermont no later than July 1, 2010. The network of community health care providers shall include primary care professionals, specialists, hospitals, and other health care providers and entities.

(B) An accountable care organization is an entity that enables networks of community health care providers to become accountable for the overall costs and quality of care for the population they jointly serve and to share in the savings created by improving quality and slowing spending growth as described in *Fostering Accountable Health Care: Moving Forward in Medicare* by Fisher et al, Health Affairs w219, 2009.

(2) The commission shall research other opportunities to create proposals to establish an ACO pilot project or another similar payment reform pilot project, which may become available through participation in a demonstration waiver in Medicare, payment reform in Medicare, national health care reform, or other federal changes that support the development of accountable care organizations.

(c)(1) The commission shall solicit participation in the work group from a broad group of interested stakeholders, including the secretary of administration or designee, the commissioner of banking, insurance, securities, and health care administration or designee, the director of the office of Vermont health access or designee, representatives of private insurers, employers, consumers, and representatives of health care professionals and facilities interested in participating in the ACO pilot project.

(2) To the extent required to avoid federal anti-trust violations, the commissioner of banking, insurance, securities, and health care administration shall facilitate and supervise the participation of health care professionals, health care facilities, and insurers in the planning and implementation of an accountable care organization. The department shall ensure that the application includes sufficient state supervision over these entities to comply with federal anti-trust provisions. The department shall propose to the commission any legislation necessary for implementation of the ACO pilot project.

(3) The director of the office of Vermont health access shall propose to the commission a plan for including Medicaid, VHAP, and Dr. Dynasaur in the accountable care organization, including a model for recapturing a portion of anticipated savings from participation in an ACO which would be reinvested with health care professionals and facilities. Notwithstanding section 1901 of Title 33, the commission, with consultation from the health access oversight committee may approve the director of Vermont health access' plan for including Medicaid, VHAP, and Dr. Dynasaur in the ACO pilot project if it is necessary for the director to apply for the waiver amendment outside of the legislative session to ensure implementation of the ACO pilot project no later than July 1, 2010.

(d) The work group shall:

(1) identify local community health care professional and facility networks interested in participating in the ACO pilot project and assist them in qualifying as a site;

(2) develop a financial model for the community provider network involved in the accountable care organization to estimate the fiscal impact of the ACO pilot project on payers, the local community health care professional

and facility network, and the state, including a model for recapturing a portion of anticipated savings from participation in an ACO which would be reinvested with health care professionals and facilities; and

(3) ensure that the ACO pilot project proposal is coordinated with the Blueprint for Health, existing medical home projects, and shared decision-making pilot projects.

(e) No later than January 15, 2010, the commission on health care reform shall report to the house committees on health care and human services and the senate committee on health and welfare on the ACO state learning collaborative application, the status of the development of an application by a Vermont network of health care providers, and any proposed legislation necessary for the implementation of the ACO pilot project.

(f) The work group shall cease to exist on January 1, 2011.

Sec. 7. ACCOUNTABLE CARE ORGANIZATION PILOT; MEDICAID WAIVER

If the plan provided for under Sec. 6(c)(3) of this act is approved by the commission on health care reform, the director of Vermont health access shall apply to the Centers on Medicare and Medicaid Services (CMS) for an amendment to the Global Commitment for Health Medicaid Section 1115 waiver to allow for participation in a national accountable care organization state learning collaborative sponsored by the Dartmouth Institute for Health Policy and Clinical Practice and the Brookings Institution.

* * * Health Care Administration * * *

Sec. 8. 18 V.S.A. § 9401 is amended to read:

§ 9401. POLICY

(a) It is the policy of the state of Vermont to ~~insure~~ ensure that all residents have access to quality health services at costs that are affordable. To achieve this policy it is necessary that the state ensure the quality of health care services provided in Vermont and, until health care systems are successful in controlling their costs and resources, to oversee cost containment.

(b) It is further the policy of the state of Vermont that the health care system should:

(1) Maintain and improve the quality of health care services offered to Vermonters.

(2) ~~Promote market or other~~ Utilize planning, market, and other mechanisms that contain or reduce increases in the cost of delivering services

so that health care costs do not consume a disproportionate share of Vermonters' incomes or the moneys available for other services required to insure the health, safety, and welfare of Vermonters.

(3) Encourage regional and local participation in decisions about health care delivery, financing, and provider supply.

(4) ~~Promote market or other~~ Utilize planning, market, and other mechanisms that will achieve rational allocation of health care resources in the state.

(5) Facilitate universal access to preventive and medically necessary health care.

(6) Support efforts to integrate mental health and substance abuse services with overall medical care.

Sec. 9. 18 V.S.A. § 9402 is amended to read:

§ 9402. DEFINITIONS

* * *

(6) "Health care facility" means all institutions, whether public or private, proprietary or nonprofit, which offer diagnosis, treatment, inpatient, or ambulatory care to two or more unrelated persons, and the buildings in which those services are offered. The term shall not apply to any facility operated by religious groups relying solely on spiritual means through prayer or healing, but includes all institutions included in subdivision ~~9432(7)~~ 9432(10) of this title, except health maintenance organizations.

* * *

(10) "Health resource allocation plan" means the plan ~~developed~~ adopted by the commissioner ~~and adopted by the governor~~ of banking, insurance, securities, and health care administration under section 9405 of this title.

(11) "Home health agency" means a for-profit or ~~not-for-profit~~ nonprofit health care facility providing part-time or intermittent skilled nursing services and at least one of the following other therapeutic services made available on a visiting basis, in a place of residence used as a patient's home: physical, speech, or occupational therapy; medical social services; home health aide services; or other non-nursing therapeutic services, including the services of nutritionists, dieticians, psychologists, and licensed mental health counselors.

* * *

(13) "Hospital" means an acute care hospital licensed under chapter 43 of this title ~~and falling within one of the following four distinct categories, as defined by the commissioner by rule:~~

~~(A) Category A1: tertiary teaching hospitals.~~

~~(B) Category A2: regional medical centers.~~

~~(C) Category A3: community hospital systems.~~

~~(D) Category A4: critical access hospitals~~.

* * *

* * * Certificate of Need * * *

Sec. 10. 18 V.S.A. § 9434 is amended to read:

§ 9434. CERTIFICATE OF NEED; GENERAL RULES

(a) A health care facility other than a hospital shall not develop, or have developed on its behalf a new health care project without issuance of a certificate of need by the commissioner. For purposes of this subsection, a "new health care project" includes the following:

* * *

(5) The offering of a health care service or technology having an annual operating expense which exceeds $500,000.00 for either of the next two budgeted fiscal years, if the service or technology was not offered or employed, either on a fixed or a mobile basis, by the health care facility within the previous three fiscal years.

(6) The construction, development, purchase, lease, or other establishment of an ambulatory surgical center.

* * *

Sec. 11. 18 V.S.A. § 9440(c)(2) is amended to read:

(c) The application process shall be as follows:

* * *

(2)(A) Prior to filing an application for a certificate of need, an applicant shall file an adequate letter of intent with the commissioner no less than 30 days or, in the case of review cycle applications under section 9439 of this title, no less than 45 days prior to the date on which the application is to be filed. The letter of intent shall form the basis for determining the applicability of this subchapter to the proposed expenditure or action. A letter of intent shall become invalid if an application is not filed within six months of the date that

the letter of intent is received or, in the case of review cycle applications under section 9439 of this title, within such time limits as the commissioner shall establish by rule. Except for requests for expedited review under subdivision (5) of this subsection, public notice of such letters of intent shall be provided in newspapers having general circulation in the region of the state affected by the letter of intent. The notice shall identify the applicant, the proposed new health care project, and the date by which a competing application or petition to intervene must be filed. In addition, a copy of the public notice shall be sent to the clerk of the municipality in which the health care facility is located. Upon receipt, the clerk shall post the notice in or near the clerk's office and in at least two other public places in the municipality.

(B) Applicants who agree that their proposals are subject to jurisdiction pursuant to section 9434 of this title shall not be required to file a letter of intent pursuant to subdivision (A) of this subdivision (2) and may file an application without further process. Public notice of the application shall be provided upon filing as provided for in subdivision (A) of this subdivision (2) for letters of intent.

Sec. 12. 18 V.S.A. § 9443 is amended to read:

§ 9443. EXPIRATION OF CERTIFICATES OF NEED

~~The commissioner shall adopt rules providing for the expiration of certificates of need.~~

(a) Unless otherwise specified in the certificate of need, a project shall be implemented within five years or the certificate shall be invalid.

(b) No later than 180 days before the expiration date of a certificate of need, an applicant that has not yet implemented the project approved in the certificate of need may petition the commissioner for an extension of the implementation period. The commissioner may grant an extension in his or her discretion.

(c) Certificates of need shall expire on the date the commissioner accepts the final implementation report filed in connection with the project implemented pursuant to the certificate.

(d) An action or expenditure that is related to a service or expenditure that was the subject of a certificate of need shall not be considered a material or nonmaterial change to that project if the original certificate of need expired, as provided in this section, at least two years before the action is proposed. The proposed action shall require a certificate of need only if the change itself would be considered a new health care project under section 9434 of this title.

Sec. 13. 18 V.S.A. § 9432 is amended to read:

§ 9432. DEFINITIONS

As used in this subchapter:

* * *

(2) "Annual operating expense" means that expense which, by generally accepted accounting principles, is incurred by a new health care service during the first fiscal year in which the service is in full operation after completion of the project.

~~(2)~~(3) "Applicant" means a person who has submitted an application or proposal requesting issuance of a certificate of need.

~~(3)~~(4) "Bed capacity" means the number of licensed beds operated by the facility under its most current license under chapter 43 of this title and of facilities under chapter 71 of Title 33.

~~(4)~~(5) "Capital expenditure" means an expenditure for the plant or equipment which is not properly chargeable as an expense of operation and maintenance and includes acquisition by purchase, donation, leasehold expenditure, or lease which is treated as capital expense in accordance to the accounting standards established for lease expenditures by the Financial Accounting Standards Board, calculated over the length of the lease for plant or equipment, and includes assets having an expected life of at least three years. A capital expenditure includes the cost of studies, surveys, designs, plans, working drawings, specifications and other activities essential to the acquisition, improvement, expansion, or replacement of the plant and equipment.

~~(5)~~(6) "Construction" means actual commencement of any construction or fabrication of any new building, or addition to any existing facility, or any expenditure relating to the alteration, remodeling, renovation, modernization, improvement, relocation, repair, or replacement of a health care facility, including expenditures necessary for compliance with life and health safety codes.

~~(6)~~(7) "To develop," when used in connection with health services, means to undertake activities which on their completion will result in the offer of a new health care project, or the incurring of a financial obligation in relation to the offering of a service.

~~(7)~~(8) "Health care facility" means all persons or institutions, including mobile facilities, whether public or private, proprietary or not for profit, which offer diagnosis, treatment, inpatient, or ambulatory care to two or more

unrelated persons, and the buildings in which those services are offered. The term shall not apply to any institution operated by religious groups relying solely on spiritual means through prayer for healing, but shall include but is not limited to:

* * *

~~(8)~~(9) "Health care provider" means a person, partnership, corporation, facility, or institution, licensed or certified or authorized by law to provide professional health care service in this state to an individual during that individual's medical care, treatment, or confinement.

~~(9)~~(10) "Health services" mean activities and functions of a health care facility that are directly related to care, treatment, or diagnosis of patients.

(11) "Material change" means a change to a health care project for which a certificate of need has been issued which:

(A) constitutes a new health care project as defined in section 9434 of this title; or

(B) increases the total costs of the project by more than 10 percent of the approved amount.

(12) "Nonmaterial change" means a modification that does not meet the cost threshold of a material change as defined in subdivision (11) of this section, but otherwise modifies the kind, scope, or capacity of a project for which a certificate of need has been granted under this subchapter.

~~(10)~~(13) "Obligation" means an obligation for a capital expenditure which is deemed to have been incurred by or on behalf of a health care facility or health maintenance organization.

~~(11)~~(14) "To offer," when used in connection with health services, means that a health care provider holds itself out as capable of providing, or as having the means for the provision of, specified health services.

~~(12) "Annual operating expense" means that expense which, by generally accepted accounting principles, is incurred by a new health care service during the first fiscal year in which the service is in full operation after completion of the project.~~

Sec. 14. 18 V.S.A. § 9444 is amended to read:

§ 9444. REVOCATION OF CERTIFICATES; MATERIAL CHANGE

(a) The commissioner may revoke a certificate of need for substantial noncompliance with the scope of the project as designated in the application, or for failure to comply with the conditions set forth in the certificate of need granted by the commissioner.

(b)(1) In the event that after a project has been approved, its proponent wishes to materially change ~~the scope or cost of~~ the approved project, all such changes are subject to review under this subchapter. ~~If a change itself would be considered a new health care project as defined in section 9434 of this title, it shall be considered as material. If the change itself would not be considered a new health care project as defined in section 9434 of this title, the commissioner may decide not to review the change and shall notify the applicant and all parties of such decision. Where the commissioner decides not to review a change, such change will be deemed to have been granted a certificate of need.~~

(2) Applicants shall notify the commissioner of a nonmaterial change to the approved project. If the commissioner decides to review a nonmaterial change, he or she may provide for any necessary process, including a public hearing, before approval. Where the commissioner decides not to review a change, such change will be deemed to have been granted a certificate of need.

* * *CONSUMER INFORMATION* * *

Sec. 15. 18 V.S.A. § 9410(a)(2)(A) is amended to read:

(2)(A) The program authorized by this section shall include a consumer health care price and quality information system designed to make available to consumers transparent health care price information, quality information, and such other information as the commissioner determines is necessary to empower individuals, including uninsured individuals, to make economically sound and medically appropriate decisions. On the front page of Vermont's state government website, the secretary of administration or designee shall prominently post a link, worded in a clear and understandable manner, to the price and quality information for consumers. The price and quality information shall be available in an easy-to-use format that is understandable to the average consumer.

Sec. 16. IMPLEMENTATION

Sec. 12 of this act, amending section 9443 of Title 18, shall apply to certificates of need issued on or after July 1, 2009.

And that, upon passage, the title of the bill shall read:

AN ACT RELATING TO CONTAINING HEALTH CARE COSTS.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, Senator Racine moved that the Senate concur in the House proposal of amendment with an amendment as follows:

First: By inserting a new section to be numbered Sec. 10a to read as follows:

Sec. 10a. 18 V.S.A. § 9434(b)(3) is amended to read:

(3) The offering of a health care service or technology having an annual operating expense which exceeds $500,000.00 for either of the next two budgeted fiscal years, if the service or technology was not offered or employed, either on a fixed or a mobile basis, by the hospital within the previous three fiscal years.

Second: By striking out Sec. 15 in its entirety and inserting in lieu thereof a new Sec. 15 to read as follows:

Sec. 15. CONSUMER HEALTH CARE PRICE AND QUALITY INFORMATION; WEBSITE

On the front page of Vermont's state government website, the secretary of administration or designee shall prominently post a link, worded in a clear and understandable manner, to the price and quality information for consumers. The price and quality information shall be available in an easy-to-use format that is understandable to the average consumer.

Which was agreed to.

House Proposals of Amendment Concurred In

S. 42.

House proposals of amendment to Senate bill entitled:

An act relating to the Department of Banking, Insurance, Securities, and Health Care Administration.

Were taken up.

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

First: In Sec. 20, 8 V.S.A. § 6014(h), by striking out the number "12" before the word "percent" and inserting in lieu thereof the number 11

Second: In Sec. 21, 8 V.S.A. § 6014(k), by striking out the following: "January 1, 2009" and inserting in lieu thereof the following: the effective date of this subsection

Third: In Sec. 22, 8 V.S.A. § 6017(a)(1), by striking out the number "12" before the word "percent" and inserting in lieu thereof the number 11

Fourth: By inserting a new section to be numbered Sec. 30a to read as follows:

Sec. 30a. 8 V.S.A. § 6006(i)(5) is amended to read:

(5) the commissioner may issue a certificate of general good to permit the formation of a captive insurance company that is established for the ~~sole~~ purpose of merging with or assuming existing insurance or reinsurance business from an existing ~~Vermont~~ licensed captive insurance company. The commissioner may, upon request of such newly formed captive insurance company, waive or modify the requirements of subdivisions 6002(c)(1)(B) and (2) of this title.

Fifth: After Sec. 33, by inserting three new sections to be numbered 33a, 33b and 33c, to read as follows:

Sec. 33a. 8 V.S.A. § 15(c) and (d) are added to read:

(c) The commissioner may waive the requirements of 15 V.S.A. § 795(b) as the commissioner deems necessary to permit the department to participate in any national licensing or registration systems with respect to any person or entity subject to the jurisdiction of the commissioner under this title, Title 9, or chapter 221 of Title 18. The commissioner may waive the requirements of 32 V.S.A. § 3113(b) as the commissioner deems necessary to permit the department to participate in any national licensing or registration systems with respect to any person or entity not residing in this state and subject to the jurisdiction of the commissioner under this title, Title 9, or chapter 221 of Title 18.

(d) Upon written request by the office of child support and after notice and opportunity for hearing to the licensee as required under any applicable provision of law, the commissioner may revoke or suspend any license or other authority to conduct a trade or business (including a license to practice a profession) issued to any person under this title, chapter 150 of Title 9, and chapter 221 of Title 18 if the commissioner finds that the applicant or licensee is subject to a child support order and is not in good standing with respect to that order or is not in full compliance with a plan to pay any and all child support payable under a support order as of the date the application is filed or as of the date of the commencement of revocation proceedings, as applicable. For purposes of such findings, the written representation to that effect by the office of child support to the commissioner shall constitute prima facie evidence. The office of child support shall have the right to intervene in any hearing conducted with respect to such license revocation or suspension. Any findings made by the commissioner based solely upon the written representation with respect to that license revocation or suspension shall be made only for the purposes of that proceeding and shall not be relevant to or introduced in any other proceeding at law, except for any appeal from that

license revocation or suspension. Any license or certificate of authority suspended or revoked under this section shall not be reissued or renewed until the department receives a certificate issued by the office of child support that the licensee is in good standing with respect to a child support order or is in full compliance with a plan to pay any and all child support payable under a support order.

Sec. 33b. 21 V.S.A. § 1378(c) is amended to read:

(c) Every agency shall, ~~at least annually~~ upon request, furnish to the commissioner a list of licenses and contracts issued or renewed by such agency during the reporting period; provided, however, that the secretary of state shall, with respect to certificates of authority to transact business issued to foreign corporations, furnish to the commissioner only those certificates originally issued by the secretary of state during the reporting period and not renewals of such certificates. The lists should include the name, address, Social Security or federal identification number of such licensee or provider, and such other information as the commissioner may require.

Sec. 33c. REPEAL

21 V.S.A. § 1378(b) (verification of good standing with respect to unemployment contributions) is repealed.

Sixth: By striking out Sec. 34 in its entirety and inserting in lieu thereof a new Sec. 34 to read as follows:

Sec. 34. EFFECTIVE DATES

This act shall take effect July 1, 2009, except that this section, Secs. 15 and 16 (guaranty funds), Secs. 17 through 19 (captive insurance), Sec. 21 (tax credit), and Secs. 23 through 30 (captive insurance) shall take effect upon passage.

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

Rules Suspended; Proposals of Amendment; Point of Order; Third Reading Ordered; Rules Suspended; Bill Passed in Concurrence with Proposals of Amendment

H. 444.

Pending entry on the Calendar for notice, on motion of Senator Carris, the rules were suspended and Senate bill entitled:

An act relating to health care reform.

Was taken up for immediate consideration.

Senator Choate, for the Committee on Health and Welfare, to which the bill was referred, reported recommending that the Senate propose to the House that the bill be amended as follows:

First: In Sec. 1, 18 V.S.A. § 9352, in subdivision (j)(2), following the words "exchange network", by adding the following: as long as nothing in such exchange or operation constitutes the practice of medicine pursuant to chapter 23 or 33 of Title 26

Second: By adding a new section to be numbered Sec. 17 to read as follows:

Sec. 17. SPECIAL ENROLLMENT PERIOD

(a) An individual who does not have an election of continuation of coverage as described in 18 V.S.A. § 4090a(a) in effect on the effective date of this act but who is an assistance eligible individual under Section 3001 of Title III of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (ARRA), may elect continuation coverage pursuant to this subsection by making such election within 60 days following the date the issuer of the policy provides notice of the right to elect coverage as required by Section 3001(a)(7) of the ARRA. The issuer of the policy shall provide such notice of the right to elect coverage no later than 30 days following the effective date of this act.

(b) Continuation coverage for an individual who elects coverage pursuant to subsection (a) of this section shall commence on the first day of the first month beginning on or after the effective date of this act and shall not extend beyond the period of continuation coverage that would have applied if the coverage had instead been elected pursuant to 18 V.S.A. § 4090a(a).

(c) Notwithstanding any provision of law to the contrary, for an individual who elects continuation coverage pursuant to this section, the period beginning on the date of the qualifying event pursuant to 18 V.S.A. § 4090a(b) and ending on the first day of the first month beginning on or after the effective date of this act shall be disregarded for purposes of determining the 63-day periods referred to in connection with preexisting condition exclusions in Section 701(c)(2) of the Employee Retirement Income Security Act of 1974, Section 9801(c)(2) of the Internal Revenue Code of 1986, and Section 2701(c)(2) of the Public Health Service Act, and the 90-day period referred to in connection with preexisting condition exclusions in 18 V.S.A. § 4080a(g).

Third: By striking out Sec. 21 in its entirety.

Fourth: In Sec. 21a, by striking out the date "February 1, 2010" and inserting in lieu thereof the following: upon approval of the waiver amendment pursuant to Sec. 21(a)(2) of this act and by redesignating Sec. 21a as Sec. 22

Fifth: By striking out the existing Sec. 22 in its entirety and inserting in lieu thereof a new section to be numbered Sec. 21 to read as follows:

Sec. 21. GLOBAL COMMITMENT WAIVER AMENDMENTS; RULEMAKING

(a) No later than September 1, 2009, the secretary of human services shall request approval from the Centers for Medicare and Medicaid Services for amendments to the Global Commitment for Health Medicaid Section 1115 waiver to:

(1) implement the self-employment exception to the Catamount Health waiting period set forth in Sec. 15 of this act; and

(2) permit the agency of human services to amend the rules for the Vermont health access plan, the Catamount Health premium assistance program, and the employer-sponsored insurance premium-assistance programs to designate depreciation as an allowable business expense when determining countable income for eligibility purposes.

(b) During the pendency of the waiver amendment request pursuant to subdivision (a)(2) of this section, the agency of human services shall amend the rules for the Vermont health access plan, the Catamount Health premium assistance program, and the employer-sponsored insurance premium-assistance programs to designate depreciation as an allowable business expense when determining countable income for eligibility purposes. The amended rules shall take effect upon approval of the waiver amendment, but in no event earlier than February 1, 2010.

Sixth: In Sec. 23, 2 V.S.A. § 903, in subdivision (b)(1)(D), by striking out the words "is requested to" preceding "report its findings" and inserting in lieu thereof the word shall

Seventh: In Sec. 26, 21 V.S.A. § 640a, by adding three new subsections (j), (k), and (l) to read as follows:

(j) An employer or insurance carrier shall not impose on any health care provider any retrospective denial of a previously paid medical bill or any part of that previously paid medical bill, unless:

(1) The employer or insurance carrier has provided at least 30 days' notice of any retrospective denial or overpayment recovery or both in writing to the health care provider. The notice must include:

(A) the injured employee's name;

(B) the service date;

(C) the payment amount;

(D) the proposed adjustment; and

(E) a reasonably specific explanation of the proposed adjustment.

(2) The time that has elapsed does not exceed 12 months from the later of the date of payment of the previously paid medical bill or the date of a final determination of compensability.

(k) The retrospective denial of a previously paid medical bill shall be permitted beyond 12 months from the later of the date of payment or the date of a final determination of compensability for any of the following reasons:

(1) The employer or insurance carrier has a reasonable belief that fraud or other intentional misconduct has occurred;

(2) The medical bill payment was incorrect because the health care provider was already paid for the health services identified in the medical bill;

(3) The health care services identified in the medical bill were not delivered by the health care provider;

(4) The medical bill payment is the subject of adjustment with another workers' compensation or health insurer; or

(5) The medical bill is the subject of legal action.

(l)(1) For purposes of subsections (j) and (k) of this section, for routine recoveries as described in subdivisions (A) through (J) of this subdivision (1), retrospective denial or overpayment recovery of any or all of a previously paid medical bill shall not require 30 days' notice before recovery may be made. A recovery shall be considered routine only if one of the following situations applies:

(A) Duplicate payment to a health care provider for the same professional service;

(B) Payment with respect to an individual for whom the employer or insurance carrier is not liable as of the date the service was provided;

(C) Payment for a noncovered service, not to include services denied as not medically necessary, experimental, or investigational in nature, or services denied through a utilization review mechanism;

(D) Erroneous payment for services due to employer or insurance carrier administrative error;

(E) Erroneous payment for services where the medical bill was processed in a manner inconsistent with the data submitted by the health care provider;

(F) Payment where the health care provider provides the employer or insurance carrier with new or additional information demonstrating an overpayment;

(G) Payment to a health care provider at an incorrect rate or using an incorrect fee schedule;

(H) Payment of medical bills for the same injured employee that are received by the employer or insurance carrier out of the chronological order in which the services were performed;

(I) Payment where the health care provider has received payment for the same services from another payer whose obligation is primary; or

(J) Payments made in coordination with a payment by a government payer that require adjustment based on an adjustment in the government-paid portion of the medical bill.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, recoveries which, in the reasonable business judgment of the employer or insurance carrier, would be likely to affect a significant volume of claims or accumulate to a significant dollar amount shall not be deemed routine, regardless of whether one or more of the situations in subdivisions (1)(A) through (J) of this subsection apply.

(3) Nothing in this subsection shall be construed to affect the time frames established in subdivision (j)(2) or subsection (k) of this section.

Eighth: By striking out Sec. 27 in its entirety.

Ninth: In Sec. 29, 18 V.S.A. § 9418, in subsection (a)(8), by striking out the following: "a workers' compensation policy of a casualty insurer,"

Tenth: In Sec. 29, 18 V.S.A. § 9418, in subsection (c), by inserting the following: , contracting entity, or payer preceding the following: "shall have ~~45~~ 30 days"

Eleventh: In Sec. 29, 18 V.S.A. § 9418, in subdivision (i)(2), after the words "because the" by inserting the words health care and after the word "provider" by striking out the words "of the insured"

Twelfth: In Sec. 29, 18 V.S.A. § 9418, in subdivision (i)(4), by striking out the word "insurer" and inserting in lieu thereof the word plan

Thirteenth: In Sec. 29, 18 V.S.A. § 9418, in subdivision (i)(5), by striking out the word "payment"

Fourteenth: In Sec. 29, 18 V.S.A. § 9418, in subsection (m), by striking out the second sentence in its entirety.

Fifteenth: In Sec. 30, 18 V.S.A. § 9418a, in subsection (g), by striking out the word "covered" in both instances in which it appears

Sixteenth: In Sec. 30, 18 V.S.A. § 9418a, in subsection (h), after the words "provider newsletter" by inserting the following: if applicable and in subdivision (h)(1), by striking out the word "the" preceding the words "commercially available" and inserting in lieu thereof the word any

Seventeenth: In Sec. 30, 18 V.S.A. § 9418a, by inserting a new subsection (j) to read as follows:

(j) For purposes of this section, "health plan" includes a workers' compensation policy of a casualty insurer licensed to do business in Vermont.

and by redesignating subsection (j) as subsection (k)

Eighteenth: In Sec. 32, 18 V.S.A. § 9418c, in subdivision (b)(4), following the words "List of products" by inserting the following: , product types,

Nineteenth: In Sec. 32, 18 V.S.A. § 9418c, in subsection (c), by striking out "subdivision (a)(1)" and inserting in lieu thereof subdivisions (a)(1)(A) and (B)

Twentieth: In Sec. 32, 18 V.S.A. § 9418c, by striking out subsection (f) in its entirety

Twenty-first: In Sec. 33, 18 V.S.A. § 9418d, in subdivision (c)(5), by striking out the period following "subdivision" and inserting in lieu thereof a colon

Twenty-second: In Sec. 33, 18 V.S.A. § 9418d, by striking out subsection (f) in its entirety.

Twenty-third: In Sec. 34, 18 V.S.A. § 9418e, by striking out subsection (b) in its entirety

Twenty-fourth: In Sec. 35, 18 V.S.A. § 9418f, by striking out subdivisions (a)(1), (2), and (3) in their entirety and by renumbering the remaining subdivisions to be numerically correct; and by striking out the second sentence of subdivision (c)(4) in its entirety and inserting in lieu thereof the following: Fees collected under this subdivision shall be deposited into the health care special fund, number 21070, and shall be available to the commissioner to offset the cost of administering the registration process.

Twenty-fifth: In Sec. 35, 18 V.S.A. § 9418f, by striking out subsection (g) in its entirety.

Twenty-sixth: In Sec. 38, by striking out the following: "sections 9418c" and inserting in lieu thereof the following: sections 9418b

Twenty-seventh: By striking out Sec. 40 in its entirety.

Twenty-eighth: In Sec. 41, in the first sentence after the words "American College of Emergency" by striking out the word "physicians" and inserting in lieu thereof the word Physicians

Twenty-ninth: In Sec. 43, 18 V.S.A. § 1130, in subsection (i), by striking out the word "establish" and inserting in lieu thereof the word adopt

Thirtieth: By adding a new section to be numbered Sec. 44 to read as follows:

* * * Healthy Workers Program * * *

Sec. 44. INTENT

It is the intent of the general assembly to establish a healthy workers program to provide preventive health services, prenatal care, outreach, and education to workers employed in the Vermont agricultural sector.

Thirty-first: By adding a new section to be numbered Sec. 45 to read as follows:

Sec. 45. HEALTHY WORKERS PROGRAM; REPORT

(a) As used in this section:

(1) "Health service" means any medically necessary treatment or procedure to maintain, diagnose, or treat an individual's physical or mental condition, including services ordered by a health care professional and medically necessary services to assist in activities of daily living.

(2) "Immunizations" means vaccines and the application of the vaccines as recommended by the practice guidelines for children and adults established by the Advisory Committee on Immunization Practices to the Centers for Disease Control and Prevention.

(3) "Vermont farm health connection" means a consortium comprising Vermont's clinics for the uninsured, federally qualified health centers, and the Bi-State Primary Care Association working together to implement pilot programs in Addison and Franklin Counties to test design principles for a replicable system of high-quality health care for farm workers.

(b) The department of health shall collaborate with the Vermont farm health connection to:

(1) participate in the development of a sustainable, statewide infrastructure to provide outreach and health services to farm workers.

(2) provide access to:

(A) screening for communicable diseases;

(B) immunizations; and

(C) prenatal services.

(3) in consultation with the office of Vermont health access, research the required federal authority and fiscal implications of extending public health program benefits to pregnant women identified through the consortium's work.

(c) No later than January 15, 2010, the department of health and the Vermont farm health connection shall report to the senate committee on health and welfare and the house committee on health care regarding the status of the program's implementations and recommendations for any legislative action necessary to advance the goal of statewide outreach and access to health services for farm workers.

(d) No later than March 1, 2010, the Vermont farm health connection shall report to the senate committee on health and welfare and the house committee on health care regarding the results of its assessment of the needs of three to five additional Vermont counties for health care services for farm workers.

Thirty-second: By adding a new section to be numbered Sec. 46 to read as follows:

Sec. 46. 9 V.S.A. chapter 80 is added to read:

CHAPTER 80. FLAME RETARDANTS

§ 2971. BROMINATED FLAME RETARDANTS

(a) As used in this section:

(1) "Brominated flame retardant" means any chemical containing the element bromine that is added to plastic, foam, or textile to inhibit flame formation.

(2) "Congener" means a specific PBDE molecule.

(3) "DecaBDE" means decabromodiphenyl ether or any technical mixture in which decabromodiphenyl ether is a congener.

(4) "Flame retardant" means any chemical that is added to a plastic, foam, or textile to inhibit flame formation.

(5) "Manufacturer" means any person who manufactures a final product containing a regulated brominated flame retardant or any person whose brand-name is affixed to a product containing a regulated brominated flame retardant.

(6) "OctaBDE" means octabromodiphenyl ether or any technical mixture in which octabromodiphenyl ether is a congener.

(7) "PentaBDE" means pentabromodiphenyl ether or any technical mixture in which a pentabromodiphenyl ether is a congener.

(8) "PBDE" means polybrominated diphenyl ether.

(9) "Technical mixture" means a PBDE mixture that is sold to a manufacturer. A technical mixture is named for the predominant congener in the mixture, but is not exclusively made up of that congener.

(b) As of July 1, 2010, no person may offer for sale, distribute for sale, distribute for promotional purposes, or knowingly sell at retail a product containing octaBDE or pentaBDE.

(c) Except for inventory purchased prior to July 1, 2009, a person may not, as of July 1, 2010, manufacture, offer for sale, distribute for sale, or knowingly sell at retail the following products containing decaBDE:

(1) A mattress or mattress pad; or

(2) Upholstered furniture.

(d) Except for inventory purchased prior to July 1, 2009, a person may not, as of July 1, 2012, manufacture, offer for sale, distribute for sale, or knowingly sell at retail a television or computer with a plastic housing containing decaBDE.

(e) This section shall not apply to the sale or resale of used products.

(f) As of July 1, 2010, a manufacturer of a product that contains decaBDE and that is prohibited under subsection (c) or (d) of this section shall notify persons that sell the manufacturer's product of the requirements of this section.

(g) A manufacturer shall not replace decaBDE, pursuant to this section, with a chemical that is:

(1) Classified as "known to be a human carcinogen" or "reasonably anticipated to be a human carcinogen" in the most recent report on carcinogens by the National Toxicology Program in the U.S. Department of Health and Human Services;

(2) Classified as a "human carcinogen" or "probable human carcinogen" in the U.S. Environmental Protection Agency's most recent list of chemicals evaluated for carcinogenic potential; or

(3) Identified by the U.S. Environmental Protection Agency as causing birth defects, hormone disruption, or harm to reproduction or development.

(h) A violation of this section shall be deemed a violation of the Consumer Fraud Act, chapter 63 of Title 9. The attorney general has the same authority to make rules, conduct civil investigations, enter into assurances of discontinuance, and bring civil actions, and private parties have the same rights and remedies as provided under subchapter 1 of chapter 63 of Title 9.

(i) In addition to any other remedies and procedures authorized by this section, the attorney general may request a manufacturer of upholstered furniture, mattresses, mattress pads, computers, or televisions offered for sale or distributed for sale in this state to provide the attorney general with a certificate of compliance with this section with respect to such products. Within 10 days of receipt of the request for a certificate of compliance, the manufacturer shall:

(1) Provide the attorney general with a certificate declaring that its product complies with the requirements of this section; or

(2) Notify persons who sell in this state a product of the manufacturer's which does not comply with this section that sale of the product is prohibited, and submit to the attorney general a list of the names and addresses of those notified.

(j) The attorney general shall consult with retailers and retailer associations in order to assist retailers in complying with the requirements of this section.

Thirty-third: By adding a new section to be numbered Sec. 47 to read as follows:

Sec. 47. 8 V.S.A. chapter 107, subchapter 11 is added to read:

Subchapter 11. Orally Administered Anticancer Medication

§ 4100g. ORALLY ADMINISTERED ANTICANCER MEDICATION; COVERAGE REQUIRED

(a) A health insurer that provides coverage for cancer chemotherapy treatment shall provide coverage for prescribed, orally administered anticancer medications used to kill or slow the growth of cancerous cells that is no less favorable on a financial basis than intravenously administered or injected anticancer medications covered under the insured's plan.

(b) As used in this section, "health insurer" means any insurance company that provides health insurance as defined in subdivision 3301(a)(2) of this title, nonprofit hospital and medical service corporations, and health maintenance organizations. The term does not apply to coverage for specified disease or other limited benefit coverage.

Thirty-fourth: By adding a new section to be numbered Sec. 48 to read as follows:

Sec. 48. ORALLY ADMINISTERED ANTICANCER MEDICATION STUDY

(a) The department of banking, insurance, securities, and health care administration shall study the impact of implementing a requirement for health insurance coverage of orally administered anticancer medication. In conducting the study, the department shall consider:

(1) projected impacts on health insurance premiums;

(2) options for mitigating the impact on premiums of the coverage requirement;

(3) the administrative complexities associated with the coverage requirement;

(4) the public policy implications of expanding required coverage for treatment-specific medications and procedures;

(5) appropriate safeguards for accomplishing the purpose of the coverage requirement; and

(6) such other factors as the department deems appropriate.

(b) No later than January 15, 2010, the department shall report its findings and recommendations to the senate committee on health and welfare and the house committee on health care.

Thirty-fifth: By adding a new section to be numbered Sec. 49 to read as follows:

Sec. 49. APPROPRIATION

In fiscal year 2010, the sum of $3,000.00 is appropriated to the department of banking, insurance, securities, and health care administration from the health care special fund, number 21070, for the purpose of administering the registration fee pursuant to 18 V.S.A. § 9418f.

Thirty-sixth: By striking out the existing Sec. 44 in its entirety and inserting in lieu thereof a new section to be numbered Sec. 50 to read as follows:

Sec. 50. EFFECTIVE DATES

(a) Secs. 14 through 17, inclusive, of this act shall take effect upon passage.

(b) Sec. 18, 8 V.S.A. § 4089k, of this act shall take effect on July 1, 2009, and the amendments to that section shall apply to the calculation, assessment

and payment of the health information technology reinvestment fee beginning on October 1, 2009.

(c) Secs. 19 and 20 (Catamount Health) shall take effect April 1, 2010.

(d) Sec. 21(b) (rulemaking on depreciation) shall take effect for the purposes of the rulemaking process on July 1, 2009, but the rule shall not take effect earlier than February 1, 2010.

(e) Health plans and contracting entities and payers shall comply with the amendments to Sec. 30, 18 V.S.A. § 9418(b), (c), (d), and (e) (payment for health care services), no later than July 1, 2010.

(f) Sec. 31, 18 V.S.A. § 9418a(b) and (c) (edit standards), shall take effect July 1, 2011.

(g) Sec. 33, 18 V.S.A. § 9418c(a)(1) through (4) (disclosure of payment information), with the exception of subdivision (a)(1)(C) (disclosure of claim edit information), shall take effect as follows:

(1) Contracting entities shall provide the information required in subdivisions (a)(1) through (3) beginning on July 1, 2009.

(2) Contracts shall obligate contracting entities to provide the information required in subdivision (a)(1) of this section, with the exception of subdivision (a)(1)(C), upon request beginning no later than September 1, 2009, and for all participating health care providers no later than January 1, 2010.

(3) Contracting entities and contracts shall comply with the provisions of subdivision (a)(1)(C) of this section no later than July 1, 2010.

(h) The summary disclosure form required by Sec. 33, 18 V.S.A. § 9418c(d), shall be included in all contracts entered into or renewed on or after July 1, 2009 and shall be provided for all other existing contracts no later than July 1, 2014.

(i) Contracting entities and covered entities shall comply with the provisions of Sec. 36, 18 V.S.A. § 9418f (rental networks), no later than January 1, 2010.

(j) This section, Sec. 38 (statutory revision), and Sec. 42 (stroke treatment study) shall take effect on passage.

(k) Sec. 47 shall take effect on April1, 2010, and shall apply to all health benefit plans on and after April 1, 2010, on such date as a health insurer offers, issues or renews the health benefit, but in no event later than April 1, 2011.

(l) All remaining sections shall take effect on July 1, 2009.

And by renumbering all sections of the bill to be numerically correct.

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

Senator Cummings, for the Committee on Finance, to which the bill was referred, reported recommending that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Health and Welfare.

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

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall Senate propose to the House to amend the bill as recommended by the Committee on Health and Welfare?, Senator Starr raised a *point of order* under Sec. 402 of Mason's Manual of Legislative Procedure on the ground that Sec. 46 of the proposals of amendment offered by the Committee on Health and Welfare in its thirty-second proposal of amendment was *not germane* to the bill since it related to a prospective prohibition of the use of certain brominated flame retardants by manufacturers of consumer goods and the wholesale or retail sale of consumer goods containing the prospectively banned chemicals.

Thereupon, the President *pro tempore overruled* the point of order in that the challenged section was designed to protect the general public from carcinogens contained in those flame retardants and any replacement chemicals that have also been found to contain carcinogens. Thus, the challenged section was in fact a health measure, designed to promote the health and welfare of the general public and, as such, was germane to H. 444.

Thereupon, the pending question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Health and Welfare?, was decided in the affirmative.

Thereupon, Senator Racine moved that the Senate propose to the House to amend the bill by adding a new section to be numbered Sec. 50 to read as follows:

Sec. 50. HOSPITAL BUDGETS

(a) A number of health care reform initiatives in Vermont, including the Blueprint for Health, health information technology, and an exploration of the variations in hospital utilization, are expected to yield results in containing health care costs in this state. As Vermont is able to rein in health care

spending, it is anticipated that hospitals will also play an important role by continuing to slow the increase in hospital budget growth.

(b) In approving hospital budgets for fiscal years 2010, 2011, and 2012, the goal of the commissioner of banking, insurance, securities, and health care administration shall be to lower the average systemwide rate increase for all Vermont hospital budgets below the average systemwide rate increase for all Vermont hospitals during the previous three years. As part of his or her efforts, the commissioner may:

(1) Establish an annual systemwide target rate increase;

(2) Limit expenditure growth, including restricting the introduction of new programs and program enhancements;

(3) Limit capital spending; or

(4) Implement other reasonable means to achieve the purposes of this section.

(c) In approving hospital budgets pursuant to section 9456 of Title 18, nothing in this section shall be deemed to limit the authority of the commissioner to consider individual hospital circumstances or the impact of individual budget increases on the overall cost of Vermont's health care system.

(d) No later than January 15 in the years 2010, 2011, and 2012, the commissioner of banking, insurance, securities, and health care administration shall report the results of the annual hospital budget approvals to the senate committee on health and welfare and the house committee on health care.

And by renumbering the remaining section to be numerically correct.

Which was agreed to.

Thereupon, Senators Campbell, Mazza, Scott, Sears and Shumlin moved that the Senate propose to the House to amend the bill as follows:

First: In Sec. 46, in subsection (a) by adding a new subdivision (6) to read as follows:

(6) "Motor vehicle" means every vehicle intended primarily for use and operation on the public highways, and shall include farm tractors and other machinery used in the production, harvesting, and care of farm products.

And by renumbering the remaining subdivisions to be numerically correct.

Second: In Sec. 46 by striking out subsection (e) in its entirety and inserting in lieu thereof a new subsection (e) to read as follows:

(e) This section shall not apply to:

(1) the sale or resale of used products; or

(2) motor vehicles or parts for use on motor vehicles.

Which was agreed to.

Thereupon, third reading of the bill was ordered.

Thereupon, on motion of Senator Mazza, the rules were suspended and the bill was placed on all remaining stages of its passage in concurrence with proposals of amendment.

Thereupon, the bill was read the third time and passed in concurrence with proposals of amendment on a roll call, Yeas 24, Nays 0.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Brock, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Giard, Hartwell, Kitchel, Kittell, Lyons, MacDonald, Maynard, Mazza, *McCormack, Miller, Mullin, Nitka, Racine, Scott, Starr, White.

Those Senators who voted in the negative were: None.

Those Senators absent or not voting were: Ayer, Bartlett, Illuzzi, Sears, Shumlin (presiding), Snelling.

*Senator McCormack explained his vote as follows:

"Mr. President,

"Last year I attempted to create a dramatic moment that everyone but me has no doubt forgotten. At that time I said I would not vote for any health care bill until we pass legislation to make health care a universally accessible right of citizenship, supported by taxes paid as an obligation of citizenship.

"This is not a radical proposition. Indeed our nation's status as the only industrial democracy to not have such a policy is a radical dissent from the rest of the civilized world.

"My point was, and is, that our present policy is the worst of both worlds, an impossible attempt to force our market system to be more humane than market forces allow.

"Nevertheless, the system we now have, for all its absurdities, contradictions and failures, needs to be maintained. This bill does that and it would be irresponsible of me to oppose it to make a point. But the point remains.

"Once something is fundamentally flawed, everything you do to make it better makes it worse. Our present system is inherently contradictory and cannot work, despite out best efforts."

Rules Suspended; Bills Messaged

On motion of Senator Mazza, the rules were suspended, and the following bills were severally ordered messaged to the House forthwith:

S. 129, H. 91, H. 297, H. 444, H. 446.

Rules Suspended; Bills Delivered

On motion of Senator Mazza, the rules were suspended, and the following bills were severally ordered delivered to the Governor forthwith:

S. 2, S. 42.

Message from the House No. 77

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

Mr. President:

I am directed to inform the Senate that:

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

H. 456. An act relating to seasonal fuel assistance.

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

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

S. 38. An act relating to requiring the Department of Finance and Management to annually publish on its website a report on grants issued by executive branch agencies.

And has passed the same in concurrence.

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

S. 51. An act relating to Vermont's motor vehicle franchise laws.

S. 67. An act relating to motor vehicles.

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

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

H. 313. An act relating to near-term and long-term economic development.

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

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

Rep. Kitzmiller of Montpelier
Rep. Deen of Westminster
Rep. Obuchowski of Rockingham

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

H. 427. An act relating to making miscellaneous amendments to education law.

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

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

Rep. Mook of Bennington
Rep. Peltz of Woodbury
Rep. Clark of Vergennes

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

S. 7. An act to prohibit the use of lighted tobacco products in the workplace.

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

Rep. French of Randolph
Rep. Pugh of South Burlington
Rep. Mrowicki of Putney

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

S. 89. An act relating to stabilization of prices paid to Vermont dairy farmers.

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

Rep. Bray of New Haven
Rep. Partridge of Windham
Rep. McAllister of Highgate

The Governor has informed the House that on the May 4, 2009, he approved and signed a bill originating in the House of the following title:

H. 348. An act relating to the Interstate Pest Control Compact.

The Governor has informed the House that on the May 5, 2009, he approved and signed a bill originating in the House of the following title:

H. 287. An act relating to Uniform Prudent Management of Institutional Funds Act.

Message from the House No. 78

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

Mr. President:

I am directed to inform the Senate that:

The House has adopted joint resolution of the following title:

J.R.H. 27. Joint resolution urging Congress to enact H.R. 676, the National Health Insurance Act (or the Expanded and Improved Medicare for All Act).

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

Adjournment

On motion of Senator Mazza, the Senate adjourned until eleven o'clock in the morning.

WEDNESDAY, MAY 6, 2009

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

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Bill Referred

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

H. 456.

An act relating to seasonal fuel assistance.

To the Committee on Appropriations.

Joint Resolution Adopted on the Part of the Senate

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

By Senators Lyons and Racine,

J.R.S. 34. Joint resolution designating October 2009 as health care career awareness month.

Whereas, quality health care services are of great importance to all Vermonters, and

Whereas, Vermont's aging population is demanding more health care services, and

Whereas, the similarly aging population of health care professionals and other health care workers could place a strain on the delivery of health care services in the state with impacts on Vermont's economy and quality of life, and

Whereas, there may be a lack of awareness among younger persons and adults seeking second careers of the excellent health care career opportunities in Vermont and of the flexibility, excellent pay, security and benefits that jobs in this field can offer, and

Whereas, it is imperative that health care professionals be attracted to the state's rural areas where there will be increasingly disproportionate challenges to health care access without the infusion of new health care professionals, and

Whereas, it would be most advantageous to the state of Vermont if a coordinated effort is undertaken to disseminate information about career opportunities in the health care field, and

Whereas, in order to meet this important public policy objective, members of the health care workforce development partnership, a team of professionals working with Vermont's workforce development council, are collaborating on long-term solutions to sustain Vermont's health care workforce, and

Whereas, greater public knowledge of the need to attract health care professionals to Vermont is in everyone's best interest, *now therefore be it*

***Resolved by the Senate and House of Representatives*:**

That the General Assembly designates October 2009 as health care career awareness month, *and be it further*

***Resolved*:** That the Secretary of State be directed to send a copy of this resolution to the director of the University of Vermont College of Medicine's Office of Primary Care and AHEC Program, Elizabeth Cote, in Burlington.

Joint Resolution Placed on Calendar

J.R.H. 27.

Joint resolution originating in the House of the following title was read the first time and is as follows:

Joint resolution urging Congress to enact H.R. 676, the National Health Insurance Act (or the Expanded and Improved Medicare for All Act).

Whereas, every person in Vermont and the United States deserves access to affordable, quality health care, and

Whereas, there is a growing crisis in health care in the United States of America, manifested in rising health care costs, increased premiums, increased out-of-pocket spending, and decreased international business competitiveness, and

Whereas, over 47,000 Vermonters still lack health insurance coverage, and

Whereas, public and private health care costs in Vermont have risen from $2.2 billion in 2002 to $4.2 billion in 2007, a greater percentage increase than the increase in national health care spending during the same time period, and

Whereas, these greatly increased costs have resulted in higher school and municipal budgets, which increase the property tax burden placed on all Vermonters, and

Whereas, the establishment of new small businesses can be a major force contributing to an improved Vermont economy, and health care concerns should not be a barrier to this important economic stimulus, and

Whereas, many individuals are dissuaded from establishing their own business enterprises because they fear that leaving their current jobs will mean a loss of health insurance coverage, and

Whereas, those insured are all too often underinsured, and

Whereas, one-half of all personal bankruptcies are due to illnesses or medical bills, and

Whereas, the increasing expense of Medicaid and the rising costs of insuring public sector employees can best be met by creating a national publicly funded health insurance program, and

Whereas, the complex bureaucracy arising from our fragmented, for-profit, multipayer system of health care financing has overhead expenses of nearly 30 percent, while Medicare operates with an overhead of only three percent, and

Whereas, Vermont's ability to step forward on universal health care depends on action at the federal level, and

Whereas, U.S. Representative John Conyers, Jr. has introduced H.R. 676, the United States National Health Insurance Act (or the Expanded and Improved Medicare for All Act), and

Whereas, this act would provide a universal and comprehensive system of high-quality national health insurance, and

Whereas, in the Senate, U.S. Senator Bernie Sanders has introduced S. 703, the American Health Security Act of 2009 that "establishes a state-based American Health Security Program to provide every U.S. resident who is a U.S. citizen, national, or lawful resident alien with health care services," and "requires each participating state to establish a state health security program," and

Whereas, S. 703 would create a system of comprehensive health care hospital services, professional services (including patient education training in self-management), community-based primary health services, long-term, acute, and chronic care services, prescription drugs, biologicals, insulin, and medical foods, dental services, mental health and substance abuse treatment services, diagnostic tests, and other services, including outpatient therapy, durable medical equipment, home dialysis, ambulance service, prosthetic devices, and addition items and services, and

Whereas, these new state health security programs would replace Medicare, Medicaid, SCHIP, and other existing federal health care programs, be funded through new federal health care income and payroll taxes, and be exempt from the limitations on state health care programs under ERISA, and

Whereas, individual state health care security programs could be tailored to the specific needs of an individual state while minimum national standards would be maintained through the newly established American Health Care Security Standards Board, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly urges Congress to enact H.R. 676, the United States National Health Insurance Act (or the Expanded and Improved

Medicare for All Act) or, in the alternative, S. 703, the American Health Care Security Act of 2009, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to the members of the Vermont Congressional Delegation.

Thereupon, in the discretion of the President *pro tempore*, under Rule 51, the joint resolution was placed on the Calendar for action the next legislative day.

Rules Suspended; Committee Relieved of Further Consideration; Bill Committed

H. 75.

On motion of Senator Shumlin, the rules were suspended, and H. 75 was taken up for immediate consideration, for the purpose of relieving the Committee on Rules from further consideration of the bill. Thereupon, on motion of Senator Shumlin, the Committee on Rules was relieved of House bill entitled:

An act relating to interim budget and appropriation adjustments,

and the bill was committed to the Committee on Appropriations.

Rules Suspended; Committee Relieved of Further Consideration; Bill Committed

H. 125.

On motion of Senator Shumlin, the rules were suspended, and H. 125 was taken up for immediate consideration, for the purpose of relieving the Committee on Rules from further consideration of the bill. Thereupon, on motion of Senator Shumlin, the Committee on Rules was relieved of House bill entitled:

An act relating to the sale of unpasteurized milk,

and the bill was committed to the Committee on Agriculture.

House Proposal of Amendment Concurred In with Amendment

S. 47.

House proposal of amendment to Senate bill entitled:

An act relating to salvage yards.

Was taken up.

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

Sec. 1. FINDINGS

The general assembly finds and declares that:

(1) Salvage yards provide an important and valuable service in Vermont that should be encouraged to continue;

(2) Automobile salvage yards are the leading recycling industry in the United States and are responsible for recycling between 75 percent and 85 percent of the material content of end of life vehicles.

(3) The role of salvage yards in recycling material is an important factor in natural resource conservation and solid waste management in Vermont.

(4) Poorly operated salvage yards, however, have the potential to significantly impact and contaminate the natural resources of Vermont.

(5) The state's regulatory authority over salvage yards should be transferred to the agency of natural resources in order to improve compliance by salvage yards with the relevant state and federal environmental requirements.

Sec. 2. 24 V.S.A. chapter 61, subchapter 10 is amended to read:

Subchapter 10. ~~Junkyards~~ Salvage Yards

Sec. 3. 24 V.S.A. § 2201(b) is amended to read:

(b) Prosecution of violations. A person who violates a provision of this section commits a civil violation and shall be subject to a civil penalty of not more than $500.00. This violation shall be enforceable in the judicial bureau pursuant to the provisions of chapter 29 of Title 4 in an action that may be brought by a municipal attorney, solid waste management district attorney, environmental enforcement officer employed by the agency of natural resources, grand juror, or designee of the legislative body of the municipality, or by any duly authorized law enforcement officer. If the throwing, placing, or depositing was done from a motor vehicle, except a motor bus, it shall be prima facie evidence that the throwing, placing, or depositing was done by the driver of such motor vehicle. Nothing in this section shall be construed as affecting the operation of an automobile graveyard or ~~junkyard~~ salvage yard as defined in section 2241 of this title, nor shall anything in this section be construed as prohibiting the installation and use of appropriate receptacles for solid waste provided by the state or towns.

Sec. 4. 24 V.S.A. § 2241 is amended to read:

§ 2241. DEFINITIONS

For the purposes of this subchapter:

(1) "Abandoned" means a motor vehicle as defined in 23 V.S.A. § 2151.

(2) "Board" means the state transportation board, or its duly delegated representative.

(3) "Highway" means any highway as defined in section 1 of Title 19.

(4) "Interstate or primary highway" means any highway, including access roads, ramps and connecting links, which have been designated by the state with the approval of the Federal Highway Administration, Department of Transportation, as part of the National System of Interstate and Defense Highways, or as a part of the national system of primary highways.

(5) "Junk" means old or scrap copper, brass, iron, steel and other old or scrap or nonferrous material, including but not limited to rope, rags, batteries, glass, rubber debris, waste, trash or any discarded, dismantled, wrecked, scrapped or ruined motor vehicles or parts thereof.

(6) "Junk motor vehicle" means a discarded, dismantled, wrecked, scrapped or ruined motor vehicle or parts thereof, or one other than an on-premise utility vehicle which is allowed to remain unregistered for a period of ninety days from the date of discovery.

(7) ~~"Junkyard"~~ "Salvage yard" means any place of outdoor storage or deposit ~~which is maintained, operated or used in connection with a business~~ for storing, keeping, processing, buying, or selling junk or as a scrap metal processing facility. ~~"Junkyard"~~ "Salvage yard" also means any place of outdoor storage or deposit, not in connection with a business which is maintained or used for storing or keeping four or more junk motor vehicles which are visible from any portion of a public highway or navigable water, as that term is defined in section 1422 of Title 10. ~~However, the term does not include a private garbage dump or a sanitary landfill which is in compliance with section 2202 of this title and the regulations of the secretary of human services.~~ It does not mean a garage where wrecked or disabled motor vehicles are stored for less than 90 days for inspection or repairs.

(8) "Legislative body" means the city council of a city, the board of selectmen of a town or the board of trustees of a village.

(9) "Main traveled way" means the portion of a highway designed for the movement of motor vehicles, shoulders, auxiliary lanes, and roadside picnic, parking, rest, and observation areas and other areas immediately adjacent and contiguous to the traveled portion of the highway and designated by the transportation board as a roadside area for the use of highway users and generally but not necessarily located within the highway right-of-way.

(10) "Motor vehicle" means any vehicle propelled or drawn by power other than muscular power, including trailers.

(11) "Notice" means by certified mail with return receipt requested.

(12) "Scrap metal processing facility" means a manufacturing business which purchases sundry types of scrap metal from various sources including the following: industrial plants, fabricators, manufacturing companies, railroads, junkyards, auto wreckers, salvage dealers, building wreckers, and plant dismantlers and sells the scrap metal in wholesale shipments directly to foundries, ductile foundries and steel foundries where the scrap metal is melted down and utilized in their manufacturing process.

(13) "Secretary" means the secretary of natural resources or the secretary's designee.

Sec. 5. 24 V.S.A. § 2242 is amended to read:

§ 2242. REQUIREMENT FOR OPERATION OR MAINTENANCE

(a) A person shall not operate, establish, or maintain a ~~junkyard~~ salvage yard unless he or she:

(1) Holds a certificate of approval for the location of the ~~junkyard~~ salvage yard; and

(2) Holds a ~~license~~ certificate of registration issued by the secretary to operate, establish, or maintain a ~~junkyard~~ salvage yard.

(b) The issuance of a certificate of registration under subsection (a) of this section shall not relieve a salvage yard from the obligation to comply with existing state and federal environmental laws and to obtain all permits required under state or federal environmental law.

Sec. 6. 24 V.S.A. § 2243 is amended to read:

§ 2243. ~~AGENCY OF TRANSPORTATION; RESPONSIBILITIES; DUTIES~~ ADMINISTRATION; DUTIES AND AUTHORITY

The agency of transportation ~~is~~ and the secretary of natural resources are designated as ~~the state agency for the purpose of~~ responsible for carrying out the provisions of this subchapter and shall have the following additional responsibilities and powers:

(1) ~~It~~ The agency of transportation or the secretary of natural resources may make such reasonable rules and regulations as ~~it deems~~ he or she deems necessary, provided such rules and regulations do not conflict with any federal laws, rules, and regulations, or the provisions of this subchapter.

(2) ~~It~~ The agency of transportation shall enter into agreements with the United States Secretary of Transportation or his or her representatives in order to designate those areas of the state which are properly zoned or used for industrial activities, and to arrange for federal cost participation.

(3) ~~It shall determine the effectiveness of the screening of any junkyard affected by this subchapter.~~

~~(4) It shall determine whether any junkyard must be screened or removed and may order such screening or any removal~~ The secretary shall adopt and enforce requirements for adequate fencing and screening of salvage yards.

~~(5) It shall approve and pay from funds appropriated for this purpose costs incurred under section 2264 of this title, and may refuse payment of all or part of such costs when it finds they are unreasonable or unnecessary.~~

~~(6)~~(4) ~~It~~ The agency of transportation may seek an injunction against ~~the establishment, operation or maintenance of a junkyard~~ a salvage yard which is ~~or will be~~ in violation of ~~this~~ the relevant provisions of this subchapter ~~and may obtain compliance with its orders for screening or removal by a petition to the superior court for the county in which the junkyard is located~~. The secretary may enforce the relevant provisions of this chapter under chapter 201 of Title 10.

~~(7) It shall conduct a continuing survey of all highways for the purpose of determining the status of junkyards affected and that the provisions of this subchapter are properly observed.~~

~~(8)~~(5) ~~It~~ The agency of transportation or the secretary may issue necessary orders, findings, and directives, and do all other things reasonably necessary and proper to carry out the purpose of this subchapter.

Sec. 7. 24 V.S.A. § 2245 is amended to read:

§ 2245. INCINERATORS, SANITARY LANDFILLS, ETC., EXCEPTED

The provisions of this subchapter shall not be construed to apply to ~~incinerators, sanitary landfills, or open dumps wholly owned or leased and operated by a municipality for the benefit of its citizens, or to any private garbage dump or any sanitary landfill which is in compliance with section 2202 of this title and the regulations of the secretary of human services~~ solid waste management facilities regulated under 10 V.S.A. chapter 159.

Sec. 8. 24 V.S.A. § 2246 is amended to read:

§ 2246. EFFECT OF LOCAL ORDINANCES

This subchapter shall not be construed to be in derogation of zoning ordinances or ordinances for the control of ~~junkyards~~ salvage yards now or hereafter established within the proper exercise of the police power granted to municipalities, if those ordinances impose stricter limitations upon ~~junkyards~~ salvage yards. If the limitations imposed by this subchapter are stricter, this subchapter shall control.

Sec. 9. 24 V.S.A. § 2247 is amended to read:

§ 2247. JUNKYARD ~~LICENSES~~ CERTIFICATE OF REGISTRATION

The provisions of this subchapter shall not be construed to repeal or abrogate any other provisions of law authorizing or requiring a ~~license~~ certificate of registration to own, establish, operate, or maintain a ~~junkyard~~ salvage yard, but no ~~license~~ certificate of registration shall be issued in contravention of this subchapter, or continue in force after the date on which the ~~junkyard~~ salvage yard for which it is issued becomes illegal under this subchapter regardless of the term for which the ~~license~~ certificate of registration is initially issued if the ~~junkyard~~ salvage yard is not satisfactorily screened.

Sec. 10. 24 V.S.A. § 2251 is amended to read:

§ 2251. APPLICATION FOR CERTIFICATE OF APPROVED LOCATION

Application for a certificate of approved location shall be made in writing to the legislative body of the municipality where ~~it is~~ the salvage yard is located or where it is proposed to ~~locate the junkyard~~ be located, and, in municipalities having a zoning ~~ordinance and a zoning board of adjustment~~ bylaw, subdivision regulations established under sections ~~4301-4492~~ 4301–4498 of this title, or a municipal ordinance or rule established under sections 1971–1984 of this title, the application shall be accompanied by a certificate from the ~~board of adjustment~~ legislative body or a public body designated by the legislative body. The legislative body or its designee shall find the proposed salvage yard location is not within an established district restricted against such uses or otherwise contrary to the requirements or prohibitions of such zoning ~~ordinance~~ bylaw or other municipal ordinance. The application shall contain a description of the land to be included within the ~~junkyard~~ salvage yard, which description shall be by reference to so-called permanent boundary markers.

Sec. 11. 24 V.S.A. § 2253 is amended to read:

§ 2253. LOCATION REQUIREMENTS

(a) At the time and place set for hearing, the legislative body shall hear the applicant, the owners of land abutting the facility, and all other persons wishing to be heard on the application for certificate of approval for the location of the ~~junkyard~~ salvage yard. ~~In passing upon the same, it shall take into account, after~~ The legislative body shall consider the following in determining whether to grant or deny the certificate:

(1) proof of legal ownership or the right to such use of the property by the applicant~~,~~;

(2) the nature and development of surrounding property, such as the proximity of highways and state and town roads and the feasibility of screening the proposed ~~junkyard~~ salvage yard from such highways~~,~~ and state and town roads; the proximity of ~~churches,~~ places of worship; schools~~,~~ ; hospitals~~,~~ ; existing, planned, or zoned residential areas; public buildings; or other places of public gathering; and

(3) whether or not the proposed location can be reasonably protected from affecting the public health, safety, environment, or ~~morals by reason of offensive or unhealthy odors or smoke, or of other causes~~ from a nuisance condition.

(b)(1) A person shall not establish, operate, or maintain a ~~junkyard~~ salvage yard which is within ~~one thousand~~ 1,000 feet of the nearest edge of the right-of-way of the interstate or primary highway systems and visible from the main traveled way thereof at any season of the year.

(2) On or after July 1, 2009, no person shall establish or initiate operation of a new salvage yard within 100 feet of the nearest edge of the right-of-way of a state or town road or within 100 feet of a navigable water, as that term is defined in section 1422 of Title 10.

(c) Notwithstanding ~~any provision of this subchapter~~ subsection (b) of this section, ~~junkyards~~ salvage yards and scrap metal processing facilities~~,~~ may be operated within ~~areas adjacent to the interstate and primary highway systems, which are within one thousand feet of the nearest edge of the right-of-way~~ 1,000 feet of the nearest edge of the right-of-way of the interstate and primary highway system or within 100 feet of the nearest edge of the right-of-way of a state or town road, provided ~~they are~~ that the area in which the salvage yard is located is zoned industrial under authority of state law, or if not zoned industrial under authority of state law, ~~are~~ is used for industrial activities as

determined by the board with the approval of the United States Secretary of Transportation.

Sec. 12. 24 V.S.A. § 2254 is amended to read:

§ 2254. AESTHETIC, ENVIRONMENTAL, AND COMMUNITY WELFARE CONSIDERATIONS

At the hearing regarding location of the ~~junkyard~~ salvage yard, the legislative body may also take into account the clean, wholesome and attractive environment which has been declared to be of vital importance to the continued stability and development of the tourist and recreational industry of the state and the general welfare of its citizens by considering whether or not the proposed location can be reasonably protected from having an unfavorable effect thereon. In this ~~connection~~ regard the legislative body may consider collectively the type of road servicing the ~~junkyard~~ salvage yard or from which the ~~junkyard~~ salvage yard may be seen, the natural or artificial barriers protecting the ~~junkyard~~ salvage yard from view, the proximity of the proposed ~~junkyard~~ salvage yard to established tourist and recreational areas or main access routes, thereto, proximity to neighboring residences, groundwater resources, surface waters, wetlands, drinking water supplies, consistency with an adopted town plan, as well as the reasonable availability of other suitable sites for the ~~junkyard~~ salvage yard.

Sec. 13. 24 V.S.A. § 2255 is amended to read:

§ 2255. GRANT OR DENIAL OF APPLICATION; APPEAL

(a) After the hearing the legislative body shall, within ~~two weeks~~ 30 days, make a finding as to whether or not the application should be granted, giving notice of their finding to the applicant by mail, postage prepaid, to the address given on the application.

(b) If approved, the certificate of approved location shall be ~~forthwith issued to remain in effect for not less than three nor more than~~ issued for a period not to exceed five years ~~from the following July 1.~~ and shall contain at a minimum the following conditions:

(1) Conditions requiring compliance with the screening and fencing requirements of section 2257 of this title;

(2) Approval shall be personal to the applicant and not assignable;

(3) Conditions that the legislative body deems appropriate to ensure that considerations of section 2254 of this title have been met;

(4) Any other condition that the legislative body deems appropriate to ensure the protection of public health, the environment, or safety or to ensure protection from nuisance conditions; and

(5) A condition requiring a salvage yard established or initiated prior to July 1, 2009 to be setback 100 feet from the nearest edge of a right-of-way of a state or town road or from a navigable water as that term is defined in section 1422 of Title 10, provided that if a salvage yard cannot meet the 100 feet setback requirement of this subsection, a municipality shall regulate the salvage yard as a nonconforming use, nonconforming structure, or nonconforming lot under a municipal nonconformity bylaw adopted under section 4412 of this title.

(c) Certificates of approval shall be renewed thereafter for successive periods of not ~~less than three nor~~ more than five years upon payment of the renewal fee without hearing, provided all provisions of this subchapter are complied with during the preceding period, and the ~~junkyard~~ salvage yard does not become a public nuisance under the common law.

(d) Any person ~~dissatisfied with the granting or denial of an application~~ may appeal the issuance or denial of a certificate of approved location to the ~~superior court for the county in which the proposed junkyard is located. The court by its order may affirm the action of the legislative body or direct the legislative body to grant or deny the application~~ environmental court within 30 days of the decision. No costs shall be taxed against either party upon such appeal.

Sec. 14. 24 V.S.A § 2257 is amended to read:

§ 2257. SCREENING REQUIREMENTS; FENCING

(a) ~~Junkyards~~ A salvage yard shall be screened by a fence or vegetation which effectively screens it from public view ~~from the highway~~ and which complies with the rules of the secretary relative to the screening and fencing of salvage yards, and shall have a gate which shall be closed~~, except when entering or departing the yard~~ after business hours.

(b) Fences and artificial means used for screening purposes as hereafter provided shall be maintained neatly and in good repair. They shall not be used for advertising signs or other displays which are visible from the main traveled way of a highway or state or town road.

(c) All junk stored or deposited in a ~~junkyard~~ salvage yard shall be kept within the enclosure, except while being transported to or from the ~~junkyard~~ salvage yard. All wrecking or other work on the junk shall be accomplished within the enclosure.

(d) Where the topography, natural growth of timber, or other natural barrier ~~screen~~ screens the ~~junkyard~~ salvage yard from view in part, the ~~agency~~ legislative body shall upon granting the ~~license,~~ certificate of approved location require the applicant to screen only those parts of the ~~junkyard~~ salvage yard not ~~so~~ screened.

~~(e) A junkyard prohibited by section 2253(b) of this title which is lawfully established after July 1, 1969 shall be screened or removed at the time it becomes nonconforming~~ A legislative body may inspect a salvage yard in order to determine compliance with the requirements of this chapter and a certificate of approved location issued under this chapter. A municipality may request that the secretary initiate an enforcement action against a salvage yard for violation of the requirements of this subchapter or statute or regulation within the authority of the secretary.

Sec. 15. 24 V.S.A. § 2261 is amended to read:

§ 2261. APPLICATION

Application for a ~~license to operate, maintain, or establish~~ certificate of registration for a ~~junkyard~~ salvage yard shall be made in writing to the ~~agency~~ secretary upon a form prescribed by ~~it~~ the secretary.

Sec. 16. 24 V.S.A. § 2262 is amended to read:

§ 2262. ELIGIBILITY

The ~~agency~~ secretary shall issue a ~~license if it finds~~ certificate of registration upon finding:

(1) The applicant is able to comply with the provisions of this subchapter.

(2) The applicant has filed a currently valid certificate of approval of location with the ~~agency~~ secretary.

(3) ~~The junkyard will not adversely affect the public health, welfare, or safety and will not constitute a nuisance at common law.~~

~~(4)~~ The applicant has complied with any regulations of the ~~agency~~ secretary issued under section 2243 of this title and with screening or fencing requirements which, under limitations of the surrounding terrain, are capable of feasibly and effectively screening the ~~junkyard~~ salvage yard from view of the main traveled way of all highways.

Sec. 17. 24 V.S.A. § 2264 is amended to read:

~~§ 2264. COMPENSATION~~

~~Notwithstanding that this subchapter is established under the state's police power for the general welfare and public good, just compensation shall be paid to an owner affected for his reasonable and necessary costs incurred for the landscaping or other adequate screening, or the removal, relocation, or disposal of the following junkyards affected by this subchapter:~~

~~(1) Those lawfully in existence on July 1, 1969.~~

~~(2) Those lawfully established after July 1, 1969 but which, because of a change in status of an existing highway, or the establishment, relocation, or change in grade of the highway are brought within the prohibitions of this subchapter.~~

Sec. 18. 24 V.S.A. § 2281 is amended to read:

§ 2281. INJUNCTIVE RELIEF; OTHER REMEDIES

(a) In addition to the penalty in section 2282 of this title, ~~the agency or~~ the legislative body may seek a temporary restraining order, preliminary injunction, or permanent injunction against the establishment, operation, or maintenance of a ~~junkyard~~ salvage yard which is ~~or will be~~ in violation of ~~this act~~ the relevant municipal requirements of this subchapter and may obtain compliance with ~~its orders for screening~~ the relevant municipal requirements of this subchapter and the terms of a certificate of approved location issued under this subchapter by complaint to the ~~superior~~ environmental court for the county in which the ~~junkyard~~ salvage yard is located.

(b) In addition to the penalty in section 2282 of this title, the agency of transportation may seek appropriate injunctive relief in the superior court to enforce the provisions of this subchapter within its regulatory authority.

Sec. 19. 24 V.S.A. § 2283 is amended to read:

§ 2283. APPEALS

After exhausting the right of administrative appeal to the board under section 5(d)(5) of Title 19, a person aggrieved by any order, act or decision of the agency of transportation may appeal to the superior court, and all proceedings shall be de novo. Any person, including the agency of transportation, may appeal to the supreme court from a judgment or ruling of the superior court. Appeals of acts or decisions of the secretary of natural resources or a legislative body of a municipality under this subchapter shall be appealed to the environmental court under 10 V.S.A. § 8503.

Sec. 20. 10 V.S.A. § 8003(a) is amended to read:

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

* * *

(16) 10 V.S.A. chapter 162, relating to the Texas Low-Level Radioactive Waste Disposal Compact;

(17) 10 V.S.A. § 2625, relating to heavy cutting of timber; ~~and~~

(18) 10 V.S.A. chapter 164, relating to comprehensive mercury management; and

(19) 24 V.S.A. chapter 61, subchapter 10, relating to salvage yards.

Sec. 21. 10 V.S.A. § 8503 is amended to read:

§ 8503. APPLICABILITY

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

(1) The following provisions of this title:

* * *

(2) 29 V.S.A. chapter 11 (management of lakes and ponds).

(3) 24 V.S.A. chapter 61, subchapter 10 (relating to salvage yards).

* * *

(f) This chapter shall govern all appeals of acts or decisions of the legislative body of a municipality arising under 24 V.S.A. chapter 61, subchapter 10, relating to the municipal certificate of approved location for salvage yards.

Sec. 22. TRANSITION

(a) For facilities holding a license for a junkyard issued prior to the effective date of this act, the license shall remain in effect until the expiration of the license. No rule adopted by the secretary of natural resources shall impose new siting criteria on existing licensed and operating facilities unless the location of a facility creates a threat to public health or the environment or creates a nuisance.

(b) Notwithstanding any other provision of law to the contrary, the functions, authorities, and responsibilities of the agency of transportation regarding the licensing of junkyards are transferred to the agency of natural

resources. Any rules adopted by the agency of transportation regarding the licensing and operation of junkyards shall remain in effect as if adopted by the agency of natural resources, and any reference to the agency of transportation or the transportation board in such rules shall be interpreted to mean the secretary of natural resources or the agency of natural resources.

(c) A municipal ordinance addressing or referring to the term "junkyard" shall be deemed to refer to the term "salvage yard" for the purpose of municipal implementation and enforcement of the requirements of 24 V.S.A. chapter 61, subchapter 10 relating to municipal regulation of salvage yards, provided that at the next revision of the town plan, the municipal ordinance is amended to be consistent with state law.

Sec. 23. AGENCY OF NATURAL RESOURCES REPORT ON THE REGULATION OF SALVAGE YARDS

On or before January 15, 2010, the secretary of natural resources shall submit to the house and senate committees on natural resources and energy and the house committee on fish, wildlife and water resources a proposed program for the regulation and permitting of salvage yards by the agency of natural resources. The report shall include:

(1) A summary of how salvage yards are regulated in the state, including the number of salvage yards licensed by the state; an estimate of the number of unlicensed salvage yards in the state; and the stormwater, groundwater, solid waste, air emission, and other environmental and land use requirements that a salvage yard is required to meet.

(2) A summary of how other New England or northeastern states regulate salvage yards, including whether any states regulate salvage yards under a general permit.

(3) A recommendation of how to regulate all environmental requirements for salvage yards under one agency of natural resources program, including whether the agency recommends the use of a general permit for salvage yards that incorporates stormwater, groundwater, solid waste, air emission, and other environmental and land use requirements.

(4) A recommendation for how to regulate the storing or keeping of salvage motor vehicles for noncommercial purposes, including a threshold number of stored or kept salvage motor vehicles that would trigger a permit or registration requirement.

(5) Environmental standards for the operation of salvage yards, including management practices or requirements for the control of stormwater

runoff, control of air emissions, activities in or near wetlands, and activities in close proximity to groundwater resources or potable water supplies.

(6) An estimate of the funding, staffing, and other resources that would be required to implement any regulatory program recommended by the agency under this section.

(7) A recommended source for funding implementation, administration, and enforcement of the program or programs recommended by the agency under this section, including a recommendation of whether to expand or increase the solid waste franchise tax under 32 V.S.A. § 5952 to apply to salvage yards and whether to require a salvage yard to pay a fee under 3 V.S.A. § 2822(j).

(8) Draft legislation or draft rules that would be required to implement the recommendation under this section for the regulation of salvage yards by the agency of natural resources, including draft legislation to implement the agency's recommendation for funding the regulation of salvage yards.

Sec. 24. AGENCY OF NATURAL RESOURCES STAFF POSITION

The agency of natural resources shall assign at least one staff member employed by the agency as of the effective date of this act to implement and enforce the requirements for salvage yards under 24 V.S.A. chapter 61 and to implement a program under which the agency shall perform a multidisciplinary review of salvage yard compliance with state and federal environmental law.

Sec. 25. REPEAL OF SUNSET OF SCRAP METAL PROCESSOR REQUIREMENTS

Sec. 12 of No. 195 of the Acts of the 2007 Adj. Sess. (2008) (sunset of scrap metal processor requirements for identification of persons selling scrap metal) is repealed.

Sec. 26. 10 V.S.A. § 7106(j) is amended to read:

(j) ~~No later than October 1, 2006, each manufacturer required to label by this section shall certify to the agency that it has developed a labeling plan for its mercury-added products that complies with this section, and that this labeling plan shall be implemented for products offered for final sale, sold at a final sale, or distributed in Vermont after July 1, 2007. The labeling plan shall include detailed descriptions of the products involved and the label size, font size, material, wording, location, and attachment method for each product and for the product packaging. The plan shall include how prior-to-sale notification will be provided, if required. The plan, together with the certification, must be submitted to the agency and the multistate clearinghouse for approval. If a manufacturer has an approved certified labeling plan on file~~

~~with the agency, the manufacturer must provide an update no later than October 1, 2006 identifying changes, if any, to the product or manufacturer's contact information and shall include all information required in this section. The update must be submitted in writing to the agency and identified as an amendment to the plan. Any changes in labeling methods for products or product categories already approved under the existing plan in order to comply with new labeling requirements must be submitted and reviewed by the agency for approval~~ A manufacturer who offers for final sale, sells at a final sale, or distributes a product subject to the labeling requirements of this section shall certify to the secretary, on a form provided by the secretary, that the label conforms to the requirements of subsection (d) of this section, subdivision (h)(3)(A) or subdivision (h)(3)(B) of this section.

Sec. 27. 10 V.S.A. § 1672(f) is amended to read:

(f) Nothing in this chapter is intended to limit the authority of the public service board under the provisions on Title 30. ~~The secretary shall solicit the concurrence of the public service board when proposing rules under subdivisions (b)(2) through (5) of this section, as applicable to water companies regulated under Title 30. When the secretary and the public service board concur, the rules shall be adopted jointly.~~

Sec. 28. WATER SUPPLY RULEMAKING

The failure of the secretary to solicit concurrence from the public service board under subsection 1672(f) of Title 10 shall not affect the validity of any rule adopted under chapter 56 of Title 10 prior to July 1, 2009.

Sec. 29. EFFECTIVE DATE

This act shall take effect on July 1, 2009.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, Senator Lyons moved that the Senate concur in the House proposal of amendment with a further amendment as follows: In Sec. 13, 24 V.S.A. § 2255(b)(5), after the following: "Title 10,"by striking out all of the language through the end of the sentence and inserting in lieu thereof the following: provided that if a salvage yard cannot demonstrate during the application process that it meets the 100 feet setback requirement of this subdivision, a municipality may regulate the salvage yard as a nonconforming use, nonconforming structure, or nonconforming lot under a municipal nonconformity bylaw adopted under section 4412 of this title, provided that no enlargement or further encroachment within a setback required under this subdivision shall be allowed.

Which was agreed to.

Rules Suspended; Joint Senate Resolution Amended; Third Reading Ordered; Rules Suspended; Joint Senate Resolution Adopted

J.R.S. 32.

Appearing on the Calendar for notice, on motion of Senator Shumlin, the rules were suspended and joint Senate resolution entitled:

Joint resolution authorizing the commissioner of forests, parks and recreation to enter into land exchanges and to sell a portion of Camel's Hump State Park.

Was taken up for immediate consideration.

Senator White, for the Committee on Institutions, to which the resolution was referred, reported recommending that the joint resolution be amended by striking out the resolution in its entirety and inserting in lieu thereof the following:

By the Committee on Institutions,

J.R.S. 32. Joint resolution authorizing the commissioner of forests, parks and recreation to enter into land exchanges.

Whereas, 10 V.S.A. § 2606(b) authorizes the commissioner of forests, parks and recreation to exchange or lease certain lands with the approval of the general assembly, and

Whereas, 29 V.S.A. §166 authorizes the commissioner of buildings and general services to sell state lands with the approval of the general assembly, and

Whereas, the general assembly considers the following actions to be in the best interest of the state, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the Commissioner of Forests, Parks and Recreation is authorized to amend the ski area lease on Okemo Mountain at Okemo State Forest to provide for three additional ten-year extension periods, *and be it further*

Resolved: That the Commissioner of Forests, Parks and Recreation is authorized to convey a limited right-of-way in common along a portion of a state forest highway locally known as "Rangers Road" to the owners of Lots 42, 43, 44, 45, and 46 located adjacent to a portion of Coolidge State Forest in the Town of Plymouth. The right-of-way in common shall begin at the westernmost end of Town Highway 38 and shall extend westerly along Rangers Road to the adjoining private parcels. The right-of-way in common shall be limited to vehicular access to the existing lots only and does not include the right to install power or telephone lines within the right-of-way.

The department may gate or close this portion of Rangers Road for maintenance purposes or if unsafe conditions exist. However, the department shall not be obligated to maintain this right-of-way in common beyond what it deems necessary for its own purposes. In exchange for this right-of-way in common, the owners of Lots 42, 43, 44, 45, and 46 shall agree not to subdivide their parcels; to limit development on their parcels to one single-family residence and associated structures; and to relinquish any claim they may have for an alternative right-of-way by necessity to the west of the parcels from Town Highway 4 (Messer Hill Rd). Additionally, as a condition of this conveyance, the owners of Lots 43, 44, 45, and 46 shall agree to convey a right-of-way to the department of forests, parks and recreation along the portion of the state forest highway that crosses their respective parcels, *and be it further*

Resolved: That the Commissioner of Forests, Parks and Recreation is authorized to convey a separate limited right-of-way across state forest land to the owner of Lot 42 adjacent to the Coolidge State Forest in the Town of Plymouth. This right-of-way shall be limited to vehicular access to Lot 42 as it currently exists, and maintenance of this right-of-way shall be the sole responsibility of the owner of Lot 42. In exchange for this limited right-of-way, the owner of Lot 42 shall ensure through the conveyance of permanent restrictive covenants to the department or through the conveyance of an easement or other legal mechanism approved by the department that Lot 42 will not be subdivided and that development will be limited to one single family residence and associated structures. As a condition of any conveyance of this limited right-of-way, the owner of Lot 42 shall also demonstrate that he or she has legal, permanent access from the end of the state's right-of-way across adjacent private lands to Lot 42, *and be it further*

Resolved: That pursuant to 29 V.S.A. § 166, the commissioner of buildings and general services, on behalf of and in consultation with the commissioner of forests, parks and recreation, is authorized to sell a portion of Camel's Hump State Park containing the so-called Lafreniere House located in the Town of Bolton. The property to be sold is considered surplus by the Department of Forests, Parks and Recreation and shall be so configured to include only that acreage deemed necessary to encompass the Lafreniere House and associated outbuildings, structures, facilities, and access drives. The barns located on this property may also be included in the sale if it is deemed in the best interest of the state to include them. The Department of Forests, Parks and Recreation shall work closely with the Town of Bolton to ensure their interests and needs are carefully considered prior to any sale or conveyance of this property. Any sale shall be contingent on the approval of the Vermont Housing and Conservation Board and shall include any legal restrictions deemed necessary

to maintain the historic integrity and open space character of the property. Pursuant to the provisions of subsection 166(d) of Title 29, the general assembly hereby authorizes that the net proceeds of this transaction shall be used by the department to cover all expenses associated with the sale of this property with the balance to be deposited in the Vermont Housing and Conservation Trust Fund, *and be it further*

Resolved: That a 10± acre portion of Victory State Forest within the town of Victory may be conveyed or leased to the town of Victory to be used for a new town garage as follows:

(1) pursuant to 10 V.S.A. § 2606(b), the commissioner of forests, parks and recreation may exchange the land for land of equivalent or greater value to the state;

(2) pursuant to 10 V.S.A. § 2606(b), the commissioner of forests, parks and recreation may lease the land to the town of Victory; or

(3) pursuant to 29 V.S.A. § 166, the commissioner of buildings and general services, on behalf of and in consultation with the commissioner of forests, parks and recreation, may sell the land. However, notwithstanding 29 V.S.A. § 166(b), the land may be sold to the town of Victory for fair market value as determined by an independent appraisal, *and be it further*

Resolved: That conveyance or lease of the Victory state forest land shall be contingent on the following: (1) the town of Victory conducts an engineering assessment of the state forest parcel which demonstrates that the site is suitable for the town's intended purposes; (2) the town of Victory assumes any and all associated costs, including appraisal, survey, permitting, and legal; (3) the final proposal, including the consideration offered by the town to the state for the exchange, sale, or lease of the state forest parcel is approved by both the Department of Forests, Parks and Recreation and the Vermont Housing and Conservation Board. Pursuant to subsection 166(d) of Title 29, the general assembly hereby authorizes that the net proceeds of any sale of the state forest parcel shall be deposited in the Vermont Housing and Conservation Trust Fund.

And that when so amended the joint resolution ought to be adopted.

Thereupon, the joint resolution was read the second time by title only pursuant to Rule 43, the recommendation of amendment was agreed to.

Thereupon, pending the question, Shall the resolution be read the third time?, Senators Nitka, Campbell and McCormack moved to amend the joint resolution in the first Resolved clause following the words "provide for three additional ten-year extension periods" by inserting the following: <u>provided</u>

that the lease shall not preclude the placement of wind turbines on the leased premises

Which was agreed to.

Thereupon, third reading of the joint resolution was ordered.

Thereupon, on motion of Senator Shumlin, the rules were suspended and the joint resolution was placed on all remaining stages of its adoption forthwith.

Thereupon, the joint resolution was read the third time and adopted on the part of the Senate.

House Proposals of Amendment Concurred In

S. 70.

House proposals of amendment to Senate bill entitled:

An act relating to clarifying the procedure for reinstatement of a driver's license based on total abstinence from alcohol and drugs.

Were taken up.

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

First: In Sec. 1, subsection (b), subdivision (1) by striking out the figure "$1,000.00" and inserting in lieu thereof the figure $500.00

Second: In Sec. 1, subsection (b), subdivision (1), after the final period, by inserting the following: The commissioner shall have the discretion to waive the application fee if the commissioner determines that payment of the fee would present a hardship to the applicant.

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

House Proposal of Amendment Concurred In

S. 91.

House proposal of amendment to Senate bill entitled:

An act relating to operation of vessels on public waters.

Was taken up.

The House proposes to the Senate to amend the bill in Sec. 4, 23 V.S.A. § 3327(a), after the words "give his or her name", by inserting the following: , date of birth,

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

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

S. 125.

House proposal of amendment to Senate bill entitled:

An act relating to expanding the sex offender registry.

Was taken up.

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

Sec. 1. COMPLIANCE WITH THE ADAM WALSH CHILD PROTECTION AND SAFETY ACT OF 2006

(a) The act. The Adam Walsh Child Protection and Safety Act of 2006 was signed by President George W. Bush in 2006. While well-intended, it contains a broad span of provisions that would significantly change state practice related to the registration and management of sex offenders in Vermont in a manner that is inconsistent with widely accepted evidence-based best practices at a substantial financial cost to the state. In comments directed to the U.S. Department of Justice regarding proposed guidelines to interpret and implement the act, the National Conference of State Legislatures called the guidelines a "burdensome," "preemptive," "unfunded mandate" for the states, requiring every legislature to undertake an extensive review of its laws as compared to the act and necessitating changes to state policy traditionally within the purview of the states.

(b) No state is in compliance. Due to the complexity and costs associated with the act, as of February 1, 2009, no state has been certified to be in substantial compliance with the act. States are required to comply with the act by July 27, 2009 or lose 10 percent of the state's federal Byrne/JAG Funds, although Vermont has recently received a one-year extension from the Office of Justice Programs' SMART office, which is responsible for regulations and compliance under the act.

(c) Constitutional challenges. The act is currently being challenged on a number of constitutional grounds in both federal and state courts at a substantial cost to many states. In addition, registry requirements and the consequences for failure to comply with them have expanded so significantly in recent years that imposition of such requirements on offenders may now violate the constitutional ban on retroactive punishment.

(d) Retroactive application and juveniles. Regulations issued by former U.S. Attorney General Alberto Gonzales require states to apply the requirements of the act retroactively, requiring Vermont to retier all sexual offenders, some of whom are currently beyond their duty to register. The retroactive application also applies to juveniles adjudicated delinquent for certain sexual offenses, even though they are currently not required to be registered under state law. Even though such juveniles were afforded the protections of the juvenile system at the time of their plea, they would now be subject to a registration term as long as 25 years with no opportunity to petition for relief and would be subject to inclusion on the Internet sex offender registry.

Sec. 2. 13 V.S.A. § 2635a is added to read:

§ 2635A. SEX TRAFFICKING OF CHILDREN; SEX TRAFFICKING OF ANY PERSON BY FORCE, FRAUD, OR COERCION

(a) As used in this section:

(1) "Coercion" means:

(A) threats of serious harm to or physical restraint against any person;

(B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious bodily harm to or physical restraint against any person; or

(C) the abuse or threatened abuse of law or the legal process.

(2) "Commercial sex act" means any sex act on account of which anything of value is given to or received by any person.

(3) "Venture" means any group of two or more individuals associated in fact, whether or not a legal entity.

(b) No person shall knowingly:

(1) recruit, entice, harbor, transport, provide, or obtain by any means a person under the age of 18 for the purpose of having the person engage in a commercial sex act;

(2) compel a person through force, fraud, or coercion to engage in a commercial sex act; or

(3) benefit financially or by receiving anything of value from participation in a venture knowing that force, fraud, or coercion was or will be used to compel any person to engage in a commercial sex act as part of the venture.

(c) A person who violates subsection (b) of this section shall be imprisoned for a term up to and including life or fined not more than $25,000.00 or both.

(d)(1) A person who is a victim of sex trafficking as defined in this section shall not be found in violation of chapter 59 (lewdness and prostitution) or 63 (obscenity) of this title for any conduct which arises out of the sex trafficking or which benefits a sex trafficker.

(2) If a person who is a victim of sex trafficking as defined in this section is prosecuted for any offense other than a violation of chapter 59 (lewdness and prostitution) or chapter 63 (obscenity) of this title which arises out of the sex trafficking or benefits a sex trafficker, the person may raise as an affirmative defense that he or she committed the offense as a result of force, fraud, or coercion by a sex trafficker.

* * * Minor Disseminating Indecent Material ("Sexting") * * *

Sec. 3. 13 V.S.A. § 2802b is added to read:

§ 2802b. MINOR ELECTRONICALLY DISSEMINATING INDECENT MATERIAL TO ANOTHER PERSON

(a)(1) No minor shall knowingly and voluntarily and without threat or coercion use a computer or electronic communication device to transmit an indecent visual depiction of himself or herself to another person.

(2) No person shall possess a visual depiction transmitted to the person in violation of subdivision (1) of this subsection. It shall not be a violation of this subdivision if the person took reasonable steps, whether successful or not, to destroy or eliminate the visual depiction.

(b) Penalties; minors.

(1) A minor who violates subsection (a) of this section shall be adjudicated delinquent. An action brought under this subdivision (1) shall be filed in family court and treated as a juvenile proceeding pursuant to chapter 52 of Title 33 and may be referred to the juvenile diversion program of the district in which the action is filed.

(2) A minor who violates subsection (a) of this section and who has not previously been adjudicated in violation of that section shall not be prosecuted under chapter 64 of this title (sexual exploitation of children) and shall not be subject to the requirements of subchapter 3 of chapter 167 of this title (sex offender registration).

(3) A minor who violates subsection (a) of this section who has previously been adjudicated in violation of that section may be adjudicated in family court as under subdivision (1) of this subsection or may be prosecuted

in district court under chapter 64 of this title (sexual exploitation of children) but shall not be subject to the requirements of subchapter 3 of chapter 167 of this title (sex offender registration).

(c) Penalties; adults. A person 18 years of age or older who violates subdivision (a)(2) of this section shall be fined not more than $300.00 or imprisoned for not more than six months or both.

(d) This section shall not be construed to prohibit a prosecution under sections 1027 (disturbing the peace by use of telephone or electronic communication), 2601 (lewd and lascivious conduct), 2605 (voyeurism), or 2632 (prohibited acts) of this title, or under any other applicable provision of law.

Sec. 4. Sec. 4 of No. 192 of the Acts of the 2005 Adj. Sess. (2006) is amended to read:

Sec. 4. SEXUAL VIOLENCE PREVENTION TASK FORCE

(a) The general assembly acknowledges that many diverse organizations in Vermont currently provide sexual violence prevention education in Vermont schools with minimal financial support from the state. In order to further the goal of comprehensive, collaborative statewide sexual violence prevention efforts, the antiviolence partnership at the University of Vermont shall convene a task force to identify opportunities for sexual violence prevention education in Vermont schools. The task force shall conduct an inventory of sexual violence prevention activities currently offered by Vermont schools and by nonprofit and other nongovernmental organizations, and shall, as funding allows, provide information to them concerning the changes to law made by this act and concerning the consequences of sexual activity among minors, including the risks of using computers and electronic communication devices to transmit indecent and inappropriate images. As funding allows, the task force shall include the information collected under this subsection in education and outreach programs for minors, parents, teachers, court diversion programs, restorative justice programs, and the community.

* * *

* * * Sex Offender Registry * * *

Sec. 5. 13 V.S.A. § 5401(10) is amended to read;

(10) "Sex offender" means:

(A) A person who is convicted in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court of any of the following offenses:

(i) sexual assault as defined in 13 V.S.A. § 3252;

(ii) aggravated sexual assault as defined in 13 V.S.A. § 3253;

(iii) lewd and lascivious conduct as defined in 13 V.S.A. § 2601;

(iv) sexual abuse of a vulnerable adult as defined in 13 V.S.A. § 1379;

(v) second or subsequent conviction for voyeurism as defined in 13 V.S.A. § 2605(b) or (c);

(vi) kidnapping with intent to commit sexual assault as defined in 13 V.S.A. § 2405(a)(1)(D); ~~and~~

(vii) a federal conviction in federal court for any of the following offenses:

(I) sex trafficking of children as defined in 18 U.S.C. § 1591;

(II) aggravated sexual abuse as defined in 18 U.S.C. § 2241;

(III) sexual abuse as defined in 18 U.S.C. § 2242;

(IV) sexual abuse of a minor or ward as defined in 18 U.S.C. § 2243;

(V) abusive sexual contact as defined in 18 U.S.C. § 2244;

(VI) offenses resulting in death as defined in 18 U.S.C. § 2245;

(VII) sexual exploitation of children as defined in 18 U.S.C. § 2251;

(VIII) selling or buying of children as defined in 18 U.S.C. § 2251A;

(IX) material involving the sexual exploitation of minors as defined in 18 U.S.C. § 2252;

(X) material containing child pornography as defined in 18 U.S.C. § 2252A;

(XI) production of sexually explicit depictions of a minor for import into the United States as defined in 18 U.S.C. § 2260;

(XII) transportation of a minor for illegal sexual activity as defined in 18 U.S.C. § 2421;

(XIII) coercion and enticement of a minor for illegal sexual activity as defined in 18 U.S.C. § 2422;

(XIV) transportation of minors for illegal sexual activity, travel with the intent to engage in illicit sexual conduct with a minor, and engaging in illicit sexual conduct in foreign places as defined in 18 U.S.C. § 2423;

(XV) transmitting information about a minor to further criminal sexual conduct as defined in 18 U.S.C. § 2425;

~~(vii)~~(ix) an attempt to commit any offense listed in this subdivision (A).

(B) A person who is convicted of any of the following offenses against a victim who is a minor, except that, for purposes of this subdivision, conduct which is criminal only because of the age of the victim shall not be considered an offense for purposes of the registry if the perpetrator is under the age of 18 and the victim is at least 12 years old:

(i) any offense listed in subdivision (A) of this subdivision (10);

(ii) kidnapping as defined in 13 V.S.A. § 2405(a)(1)(D);

(iii) lewd and lascivious conduct with a child as defined in 13 V.S.A. § 2602;

(iv) ~~white~~ slave traffic as defined in 13 V.S.A. § 2635;

(v) sexual exploitation of children as defined in 13 V.S.A. chapter 64;

(vi) ~~or~~ procurement or solicitation as defined in 13 V.S.A. § 2632(a)(6);

(vii) aggravated sexual assault of a child as defined in 13 V.S.A. § 3253a;

(viii) sex trafficking of children or sex trafficking by force, fraud, or coercion as defined in 13 V.S.A. § 2635a;

(ix) sexual exploitation of a minor as defined in 13 V.S.A. § 3258(b);

(x) an attempt to commit any offense listed in this subdivision (B).

(C) A person who takes up residence within this state, other than within a correctional facility, and who has been convicted in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court, for a sex crime the elements of which would constitute a crime under subdivision ~~(10)~~(A) or (B) of this ~~section~~ subdivision (10) if committed in this state.

(D) A person 18 years of age or older who resides in this state, other than in a correctional facility, and who was required to register as a sex offender in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court, prior to taking up residence within this state, except that, for purposes of this subdivision, conduct which is criminal only because of the age of the victim shall not be considered an offense for purposes of the registry if the perpetrator is under the age of 18 and the victim is at least 12 years old.

~~(D)~~(E) A nonresident sex offender who crosses into Vermont and who is employed, carries on a vocation, or is a student.

Sec. 6. 13 V.S.A. § 5407 is amended to read:

§ 5407. SEX OFFENDER'S RESPONSIBILITY TO REPORT

* * *

(g) The department shall adopt forms and procedures for the purpose of verifying the addresses of persons required to register under this subchapter in accordance with the requirements set forth in section (b)(3) of the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act. Every 90 days for sexually violent predators and annually for other registrants, the department shall verify addresses of registrants by sending a nonforwardable address verification form to each registrant at the address last reported by the registrant. The registrant shall be required to sign and return the form to the department within 10 days of receipt. If the registrant's name appears on the list of address verification forms automatically generated by the registry, it shall be presumed that the sex offender has received that form.

* * *

Sec. 7. 13 V.S.A. § 5409 is amended to read:

§ 5409. PENALTIES

(a) Except as provided in subsection (b) of this section, a sex offender who knowingly fails to comply with any provision of this subchapter shall:

(1) Be imprisoned for not more than two years or fined not more than $1,000.00, or both. A sentence imposed under this subdivision shall run consecutively to any sentence being served by the sex offender at the time of sentencing.

(2) For the second or subsequent offense, be imprisoned not more than three years or fined not more than $5,000.00, or both. A sentence imposed

under this subdivision shall run consecutively to any sentence being served by the sex offender at the time of sentencing.

(b) A sex offender who knowingly fails to comply with any provision of this subchapter for a period of more than five consecutive days shall be imprisoned not more than five years or fined not more than $5,000.00, or both. A sentence imposed under this subsection shall run consecutively to any sentence being served by the sex offender at the time of sentencing.

(c) It shall be presumed that every sex offender knows and understands his or her obligations under this subchapter.

(d)(1) An affidavit by the administrator of the sex offender registry which describes the failure to comply with the provisions of this subchapter shall be prima facie evidence of a violation of this subchapter.

(2) Certified records of the sex offender registry shall be admissible into evidence as business records.

Sec. 8. NOTIFICATION OF RESPONSIBILITIES TO SEX OFFENDER

On or before June 15, 2009, the department of public safety shall provide written notice to all persons required to register as sex offenders under chapter 167 of Title 13 of the changes to sex offender reporting requirements made by this act and the penalties for failing to meet those requirements. The offender shall be presumed to have received the letter required by this section if the department sends the letter by first class mail to the offender at his or her last known address.

* * * Internet Sex Offender Registry * * *

Sec. 9. 13 V.S.A. § 5411a is amended to read:

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

(a) Notwithstanding sections 2056a-2056e of Title 20, the department shall electronically post information on the Internet in accordance with subsection (b) of this section regarding the following sex offenders, upon their release from confinement:

(1) Sex offenders who have been convicted of ~~a violation of section 3253 of this title (aggravated sexual assault), section 2602 of this title (lewd or lascivious conduct with child) if the offender has been designated as high risk by the department of corrections pursuant to section 5411b of this title, or subdivision 2405(a)(1)(D) of this title if a registrable offense (kidnapping and sexual assault of a child)~~:

(A) Aggravated sexual assault of a child (13 V.S.A. § 3253a).

(B) Aggravated sexual assault (13 V.S.A. § 3253).

(C) Sexual assault (13 V.S.A. § 3252).

(D) Kidnapping with intent to commit sexual assault (13 V.S.A. § 2405(a)(1)(D)).

(E) Lewd or lascivious conduct with child (13 V.S.A. § 2602) if the offender has been designated as high risk by the department of corrections pursuant to section 5411b of this title.

(F) A second or subsequent conviction for voyeurism (13 V.S.A. § 2605(b) or (c)) if the offender has been designated as high risk by the department of corrections pursuant to section 5411b of this title.

(G) Slave traffic if a registrable offense under subdivision 5401(10)(B)(iv) of this title (13 V.S.A. § 2635).

(H) Sex trafficking of children or sex trafficking by force, fraud, or coercion (13 V.S.A. § 2635a).

(I) Sexual exploitation of a minor (13 V.S.A. § 3258(b)).

(J) Any offense regarding the sexual exploitation of children (chapter 64 of this title).

(K) Sexual abuse of a vulnerable adult (13 V.S.A. § 1379).

(L) A federal conviction in federal court for any of the following offenses:

(i) Sex trafficking of children as defined in 18 U.S.C. § 1591.

(ii) Aggravated sexual abuse as defined in 18 U.S.C. § 2241.

(iii) Sexual abuse as defined in 18 U.S.C. § 2242.

(iv) Sexual abuse of a minor or ward as defined in 18 U.S.C. § 2243.

(v) Abusive sexual contact as defined in 18 U.S.C. § 2244.

(vi) Offenses resulting in death as defined in 18 U.S.C. § 2245.

(vii) Sexual exploitation of children as defined in 18 U.S.C. § 2251.

(viii) Selling or buying of children as defined in 18 U.S.C. § 2251A.

(ix) Material involving the sexual exploitation of minors as defined in 18 U.S.C. § 2252.

(x) Material containing child pornography as defined in 18 U.S.C. § 2252A.

(xi) Production of sexually explicit depictions of a minor for import into the United States as defined in 18 U.S.C. § 2260.

(xii) Transportation of a minor for illegal sexual activity as defined in 18 U.S.C. § 2421.

(xiii) Coercion and enticement of a minor for illegal sexual activity as defined in 18 U.S.C. § 2422.

(xiv) Transportation of minors for illegal sexual activity, travel with the intent to engage in illicit sexual conduct with a minor, and engaging in illicit sexual conduct in foreign places as defined in 18 U.S.C. § 2423.

(xv) Transmitting information about a minor to further criminal sexual conduct as defined in 18 U.S.C. § 2425.

(2) Sex offenders who have at least one prior conviction for an offense described in subdivision 5401(10) of this subchapter.

(3) Sex offenders who have failed to comply with sex offender registration requirements and for whose arrest there is an outstanding warrant for such noncompliance. Information on offenders shall remain on the Internet only while the warrant is outstanding.

(4) Sex offenders who have been designated as sexual predators pursuant to section 5405 of this title.

(5)(A) Sex offenders who have not complied with sex offender treatment recommended by the department of corrections or who are ineligible for sex offender treatment. The department of corrections shall establish rules for the administration of this subdivision and shall specify what circumstances constitute noncompliance with treatment and criteria for ineligibility to participate in treatment. Offenders subject to this provision shall have the right to appeal the department of corrections' determination in superior court in accordance with Rule 75 of the Vermont Rules of Civil Procedure. This subdivision shall apply prospectively and shall not apply to those sex offenders who did not comply with treatment or were ineligible for treatment prior to March 1, 2005.

(B) The department of corrections shall notify the department if a sex offender who is compliant with sex offender treatment completes his or her sentence but has not completed sex offender treatment. As long as the offender complies with treatment, the offender shall not be considered noncompliant under this subdivision and shall not be placed on the Internet

registry in accordance with this subdivision alone. However, the offender shall submit to the department proof of continuing treatment compliance every three months. Proof of compliance shall be a form provided by the department that the offender's treatment provider shall sign, attesting to the offender's continuing compliance with recommended treatment. Failure to submit such proof as required under this subdivision (B) shall result in the offender's placement on the Internet registry in accordance with subdivision (A) of this subdivision (5).

(6) Sex offenders who have been designated by the department of corrections, pursuant to section 5411b of this title, as high-risk.

(7) A person 18 years of age or older who resides in this state, other than in a correctional facility, and who was required to register as a sex offender in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court, prior to taking up residence within this state, except that, for purposes of this subdivision, conduct which is criminal only because of the age of the victim shall not be considered an offense for purposes of the registry if the perpetrator is under the age of 18 and the victim is at least 12 years old.

(b) The department shall electronically post the following information on sex offenders designated in subsection (a) of this section:

(1) the offender's name and any known aliases;

(2) the offender's date of birth;

(3) a general physical description of the offender;

(4) a digital photograph of the offender;

(5) the offender's town of residence;

(6) the date and nature of the offender's conviction;

(7) if the offender is under the supervision of the department of corrections, the name and telephone number of the local department of corrections office in charge of monitoring the sex offender;

(8) whether the offender complied with treatment recommended by the department of corrections;

(9) a statement that there is an outstanding warrant for the offender's arrest, if applicable~~; and~~

(10) the reason for which the offender information is accessible under this section; and

(11) whether the offender has been designated high-risk by the department of corrections pursuant to section 5411b of this title.

(c) The department shall have the authority to take necessary steps to obtain digital photographs of offenders whose information is required to be posted on the Internet and to update photographs as necessary. An offender who is requested by the department to report to the department or a local law enforcement agency for the purpose of being photographed for the Internet shall comply with the request within 30 days.

(d) An offender's street address shall not be posted electronically. The identity of a victim of an offense that requires registration shall not be released.

(e) Information regarding a sex offender shall not be posted electronically if the conduct that is the basis for the offense is criminal only because of the age of the victim and the perpetrator is within 38 months of age of the victim.

(f) Information regarding a sex offender shall not be posted electronically prior to the offender reaching the age of 18, but such information shall be otherwise available pursuant to section 5411 of this title.

(g) Information on sex offenders shall be posted on the Internet for the duration of time for which they are subject to notification requirements under section 5401 et seq. of this title.

(h) Posting of the information shall include the following language: "This information is made available for the purpose of complying with 13 V.S.A. § 5401 et seq., which requires the Department of Public Safety to establish and maintain a registry of persons who are required to register as sex offenders and to post electronically information on sex offenders. The registry is based on the legislature's decision to facilitate access to publicly available information about persons convicted of sexual offenses. EXCEPT FOR OFFENDERS SPECIFICALLY DESIGNATED ON THIS SITE AS HIGH-RISK, THE DEPARTMENT OF PUBLIC SAFETY HAS NOT CONSIDERED OR ASSESSED THE SPECIFIC RISK OF REOFFENSE WITH REGARD TO ANY INDIVIDUAL PRIOR TO HIS OR HER INCLUSION WITHIN THIS REGISTRY AND HAS MADE NO DETERMINATION THAT ANY INDIVIDUAL INCLUDED IN THE REGISTRY IS CURRENTLY DANGEROUS. THE MAIN PURPOSE OF PROVIDING THIS DATA ON THE INTERNET IS TO MAKE INFORMATION MORE EASILY AVAILABLE AND ACCESSIBLE, NOT TO WARN ABOUT ANY SPECIFIC INDIVIDUAL. IF YOU HAVE QUESTIONS OR CONCERNS ABOUT A PERSON WHO IS NOT LISTED ON THIS SITE OR YOU HAVE QUESTIONS ABOUT SEX OFFENDER INFORMATION LISTED ON THIS SITE, PLEASE CONTACT THE DEPARTMENT OF PUBLIC

SAFETY OR YOUR LOCAL LAW ENFORCEMENT AGENCY. PLEASE BE AWARE THAT MANY NONOFFENDERS SHARE A NAME WITH A REGISTERED SEX OFFENDER. Any person who uses information in this registry to injure, harass, or commit a criminal offense against any person included in the registry or any other person is subject to criminal prosecution."

(i) The department shall post electronically general information about the sex offender registry and how the public may access registry information. Electronically posted information regarding sex offenders listed in subsection (a) of this section shall be organized and available to search by the sex offender's name and the sex offender's county, city, or town of residence.

(j) The department shall adopt rules for the administration of this section and shall expedite the process for the adoption of such rules. The department shall not implement this section prior to the adoption of such rules.

(k) If a sex offender's information is required to be posted electronically pursuant to subdivision (a)(2) of this section, the department shall list the offender's convictions for any crime listed in subdivision 5401(10) of this title, regardless of the date of the conviction or whether the offender was required to register as a sex offender based upon that conviction.

Sec. 10. 13 V.S.A. § 5411b is amended to read:

§ 5411B. DESIGNATION OF HIGH-RISK SEX OFFENDER

(a) The department of corrections ~~may~~ shall evaluate a sex offender for the purpose of determining whether the offender is "high-risk" as defined in section 5401 of this title. The designation of high-risk under this section is for the purpose of identifying an offender as one who should be subject to increased public access to his or her status as a sex offender and related information, including internet access.

(b) After notice and an opportunity to be heard, a sex offender who is designated as high-risk shall have the right to appeal de novo to the superior court in accordance with Rule 75 of the Vermont Rules of Civil Procedure.

(c) The department of corrections shall adopt rules for the administration of this section. The department of corrections shall not implement this section prior to the adoption of such rules.

(d) The department of corrections shall identify those sex offenders under the supervision of the department as of the date of passage of this act who are high-risk and shall designate them as such no later than September 1, ~~2005~~ 2009.

Sec. 11. APPLICABILITY

Secs. 5, 9, and 14 of this act (sex offender registry and Internet sex offender registry) shall apply only to the following persons:

(1) A person convicted prior to the effective date of this act who is under the supervision of the department of corrections.

(2) A person convicted on or after the effective date of this act.

(3)(A) A person convicted prior to the effective date of this act who is not under the supervision of the department of corrections and is subject to sex offender registry requirements under subchapter 3 of chapter 167 of Title 13 unless the sex offender review committee determines pursuant to the requirements of this subdivision (3) that the person:

(1) has not been charged or convicted of a criminal offense since being placed on the registry; or

(2) has successfully reintegrated into the community.

(B)(1) No person's name shall be posted electronically pursuant to subdivision (3)(A) of this section before October 1, 2009.

(2) On or before July 1, 2009, the department of public safety shall provide notice of the right to petition under this subdivision to all persons convicted prior to the effective date of this act who are not under the supervision of the department of corrections and are subject to sex offender registry requirements under subchapter 3 of chapter 167 of Title 13.

(3) A person seeking a determination from the sex offender review committee that he or she is not subject to subdivision (3)(A) of this section shall file a petition with the committee before October 1, 2009. If a petition is filed before October 1, 2009, the petitioner's name shall not be posted electronically pursuant to subdivision (3)(A) of this section until after the sex offender review committee has ruled on the petition.

* * * Sex Offender Name Changes * * *

Sec. 12. 15 V.S.A. § 817 is added to read:

§ 817. CONSULTATION OF SEX OFFENDER REGISTRY WHEN FORM FILED

Upon receipt of a change-of-name form submitted pursuant to section 811 of this title, the probate court shall request the department of public safety to determine whether the person's name appears on the sex offender registry established by section 5402 of Title 13. If the person's name appears on the registry, the probate court shall not permit the person to change his or her name

unless it finds, after permitting the department of public safety to appear, that there is a compelling purpose for doing so.

Sec. 13. 13 V.S.A. § 5402 is amended to read:

§ 5402. SEX OFFENDER REGISTRY

(a) The department of public safety shall establish and maintain a sex offender registry, which shall consist of the information required to be filed under this subchapter.

(b) All information contained in the registry may be disclosed for any purpose permitted under the law of this state, including use by:

(1) local, state and federal law enforcement agencies exclusively for lawful law enforcement activities;

(2) state and federal governmental agencies for the exclusive purpose of conducting confidential background checks;

(3) any employer, including a school district, who is authorized by law to request records and information from the Vermont criminal information center, where such disclosure is necessary to protect the public concerning persons required to register under this subchapter. The identity of a victim of an offense that requires registration shall not be released~~; and~~

(4) a person identified as a sex offender in the registry for the purpose of reviewing the accuracy of any record relating to him or her. The identity of a victim of an offense that requires registration shall not be released; and

(5) probate courts for purposes of conducting checks on persons applying for changes of name under section 811 of Title 15.

(c) The departments of corrections and public safety shall adopt rules, forms and procedures under chapter 25 of Title 3 to implement the provisions of this subchapter.

* * * Sex Offender Addresses on Internet * * *

Sec. 14. 13 V.S.A. § 5411a is amended to read:

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

* * *

(b) The department shall electronically post the following information on sex offenders designated in subsection (a) of this section:

(1) the offender's name and any known aliases;

(2) the offender's date of birth;

(3) a general physical description of the offender;

(4) a digital photograph of the offender;

(5) the offender's town of residence;

(6) the offender's address or, if the offender does not have a fixed address, other information about where the offender habitually lives, if:

(A) the offender has been designated as high-risk by the department of corrections pursuant to section 5411b of this title;

(B) the offender has not complied with sex offender treatment;

(C) there is an outstanding warrant for the offender's arrest; or

(D) the offender has been electronically posted for an offense committed in another jurisdiction which required the person's address to be electronically posted in that jurisdiction;

~~(6)~~(7) the date and nature of the offender's conviction;

~~(7)~~(8) if the offender is under the supervision of the department of corrections, the name and telephone number of the local department of corrections office in charge of monitoring the sex offender;

~~(8)~~(9) whether the offender complied with treatment recommended by the department of corrections;

~~(9)~~(10) a statement that there is an outstanding warrant for the offender's arrest, if applicable; and

~~(10)~~(11) the reason for which the offender information is accessible under this section.

* * *

(d) ~~An offender's street address shall not be posted electronically.~~ The identity of a victim of an offense that requires registration shall not be released.

* * *

* * * Risk Assessments * * *

Sec. 15. 28 V.S.A. § 204a is amended to read:

§ 204A. SEXUAL OFFENDERS; PRE-SENTENCE INVESTIGATIONS; RISK ASSESSMENTS; PSYCHOSEXUAL EVALUATIONS

* * *

(e) The department shall use assessment of offender risk for reoffense as the basis for classifying sex offenders and developing programming for sex offenders under the department.

(f) Nothing in this section shall be construed to infringe in any manner upon the department's authority to make decisions about programming for defendants or to create a right on the part of the offender to receive treatment in a particular program.

*** Statutes of Limitations in Child Sex Abuse Cases ***

Sec. 16. 13 V.S.A. § 4501 is amended to read:

§ 4501. LIMITATION OF PROSECUTIONS FOR CERTAIN FELONIES

(a) Prosecutions for aggravated sexual assault, aggravated sexual assault of a child, murder, arson causing death, and kidnapping may be commenced at any time after the commission of the offense.

(b) Prosecutions for manslaughter, sexual assault, lewd and lascivious conduct, sexual exploitation of children, grand larceny, robbery, burglary, embezzlement, forgery, bribery offenses, false claims, fraud under subsection 141(d) of Title 33, and felony tax offenses shall be commenced within six years after the commission of the offense, and not after.

(c) Prosecutions for sexual assault, lewd and lascivious conduct, and lewd or lascivious conduct with a child, alleged to have been committed against a child ~~16~~ under 18 years of age ~~or under~~, ~~shall be commenced within the earlier of the date the victim attains the age of 24 or six years from the date the offense is reported, and not after~~. ~~For purposes of this subsection, an offense is reported when a report of the conduct constituting the offense is made to a law enforcement officer by the victim~~ may be commenced at any time after the commission of the offense.

* * *

* * * Miscellaneous Provisions * * *

Sec. 17. 20 V.S.A. § 2061 is amended to read:

§ 2061. FINGERPRINTING

* * *

(m) The Vermont crime information center may electronically transmit fingerprints and photographs of accused persons to the Federal Bureau of Investigation (FBI) at any time after arrest, summons, or citation ~~for the sole purpose of identifying an individual. However, the Vermont crime information center shall not forward fingerprints and photographs to the FBI for the purpose of inclusion in the National Crime Information Center~~

~~Database until after arraignment~~. If the Vermont crime information center forwards fingerprints and photographs to the FBI ~~after arraignment~~ and the defendant is acquitted, the Vermont crime information center shall request the FBI to destroy the fingerprints and photographs. If the Vermont crime information center forwards fingerprints and photographs to the FBI ~~after arraignment~~ and all charges against the defendant are dismissed, the Vermont crime information center shall request the FBI to destroy the fingerprints and photographs, unless the attorney for the state can show good cause why the fingerprints and photographs should not be destroyed.

* * *

Sec. 18. 13 V.S.A. § 7044 is amended to read:

§ 7044. SENTENCE CALCULATION; NOTICE TO DEFENDANT

(a) Within 30 days after sentencing in all cases where the court imposes a sentence which includes a period of incarceration to be served, the commissioner of corrections shall provide to the court and the office of the defender general a calculation of the potential shortest and longest lengths of time the defendant may be incarcerated taking into account the provisions for reductions of term pursuant to 28 V.S.A. § 811 based on the sentence or sentences the defendant is serving, and the effect of any credit for time served as ordered by the court pursuant to 13 V.S.A. § 7031. The commissioner's calculation shall be a public record.

(b) In all cases where the court imposes a sentence which includes a period of incarceration to be served, the department of corrections shall provide the defendant with a copy and explanation of the sentence calculation made pursuant to subsection (a) of this section.

Sec. 19. Rule 804a of the Vermont Rules of Evidence is amended to read:

Rule 804a. HEARSAY EXCEPTION; PUTATIVE VICTIM AGE 12 OR UNDER; PERSON ~~IN NEED OF GUARDIANSHIP~~ WITH DEVELOPMENTAL DISABILITY OR MENTAL ILLNESS

(a) Statements by a person who is a child 12 years of age or under or who is a person ~~in need of guardianship as defined in 14 V.S.A. § 3061~~ with a mental illness as defined in 18 V.S.A. § 7101(14) or a developmental disability as defined in 18 V.S.A. § 8722(2) at the time the statements were made are not excluded by the hearsay rule if the court specifically finds at the time they are offered that:

(1) the statements are offered in a civil, criminal, or administrative proceeding in which the child or person ~~in need of guardianship~~ with a mental illness or developmental disability is a putative victim of sexual assault under

13 V.S.A. § 3252, aggravated sexual assault under 13 V.S.A. § 3253, aggravated sexual assault of a child under 13 V.S.A. § 3253a, lewd or lascivious conduct under 13 V.S.A. § 2601, lewd or lascivious conduct with a child under 13 V.S.A. § 2602, incest under 13 V.S.A. § 205, abuse, neglect, or exploitation under 33 V.S.A. § 6913, sexual abuse of a vulnerable adult under 13 V.S.A. § 1379, or wrongful sexual activity and the statements concern the alleged crime or the wrongful sexual activity; or the statements are offered in a juvenile proceeding under chapter 52 of Title 33 involving a delinquent act alleged to have been committed against a child 13 years of age or under or a person ~~in need of guardianship~~ with a mental illness or developmental disability if the delinquent act would be an offense listed herein if committed by an adult and the statements concern the alleged delinquent act; or the child is the subject of a petition alleging that the child is in need of care or supervision under chapter 53 of Title 33, and the statement relates to the sexual abuse of the child;

(2) the statements were not taken in preparation for a legal proceeding and, if a criminal or delinquency proceeding has been initiated, the statements were made prior to the defendant's initial appearance before a judicial officer under Rule 5 of the Vermont Rules of Criminal Procedure;

(3) the child or person ~~in need of guardianship~~ with a mental illness or developmental disability is available to testify in court or under Rule 807; and

(4) the time, content, and circumstances of the statements provide substantial indicia of trustworthiness.

(b) Upon motion of either party in a criminal or delinquency proceeding, the court shall require the child or person ~~in need of guardianship~~ with a mental illness or developmental disability to testify for the state.

Sec. 20. 24 V.S.A. § 363 is amended to read:

§ 363. DEPUTY STATE'S ATTORNEYS

A state's attorney may appoint as many deputy state's attorneys as necessary for the proper and efficient performance of his office, and with the approval of the governor, fix their pay not to exceed that of the state's attorney making the appointment, and may remove them at pleasure. Deputy state's attorneys shall be compensated only for periods of actual performance of the duties of such office. Deputy state's attorneys shall be reimbursed for their necessary expenses incurred in connection with their official duties when approved by the state's attorneys and the commissioner of finance. Deputy state's attorneys shall exercise all the powers and duties of the state's attorneys except the power to designate someone to act in the event of their own disqualification. Deputy state's attorneys may not enter upon the duties of the

office until they have taken the oath or affirmation of allegiance to the state and the oath of office required by the constitution, and until such oath together with their appointment is filed for record with the county clerk. If appointed and under oath, a deputy state's attorney may prosecute cases in another county if the state's attorney in the other county files the deputy's appointment in the other county clerk's office. In case of a vacancy in the office of state's attorney, the appointment of the deputy shall expire upon the appointment of a new state's attorney.

Sec. 20a. DEPARTMENT OF CORRECTIONS WORKING GROUP

(a) The commissioner of the department of corrections shall convene a working group for the purpose of identifying ways to provide assistance to those municipalities that are being asked to take a disproportionately high number of department supervisees into their communities. The working group, in consultation with the joint committee on corrections oversight, shall consider how to employ strategies that facilitate community reintegration that do not unduly burden the services and budgets of communities with a large number of supervisees.

(b) The working group shall comprise the commissioner and at least four representatives of communities that have a disproportionate number of supervisees as residents. Community representatives shall be selected by the commissioner, and shall represent all geographical areas of the state that have a disproportionate number of supervisees as residents.

(c) The working group shall present its report to the house committees on judiciary and on corrections and institutions, and the senate committee on judiciary no later than January 10, 2010.

Sec. 21. EFFECTIVE DATE

This act shall take effect on July 1, 2009, except as follows:

(1) Sec. 19 of this act shall take effect on July 2, 2009.

(2) Sec. 14 of this act shall take effect July 1, 2010.

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

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

Senator Campbell
Senator Mullin
Senator Sears

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

House Proposal of Amendment Concurred In

J.R.S. 26.

House proposal of amendment to joint Senate resolution entitled:

Joint resolution relating to the legalization of industrial hemp.

Was taken up.

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

Whereas, industrial hemp refers to the nondrug oilseed and fiber varieties of *Cannabis* which have less than three-tenths of one percent (0.3%) tetrahydrocannabinol (THC) and which are cultivated exclusively for fiber, stalk, and seed, and

Whereas, industrial hemp is genetically distinct from drug varieties of *Cannabis* (also known as marijuana), and the flowering tops of industrial hemp do not produce any psychoactive drug effect when smoked or ingested, and

Whereas, Congress did not intend to prohibit the production of industrial hemp when restricting the production, possession and use of marijuana, and

Whereas, the legislative history of the Marijuana Tax Act of 1937 (50 Stat. 551), the statutory source for the federal definition of marijuana, shows that industrial hemp farmers and manufacturers of industrial hemp products were assuaged by the Federal Bureau of Narcotics commissioner, that the proposed legislation bore no threat to hemp-related activities, and

Whereas, the United States Court of Appeals for the Ninth Circuit ruled in Hemp Industries v. Drug Enforcement Administration, 357 F.3d 1012 (9th Cir. 2004), that the federal Controlled Substances Act of 1970 (21 U.S.C. Sec. 812(b)) explicitly excludes nonpsychoactive industrial hemp from the definition of marijuana, and the federal government declined to appeal that decision, and

Whereas, the Controlled Substances Act of 1970 specifies the findings to which the government must attest in order to classify a substance as a Schedule I drug, and those findings include that the substance has a high potential for abuse, has no accepted medical use, and has a lack of accepted safety for use, none of which applies to industrial hemp, and

Whereas, Article 28, § 2 of the Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol, states that, "This Convention shall not apply to the cultivation of the cannabis plant exclusively for industrial purposes (fibre and seed) or horticultural purposes," and

Whereas, industrial hemp is commercially produced in more than 30 countries, including Australia, Canada, China, Great Britain, France, Germany and Romania, without undue restriction or complications, and

Whereas, American companies are forced to import millions of dollars' worth of hemp seed and fiber products, denying American farmers the opportunity to compete for and share in profits for cultivating hemp, and

Whereas, nutritious hemp foods can be found in grocery stores nationwide, and strong durable hemp fibers can be found in the interior parts of millions of American cars, and

Whereas, buildings are being constructed of a hemp and lime mixture that sequesters carbon, and

Whereas, retail sales of hemp products in this country are estimated to be $365 million annually, and

Whereas, industrial hemp is a high-value low-input crop that is not genetically modified, requires little or no pesticide use, can be dry-land farmed, and uses less fertilizer than wheat or corn, and

Whereas, the reluctance of the United States Drug Enforcement Administration to permit industrial hemp farming is denying agricultural producers in this country the ability to benefit from a high-value low-input crop, which can provide significant economic benefits to producers and manufacturers, and

Whereas, the United States Drug Enforcement Administration has the authority under the Controlled Substances Act to allow this state to regulate industrial hemp farming under existing laws and without requiring individual federal applications and licenses, and

Whereas, the Vermont General Assembly passed Act 212 in the 2007 session, which established a process wherein Vermont producers could take advantage of agronomic and commercial opportunities related to industrial hemp, *now therefore be it*

***Resolved by the Senate and House of Representatives*:**

That the General Assembly urges Congress to:

1) Recognize industrial hemp as a valuable agricultural commodity;

2) Define industrial hemp in federal law as a nonpsychoactive and genetically identifiable species of the genus *Cannabis*;

3) Acknowledge that allowing and encouraging farmers to produce industrial hemp will improve the balance of trade by promoting domestic sources of industrial hemp; and

4) Assist United States producers by removing barriers to state regulation of the commercial production of industrial hemp, *and be it further*

***Resolved*:** That the United States Drug Enforcement Administration allow the states to regulate industrial hemp farming without federal applications, licenses or fees, *and be it further*

***Resolved*:** That the Secretary of State be directed to send a copy of this resolution to the Administrator of the United States Drug Enforcement Administration, United States Secretary of Agriculture Tom Vilsack, and the Vermont Congressional delegation.

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

Committees of Conference Appointed

H. 313.

An act relating to near-term and long-term economic development.

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

Senator Illuzzi
Senator Miller
Senator Hartwell

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

H. 427.

An act relating to making miscellaneous amendments to education law.

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

Senator Starr
Senator Doyle
Senator Nitka

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

Rules Suspended; Bills Messaged

On motion of Senator Shumlin, the rules were suspended, and the following bills were severally ordered messaged to the House forthwith:

S. 47, S. 125.

Rules Suspended; Joint Senate Resolution Messaged

On motion of Senator Shumlin, the rules were suspended, and the following joint resolution was ordered messaged to the House forthwith:

J.R.S. 32.

Rules Suspended; Bills Delivered

On motion of Senator Shumlin, the rules were suspended, and the following a bill were severally ordered delivered to the Governor forthwith:

S. 70, S. 91.

Rules Suspended; Consideration Interrupted by Recess

H. 83.

Pending entry on the Calendar for notice, on motion of Senator Shumlin, the rules were suspended and Senate bill entitled:

An act relating to underground storage tanks and the petroleum cleanup fund.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Natural Resources and Energy, Senator Shumlin moved that the Senate recess until four o’clock in the afternoon.

Called to Order

At four o'clock and fifteen minutes the Senate was called to order by the President.

Consideration Resumed; Proposal of Amendment; Third Reading Ordered; Rules Suspended; Bill Passed in Concurrence with Proposal of Amendment

H. 83.

Consideration was resumed on House bill entitled:

An act relating to underground storage tanks and the petroleum cleanup fund.

Senator MacDonald, for the Committee on Natural Resources and Energy, to which the bill was referred, reported recommending that the Senate propose to the House that the bill be amended by striking out Sec. 9 in its entirety and inserting in lieu thereof the following:

Sec. 9. 10 V.S.A. § 1944 is amended to read:

§ 1944. UNDERGROUND STORAGE TANK LOAN ASSISTANCE PROGRAM

* * *

(b) Loans shall be made to the person who owns the existing motor fuel tanks or will own the new motor fuel tanks. Loans will be in accordance with terms and conditions established by the secretary which shall include but not be limited to requirements that:

* * *

(4) loans have a satisfactory maturity date, in no case later than ten years from the date of the loan. The secretary may, upon a showing of financial hardship by the person who took out the loan, extend the maturity date for not more than an additional five years.

(c) The loans will be at a zero interest rate~~, except that a person who owns five or more facilities shall have an interest rate of four percent. As used in this subsection, "facility" shall mean the property upon which a category one tank is located~~.

* * *

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

Senator MacDonald, for the Committee on Finance, to which the bill was referred, reported recommending that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Natural Resources and Energy.

Senator Bartlett, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Natural Resources and Energy.

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

Thereupon, on motion of Senator Shumlin, the rules were suspended and the bill was placed on all remaining stages of its passage in concurrence with proposal of amendment.

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

Rules Suspended; Proposals of Amendment; Third Reading Ordered; Rules Suspended; Bill Passed in Concurrence with Proposals of Amendment

H. 136.

Pending entry on the Calendar for notice, on motion of Senator Shumlin, the rules were suspended and House bill entitled:

An act relating to executive branch fees.

Was taken up for immediate consideration.

Senator Cummings, for the Committee on Finance, to which the bill was referred, reported recommending that the Senate propose to the House to amend the bill as follows:

First: In Sec. 1, 20 V.S.A. § 1815(a), in subdivisions (3) and (4), by striking out in each instance: ". No fee shall be charged under this subdivision to a defendant whom the court has determined to be indigent"

Second: In Sec. 4, 22 V.S.A. § 724(a) by striking out the following: "~~(5) Other funds as may be appropriated by the legislature.~~" and inserting in lieu thereof the following: (5) ~~Other funds as may be appropriated by the legislature~~ Revenues from the sale of publications.

Third: By striking out Secs. 11 and 12 and inserting in lieu thereof fifteen new sections to be numbered Secs 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25 to read as follows:

* * * Pet Vendors * * *

Sec. 11. 20 V.S.A. § 3681 is amended to read:

§ 3681. KENNEL PERMIT

The owner or keeper of ~~two~~ one or more domestic pets or wolf-hybrids four months of age or older kept for sale or for breeding purposes~~, except for his or her own use,~~ shall apply to the ~~municipal~~ clerk of the ~~town or city~~ municipality in which the domestic pets or wolf-hybrids are kept for a kennel permit to be issued on forms prescribed by the ~~commissioner~~ secretary and pay the clerk a fee of $10.00 for the same. The provisions of subchapters 1, 2, and 4 of this

chapter not inconsistent with this subchapter, ~~shall~~ apply to the permit which shall be in addition to other permits required. A kennel permit ~~shall expire~~ expires on March 31 next after issuance, and shall be displayed prominently on the premises on which the domestic pets or wolf-hybrids are kept. If the permit fee is not paid by April 1, the owner or keeper may thereafter procure a permit for that license year by paying a fee of ~~fifty~~ 50 percent in excess of that otherwise required. Municipal clerks shall maintain a record of the type of animals being kept by the permit holder. A person convicted of animal cruelty under 13 V.S.A. § 352 is not eligible for a kennel permit under this section.

Sec. 12. 20 V.S.A. chapter 194 is amended to read:

CHAPTER 194. WELFARE OF ANIMALS; SALE OF ANIMALS

Subchapter 1. Generally

§ 3901. DEFINITIONS

As used in this chapter, unless the context clearly requires otherwise:

(1) "Adequate feed" means the provision at suitable intervals, not exceeding 24 hours, of a quantity of wholesome foodstuff suitable for the species and age, sufficient to maintain a reasonable level of nutrition in each animal. All foodstuff shall be served in a clean and sanitary manner.

(2) "Adequate water" means a constant access to a supply of clean, fresh, potable water provided in a sanitary manner or provided at suitable intervals for the species and not to exceed 24 hours at any interval.

(3) "Ambient temperature" means the temperature surrounding the animal.

(4) "Animal" means any dog or cat, rabbit, rodent, ~~nonhuman primate,~~ bird, or other warm-blooded vertebrate but ~~shall~~ does not include horses, cattle, sheep, goats, swine, and domestic fowl.

(5) "Animal shelter" means a facility ~~which~~ that is used to house or contain animals and is owned, operated, or maintained by a duly incorporated humane society, animal welfare society, society for the prevention of cruelty to animals, or other nonprofit organization devoted to the welfare, protection, and humane treatment of animals.

(6) "Secretary" means the secretary of agriculture, food and markets.

(7) "~~Dealer~~ Pet dealer" means any person, other than a pet shop or a veterinarian, who sells, exchanges, or donates, or offers to sell, exchange, or donate animals~~, but shall not include a person who makes disposition only of offspring from animals maintained by him only as household pets~~.

(8) "Euthanize" means to humanely destroy an animal by a method producing instantaneous unconsciousness and immediate death, or by anesthesia produced by an agent ~~which~~ that causes painless loss of consciousness and death during the loss of consciousness. "Euthanasia" means the humane destruction of animals in accordance with this subdivision.

(9) "Housing facility" means any room, building, or area used to contain a primary enclosure or enclosures.

(10) ~~"Person" means any individual, partnership, firm, joint stock company, corporation, association, trust, estate, or other legal entity~~ "Consumer" means an individual who purchases an animal from a person licensed or registered under this chapter.

(11) "Pet shop" means a place of retail or wholesale business that is not part of a private dwelling where animals are bought, sold, exchanged, or offered for sale or exchange to the general public.

(12) "Primary enclosure" means any structure used to immediately restrict an animal or animals, excluding household pets, to a limited amount of space, such as a room, pen, cage, compartment, or hutch.

(13) "Public auction" means any place or establishment where dogs or cats are sold at auction to the highest bidder whether individually, as a group, or by weight.

(14) "Fair" means any public or privately operated facility where animals are confined for the purpose of display ~~and/or~~ or sale or both or for viewing.

(15) ~~"Pet merchant" means any person who operates a pet shop or who acts as a dealer.~~ "Rescue organization" means an organization that accepts more than five animals in a calendar year for the purpose of finding adoptive homes for the animals and that is one or more of the following:

(A) Licensed as a pet shop.

(B) A nonprofit organization under Section 501(c)(3) of the Internal Revenue Code, but is not an animal shelter.

(C) Registered as an animal shelter with the agency of agriculture, food and markets under section 3903 of this title.

Subchapter 2. Animal Welfare

§ 3902. REGISTRATION OF FAIRS

No person may operate a fair as defined under section 3901 of this title unless a certificate of registration for the fair has been granted by the secretary.

Application for the certificate shall be made in a manner provided by the secretary. No fee shall be required for the certificate. Certificates of registration shall be valid for a period of one year or until revoked, and may be removed for like periods upon application in the manner provided.

§ 3903. REGISTRATION OF ANIMAL SHELTERS AND RESCUE ORGANIZATIONS

(a) No person may operate an animal shelter ~~after the expiration of six months following the effective date of this chapter~~ or rescue organization unless a certificate of registration for the animal shelter or rescue organization has been granted by the secretary. Application for the certificate shall be made in the manner provided by the secretary. No fee ~~shall be~~ is required for the certificate. Certificates of registration ~~shall be~~ are valid for a period of one year or until revoked, and may be renewed for like periods upon application in the manner provided.

(b) An animal shelter or rescue organization registered under this ~~chapter~~ subchapter shall not accept an animal unless the ~~donor~~ person transferring the animal to the animal shelter provides the following information: the name and address of the ~~donor~~ person transferring the animal and, if known, the name of the animal, its vaccination history, and other information concerning the background, temperament, and health of the animal.

§ 3905. PUBLIC AUCTIONS

No person may operate a public auction as defined in this chapter ~~after the expiration of six months following the effective date of this chapter~~ unless a license to operate the auction has been granted by the secretary. The license period shall be April 1 to March 31, and the license fee ~~shall be~~ is $10.00 for each license period or part thereof.

§ 3906. LICENSING OF PET ~~MERCHANTS~~ SHOPS

~~(a)~~ No person may transact business as a pet ~~merchant, as defined in this chapter,~~ shop unless a license for that purpose has been granted by the secretary to that person. Application for the license shall be made in the manner provided by the secretary. The license period shall be April 1 to March 31, and the license fee shall be $150.00 for each license period or part thereof.

§ 3907. DENIAL OR REVOCATION OF REGISTRATION OR LICENSE

Issuance of a certificate of registration may be denied to any animal shelter, rescue organization, or fair, or a license denied to any public auction, ~~or~~ pet ~~merchants~~ shop, or any certificate or license previously granted under this ~~chapter,~~ subchapter may be revoked by the secretary if, after public hearing, it

is determined that the housing facilities or primary enclosures are inadequate for the purposes of this ~~chapter~~ subchapter, or if the feeding, watering, sanitizing, and housing practices of the animal shelter, rescue organization, fair, public auction, pet ~~merchant~~ shop, as the case may be, are not consistent with this ~~chapter~~ subchapter or with rules adopted under this ~~chapter~~ subchapter.

§ 3908. ADOPTION OF ~~REGULATIONS~~ RULES

The secretary may ~~as he deems necessary~~ adopt, amend, revise, and repeal rules consistent with this ~~chapter~~ subchapter for the purpose of carrying out its purposes. The rules may include~~, but need not be limited to,~~ provisions relating to humane transportation to and from registered or licensed premises, records of purchase and sale, identification of animals, primary enclosures, housing facilities, sanitation, euthanasia, ambient temperatures, feeding, watering, and adequate veterinary medical care, with respect to animals kept or cared for at premises licensed or registered under this ~~chapter~~ subchapter. The secretary may ~~at his discretion,~~ adopt in whole or in part those portions of the rules of the secretary of agriculture under Public Law 89-544, commonly known as the Laboratory Animal Welfare Act~~, which~~ that are consistent with the purposes of this ~~chapter~~ subchapter.

§ 3909. SALE OF ANIMALS BY HUMANE SOCIETY

The board of directors of an incorporated humane society shall determine the method of disposition of animals released by it. Any proceeds derived from the sale of animals by the society shall be paid to the clerk or treasurer of the humane society and no part of the proceeds shall accrue to any individual. Proceeds from the sale of animals by any person authorized by a municipality to dispose of such animals shall revert to the treasury of the municipality.

§ 3910. EXCEPTIONS

This ~~chapter~~ subchapter shall not apply to any place or establishment operated as an animal hospital under the supervision of a duly licensed veterinarian in connection with the treatment, alleviation, or prevention of diseases.

§ 3911. PENALTIES

(a) Any person licensed or registered under this ~~chapter,~~ subchapter who fails to provide animals under the person's care or custody with adequate food or adequate water~~, as defined in section 3901 of this title,~~ or who fails to house animals in the person's care or custody in a manner which is adequate for their welfare, shall be fined not more than $500.00.

(b) Any person who operates a fair~~,~~ or public auction~~,~~ or who transacts business as a pet ~~merchant,~~ shop, animal shelter, or rescue organization without being duly licensed or without possessing a proper certificate of registration, as the case may be, as required under this ~~chapter~~ subchapter, or who violates any provision of this chapter or of any rule lawfully adopted under its authority for which no other penalty is provided~~,~~ shall be fined not more than $300.00 or imprisoned for not more than six months~~,~~ or both.

(c) The secretary may assess administrative penalties under sections 15–17 of Title 6, not to exceed $1,000.00, for violations of this chapter.

* * *

§ 3914. SPECIAL FUNDS

Fees collected under this chapter shall be credited to a special fund and shall be available to the agency of agriculture, food and markets to offset the cost of providing the services.

Subchapter 3. Sale of Dogs and Cats

§ 3921. SALE OF A DOG OR CAT; RESTITUTION

(a) If, within seven days following the sale of a dog or cat, a veterinarian of the consumer's choosing certifies that the dog or cat is unfit for purchase due to illness or the presence of signs of contagious or infectious disease or if, within one year, the veterinarian certifies that the dog or cat has a congenital malformation or hereditary disease, the consumer may act under subdivision (1) of this subsection, or if mutually agreed upon, under subdivision (2) or (3) of this subsection. The consumer may have the right to one of the following:

(1) Return the dog or cat and receive a full refund of the purchase price, including sales tax, and receive reasonable veterinary fees related to certification under this section. A veterinary finding of common intestinal parasites in an otherwise healthy pet is not grounds for declaring a dog or cat unfit, nor is an injury or illness sustained subsequent to the consumer taking possession of a dog or cat.

(2) Return the dog or cat in exchange for another dog or cat of the consumer's choice of equivalent value and receive reasonable veterinary costs related to certification under this subsection.

(3) Retain the dog or cat and receive reimbursement from the pet dealer or pet shop for reasonable veterinary service for the purpose of curing or attempting to cure the dog or cat. In no case shall this service exceed the purchase price of the dog or cat. Veterinary service is reasonable if it compares to similar service rendered by other veterinarians in the area, but in no case may it cover costs not directly related to the certification of unfitness.

(b) The secretary shall prescribe a form for and the content of the certificate to be used under subsection (a) of this section. The form shall include an identification of the type of dog or cat, the owner, date, and diagnosis, the treatment recommended, if any, and an estimated cost of the treatment, and the provisions of subsection (a) of this section.

(c) Every pet dealer or pet shop that sells a dog or cat to a consumer shall provide the consumer at the time of sale with the written form prescribed by the secretary. The notice may be included in a written contract, in a certificate of the history of the dog or cat, or in another separate document.

(d) The secretary shall prescribe by rule other information to be provided in writing by the pet dealer or pet shop to the consumer at the time of sale. This information shall include a description of the dog or cat, including breed; date of purchase; the name, address, and telephone number of the consumer; and the purchase price. Certification of this document occurs when signed by the pet dealer or pet shop.

(e) Refund or reimbursement under subsection (a) of this section shall be made within ten business days following receipt of the signed veterinary certification. The certification shall be presented to the pet dealer or pet shop within three business days by the consumer.

§ 3922. CHALLENGE BY PET DEALER OR PET SHOP

A pet dealer or pet shop may contest a demand for reimbursement, refund, or exchange under section 3921 of this title by requiring the consumer to produce the dog or cat for examination by a licensed veterinarian of the pet dealer's or pet shop's designation. If the consumer and the pet dealer or pet shop are unable to reach an agreement under provisions of this section within ten business days of an examination, the consumer may initiate an action in a court of competent jurisdiction in the locality where the consumer resides to obtain a refund, exchange, or reimbursement. Nothing in this section shall limit the rights or remedies otherwise available to the consumer under any other law.

§ 3923. ADMINISTRATIVE PENALTIES

The secretary may assess administrative penalties under sections 15–17 of Title 6, not to exceed $1,000.00, for violations of this chapter.

§ 3924. EXEMPTIONS

A duly incorporated humane society, rescue organization, or animal shelter that offers dogs or cats for adoption is exempt from the requirements of this subchapter, except that dogs or cats that are imported into the state for sale,

resale, exchange, or donation are not exempt when offered for adoption by a humane society, rescue organization, or animal shelter.

Subchapter 4. Health Certificates for Importation

§ 3931. HEALTH CERTIFICATE FOR TRANSPORT INTO STATE

A dog, cat, ferret, or wolf-hybrid imported into the state for sale, resale, exchange, or donation shall be accompanied by an official health certificate or similar certificate of inspection for the dog, cat, ferret, or wolf-hybrid issued by a veterinarian licensed in the state or country of origin. The certificate of health inspection shall certify the following:

(1) That the dog, cat, ferret, or wolf-hybrid has been examined and is free of visible signs of infections or contagious or communicable disease.

(2) That if the dog, cat, ferret, or wolf-hybrid is age-eligible, the dog, cat, ferret, or wolf-hybrid has a current rabies vaccination.

§ 3932. RULEMAKING

The agency of agriculture, food and markets may adopt rules regarding the issuance and contents of a health certificate required under this subchapter.

Sec. 13. 20 V.S.A. § 3815 is amended to read:

§ 3815. DOG, CAT, AND WOLF-HYBRID SPAYING AND NEUTERING PROGRAM

* * *

(c) Only a dog, cat, or wolf-hybrid acquired by adoption is eligible for funding from the animal spaying and neutering program established under this section, except that a dog, cat, or wolf-hybrid imported into the state for sale, resale, exchange, or donation is not eligible for funding from the animal spaying and neutering program established under this section. For purposes of this subsection, a nominal fee or donation required for adoption of a dog, cat, or wolf-hybrid shall not constitute the purchase of the animal.

Sec. 14. 20 V.S.A. § 3546 is amended to read:

§ 3546. INVESTIGATION OF ~~VICIOUS~~ DOMESTIC PETS OR WOLF-HYBRIDS; ORDER

* * *

~~(c) The procedures provided in this section shall not apply if the voters of a municipality, at a special or annual meeting duly warned for the purpose, have authorized the legislative body of the municipality to regulate domestic pets or wolf-hybrids by ordinances that are inconsistent with this section, in which case those ordinances shall apply.~~

Sec. 15. 20 V.S.A. § 3549 is amended to read:

§ 3549. DOMESTIC PETS OR WOLF-HYBRIDS, REGULATION BY ~~TOWNS~~ MUNICIPALITIES

The legislative body of a ~~city or town~~ municipality by ordinance may regulate the keeping, leashing, muzzling, restraint, impoundment, and, in conformance with section 3546 of this title, destruction of domestic pets or wolf-hybrids and their running at large.

Sec. 16. 24 V.S.A. § 2291is amended to read:

§ 2291. ENUMERATION OF POWERS

For the purpose of promoting the public health, safety, welfare, and convenience, a ~~town, city,~~ municipality or incorporated village ~~shall have~~ has the following powers:

* * *

(10) To regulate the keeping of dogs, and to provide for their leashing, muzzling, restraint, and impoundment~~, and destruction~~.

* * *

* * * Animal Control Officers * * *

Sec. 17. 13 V.S.A. § 351(4) is amended to read:

(4) "Humane officer" or "officer" means any law enforcement officer as defined in 23 V.S.A. § 4(11), auxiliary state police officers, deputy game wardens, humane society officer, elected or appointed animal control officer, employee or agent, local board of health officer or agent, or any officer authorized to serve criminal process.

Sec. 18. REPEAL

Chapter 199 of Title 20 (sale of dogs and cats) is repealed.

* * * Fish and Wildlife * * *

Sec. 19. 10 V.S.A. §4081(g) is amended to read:

(g) If the board finds that an antlerless season is necessary to maintain the health and size of the herd, the department shall administer an antlerless deer program. Annually, the board shall determine how many antlerless permits to issue in each wildlife management unit. For a nonrefundable fee of $10.00 for residents and $25.00 for nonresidents a person may apply for a permit. Each person may submit only one application for a permit. The department shall allocate the permits in the following manner:

(1) A Vermont landowner, as defined in section 4253 of this title, who owns 25 or more contiguous acres and who applies shall receive a permit for antlerless hunting in the management unit on which the land is located before any are given to people eligible under subdivision (2) of this subsection. If the land is owned by more than one individual, corporation or other entity, only one permit shall be issued. Landowners applying for antlerless permits under this subdivision shall not, at the time of application or thereafter during the regular hunting season, post their lands except under the provisions of section 4710 of this title. If the number of landowners who apply exceeds the number of permits for that district, the department shall award all permits in that district to landowners by lottery.

(2) ~~All remaining permits~~ Permits remaining after allocation pursuant to subdivision (1) of this subsection shall be issued by lottery.

(3) Any permits remaining after permits have been allocated pursuant to subdivisions (1) and (2) of this subsection shall be issued by the department for a $10.00 fee for residents. Ten percent of ~~these shall~~ the remaining permits may be issued to nonresident applicants for a $25.00 fee.

* * * Criminal and Civil Penalty Assessments * * *

Sec. 20. 13 V.S.A. § 7282 is amended to read:

§ 7282. ASSESSMENT

(a) In addition to any penalty or fine imposed by the court or judicial bureau for a criminal offense or any civil penalty imposed for a traffic violation, including any violation of a fish and wildlife statute or regulation, violation of a motor vehicle statute, or violation of any local ordinance relating to the operation of a motor vehicle, except violations relating to seat belts and child restraints and ordinances relating to parking violations, the clerk of the court or judicial bureau shall levy an additional fee of:

* * *

(8)(A) For any offense or violation committed after June 30, 2006, but before July 1, 2008, $26.00, of which $18.75 shall be deposited in the victims' compensation special fund and $2.25 shall be deposited into the criminal justice training council special fund established in section 2363 of Title 20.

* * *

(C) For any offense or violation committed after June 30, 2009, $41.00, of which $33.75 shall be deposited in the victims' compensation special fund, and $2.25 shall be deposited into the criminal justice training council special fund established in section 2363 of Title 20.

(b) The fees imposed by this section shall be used for the purposes set out in section 7281 of this title and shall not be waived by the court.

(c) SIU ASSESSMENT Notwithstanding section 7281 of this title and subsection (b) of this section, in addition to any penalty or fine imposed by the court or judicial bureau for a criminal offense committed after July 1, 2009, the clerk of the court or judicial bureau shall levy an additional fee of $100.00 to be deposited with the specialized investigative unit grants board created in 24 V.S.A. § 1940(c) to be used to pay for staffing for specialized investigative units.

* * * Municipal Clerks * * *

Sec. 21 . 32 V.S.A. § 1671(a) is amended to read:

(a) For the purposes of this section a "page" is defined as a single side of a leaf of paper on which is printed, written, or otherwise placed information to be recorded or filed. The maximum covered area on a page shall be 71/2 inches by 14 inches. All letters shall be at least one-sixteenth inch in height or in at least eight point type. Unless otherwise provided by law, the fees to town clerks shall be as follows:

(1) For recording a trust mortgage deed as provided in section 1155 of Title 24, $10.00 per page;

(2) For filing or recording a copy of a complaint to foreclose a mortgage as provided in subsection 4523(b) of Title 12, ~~$6.00~~ $10.00 per page;

* * *

(6) Notwithstanding any other provision of law to the contrary, for the recording or filing, or both, of any document that is to become a matter of public record in the town clerk's office, or for any certified copy of such document, a fee of ~~$8.00~~ $10.00 per page shall be charged; except that for the recording or filing, or both, of a property transfer return, a fee of ~~$8.00~~ $10.00 shall be charged;

* * *

(8) For survey plats filed in accordance with chapter 17 of Title 27, a fee of ~~$6.00~~ $15.00 per 11 inch by 17 inch sheet, ~~$8.00~~ $15.00 per 18 inch by 24 inch sheet, and ~~$10.00~~ $15.00 per 24 inch by 36 inch sheet shall be charged.

Sec. 22. 32 V.S.A. § 9606(d) is amended to read:

(d) For receiving a property transfer return and tax payment, if any, under this chapter, there shall be paid to the town clerk at the time of filing a fee of ~~$7.00~~ $10.00.

* * * Home Health Agencies * * *

Sec. 23. 33 V.S.A. §1955a(a) is amended to read:

(a) Beginning July 1, ~~2005~~ 2009, each home health agency's assessment shall be ~~18.45~~ 17.69 percent of its net operating revenues from core home health care services, excluding revenues for services provided under Title XVIII of the federal Social Security Act. The amount of the tax shall be determined by the director based on the home health agency's most recent audited financial statements at the time of submission, a copy of which shall be provided on or before December 1 of each year to the office. For providers who begin operations as a home health agency after January 1, 2005, the tax shall be assessed as follows:

* * *

* * * Executive Branch Fees * * *

Sec. 24. EXECUTIVE BRANCH FEES; 2010 LEGISLATIVE REVIEW

Notwithstanding 32 V.S.A. §605(b), in addition to the fee report and request covering all fees listed in 32 V.S.A. §605(b)(2), the governor shall also submit a fee report and request covering the fees listed in 32 V.S.A. §605(b)(3) to the general assembly on the third Tuesday of the 2010 legislative session.

Sec. 25. EFFECTIVE DATES

This act shall take effect on July 1, 2009, except that this section and Secs. 1, 2, 6, 7, and 24 shall take effect on passage.

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

Thereupon, on motion of Senator Shumlin, the rules were suspended and the bill was placed on all remaining stages of its passage in concurrence with proposals of amendment.

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

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

H. 15.

Pending entry on the Calendar for notice, on motion of Senator Shumlin, the rules were suspended and the report of the Committee of Conference on House bill entitled:

An act relating to aquatic nuisance control.

Was taken up for immediate consideration.

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

To the Senate and House of Representatives:

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

H. 15. An act relating to aquatic nuisance control.

Respectfully reports that it has met and considered the same and recommends that the House accede to the Senate proposal of amendment, and that the bill be further amended as follows:

First: In Sec. 1, 10 V.S.A. § 1451, by striking out subdivision (2) in its entirety and inserting in lieu thereof the following:

(2) It is the policy of the state of Vermont to prevent the infestation and proliferation of invasive species in the state that result in negative environmental impacts, including habitat loss and a reduction in native biodiversity along with adverse social and economic impacts and impacts to the public health and safety.

(3) The agency of agriculture, food and markets and the department of forests, parks and recreation have established an informal working group to address invasive and noxious weeds, but additional authority is necessary for the agency of natural resources to adequately respond to invasive aquatic nuisance species.

And by renumbering the following subdivisions accordingly.

Second: By striking out Sec. 10c in its entirety and inserting in lieu thereof a new Sec. 10c to read as follows:

Sec. 10c. AGENCY OF NATURAL RESOURCES REPORT ON INVASIVE SPECIES

On or before January 15, 2010, the agency of natural resources, after consultation with the invasive and noxious plants working group administered by the agency of agriculture, food, and markets and the department of forests, parks and recreation, shall submit to the house and senate committees on natural resources and energy, the house and senate committees on agriculture, and the house committee on fish, wildlife and water resources a report that shall include the following:

(1) A summary of the economic and environmental impact of invasive species on the state;

(2) A summary of how invasive species are currently regulated in the state;

(3) A summary of how state agencies and affected state industry respond to invasive species outbreaks in the state;

(4) Recommendations for improving state regulation of and response to the threat and spread of invasive species; and

(5) Recommendations for providing and coordinating public education and outreach regarding invasive species.

Third: In Sec. 11, subsection (a), by striking out the second period at the end of the sentence

RICHARD J. MCCORMACK
ROBERT M. HARTWELL
DIANE SNELLING

Committee on the part of the Senate

STEVEN C. ADAMS
JIM MCCULLOUGH
KATE WEBB

Committee on the part of the House

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

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

H. 86.

Pending entry on the Calendar for notice, on motion of Senator Doyle, the rules were suspended and the report of the Committee of Conference on House bill entitled:

An act relating to the regulation of professions and occupations.

Was taken up for immediate consideration.

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

To the Senate and House of Representatives:

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

H. 86. An act relating to the regulation of professions and occupations.

Respectfully reports that it has met and considered the same and recommends as follows:

First: That the Senate recede from its *Third* proposal of amendment;

Second: That the House accede to the Senate's First, Second, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth proposals of amendment;

WILLIAM T. DOYLE
RANDY BROCK
JEANETTE K. WHITE

Committee on the part of the Senate

DEBBIE EVANS
RONALD E. HUBERT
LAWRENCE TOWNSEND

Committee on the part of the House

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

Rules Suspended; Proposal of Amendment; Third Reading Ordered; Rules Suspended; Bill Passed in Concurrence with Proposal of Amendment

H. 453.

Pending entry on the Calendar for notice, on motion of Senator Shumlin, the rules were suspended and House bill entitled:

An act relating to receivership of long-term care facilities.

Was taken up for immediate consideration.

Senator Campbell, for the Committee on Judiciary, to which the bill was referred, reported recommending that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 33 V.S.A. chapter 71 is amended to read:

CHAPTER 71. ~~LICENSING OF NURSING HOMES~~ REGULATION OF LONG-TERM CARE FACILITIES

Subchapter 1. General Provisions

§ 7101. POLICY

The purpose of this chapter is to provide for the development, establishment and enforcement of standards for the construction, maintenance ~~and~~, operation,

provision of receivership and dissolution of ~~nursing homes and similar institutions~~ long-term care facilities in which medical, nursing, or other ~~remedial~~ care is rendered, ~~and of homes for the aged,~~ which will promote safe surroundings, adequate care, and humane treatment, safeguard the health of, safety of, and continuity of care to residents, and protect residents from the adverse health effects caused by abrupt or unsuitable transfer of such persons cared for in these facilities.

§ 7102. DEFINITIONS

~~The following words and phrases, as used in~~ For purposes of this chapter~~, have the following meanings unless otherwise provided~~:

~~(1) "Residential care home" means a place, however named, excluding a licensed foster home, which provides, for profit or otherwise, room, board and personal care to three or more residents unrelated to the home operator. Residential care homes shall be divided into two groups, depending upon the level of care they provide, as follows:~~

~~(A) Level III, which provides personal care, defined as assistance with meals, dressing, movement, bathing, grooming, or other personal needs, or general supervision of physical or mental well-being, including nursing overview and medication management as defined by the licensing agency by rule, but not full-time nursing care; and~~

~~(B) Level IV, which provides personal care, as described in subdivision (A), or general supervision of the physical or mental well-being of residents, including medication management as defined by the licensing agency by rule, but not other nursing care;~~

~~(2) "Therapeutic community residence" means a place, however named, excluding a hospital as defined by statute or the Vermont state hospital, which provides, for profit or otherwise, short-term individualized treatment to three or more residents with major life adjustment problems, such as alcoholism, drug abuse, mental illness or delinquency;~~

~~(3) "Licensing agency" means the agency of human services, or the department or division within the agency as the secretary of human services may designate;~~

~~(4) "Maternity home" means a place, other than a hospital as defined by statute, which maintains and operates facilities, for profit or otherwise, accommodating a person or persons, unrelated to the home operator, who require maternity care;~~

~~(5) "Maternity care" means a high level of nursing care, prescribed by the physician, and medical care required by obstetrical patients prior to~~

~~delivery, during delivery, and for such period following delivery as the physician may indicate. The term "maternity care" shall also include care of the newborn in accordance with procedures and techniques recommended in "Hospital Care of Newborn Infants," most recent edition published by the American Academy of Pediatrics;~~

~~(6) "Nursing care" means the performance of services necessary in caring for the sick or injured that require specialized knowledge, judgment and skill and meet the standards of the nursing regimen, or the medical regimen, or both, as defined in 26 V.S.A. § 1572(4) and (5);~~

~~(7) "Nursing home" means an institution or distinct part of an institution which is primarily engaged in providing to its residents any of the following:~~

~~(A) Skilled nursing care and related services for residents who require medical or nursing care.~~

~~(B) Rehabilitation services for the rehabilitation of injured, disabled, or sick persons.~~

~~(C) On a 24-hour basis, health related care and services to individuals who because of their mental or physical condition require care and services which can be made available to them only through institutional care;~~

~~(8) "Person" means any individual, corporation, partnership, association, state, subdivision or agency of the state, or any other entity. Whenever used in any provision of this chapter which prescribes or imposes a fine or imprisonment, or both, the term "person," as applied to a firm, partnership or association, shall include the members thereof and, as applied to a corporation, the officers thereof; a firm, partnership, association or a corporation may be subjected as an entity to the payment of a fine;~~

(1) "Assisted living residence" means a program which combines housing, health and supportive services for the support of resident independence and aging in place. Within a homelike setting, assisted living units offer, at a minimum, a private bedroom, private bath, living space, kitchen capacity, and a lockable door. Assisted living promotes resident self-direction and active participation in decision-making while emphasizing individuality, privacy, and dignity.

~~(9)~~(2) "Facility" means a residential care home, ~~maternity home,~~ nursing home, assisted living residence, home for the terminally ill, or therapeutic community residence licensed or required to be licensed pursuant to the provisions of this chapter.

~~(10)~~(3) "Home for the terminally ill" means a place providing services specifically for three or more dying people, including room, board, personal

care and other assistance for the residents' emotional, spiritual, and physical well-being. ~~A home for the terminally ill shall not be considered a nursing home, residential care home or any other facility regulated by this chapter.~~

~~(11) "Assisted living residence" means a program which combines housing, health and supportive services for the support of resident independence and aging in place. Within a homelike setting, assisted living units offer, at a minimum, a private bedroom, private bath, living space, kitchen capacity, and a lockable door. Assisted living promotes resident self-direction and active participation in decision-making while emphasizing individuality, privacy and dignity.~~

(4) "Licensee" means any person, other than a receiver appointed under this chapter, which is licensed or required to be licensed to operate a facility.

(5) "Licensing agency" means the agency of human services or the department or division within the agency as the secretary of human services may designate.

(6) "Nursing care" means the performance of services necessary in caring for the sick or injured that require specialized knowledge, judgment, and skill and meet the standards of nursing as defined in 26 V.S.A. § 1572.

(7) "Nursing home" means an institution or distinct part of an institution which is primarily engaged in providing to its residents any of the following:

(A) Skilled nursing care and related services for residents who require medical or nursing care.

(B) Rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

(C) On a 24-hour basis, health-related care and services to individuals who because of their mental or physical condition require care and services which can be made available to them only through institutional care.

(8) "Owner" means the holder of the title to the property on or in which the facility is maintained.

(9) "Resident" means any person who lives in and receives services or care in a facility.

(10) "Residential care home" means a place, however named, excluding a licensed foster home, which provides, for profit or otherwise, room, board, and personal care to three or more residents unrelated to the home operator. Residential care homes shall be divided into two groups, depending upon the level of care they provide, as follows:

(A) Level III, which provides personal care, defined as assistance with meals, dressing, movement, bathing, grooming, or other personal needs, or general supervision of physical or mental well-being, including nursing overview and medication management as defined by the licensing agency by rule, but not full-time nursing care; and

(B) Level IV, which provides personal care, as described in subdivision (A) of this subdivision (10), or general supervision of the physical or mental well-being of residents, including medication management as defined by the licensing agency by rule, but not other nursing care.

(11) "Therapeutic community residence" means a place, however named, excluding a hospital as defined by statute or the Vermont state hospital, which provides, for profit or otherwise, short-term individualized treatment to three or more residents with major life adjustment problems, such as alcoholism, drug abuse, mental illness, or delinquency.

Subchapter 2. Licensing of Long-Term Care Facilities

§ 7103. LICENSE

(a) A person shall not operate a nursing home, ~~maternity home,~~ assisted living residence, home for the terminally ill, residential care home or therapeutic community residence without first obtaining a license.

(b) A person shall not operate a nursing home as defined in this chapter or as defined in chapter 46 of Title 18 except under the supervision of an administrator licensed in the manner provided in chapter 46 of Title 18.

(c) ~~A person shall not operate a home for the terminally ill without first obtaining a license.~~

~~(d)~~ Residents of a home for the terminally ill ~~shall be admitted to a Medicare-certified hospice and affiliated programs and~~ shall receive necessary medical and nursing services, which may be provided through outside providers. ~~The licensing standards for a home for the terminally ill shall be adopted by the licensing agency after consultation with provider groups, consumers and the general public as determined by the licensing agency.~~

* * *

§ 7105. LICENSE REQUIREMENTS

(a) Upon receipt of an application for license, the licensing agency shall issue a full license when it has determined that the applicant and facilities meet the standards established by the licensing agency. Licenses issued hereunder shall expire one year after date of issuance, or upon such uniform dates annually as the licensing agency may prescribe by regulation. Licenses shall

be issued only for the premises and persons named in the application and shall not be transferable or assignable. Licenses shall be posted in a conspicuous place on the licensed premises.

(b) In its discretion the licensing agency may issue a temporary license permitting operation of a nursing home, assisted living residence, therapeutic community residence, residential care home or ~~maternity~~ home for the terminally ill for such period or periods and subject to such conditions as the licensing agency deems proper, but in no case shall a nursing home, assisted living residence, therapeutic community residence, residential care home or ~~maternity~~ home for the terminally ill operate under a temporary license or renewal thereof for a period exceeding ~~thirty-six~~ 36 months.

(c) ~~[Deleted.]~~ An owner, licensee, or administrator shall disclose to the licensing agency any changes in the ownership interests in the company, ownership of any real property, management of the facility, or corporate structure that occur after the date the license is issued. The licensing agency may require the owner, licensee, or administrator to apply for a new license.

~~(d) In its discretion the licensing agency may issue a temporary license permitting operation of a residential care home for such period or periods and subject to such conditions as the licensing agency deems proper, but in no case shall a residential care home operate under a temporary license or renewal thereof for a period exceeding thirty-six months.~~

* * *

§ 7107. UNLICENSED HOMES

(a) The licensing agency shall promulgate regulations governing the identification of unlicensed residential care homes, nursing homes, assisted living residences, therapeutic community residences, and ~~maternity~~ homes for the terminally ill.

* * *

(e)(1) Within 30 days of the date a license to operate any facility pursuant to this section is revoked or voluntarily relinquished, the operator shall obtain a new license or shall cause all of the residents in the facility to be moved promptly.

(2) The facility shall be responsible for securing suitable alternative placements for the residents and shall be responsible for the cost of the planning for the transition and transportation of the residents to the alternative placements.

(3) Failure to comply with this subsection may result in penalties being assessed against the operator, owner or the facility as provided for in section 7111 of this title.

* * *

§ 7111. ENFORCEMENT; PROTECTION OF RESIDENTS

(a) The licensing agency shall enforce provisions of this chapter to protect residents of facilities.

(b) The licensing agency may require a facility to take corrective action to eliminate a violation of a rule or provision of this chapter within a specified period of time. If the licensing agency does require corrective action:

(1) the licensing agency may, within the limits of resources available to it, provide technical assistance to the facility to enable it to comply with the provisions of this chapter;

(2) the facility shall provide the licensing agency with proof of correction of the violation within the time specified; and

(3) if the facility has not corrected the violation by the time specified, the licensing agency may take such further action as it deems appropriate under this section.

(c)(1) The licensing agency may impose an administrative penalty against a facility for failure to correct a violation or failure to comply with a plan of corrective action for such a violation, as follows:

~~(1)~~(A) up to $5.00 per resident or $50.00, whichever is greater, for each day a violation remains uncorrected if the rule or provision violated was adopted primarily for the administrative purposes of the licensing agency;

~~(2)~~(B) up to $8.00 per resident or $80.00, whichever is greater, for each day a violation remains uncorrected if the rule or provision violated was adopted primarily to protect the welfare or the rights of residents; and

~~(3)~~(C) up to $10.00 per resident or $100.00, whichever is greater, for each day a violation remains uncorrected if the rule or provision violated was adopted primarily to protect the health or safety of residents~~;~~.

(2) The licensing agency may impose an administrative penalty against a facility of up to $10.00 per resident or $100.00, whichever is greater, for each day a facility operates without a license when either:

(A) the facility has not obtained a license; or

(B) a license has been revoked or voluntarily relinquished and the operator fails to obtain a new license or to cause all of the residents to be moved promptly and appropriately.

~~(4)~~(3) ~~for~~ For purposes of imposing administrative penalties under this subsection, a violation shall be deemed to have first occurred as of the date of the notice of violation.

(d) The licensing agency may, after notice and an opportunity for a hearing, suspend, revoke, modify or refuse to renew a license upon any of the following grounds:

(1) violation by the licensee of any of the provisions of this chapter or the rules adopted pursuant to this chapter;

(2) conviction of a crime for conduct which demonstrates the unfitness of the licensee or the principal owner to operate a facility under this chapter;

(3) conduct inimical to the public health, morals, welfare and safety of the people of the state of Vermont in the maintenance and operation of the premises for which a license is issued;

(4) financial incapacity of the licensee to provide adequate care and services; or

(5) failure to comply with a final decision or action of the licensing agency.

(e) In the interest of the public health, safety and pursuant to the provisions for the summary suspension of a license in subsection 814(c) of Title 3, the licensing agency shall suspend the license of a nursing home which has been administered by a provisional administrator licensed under section 2061 of Title 18 for the preceding 90 days and which nursing home is not presently administered by an administrator who is permanently licensed under section 2055 of Title 18.

(f) The licensing agency may suspend admissions to a facility or transfer residents from a facility to an alternative placement, or both for a violation which may directly impair the health, safety or rights of residents or for operating without a license. Residents subject to transfer shall

(1) be allowed to participate in the decision-making process of the agency concerning the selection of an alternative placement;

(2) receive adequate notice of a pending transfer; and

(3) be allowed to contest their transfer in accordance with the procedures in section 7118 of this title.

(g) The licensing agency, the attorney general or a resident may bring an action for injunctive relief against a facility in accordance with the Rules of Civil Procedure to enjoin any act or omission which constitutes a violation of this chapter or rules adopted pursuant to this chapter.

(h) The ~~licensing agency~~ commissioner of disabilities, aging, and independent living, the attorney general, or a resident or a resident's legal representative may bring an action ~~in accordance with the Rules of Civil Procedure for appointment of a receiver for a facility, if there are grounds to support suspension, revocation, modification or refusal to renew the facility's license and alternative placements for the residents are not readily available~~ as provided for in subchapter 3 of this chapter.

~~§ 7113. INTERPRETATION~~

~~This chapter shall not be construed in any way to restrict or modify any law pertaining to the placement and adoption of children or the care of unmarried mothers.~~

* * *

Sec. 2. 33 V.S.A. chapter 71, subchapter 3 is added to read:

Subchapter 3. Receivership Proceedings

§ 7201. POLICY

The purpose of this subchapter is to provide for the receivership of a long-term care facility in order to ensure safe surroundings, adequate care, and humane treatment; to safeguard the health of, safety of, and continuity of care to residents; and to protect residents from the adverse health effects caused by abrupt or unsuitable transfer of such persons cared for in these facilities.

§ 7202. APPLICATION FOR RECEIVER

(a) The commissioner of disabilities, aging, and independent living or the attorney general may file a complaint in the superior court of the county in which the licensing agency or the facility is located, requesting the appointment of a receiver when:

(1) A licensee intends to close and has not secured suitable placements for its residents at least 30 days prior to closure;

(2) A situation, physical condition, or a practice, method, or operation which presents imminent danger of death or serious physical or mental harm to residents exists in a facility, including imminent or actual abandonment of a facility;

(3) A facility is in substantial or habitual violation of the standards of health, safety, or resident care established under state or federal regulations to the detriment of the welfare of the residents or clients;

(4) The facility is insolvent; or

(5) The licensing agency has suspended, revoked, or modified the existing license of the facility.

(b)(1) A resident or resident's representative may petition the licensing agency or the attorney general to seek a receivership under this section. If the licensing agency or attorney general denies the petition or fails to file a complaint within five days, the party bringing the petition may file a complaint in the superior court of the county in which the licensing agency or the facility is located, requesting the appointment of a receiver on the same grounds listed in subsection (a) of this section. Prior to a hearing for the appointment of a receiver, the commissioner of disabilities, aging, and independent living shall file an affidavit describing the results of any investigation conducted, including a statement of findings with respect to the resident's petition and the reasons for not filing an action under this section. The commissioner shall include the two most recent reports of deficiencies in the facility, if any.

(2) If the court finds the grounds listed in subsection (a) of this section are not met, the court may dismiss the complaint without a hearing as provided for in the Vermont rules of civil procedure.

(c)(1) The licensing agency shall be deemed a necessary party under Rule 19(a) of the Vermont Rules of Civil Procedure. A temporary receiver shall be a necessary party after the temporary receiver is appointed and shall remain a party until a receiver is appointed under section 7204 of this chapter. A receiver appointed under section 7204 of this chapter shall be deemed a necessary party under Rule 19(a) of the Vermont Rules of Civil Procedure.

(2) The entity filing the complaint shall notify the state long-term care ombudsman and the mortgage holder upon filing of the complaint.

§ 7203. APPOINTMENT OF TEMPORARY RECEIVER

(a) A motion to appoint a temporary receiver may be filed with the complaint or at any time prior to the hearing on the merits provided for in section 7204 of this chapter. The motion shall be accompanied by an affidavit alleging facts necessary to show the grounds for the receivership and the necessity for appointing a temporary receiver prior to the hearing on the merits. A motion to prejudgment attachment under Rule of Civil Procedure 4.1(b)(3) may also be filed with the complaint or at any time prior to the hearing on the merits.

(b) The court may appoint a temporary receiver ex parte when the court finds that there is a reasonable likelihood that:

(1)(A) a licensee intends to close the facility and has not secured suitable placements for its residents prior to closure; or

(B) a situation, physical condition, or a practice, method, or operation presents imminent danger of death or serious physical or mental harm to residents; and

(2) the situation must be remedied immediately to ensure the health, safety, and welfare of the residents of the facility.

(c) If the order for temporary receivership is granted, the complaint and order shall be served on the owner, licensee, or administrator and shall be posted in a conspicuous place in the facility no later than 24 hours after issuance.

§ 7204. APPOINTMENT OF RECEIVER; NOTICE

(a)(1) Unless the complaint is dismissed as provided for in section 7202 of this chapter or parties agree to a later date, the court shall hold a hearing on the merits to appoint a receiver within 10 days of filing the complaint. The court shall hold a hearing on the merits even when the court has appointed a temporary receiver as provided for in section 7203 of this chapter.

(2) Notice of the hearing shall be served on the owner, the licensee, the mortgage holder, the state long-term care ombudsman, and the licensing agency not less than five days before the hearing. If the owner or the licensee cannot be served, the court shall specify an alternative form of notice.

(b) The licensee shall post notice of the hearing, in a form approved by the court, in a conspicuous place in the facility for not less than five days before the date of the hearing.

§ 7205. APPOINTMENT OF RECEIVER; RECOMMENDATIONS BY LICENSING AGENCY

Not less than two days prior to the hearing on the merits, the commissioner shall file with the court a list of recommended persons to consider for appointment as the receiver, which may include licensed nursing home administrators or other qualified persons with experience in the delivery of health care services and the operation of a long-term care facility. The list shall include a minimum of three recommended persons and shall include the names and the qualifications of the persons.

§ 7206. APPOINTMENT OF RECEIVER; HEARING AND ORDER

(a) After the hearing on the merits, the court may appoint a receiver from the list provided by the licensing agency if it finds that one of the grounds in section 7202 of this chapter is satisfied, and that the person is qualified to perform the duties of a receiver as provided for in section 7205 of this chapter.

(b) The court shall set a reasonable compensation for the receiver and may require the receiver to furnish a bond with surety as the court may require. Any expenditure, including the compensation of the receiver, shall be paid from the revenues of the facility.

(c) The court may order limitations and conditions on the authority of the receiver provided for in section 7207 of this chapter. The order shall divest the owner and licensee of possession and control of the facility during the period of receivership under the conditions specified by the court.

(d) An order issued pursuant to this section shall confirm on the receiver all rights and powers described in section 7207 of this chapter and shall provide the receiver with the authority to conduct any act authorized under this section, including managing the accounts, banking transactions, and payment of debts.

(e) An order appointing a receiver under this chapter has the effect of a license for the duration of the receivership and of suspending the license of the licensee. The receiver shall be responsible to the court for the conduct of the facility during the receivership, and a violation of regulations governing the conduct of the facility, if not promptly corrected, shall be reported by the licensing agency to the court. The order shall not remove the obligation of the receiver to comply with all relevant federal and state rules applicable to the facility.

(f) The court shall order regular accountings by the receiver at least semi-annually.

§ 7207. POWERS AND DUTIES OF RECEIVER

(a) A receiver shall not take any actions or assume any responsibilities inconsistent with the purposes of this subchapter or the duties specifically provided for in this section.

(b) Unless otherwise ordered by the court and subject to the limitations provided for in sections 7208 through 7211 of this chapter, the receiver appointed under this subchapter shall:

(1) notify residents of the receivership and shall provide written notice by first-class mail to the last known address of the next of kin after the facility is placed in receivership;

(2) operate the facility;

(3) remedy the conditions that constituted grounds for the receivership;

(4) remedy violations of federal and state regulations governing the operation of the facility;

(5) protect the health, safety, and welfare of the residents, including the correction or elimination of any deficiency of the facility that endangers the safety or health of the residents;

(6) preserve the assets and property of the residents, the owner, and the licensee;

(7) hire, direct, manage, and discharge any employees, including the administrator or manager of the facility;

(8)(A) Apply the revenues of the facility to current operating expenses;

(B) Receive and expend in a reasonable and prudent manner the revenues of the facility due during the 30-day period preceding the date of appointment and becoming due thereafter; and

(C) To the extent possible, apply the revenues of the facility to debts incurred by the licensee prior to the appointment of the receiver;

(9) continue the business of the facility and the care of residents;

(10) file monthly reports containing information as required by the licensing agency to the owner and the licensing agency; and

(11) exercise such additional powers and perform such additional duties as ordered by the court.

§ 7208. LIMITATIONS; CORRECTION OF CONDITIONS

(a)(1) Except as provided for in subsection (b) of this section, if the total cost of correcting conditions that constituted grounds for the receivership and violations of federal and state regulations governing the operation of the facility or of other health and safety issues exceeds $5,000.00, the receiver shall notify the mortgage holder, licensee and owner of the conditions needing correcting and the estimated amount needed to correct the condition.

(2) The mortgage holder, owner, or licensee shall have five days from the date of mailing of the notice to apply to the court to determine the reasonableness of the expenditure by the receiver.

(3) If the mortgage holder, owner, or licensee files a motion objecting to the corrections, the receiver shall not correct the conditions until ordered by the court.

(b) If the condition constitutes a situation, physical condition, or a practice, method, or operation which presents imminent danger of death or serious physical or mental harm to residents and the estimate and the total cost of the correction exceeds $10,000.00, the receiver shall notify the mortgage holder, owner, and licensee who may object to the court as provided for in subsection (a) of this section. The receiver may proceed with the corrections pending a hearing and order of the court.

§ 7209. LIMITATIONS; PAYMENT OF DEBTS

The receiver shall petition the court when debts incurred prior to appointment of the receiver appear extraordinary, of questionable validity, or unrelated to the normal and expected maintenance and operation of the facility; or where payment of the debts will interfere with the purposes of the receivership. The court shall determine the order of priority of debts with first priority given to expenditures for direct care of current residents.

§ 7210. LIMITATIONS; AUTHORITY TO BORROW

(a) In the event that the receiver does not have sufficient funds to cover expenses needed to prevent or remove jeopardy to the resident or to pay the debts accruing to the facility, the receiver may petition the court for permission to borrow for these purposes.

(b) Notice of the receiver's petition to the court for permission to borrow must be given to the owner, the licensee, the mortgage holder, and the licensing agency.

(c) The court may, after hearing, authorize the receiver to borrow money upon specified terms of repayment and to pledge security, if necessary, if the court determines that the facility should not be closed and that the loan is reasonably necessary to prevent or remove jeopardy, or if it determines that the facility should be closed and that the expenditure is necessary to prevent or remove jeopardy to residents for the limited period of time when they are awaiting transfer.

§ 7211. LIMITATIONS; CLOSURE OF THE FACILITY

(a) The receiver may not close the facility without leave of the court.

(b) The court shall consider the protection of residents and shall prevent the closure of facilities that, under proper management, are likely to be financially viable. This section may not be construed as a method of financing major repair or capital improvements to facilities that have been allowed to deteriorate because the owner or licensee has been unable or unwilling to secure financing by conventional means.

(c) In ruling on a motion to close the facility, the court shall consider:

(1) The rights and best interests of the residents;

(2) The availability of suitable alternative placements;

(3) The rights, interest, and obligations of the owner and licensee;

(4) The licensure status of the facility; and

(5) The need for the facility in the geographic area.

(d) When a facility is closed, the receiver shall provide for the orderly transfer of residents to mitigate trauma caused by the transfer to another facility.

§ 7212. WRIT OF POSSESSION

After notice and a hearing, the court may issue a writ of possession as provided for in section 4854 of Title 12 on behalf of the receiver for specific real or personal property related or pertaining to the facility.

§ 7213. ATTACHMENT; TRUSTEE PROCESS

Revenues held by or owing to the receiver in connection with the operation of the facility are exempt from attachment as provided for in chapter 123 of Title 12 and trustee process as provided for in chapter 121 of Title 12, including process served prior to the institution of receivership proceedings.

§ 7214. AVOIDANCE OF CONTRACTS

(a) The court may grant a motion filed by the receiver to avoid a lease, mortgage, secured transaction, or other contract entered into by the owner or licensee of the facility if the court finds that the agreement:

(1) was entered into for a fraudulent purpose or to hinder or delay creditors;

(2) including a rental amount, price, or rate of interest, was unreasonable or excessive at the time the agreement was entered into; or

(3) is unrelated to the operation of the facility.

(b)(1) The receiver shall send notice of the motion to any known owners and mortgage holder of the property, the licensing agency, and the state long-term care ombudsman at the time of filing.

(2) The court shall hold a hearing on the receiver's motion to avoid a contract within 15 days.

(c) If the receiver is in possession of real estate or goods subject to a contract or security interest that the receiver is permitted to avoid under this section and if the real estate or goods are necessary for the continued operation

of the facility, the court may set a reasonable rental amount, price, rate of interest, or of replacement contract term to be paid by the receiver during the term of the receivership.

(d) Payment by the receiver of the amount determined by the court to be reasonable is a defense to an action against the receiver for payment or for the possession of the subject goods or real estate by a person who received notice.

(e) Notwithstanding this section, there may not be a foreclosure or eviction during the receivership by any person if the foreclosure or eviction would, in view of the court, serve to defeat the purpose of the receivership.

§ 7215. OBLIGATIONS OF THE OWNER OR LICENSEE

(a) A licensee, owner, manager, employee, or such person's agent shall cooperate with the receiver in any proceeding under this chapter, including replying promptly to any inquiry from the receiver or the licensing agency requesting a reply, and making available to the receiver any books, accounts, documents, or other records or information or property pertaining to operation of the facility in his or her possession, custody, or control. A person shall not obstruct or interfere with the receiver in the conduct of any receivership.

(b) This section shall not be construed to abridge otherwise existing legal rights, including the right to resist a petition for receivership or revocation or suspension of licensure.

(c)(1) After notice of the receiver's appointment, a person who fails to cooperate with the receiver or any person who obstructs or interferes with the receiver in the conduct of the receivership shall be assessed a civil penalty of not more than $10,000.00.

(2) A person who violates this subsection may be subject to the revocation or suspension of a nursing home administrator's license or a license to operate a facility.

§ 7216. REVIEW AND TERMINATION

(a) The court shall review the necessity of the receivership at least semiannually.

(b) Either party or the commissioner of disabilities, aging, and independent living may petition the court to terminate the receivership. The petition shall include a certification from the commissioner or designee that the conditions that prompted the appointment have been corrected or, in the case of a discontinuance of operation, when the residents are safely relocated.

(c) The petitioner shall send notice of the petition to terminate the receivership to the mortgage holder, the licensing agency, and the state long-term care ombudsman at the time of filing.

(d) A receivership may not be terminated in favor of the former or the new licensee, unless that person assumes all obligations incurred by the receiver and provides collateral or other assurances of payment considered sufficient by the court.

(e) At the time of termination of the receivership, the court shall lift the suspension or revoke the license of the licensee.

§ 7217. DUTIES OF LICENSING AGENCY

The licensing agency shall have the duty to provide information to residents of long-term care facilities for which a receiver has been appointed by the court. When applicable, the licensing agency shall assist in the process of transferring residents to another long-term care facility, including providing information about facilities with available openings.

Sec. 3. REPORT; DAIL

No later than January 15, 2011, the department of disabilities, aging, and independent living shall report to the house and senate committees on judiciary with information on the number of receivership proceedings which have been filed and the disposition of the proceedings. The department shall solicit comments and information from the long-term care ombudsman and Vermont Health Care Association, Inc. on the content of the report. The department shall include in the report any suggestions for revisions to subchapter 3 of chapter 71 of Title 33.

Sec. 4. SUNSET

(a) Sec. 2 of this act (33 V.S.A. chapter 73, subchapter 3) shall expire on June 30, 2011.

(b) Upon expiration of Sec. 2 of this act, 33 V.S.A. § 7101 shall be amended by striking the term ", provision of receivership and dissolution".

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

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

Thereupon, on motion of Senator Shumlin, the rules were suspended and the bill was placed on all remaining stages of its passage in concurrence with proposal of amendment.

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

Rules Suspended; Bills Messaged

On motion of Senator Shumlin, the rules were suspended, and the following bills were severally ordered messaged to the House forthwith:

H. 15, H. 83, H. 86, H. 136, H. 453.

Adjournment

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

THURSDAY, MAY 7, 2009

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

Devotional Exercises

Devotional exercises were conducted by the Reverend Wendy Manley of Montpelier.

Message from the House No. 79

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

Mr. President:

I am directed to inform the Senate that:

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

H. 431. An act relating to miscellaneous adjustments to the public retirement systems.

H. 435. An act relating to palliative care.

And has severally concurred therein.

The House has adopted joint resolution of the following title:

J.R.H. 29. Joint resolution urging Congress to enact a new Homeowner and Bank Protection Act.

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

Joint Resolution Placed on Calendar

J.R.H. 29.

Joint resolution originating in the House of the following title was read the first time and is as follows:

Joint resolution urging Congress to enact a new Homeowner and Bank Protection Act.

Whereas, in 2008, the House of Representatives passed J.R.H. 49, expressing its concern over the likelihood of a coming financial crisis's impact on the state's economy and the livelihood of Vermonters, and

Whereas, J.R.H. 49 urged Congress "to enact emergency homeowners and bank protection legislation that protects families and state and federally chartered financial institutions from negative consequences of foreclosure actions," and

Whereas, Vermonters continue to experience the negative effects of the global financial meltdown, and

Whereas, Vermont banks' ability to extend credit for loans for basic necessities such as homes and vehicles, as well as support for struggling businesses of all sizes, has been hurt by financial conditions beyond Vermont's borders despite the relative health of Vermont's financial sector, and

Whereas, many Vermonters are concerned about the rising national debt and the consequences for future generations, and

Whereas, Congress has attempted to mitigate the crisis through bailouts, loans, the Troubled Assets Relief Program, and other legislative remedies with mixed results at best, and

Whereas, other solutions to the current financial crisis have been offered, such as the previously proposed Homeowners Bankruptcy Protection Act of 2007, and

Whereas, creative, timely, and vigilant bold action is necessary to stabilize financial markets and secure the financial well-being of Vermonters, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly urges Congress to examine all options to relieve the toxic mortgage crisis and stabilize the housing and credit markets and to act decisively to secure the promise of the American dream and specifically urges that Congress:

1. Declare an economic emergency equivalent to the one associated with emergency banking legislation in 1933 during the Great Depression.

2. Mandate federal bankruptcy reorganization of national and state-chartered banks that includes the writing down of debt securities.

3. Freeze all mortgages and delay any foreclosure actions, either in progressor pending, until the economy is revived.

4. Mandate the establishment of fair-market payments that are equivalent to rent to be paid to banks in lieu of mortgage payments in order that banks can be recapitalized and that these payments be subject to regulation by the states, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Vermont Congressional Delegation.

Thereupon, in the discretion of the President *pro tempore*, under Rule 51, the joint resolution was placed on the Calendar for action the next legislative day.

Senate Resolution Placed on Calendar

S.R. 14.

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

By Senators Cummings, Ayer, Carris, Hartwell, MacDonald, Maynard and McCormack,

S.R. 14. Senate resolution urging Congress to oppose federal regulation and/or federal chartering of insurance companies.

Whereas, since Congress enacted the McCarran-Ferguson Act in 1945, the exclusive jurisdiction for regulating the insurance industry has been reserved for the individual states, and

Whereas, the McCarran-Ferguson Act was enacted because Congress recognized that the states were ideally suited to oversee this sector of the financial industry, and

Whereas, for over 60 years, state legislatures and administrative officials have monitored and regulated the insurance industry with a sensitivity based on their knowledge of local and unique economic conditions, and

Whereas, diverse economic factors affecting the insurance industry in different states continue to reinforce the wisdom of Congress's decision to authorize state regulation, and

Whereas, notwithstanding the logic to retain this long-standing regulatory scheme, recent initiatives have been proposed in both Congress and the United States Department of the Treasury to introduce partial federal regulation of the insurance industry that the public at large has not been requesting, and

Whereas, during the last Congress, the Insurance Information Act, which would have established an Office of Insurance Information within the United States Department of the Treasury, was introduced, and

Whereas, this federal measure pre-empted state insurance laws that are inconsistent, marking a terrible reversal in a long-standing federal policy that the states represent the level of government best informed to regulate the insurance industry, and

Whereas, this legislation could have resulted in federal chartering of insurance companies and enabled insurance companies to evade state consumer protection laws, and

Whereas, a federal insurance office will not be in the same position as a state regulator to respond effectively to insurance industry problems that arise in individual states, and

Whereas, citing the collapse of the American International Group as the rationale for introducing federal insurance regulation is disingenuous, as the state-regulated insurance operations remain in good order, while federally regulated risky credit swaps were the cause of the company's severe financial problems, and

Whereas, the Council of State Governments at its fall 2008 meeting in Omaha, Nebraska, adopted a resolution expressing these sentiments, and the National Conference of Insurance Legislators subsequently endorsed that resolution, and

Whereas, the adoption of either federal insurance regulation or chartering or both would not serve the interest of Vermont's consumers, *now therefore be it*

***Resolved by the Senate*:**

That the Senate of the State of Vermont urges Congress not to adopt any measure that provides for federal regulation or chartering or both of the insurance industry, *and be it further*

***Resolved*:** That the Secretary of the Senate be directed to send a copy of this resolution to Deputy Commissioner of Insurance Michael Bertrand, to United States Secretary of the Treasury Timothy Geithner, and to the Vermont Congressional delegation.

Thereupon, in the discretion of the President *pro tempore*, under Rule 51, the resolution was placed on the Calendar for action the next legislative day.

House Proposals of Amendment Concurred In

S. 67.

House proposals of amendment to Senate bill entitled:

An act relating to motor vehicles.

Were taken up.

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

First: By inserting a new section to be numbered Sec. 14 to read as follows:

Sec. 14. 23 V.S.A. § 618a is added to read:

§ 618a. ANATOMICAL GIFT ACT; DONOR; FORM

The commissioner shall provide a form which, upon the licensee's execution, shall serve as a document of an anatomical gift under chapter 109 of Title 18. An indicator shall be placed on the license of any person who has executed an anatomical gift form in accordance with this section.

Second: By inserting a new section to be numbered Sec. 15 to read as follows:

Sec. 15. 23 V.S.A. § 4111(a) is amended to read:

(a) Contents of license. A commercial ~~driver~~ driver's license shall be marked "commercial driver license" or "CDL," and shall be, to the maximum extend practicable, tamper proof, and shall include, but not be limited to the following information:

* * *

(11) An indicator that a licensee has executed a document that serves as an anatomical gift pursuant to section 618a of this title.

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

Joint Resolution Adopted in Concurrence

J.R.H. 27.

Joint House resolution entitled:

Joint resolution urging Congress to enact H.R. 676, the National Health Insurance Act (or the Expanded and Improved Medicare for All Act).

Having been placed on the Calendar for action, was taken up and adopted in concurrence on a roll call, Yeas 15, Nays 5.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Bartlett, Campbell, Flanagan, Giard, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Nitka, Racine, Sears, White.

Those Senators who voted in the negative were: Brock, Maynard, Miller, Mullin, Scott.

Those Senators absent or not voting were: Ayer, Carris, Choate, Cummings, Doyle, Hartwell, Illuzzi, Shumlin (presiding), Snelling, Starr.

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

H. 75.

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

An act relating to interim budget and appropriation adjustments.

Was taken up for immediate consideration.

Senator Bartlett, for the Committee on Appropriations, to which the bill was referred, reported that the bill ought to pass in concurrence.

President Assumes the Chair

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

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

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

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

H. 443.

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

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

Was taken up for immediate consideration.

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

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

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

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

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

H. 452.

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

An act relating to the approval of amendments to the charter of the village of Essex Junction.

Was taken up for immediate consideration.

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

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

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

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

House Proposals of Amendment Concurred In

S. 51.

House proposals of amendment to Senate bill entitled:

An act relating to Vermont’s motor vehicle franchise laws.

Were taken up.

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

First: In Sec. 1, § 4085(6)(A) and (B) by inserting the word new before the words "motor vehicle dealer"

Second: In Sec. 1, 9 V.S.A. § 4085, by adding a new subdivision (17) to read as follows:

(17) "Motor home" means a motor vehicle that is primarily designed to provide temporary living quarters, built into as an integral part of, or permanently attached to, a self-propelled motor vehicle chassis or van. The vehicle must contain at least four of the following facilities: cooking, refrigeration or ice box, self-contained toilet, heating or air conditioning or both, a potable water supply system, including a sink and faucet, separate 110-125 volt electrical power supply or an LP gas supply or both.

Third: In Sec. 1, 9 V.S.A. § 4089(e)(3), by striking out the words "make, line, or brand" where they twicely appear and inserting in lieu thereof the following: line-make and by striking out the words "make or line" and inserting in lieu thereof the following: line-make

Fourth: In Sec. 1, 9 V.S.A. § 4090(a)(4), after the figure "180" by inserting the word days

Fifth: in Sec. 1, 9 V.S.A. § 4091(a)after the following: "section 4089", by inserting the following: or section 4090(a)(4)

Sixth: In Sec. 1, 9 V.S.A. § 4091(a)(1), after the words "500 miles or less on the odometer" by inserting the following: , or in the case of a motor home if the vehicle's odometer has no more than 1,000 miles above the original factory to dealership delivery mileage,

Seventh: In Sec. 1, 9 V.S.A. § 4091(c), after the words "pays the" by inserting the word new

Eighth: In Sec. 1, 9 V.S.A. § 4091, by adding a new subdivision (e) to read as follows:

(e) This section shall not apply to a nonrenewal or termination that is implemented as a result of the sale of the assets or stock of the motor vehicle dealer, unless the franchisor and franchisee otherwise agree in writing.

Ninth: In Sec. 1, 9 V.S.A. § 4096(6),in the sentence beginning "For purposes of this act," after the words "requirement that a" by inserting the word new

Tenth: In Sec. 1, 9 V.S.A. § 4096, by striking out subdivision (8) in its entirety and inserting in lieu thereof the following:

(8) to change the location of the dealership or to make any substantial alterations to the dealership premises or facilities when to do so would be unreasonable;

(9) to change the location of the dealership or to make any substantial alterations to the dealership premises or facilities in the absence of written assurance from the manufacturer or distributor of a sufficient supply of new motor vehicles to justify the change in location or the alterations

Eleventh: In Sec. 1, 9 V.S.A. § 4097(13), after the words "with respect to a" by inserting the words new motor vehicle and after the words "situated" by inserting the words new motor vehicle

Twelfth: In Sec. 1, 9 V.S.A. § 4097, by striking out subdivision (17) in its entirety and inserting in lieu thereof a new subdivision (17) to read as follows:

(17) to fail or refuse to sell or offer to sell to all motor vehicle franchisees of a line-make, all models manufactured for that line-make, or to require a motor vehicle franchisee to do any of the following as a prerequisite to receiving a model or series of vehicles: requiring the dealer to pay any extra fee; requiring a dealer to execute a separate franchise agreement, purchase unreasonable advertising displays or other materials, or relocate, expand, improve, remodel, renovate, recondition, or alter the dealer's existing facilities; or requiring the dealer to provide exclusive facilities. However, a manufacturer may require reasonable improvements to the existing facility that are necessary to accommodate special or unique features of a specific model or line. The failure to deliver any such motor vehicle, however, shall not be considered a violation of this section if the failure is due to a lack of manufacturing capacity or to a strike or labor difficulty, a shortage of materials, a freight embargo, or other cause over which the franchisor has no control. This subdivision shall not apply to a manufacturer of a motor home;

Thirteenth: In Sec. 1, 9 V.S.A. § 4097(18), after the words "prevent any" by inserting the word new and after the words "stockholder of any" by inserting the word new

Fourteenth: In Sec. 1, 9 V.S.A. § 4097, by striking out subdivision (21) in its entirety and inserting in lieu thereof a new subdivision (21) to read as follows:

(21)(A) to vary the price charged to any of its franchised new motor vehicle dealers located in this state for new motor vehicles based on:

(i) the dealer's purchase of new facilities, supplies, tools, equipment, or other merchandise from the manufacturer;

(ii) the dealer's relocation, remodeling, repair, or renovation of existing dealerships or construction of a new facility;

(iii) the dealer's participation in training programs sponsored, endorsed, or recommended by the manufacturer;

(iv) whether or not the dealer offers for sale more than one line-make of new motor vehicle in the same dealership facility;

(v) the dealer's sales penetration, sales volume, or level of sales or customer service satisfaction;

(vi) the dealer's purchase of advertising materials, signage, nondiagnostic computer hardware or software, communications devices, or furnishings; or

(vii) the dealer's participation in used motor vehicle inspection or certification programs sponsored or endorsed by the manufacturer.

(B) The price of the vehicle, for purposes of this subdivision (21), shall include the manufacturer's use of rebates, credits, or other consideration that has the effect of causing a variance in the price of new motor vehicles offered to its franchised dealers located in the state;

Fifteenth: In Sec. 1, 9 V.S.A. § 4097(22), by substituting the words new motor vehicle dealer for the words "new vehicle dealer" where they twicely appear in the first sentence and in subparagraphs (B), (C) and (F)

Sixteenth: In Sec. 1, 9 V.S.A. § 4100, by inserting the word new before the words "motor vehicle"

Seventeenth: In Sec. 1, 9 V.S.A. § 4100a, by inserting the word new before the words "motor vehicle" where they twicely appear

Eighteenth: In Sec. 1, 9 V.S.A. § 4100e, in the first sentence, after the words "acquire the" by inserting the word new and in 9 V.S.A. §4100e(1), after the words "notify the" by inserting the word new and in 9 V.S.A. §4100e(3)(D)(i), after the word "new" by adding the word motor

Ninteenth: In Sec. 2, 19 V.S.A. § 3(2), by inserting the word new before the words "motor vehicle dealer" where they twicely appear

Twentieth: By striking out Sec. 1a in its entirety.

Twenty-first: In Sec. 1, by striking out § 4100c in its entirety and inserting in lieu thereof a new § 4100c to read as follows:

§ 4100c. FINANCING; VERMONT TRANSPORTATION BOARD

(a) On July 1, 2009, and every year thereafter, there is imposed an annual fee upon each new motor vehicle dealer of $60.00 for each dealer license held by that dealer, and there is imposed upon each manufacturer an annual fee of $600.00 for each line-make of new motor vehicle that the manufacturer sells or distributes within this state.

(b) Upon the filing of a protest under this chapter, the protesting party shall pay to the board a filing fee of $1,500.00.

(c) The transportation board shall administer the fees imposed under this section, and the fees shall be deposited into the transportation fund.

(d) The amount of the fee imposed by this section is intended to correlate to the amount of funding required by the transportation board to administer its duties under 9 V.S.A. chapter 108.

Twenty-second: In Sec. 3 19 V.S.A. § 5(d) by adding a new subdivision (12) to read as follows:

(12) maintain the accounting functions for the duties imposed by 9 V.S.A. chapter 108 separately from the accounting functions relating to its other duties.

Twenty-third: By adding new three new sections to be numbered Secs. 4, 5 and 6 to read as follows:

Sec. 4. ALLOCATION TO TRANSPORTATION BOARD FOR DUTIES UNDER 9 V.S.A. CHAPTER 108

The sum of $50,000.00 is appropriated from the transportation fund to the transportation board for the purpose of implementing the provisions of 9 V.S.A. chapter 108.

Sec. 5. REPORT

By January 15, 2011, the transportation board shall report to the house and senate committees on transportation regarding the cost of administering the provisions of 9 V.S.A. chapter 108, and based on that cost shall make recommendations regarding the amount of the fees imposed under 9 V.S.A. § 4100c. After the initial report is presented by January 15, 2011, the transportation board shall ensure that the ongoing cost of administering 9 V.S.A. chapter 108 and associated fee recommendations are presented to the house and senate committees on transportation under the customary periodic motor vehicle fee review.

Sec. 6. TRANSPORTATION BOARD; ANNUAL BUDGET FOR DUTIES UNDER 9 V.S.A. CHAPTER 108

Each year, the transportation board shall request a line item appropriation for its duties under 9 V.S.A. chapter 108 separate and apart from its budget for its other functions. This request shall be based upon its expenditures for those duties in the prior fiscal year.

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

Third Reading Ordered; Rules Suspended; Bill Passed in Concurrence

H. 222.

Senator Hartwell, for the Committee on Finance, to which was referred House bill entitled:

An act relating to senior protection and financial services.

Reported that the bill ought to pass in concurrence.

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

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

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

Rules Suspended; Third Reading Ordered; Rules Suspended; Joint House Resolution Adopted in Concurrence

J.R.H. 11.

Appearing on the Calendar for notice, on motion of Senator Shumlin, the rules were suspended and joint House resolution entitled:

Joint resolution urging Vermonters and public and private organizations in the state to institute a voluntary 20 percent reduction in energy use.

Was taken up for immediate consideration.

Senator Hartwell, for the Committee on Natural Resources and Energy, to which the joint resolution was referred, reported that the resolution ought to be adopted in concurrence.

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

Thereupon, on motion of Senator Shumlin, the rules were suspended and the joint resolution was placed on all remaining stages of its adoption in concurrence.

Thereupon, the resolution was read the third time and adopted in concurrence.

Rules Suspended; Bills Messaged

On motion of Senator Shumlin, the rules were suspended, and the following bills and resolution were severally ordered messaged to the House forthwith:

H. 75, H. 222, H. 443, H. 452, J.R.H. 11.

Rules Suspended; Bills Delivered

On motion of Senator Shumlin, the rules were suspended, and the following bills were severally ordered delivered to the Governor forthwith:

S. 51, S. 67.

Recess

On motion of Senator Shumlin the Senate recessed until four o'clock in the afternoon.

Called to Order

At four o'clock and ten minutes the Senate was called to order by the President *pro tempore*.

Message from the House No. 80

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

Mr. President:

I am directed to inform the Senate that:

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

H. 434. An act relating to agency of agriculture, food and markets revenues.

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

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

S. 129. An act relating to containing health care costs by decreasing variability in health care spending and utilization.

And has concurred therein.

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

S. 125. An act relating to expanding the sex offender registry.

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

Rep. Lippert of Hinesburg
Rep. Jewett of Ripton
Rep. Flory of Pittsford.

Message from the House No. 81

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

Mr. President:

I am directed to inform the Senate that:

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

S. 25. An act relating to the repeal or revision of certain state agency reporting requirements.

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

The House has adopted joint resolution of the following title:

J.R.H. 10. Joint resolution recognizing the commitment to quality service of Vermont's locally owned banks.

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

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

J.R.S. 32. Joint resolution authorizing the commissioner of forests, parks and recreation to enter into land exchanges and to sell a portion of Camel's Hump State Park.

And has adopted the same in concurrence with proposal of amendment in the adoption of which the concurrence of the Senate is requested.

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

S. 7. An act to prohibit the use of lighted tobacco products in the workplace.

And has adopted the same on its part.

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

S. 26. An act relating to recovery of profits from crime.

And has adopted the same on its part.

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

S. 47. An act relating to salvage yards.

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

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

H. 83. An act relating to underground storage tanks and the petroleum cleanup fund.

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

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

Rep. Fagan of Rutland City
Rep. Spengler of Colchester
Rep. Sharpe of Bristol

Bill Referred

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

H. 434.

An act relating to agency of agriculture, food and markets revenues.

To the Committee on Rules.

Joint Resolution Placed on Calendar

J.R.H. 10.

Joint resolution originating in the House of the following title was read the first time and is as follows:

Joint resolution recognizing the commitment to quality service of Vermont’s locally owned banks.

Whereas, the nation's banking system has weathered much criticism and scorn in recent months, and

Whereas, many of the largest financial institutions in the United States have sustained major losses that are being compared to the setbacks that the banking industry suffered during the Great Depression, and

Whereas, a large percentage of the difficulties that the large interstate banks are encountering can be traced to extremely hasty business decisions that were based on quick profits and not on prudent decision-making focused on long-term institutional growth and stability, and

Whereas, the map of America's banks may well be altered before the current crisis is over, and

Whereas, despite the problems facing the banking industry, the locally owned banks in Vermont have continued to be a bright spot in an otherwise gloomy financial picture, and

Whereas, Vermont's locally owned banks reacted cautiously to proposed new credit and lending policies that larger banks were implementing, but instead relied on sound business judgment, and

Whereas, had the nation's major lenders followed the fiscal sensibility of Vermont's locally owned banks, the United States might not have reached the economic level of distress in which it is presently entangled, and

Whereas, each of Vermont's locally owned banks deserves commendation for its prudent business practices despite the enticements through the banking industry to eschew fundamental common sense, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly recognizes the commitment to quality service of Vermont's locally owned banks, including Brattleboro Savings and Loan Association, Community National Bank, First National Bank of Orwell, Merchants Bank, National Bank of Middlebury, Northfield Savings Bank, Passumpsic Savings Bank, People's Trust Company, Randolph National Bank, The Bank of Bennington, Union Bank, and Wells River Savings Bank, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to each of the banks listed in this resolution.

Thereupon, in the discretion of the President *pro tempore*, under Rule 51, the joint resolution was placed on the Calendar for action the next legislative day.

President Assumes the Chair

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

H. 445.

Pending entry on the Calendar for notice, on motion of Senator Mazza, the rules were suspended and the report of the Committee of Conference on House bill entitled:

An act relating to capital construction and state bonding.

Was taken up for immediate consideration.

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

To the Senate and House of Representatives:

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

H. 445. An act relating to capital construction and state bonding.

Respectfully reports that it has met and considered the same and recommends that the Senate recede from its proposal of amendment and that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following

* * * Capital Appropriations * * *

Sec. 1. STATE BUILDINGS

The following sums are appropriated in total to the department of buildings and general services, and the commissioner is authorized to direct funds appropriated in this section to the projects contained in this section; however, no project shall be canceled unless the chairs of the senate committee on institutions and the house committee on corrections and institutions are notified before that action is taken. The individual allocations in this section are estimates only.

(1) Statewide, Americans with Disabilities Act (ADA) - for upgrades at the State Office Buildings in Newport:	100,000
(2) Statewide, building reuse and planning:	125,000
(3) Statewide, contingency:	500,000
(4) Statewide, major maintenance:	8,181,508
(5) Statewide, asbestos and lead abatement:	300,000

(6) Statewide, elevator repairs and upgrades: 150,000

(7) Statewide, physical security enhancements: 250,000

(8) BGS engineering and architectural project costs. It is the intent of the general assembly that labor and operating costs, such as engineering and architectural costs, shall not be paid for from bonded funds in the future: 1,950,000

(9) Springfield, state office building retaining wall, phase 3: 150,000

(10) Middlesex, to complete the secretary of state and state archives vault addition: 6,800,000

(11) Bennington, 200 Veterans Drive. Demolish and design the rebuilding of the older section of the state office building, excluding the courthouse space; renovate the newer section of the building to house programs and services previously located in the building; and build four holding cells, a sally port, and two additional courtrooms without jury facilities for a total of four courtrooms: 8,000,000

(12) Newport, correctional facility roof replacement: 300,000

(13) Burlington, 32 Cherry St., HVAC Upgrades, phase 1: 500,000

(14) Burlington, 32 Cherry St., water intrusion repairs, phase 1: 825,000

(15) Sharon, welcome center, sidewalk repairs. Upon tearing up the sidewalk, the commissioner of buildings and general services shall determine if it was constructed according to design specifications and, if appropriate, shall ensure that the contractors fulfill any obligations to reconstruct or repair it: 250,000

(16) Rutland, multimodal garage trench drains 125,000

(17) Statewide, major maintenance at information centers 150,000

(18) Repair and replacement of slate roofs on historic state buildings in the Waterbury complex. The commissioner shall strive to employ as many tradespeople as possible: 250,000

Total Appropriation – Section 1 $28,906,508

Sec. 2. ADMINISTRATION

The following sums are appropriated to the agency of administration for the projects described in this section:

(1) for the department of taxes for the Vermont Center for Geographic Information for an ongoing project to update statewide quadrangle maps

through digital orthophotographic quadrangle mapping. The project shall be carried out pursuant to Sec. H.21 of H.441 of 2009: 100,000

(2) for the department of information and innovation as a match for federal funds for phase I of installation of a Medicaid and health care data system to replace the access system that was installed in the 1980s: 1,720,000

Total Appropriation – Section 2 $1,820,000

Sec. 3. HUMAN SERVICES

The following sums are appropriated in total to the department of buildings and general services for the agency of human services for the projects described in this section.

(1) Vermont state hospital, ongoing safety renovations. The commissioner of the department of buildings and general services shall work with the secretary of the agency of human services to utilize the existing space without costly renovations: 200,000

(2) Vermont state hospital, planning, design, and permitting for a 15-bed secure residential recovery facility in Waterbury: 500,000

(3) Vermont state hospital, to consider how to replace acute intensive psychiatric inpatient services provided by the current Vermont state hospital by building capacity to provide those functions at the Rutland Regional Medical Center (RRMC). The funds allocated under this subdivision shall not be used for the financial analysis obtained pursuant to Sec. 32(c) of this act. The funds may be encumbered upon completion of the financial analysis, provided that planning is not discontinued pursuant to Sec. 32(c)(4) of this act. Funds encumbered under this subdivision shall be used to match funds provided by the Rutland Regional Medical Center to continue planning for providing acute intensive inpatient services at the RRMC on a one-to-one basis: 250,000

(4) Health lab, for analysis, feasibility studies, adaptation of past plans, and development of conceptual designs to provide the basis for an agreement with the University of Vermont to co-locate the department of health laboratory with its Colchester research facility. However, no expenditures shall be made under this subdivision until the University of Vermont has signed a letter stating its intent to work with the state to co-locate a health laboratory at the Colchester facility: 350,000

(5) Corrections, continuation of suicide abatement project: 200,000

(6) Corrections, security upgrades: 180,000

Total Appropriation – Section 3 $1,680,000

Sec. 4. COMMERCE AND COMMUNITY DEVELOPMENT

(a) The following sums are appropriated to the department of buildings and general services for the agency of commerce and community development for the following projects:

(1) Major maintenance at historic sites statewide; provided such maintenance shall be under the supervision of the department of buildings and general services: 250,000

(2) Final state contribution to expand the visitors' center at the Calvin Coolidge state historic site in Plymouth Notch. The expansion is a joint project between the agency of commerce and community development and the Calvin Coolidge Memorial foundation, which has been awarded National Endowment for the Humanities Challenge Grant #CH5016, and the funds may be used as a match for that grant. The commissioner of finance and management may approve a request from the commissioner of buildings and general services for funds in anticipation of receipts of private donations for the Plymouth visitors' center project: 1,500,000

(b) The following sums are appropriated to the agency of commerce and community development for the following projects:

(1) Underwater preserves: 50,000

(2) Placement and replacement of roadside historic site markers: 15,000

Total Appropriation – Section 4 $1,815,000

Sec. 5. EDUCATION

(a) The following is appropriated in total to the department of education for the purposes described in this section:

(1) To pay the balance owed for the following addition and renovation projects, up to:

(A) Brattleboro Union High and Area Middle schools;

(B) Hanover High School and Frances C. Richmond School in Hanover, N.H.;

(C) Williamstown Middle/High School;

(D) Saxtons River Elementary School in Rockingham;

(E) Central Elementary School in Rockingham; and

(F) Thatcher Brook Primary School in Waterbury: 2,426,916

(2) To pay one-third of the balance owed for the following addition, renovation, and consolidation projects, up to:

(A) Elm Hill School in Springfield;

(B) Union Street School in Springfield;

(C) Weathersfield Elementary and Middle Schools;

(D) Newport Town School; and

(E) Robinson Elementary School in Starksboro: 4,205,996

(3) To pay the balance owed for the following energy performance contracts, up to:

(A) Montpelier elementary, middle, and high schools;

(B) Milton elementary, junior, and senior high schools;

(C) Brattleboro elementary schools; and

(D) Neshobe School in Brandon: 390,480

(4) To pay the balance owed for the following biomass projects, up to:

(A) Camels Hump Middle School in Richmond; and

(B) Williamstown Middle/High School: 71,264

(5) To pay state aid for emergency school construction projects pursuant to subdivision 3448(a)(3)(A) of Title 16 which may arise during FY10, up to: 300,000

(6) To be divided evenly, along with any funds remaining after the projects listed in subdivisions (1)–(5) of this subsection have received funds, among the following for addition and renovation projects:

(A) Green Mountain Technology and Career Center in Hyde Park;

(B) Center for Technology in Essex Town; and

(C) North Country Career Center in Newport: 2,905,344

(b) The following is appropriated to the department of education for emergency shelters in schools paid pursuant to 16 V.S.A. § 3453a: 43,555

Total Appropriation – Section 5 $10,343,555

Sec. 6. AUSTINE SCHOOL

The sum of $227,937 is appropriated to the department of buildings and general services for the renovation of Holton Hall at the Austine School.

Total Appropriation – Section 6 $227,937

Sec. 7. UNIVERSITY OF VERMONT

The sum of $2,000,000 is appropriated to the University of Vermont for construction, renovation, or maintenance projects.

Total Appropriation – Section 7 $2,000,000

Sec. 8. VERMONT STATE COLLEGES

The sum of $2,000,000 is appropriated to the Vermont State Colleges for major facility maintenance.

Total Appropriation – Section 8 $2,000,000

Sec. 9. NATURAL RESOURCES

(a) The following sums are appropriated in total to the agency of natural resources for water pollution control projects:

(1) For existing projects, the Springfield loan conversion, chapter 120 administrative support, and feasibility study planning advances necessary to operate the ongoing program for grants to municipalities pursuant to chapter 55 of Title 10 (aid to municipalities for water supply, pollution abatement, and sewer separations) and chapter 120 of Title 24 (special environmental revolving fund): 475,000

(2) Municipal pollution control projects:

(A) Proctor for combined sewer overflow abatement: 160,000

(B) Enosburg Falls for combined sewer overflow abatement: 250,000

(C) St. Johnsbury for combined sewer overflow abatement: 240,000

(3) Interest on short-term borrowing associated with delayed grant funding for the Pownal project: 140,000

(4) For the Vermont environmental protection agency pollution control revolving fund: 19,433,000

(b) The following sums are appropriated in total to the agency of natural resources for the drinking water state revolving fund:

(1) for engineering, oversight, and program management: 275,000

(2) for the Vermont environmental protection agency drinking water revolving fund in fiscal year 2010: 19,500,000

(c) The following sums are appropriated in total to the agency of natural resources for the clean and clear program to accelerate the reduction of phosphorus discharges into Lake Champlain and other waters of the state:

(1) Ecosystem restoration and protection: 1,500,000

(2) Unregulated stormwater management: 200,000

(3) Phosphorus treatment at the Proctor aerated lagoon facility: 510,000

(d) The following sum is appropriated to the agency of natural resources for the state's year-two share of the federal match to conduct a three-year study of flood-control measures in the city of Montpelier. However, the state shall not enter into any commitment to pay for construction of flood control improvements without legislative approval: 142,000

(e) The following is appropriated to the Green Mountain Club, Inc. for the procurement in fee simple or by easement of properties along the Long Trail: 25,000

(f) The following sums are appropriated to the agency of natural resources for department of fish and wildlife projects described in this subsection. If possible, the secretary shall apply for ARRA funds for energy upgrades such as window replacement at the fish hatcheries, and shall report on any receipt of such funds to the senate committee on institutions and the house committee on corrections and institutions:

(1) Backup generators for the Bald Hill or the Bennington Filter Building, or both: 125,000

(2) Buck Lake Camp facilities improvement: 84,000

(3) For the Lake Champlain Walleye Association, Inc. to upgrade and repair the walleye rearing, restoration, and stocking infrastructure: 25,000

(4) Immediate biosecurity at several of the fish hatcheries: 83,000

(5) Fish production improvements at the Grand Isle and Bennington hatcheries: 181,000

(6) Long-term biosecurity at the Grand Isle fish hatchery: 269,000

(g) If more ARRA funds become available for pollution control, drinking water projects, or other natural-resource-related projects during fiscal year 2010, the secretary shall apply for them.

Total Appropriation – Section 9 $43,617,000

Sec. 10. MILITARY

The following sums are appropriated in total to the department of the military for:

(1) Site acquisition for the combined northern field maintenance shop and Morrisville armory: 100,000

(2) Maintenance and renovations at state armories, including increased locker space at 12 armories, designs for latrines and ADA projects, ADA and sanitary facilities upgrades, and low roof design and construction at the Waterbury Armory 300,000

Total Appropriation – Section 10 $400,000

Sec. 11. PUBLIC SAFETY

The following sums are appropriated in total to the department of buildings and general services for the department of public safety for:

(1) Complete construction of a new forensics lab in Waterbury: 2,057,821

(2) Design and construction of a new emergency operations center in Waterbury. This amount shall be used to match $1,000,000 in federal funds for the project: 375,000

(3) Purchase of property, obtaining of permits, and design for the Brattleboro/Rockingham state police office: 650,000

Total Appropriation – Section 11 $3,082,821

Sec. 12. FIRE SERVICE TRAINING

The following sums are appropriated for fire service training:

(1) To the department of public safety for the Vermont fire service training council for equipment for the VTC fire science degree program: 100,000

(2) To Vermont State Colleges as the state's financial contribution to the construction of a steel burn building at the Vermont Technical College campus in Randolph: 200,000

Total Appropriation – Section 12 $300,000

Sec. 13. CRIMINAL JUSTICE TRAINING COUNCIL; PHASE I, PROFESSIONAL RANGE DESIGN

(a) The sum of $800,000 is appropriated to the department of buildings and general services for the Vermont Criminal Justice Training Council to:

(1) design and construct a new firing range; and

(2) purchase and locate a three-lane modular firing unit in Pittsford. The project shall be phased.

(b) Before finalizing design of the range, the commissioner shall consult with an experienced range consultant professional to ensure the project is optimally designed.

Total Appropriation – Section 13 $800,000

Sec. 14. AGRICULTURE, FOOD AND MARKETS

The following sums are appropriated in total to the agency of agriculture, food and markets for the purposes described in this section:

(1) For the best management practice implementation cost share program, to continue to develop best management practices on Vermont farms. Farmers participating in this program are eligible for cost share funds not to exceed $75,000 or 80 percent of a project, whichever is less. For projects completed in calendar year 2009, cost share funds may be increased to 90 percent of a project. Projects completed after December 31, 2009 shall revert to cost share funding not to exceed $75,000 or 80 percent of a project, whichever is less: 1,600,000

(2) For the agricultural buffer program, to install water quality conservation buffers 175,000

(3) For the agricultural fair capital projects competitive grants program. No single entity shall be awarded more than ten percent of this appropriation: 200,000

Total Appropriation – Section 14 $1,975,000

Sec. 15. VERMONT PUBLIC TELEVISION

The sum of $500,000 is appropriated to Vermont Public Television as the state match for the federally mandated legally required conversion of Vermont Public Television's facilities to digital format.

Total Appropriation – Section 15 $500,000

Sec. 16. VERMONT INTERACTIVE TELEVISION

The sum of $308,000 is appropriated to Vermont Interactive Television for video upgrades, monitor replacement, or any combination thereof, at Vermont Interactive Television sites.

Total Appropriation – Section 16 $308,000

Sec. 17. VERMONT RURAL FIRE PROTECTION

The sum of $100,000 is appropriated to the department of public safety, division of fire safety for the Vermont rural fire protection task force to continue the dry hydrant program.

Total Appropriation – Section 17 $100,000

Sec. 18. VERMONT VETERANS' HOME

The following sums are appropriated to the department of buildings and general services for the Vermont Veterans' Home for the purposes described in this section:

(1) Cost increase for Phase II of geothermal HVAC renovations: 600,000

(2) North wing roof replacement: 200,000

Total Appropriation – Section 18 $800,000

Sec. 19. VERMONT CENTER FOR CRIME VICTIM SERVICES

The sum of $50,000 is appropriated to the Vermont Center for Crime Victim Services for Americans with Disabilities Act improvements at domestic violence shelters. The Vermont Center for Crime Victim Services shall file with the commissioner of buildings and general services an annual report, on or before December 1, 2009, which details the status of the improvements funded in whole or in part by state capital appropriations.

Total Appropriation – Section 19 $50,000

Sec. 20. VERMONT INVESTMENT PROGRAM

(a) It is the intent of the general assembly to invest fiscal year 2010 funds to increase work opportunities and improve infrastructure. Therefore, the purpose of the Vermont investment program established in this section is to:

(1) Employ Vermont tradespeople and artisans;

(2) Help young Vermonters acquire marketable skills;

(3) Improve Vermont state infrastructure; and

(4) Improve local infrastructure and cultural facilities.

(b) The following sums are appropriated to the agency of natural resources for the department of forests, parks and recreation. To the extent possible, the commissioner of forests, parks and recreation shall involve the Vermont Youth Conservation Corps in the following initiatives. Funds shall be used for:

(1) A parks conservation corps program to stimulate economic activity, create employment opportunities, and improve trails, buildings, and other state park infrastructure through geographically dispersed construction and renovation projects in Vermont state parks. To the extent feasible, these funds shall be used to support small-scale projects being funded by resources made available through the American Recovery and Reinvestment Act of 2009

(ARRA), including a summer youth employment program in partnership with the department of labor. Projects may include construction of rustic cabins: 400,000

(2) Statewide, small-scale rehabilitation: 400,000

(3) Wastewater repairs and preventive improvements: 250,000

(4) Infrastructure improvements: 1,000,000

(5) Energy conservation and alternative energy projects in state parks: 700,000

(6) Rehabilitation of CCC structures in state parks: 1,000,000

(7) Upgrade of restrooms and bathhouses in state parks: 1,000,000

(8) Upgrade of the ranger residence and headquarters at Woodford State Park: 250,000

(9) Upgrade and maintenance of Maidstone Road, and other forest highways with any funds remaining after the upgrade of Maidstone Road: 600,000

(c) The following is appropriated to the Vermont housing and conservation board to support building of transitional housing for various populations such as victims of violence, people recently released from incarceration, and homeless people; for housing for people with particular needs such as housing with services for people with disabilities, those requiring treatment for substance abuse, or the elderly; and for improving downtown areas: 1,000,000

(d) The following is appropriated for the Vermont telecommunications authority to provide financial assistance for the purpose of expanding Vermont's mobile telecommunications and broadband infrastructure pursuant to Sec. 29 of this act. Of this amount, the authority shall use $300,000 to provide a grant to two contiguous electric utilities in Orleans County which serve a combined total of less than 3,500 customers in Vermont, for a reliability project which includes 144 strands of middle mile fiber over subtransmission lines between substations where at least one substation is in an unserved area as defined in 30 V.S.A. § 8078(a)(1). The Vermont telecommunications authority shall own the completed fiber and be responsible for maintenance. The utilities shall provide pole attachment rights to the state for the fiber for 20 years and shall be entitled to use two strands of the fiber or the equivalent for utility communications purposes. 1,000,000

(e) The following sums are appropriated for building communities grants established in 24 V.S.A. chapter 137:

(1) To the agency of commerce and community development, division for historic preservation, for the historic preservation grant program: 200,000

(2) To the agency of commerce and community development, division for historic preservation, for the historic barns preservation grant program: 200,000

(3) To the Vermont council on the arts for the cultural facilities grant program: 200,000

(4) To the department of buildings and general services for the recreational facilities grant program: 200,000

(5) To the department of buildings and general services for the human services and educational facilities competitive grant program: 200,000

Total Appropriation – Section 20 $8,600,000

* * * Financing this Act * * *

Sec. 21. REALLOCATION OF FUNDS; TRANSFER OF FUNDS

The following sums are reallocated to the department of buildings and general services to defray expenditures authorized in Sec. 1 of this act:

(1) of the amount appropriated in Sec. 253(4) of No. 152 of the Acts of the 1999 Adj. Sess. (2000) (Springfield Correctional Facility): 461.14

(2) of the amount appropriated in Sec. 14 of No. 61 of the Acts of 2001 (Pittsford Wastewater System): 216,933.98

(3) of the amount appropriated by Sec. 12(b) of No. 43 of the Acts of 2005 (Public Safety): 2,105.00

(4) of the amount appropriated by Sec. 13(c) of No. 52 of the Acts of 2007 (Public Safety and Fire Service Training Council): 14,520.70

(5) of the amount appropriated by Sec. 26 of No. 52 of the Acts of 2007 (Sale of condo unit, Newport State Office Building): 163,800.00

Total Reallocations and Transfers – Section 21 $397,820.82

Sec. 22. GENERAL OBLIGATION BONDS AND APPROPRIATIONS

(a) The state treasurer is authorized to issue general obligation bonds in the amount of $69,995,000 for the purpose of funding the appropriations of this act. The state treasurer, with the approval of the governor, shall determine the appropriate form and maturity of the bonds authorized by this section consistent with the underlying nature of the appropriation to be funded. The state treasurer shall allocate the estimated cost of bond issuance or issuances to

the entities to which funds are appropriated pursuant to this section and for which bonding is required as the source of funds, pursuant to 32 V.S.A. § 954. 69,995,000

(b) The following amount from ARRA clean water state revolving fund grants is hereby appropriated for use in FY10 and FY11 for projects funded through the Vermont environmental protection agency pollution control revolving fund. Specific project spending shall be approved by a committee made up of the joint fiscal committee and the chairs of the senate committee on institutions and the house committee on corrections and institutions. 19,433,000

(c) The following amount from ARRA state drinking water capitalization grants is hereby appropriated for use in FY10 and FY11 for projects funded through the drinking water state revolving fund. Specific project spending shall be approved by a committee made up of the joint fiscal committee and the chairs of the senate committee on institutions and the house committee on corrections and institutions. 19,500,000

Total Revenues – Section 22 $108,928,000

* * * General Authority * * *

Sec. 23. FEDERAL STIMULUS FUNDS; GENERAL AUTHORITY

(a) The head of any state agency or public body that receives funds under this act shall apply for ARRA funds if any are available for capital expenses. Any ARRA funds received for capital expenses shall be reported to the chair of the senate committee on institutions and the chair of the house committee on corrections and institutions pursuant to Sec. E.129 of the appropriations bill of 2009.

(b) The head of any state agency or public body that receives funds under this act is authorized to use funds appropriated under this act to apply for and match funds which may be available for capital construction under the ARRA.

* * * Buildings and General Services * * *

Sec. 24. DEPARTMENT OF BUILDINGS AND GENERAL SERVICES; AUTHORITY TO FUND PROJECTS AUTHORIZED IN PRIOR YEARS

(a) The commissioner of buildings and general services is authorized to use funds appropriated under this act for capital projects requiring additional support that were funded with capital or general appropriations made in prior years.

(b) In Sec. 14 of No. 61 of the Acts of 2001, the commissioner of buildings and general services received funds to build a sewer line to connect the

Vermont criminal justice and Vermont fire service training council buildings to the Pittsford wastewater treatment system. At present, the state has determined that it is not prepared to make a decision on the sewer installation. Therefore, in Sec. 21(2) of this act, the general assembly has authorized reallocation of $216,933.98 from the 2001 appropriation to the commissioner for other building projects. The town enlarged the capacity of its plant to be able to accommodate the anticipated needs of the state. Therefore, it is the intent of the general assembly that the commissioner of buildings and general services shall negotiate a new agreement with the town of Pittsford regarding the sewer allocation and the state's obligation to the town of Pittsford.

Sec. 25. PROPERTY TRANSACTIONS; MISCELLANEOUS

(a) Notwithstanding 29 V.S.A. § 166(b), the commissioner of buildings and general services is authorized to negotiate the sale of all or a portion of the state's property that adjoins the Hebard state office building in Newport City for the purposes of transferring ownership and operation of the bike path, walking path, and boardwalk. Upon approval of the chairs and vice chairs of the senate committee on institutions and the house committee on corrections and institutions, the commissioner may sell the property for the negotiated price. The commissioner shall strive to sell the property at fair market value. However, due to the unique nature of the transaction, the commissioner may use the following factors to justify selling the property at less than fair market value:

(1) Ongoing maintenance and operation costs associated with the property.

(2) Risk potential to the state.

(3) The local economic situation.

(b) The commissioner of buildings and general services is authorized to purchase property in the Westminster vicinity for the purpose of locating the southeastern Vermont public safety facility.

(c) Notwithstanding Sec. 32(c) of No. 200 of the Acts of the 2007 Adj. Sess. (2008), and 29 V.S.A. § 166(b), the commissioner of buildings and general services is authorized to sell the real property commonly referred to as the "Former Tree Farm Property" and associated buildings located in the town and village of Essex in one or two parcels as follows: the commissioner may sell the portion which is in the town of Essex to the town of Essex and the portion which is in the village of Essex to the village of Essex or may sell the entire parcel to either the village or the town of Essex. Upon approval of the chairs and vice chairs of the senate committee on institutions and the house committee on corrections and institutions, the commissioner may sell the

property for the negotiated price. The commissioner shall strive to sell the property at fair market value. However, due to the unique nature of the transaction, the commissioner may use the following factors to justify selling the property at less than fair market value:

(1) Ongoing maintenance and operation costs associated with the property.

(2) Risk potential to the state.

(3) The need to recover costs incurred by the state related to site development.

(d) The commissioner is authorized either to convert to other state use or to sell the building in Middlesex formerly leased to North American Playcare, Inc. if the commissioner is unable to enter into a lease with the Montessori school for a child care facility. If the commissioner sells the building, he or she shall follow the process of 29 V.S.A. § 166.

(e) Pursuant to 29 V.S.A. § 166(b), the commissioner of buildings and general services is authorized to subdivide land at the former Weeks school in Vergennes in order to sell the Arsenal and Fairbanks buildings. The commissioner may use proceeds from the sale to enhance the value of the remaining former Weeks school property.

(f) Notwithstanding 29 V.S.A. § 166(b), the commissioner of buildings and general services is authorized to sell the Dummerston library building. Upon approval of the chairs and vice chairs of the senate committee on institutions and the house committee on corrections and institutions, the commissioner may sell the property for the negotiated price. The commissioner shall strive to obtain fair market value. However, due to the unique nature of the transaction, the commissioner may use the following factors to justify selling the property at less than fair market value:

(1) Ongoing maintenance and operation costs associated with the property.

(2) Risk potential to the state.

(g) The commissioner of buildings and general services is authorized to sell the following properties pursuant to 29 V.S.A. § 166:

(1) Building 617 in Essex. The commissioner shall consult with the chair of the senate committee on institutions and the chair of the house committee on corrections and institutions prior to finalizing any sale.

(2) The Redstone building at 26 Terrace Street in Montpelier after the secretary of state has moved to another location.

(h) The commissioner of buildings and general services shall consider options for use and disposal of the following properties and shall present his or her analysis and recommendations to the senate committee on institutions and the house committee on corrections and institutions on or before January 15, 2010:

(1) Father Logue's camp in Duxbury.

(2) 62 Pierpoint Avenue in Rutland.

(3) The house, barn, and land at the Northwest State Correctional Facility in St. Albans. At a minimum, the commissioner of buildings and general services shall consult with the commissioner of corrections to consider use of the buildings and property as transitional housing, a work farm associated with the correctional facility, or transitional housing, and to consider sale of the property for use as a working farm.

(i) In Sec. 32(d) of No. 200 of the Acts of the 2007 Adj. Sess. (2008), the general assembly authorized the commissioner of buildings and general services to sell, lease, subdivide, convert into condominiums, or any combination thereof the Thayer school building located at 1193 North Avenue in Burlington. The commissioner is hereby further authorized to transfer title by warranty deed for sale of the building and to convey the Thayer school property by warranty deed.

Sec. 26. CAPITAL CONSTRUCTION; WINDHAM COUNTY; AUTHORITY TO BORROW

(a) Notwithstanding the provisions of 24 V.S.A. § 82, based on assertions by the Windham County assistant judges that the Windham County sheriff's office is in an unsafe condition and in immediate need of renovation and repair, the general assembly hereby authorizes the Windham County assistant judges to borrow up to $200,000 for the purpose of renovating and restoring the Windham County sheriff's office pursuant to the budget adopted by the judges on January 16, 2009, without a further vote of the county electorate. However, at least 30 days prior to making a request for borrowing, the assistant judges shall notify the legislative bodies of the municipalities in the county that they intend to borrow. The judges may mortgage county property or obtain an unsecured loan for this purpose. Any project constructed pursuant to this section shall be completed within two years of passage of this act.

(b) It is the intent of the general assembly that the assistant judges shall not incur debt in future without following procedures of 24 V.S.A. § 82.

Sec. 27. 29 V.S.A. § 152(a)(33) is added to read:

(33) Accept grants of funds, equipment, and services from any source, including federal appropriations, for the installation, operation, implementation, or maintenance of energy conservation measures or improvements at state buildings, provided that the commissioner shall report receipt of a grant under this subdivision to the chairs of the senate committee on institutions, the house committee on corrections and institutions, and the joint fiscal committee.

Sec. 28. 29 V.S.A. § 152(b) is amended to read:

(b) The commissioner of buildings and general services shall:

(1) Prior to transfer of unexpended balances between projects under the provisions of this section or another provision of law, ~~the commissioner shall~~ consult with the state treasurer and the commissioner of finance and management to determine that such transfer does not adversely affect the exclusion from gross income of the interest on the bonds from which such unexpended proceeds are derived, pursuant to Section 103 of the Internal Revenue Code of 1986 or any corresponding Internal Revenue Code section of the United States, as from time to time amended. The commissioner shall notify the state treasurer within 30 days of the postponement of any authorized projects for which bonds have been issued.

(2) Consult with the state treasurer regarding implementation of projects in each capital appropriations act, including the disposition of assets purchased with capital appropriations, with regard to satisfactory resolution of issues associated with legal and tax-exempt status of outstanding state bonds.

* * * Commerce and Community Development * * *

Sec. 29. VERMONT TELECOMMUNICATIONS AUTHORITY; MOBILE TELECOMMUNICATIONS AND BROADBAND SERVICES

(a) The Vermont telecommunications authority shall use funds appropriated in Sec. 20(d) of this act as described in this section:

(1) To provide financial assistance for building infrastructure capable of delivering mobile telecommunications and broadband services pursuant to the authority granted in 30 V.S.A. § 8062(b)(2), and in accordance with the priorities established under 30 V.S.A. § 8077;

(2) To leverage funding from other sources, including funds available under the American Recovery and Reinvestment Act of 2009 (ARRA); and

(3) To use up to $200,000 to fund the broadband development grant program created in Sec. 3 of No. 79 of the Acts of 2007.

(b) If the authority has an opportunity to use the appropriation to leverage funds, and if the funding source requires that the leveraged funds be used in a way that conflicts with subdivision (a)(1) of this section, the authority may accept and expend the funds upon approval of the joint fiscal committee, the chairs of the senate committees on institutions and on finance, and the chairs of the house committees on corrections and institutions and on commerce and economic development.

(c) The authority shall consult with the state treasurer and the commissioner of finance and management regarding grants, loans, or any other disposition of these bonding-derived funds with regard to satisfactory resolution of issues associated with legal and tax-exempt status of outstanding state bonds.

* * * Human Services * * *

Sec. 30. VERMONT STATE HOSPITAL; REPLACEMENT

(a) It is the intent of the general assembly that expenditures for planning for replacement of the functions of the Vermont state hospital shall be directed toward meeting the conditions and requirements of the conceptual certificate of need issued by the department of banking, insurance, securities, and health care administration on April 12, 2007, and extended for 12 months, to expire on April 12, 2010.

(b) Prior to the submission of an application for a phase II certificate of need for construction of a facility to house a secure residential recovery program provided for in Sec. 31 of this act, the department of mental health shall develop a master plan to replace the functions now provided in the Vermont state hospital and to close the Vermont state hospital. The master plan shall include an adequate long-range perspective of the funding needs and sources such that the phase II review process for a secure residential recovery program will be able to:

(1) consider whether there will be an appropriate balance between the fiscal and other needs of current and future inpatient facilities and the fiscal and other needs of the community mental health system; and

(2) consider the state's financial ability to complete the master plan.

(c) While pursuing the secure residential facility as described in Sec. 31 of this act and the planning for acute mental health care in several hospitals geographically distributed throughout the state as provided for in Sec. 32 of this act, the department of mental health shall enter into discussions with general and specialty hospitals to explore options for hospital-level care for the remaining placements needed to close the Vermont state hospital.

(d) As part of its master plan to replace the Vermont state hospital, the department of mental health shall conduct a financial analysis and an analysis of the impact on care of the temporary return to inpatient care at staff-secure facilities.

Sec. 31. VERMONT STATE HOSPITAL; SECURE RESIDENTIAL RECOVERY PROGRAM

(a) It is the intent of the general assembly that the commissioner of mental health shall provide for a secure residential recovery program for individuals who are in the care and custody of the commissioner of mental health with a mental health disability for whom inpatient hospital treatment would be inappropriate and for whom other appropriate less-restrictive alternatives are not available. It is further the intent of the general assembly that the facility housing the program shall be designed to afford the greatest future flexibility for any potential residential health care program and shall be consistent with the goal of creating a facility with a residential character. In addition, both the site and design shall foster the ability to provide outdoor recreation, safety of residents and program participants, and appropriate programming to meet the needs of each of the several diagnostic groups to be served.

(b) Prior to further design development, the commissioner of mental health and the commissioner of buildings and general services shall fully investigate and analyze site options for locating the secure residential facility on the Waterbury campus and, in the discretion of the commissioner of buildings and general services, at other sites in Waterbury. The facility shall not be located next to the A-building. The facility design shall incorporate the necessary components to function as a freestanding program that does not rely on support space currently serving patient needs in the existing Vermont state hospital.

(c) It is the intent of the general assembly that the secure residential recovery program shall have a governance structure which is as separate and independent from the governance structure of the Vermont state hospital as is legally feasible and would be operated under a license to be issued by the department of disabilities, aging, and independent living (DAIL).

(d) DAIL shall amend by rule pursuant to chapter 25 of Title 3 the licensing requirements for therapeutic community residences to provide for the operation of secure residential recovery programs.

(e) At the time of filing a certificate of need (CON) letter of intent with the department of banking, insurance, securities, and health care administration, the agency of human services shall notify the Centers for Medicare and Medicaid Services (CMS) in writing that it is planning and developing a 15-bed residential program, with a description of its size, program, intended patient population, physical location relative to the existing state hospital,

anticipated licensing, and anticipated governance structure. In addition, the agency shall request CMS to review the final plan to determine if federal financial participation under Titles XVIII (Medicare) and XIX (Medicaid) of the Social Security Act would be available for the facility.

(f)(1) The agency of human services shall submit the response of CMS, if any, or the fact that CMS has not responded to the request, to the senate committee on institutions and the house committee on corrections and institutions, the senate and house committees on appropriations, the senate committee on health and welfare, the house committee on human services, the joint fiscal committee, and the mental health oversight committee.

(2) During the legislative session, the department of mental health shall provide quarterly updates to the senate committee on institutions, the house committee on corrections and institutions, the senate committee on health and welfare, and the house committee on human services on the progress toward completing the facility and developing the residential recovery program.

(3) Outside the legislative session, the department of mental health shall provide quarterly updates to the joint fiscal committee and the mental health oversight committee on the progress toward completing the facility and developing the residential recovery program.

(g) Within 30 days of beginning to accept patients in the secure residential recovery program, the department of health shall reduce the licensed bed capacity at the Vermont state hospital by 15.

Sec. 32. VERMONT STATE HOSPITAL; REPLACEMENT OF ACUTE CARE FUNCTIONS

(a) The general assembly recognizes that the Vermont state hospital provides both specialized and intensive acute inpatient mental health care. It is the intent of the general assembly that the plan for replacement of the functions of the Vermont state hospital shall provide geographic access such that patients requiring specialized acute mental health care or intensive acute mental health care or both can be appropriately treated as near to their respective homes as possible by providing replacement specialized and intensive inpatient levels of care in more than one hospital staffed with appropriately trained and experienced staff. Therefore, the commissioner of mental health shall work with general and specialty hospitals to explore options for replacement of these functions. Acute care facilities may be operated under one or more licenses issued to the department or to the hospitals, as appropriate.

(b) The commissioner of mental health shall design a special designation program for hospitals that operate an intensive acute or specialized acute inpatient program or both which will serve as a successor program to the

Vermont state hospital and submit proposed enabling legislation for consideration in the 2010 legislative session. A special designation will be similar to the designation of community agencies to provide mental health and developmental disability services provided for in 18 V.S.A. chapter 207. The designation process shall, at a minimum:

(1) Provide for an ongoing, consistent, and predictable relationship between the specially designated hospital and the state.

(2) Allow the commissioner to establish a reasonable schedule of cost per service unit and a uniform and reasonable schedule of fees for services provided by the specially designated hospitals. Any grant of funds to any specially designated hospital shall be based on a program plan and program budget and a balanced plan of anticipated fees and receipts developed by the hospital and submitted to and approved by the commissioner.

(3) Establish minimum program standards and other regulations as may be necessary to ensure a quality program and care that is consumer-directed, trauma-informed, and recovery-oriented.

(c)(1) The department of mental health, in collaboration with the joint fiscal office, the treasurer's office, and the Vermont educational and health buildings finance agency, shall obtain an accounting and financial analysis of any proposed bonding structure, including costs of capitalization, to determine whether a financing arrangement that places no debt capacity burden on either the state or on Rutland Regional Medical Center (RRMC) is reasonably feasible for a new psychiatric wing at RRMC to replace and expand the existing psychiatric unit.

(2) The joint fiscal office may contract with an independent consultant to provide additional analysis, if needed, for the analysis required under subdivision (1) of this subsection. Upon request of the joint fiscal office, the commissioner of the department of buildings and general services shall transfer up to $25,000 of unexpended funds appropriated to the department of buildings and general services in prior capital construction acts for Vermont state hospital planning to the joint fiscal office for this purpose.

(3) No later than October 1, 2009, the treasurer's office and the joint fiscal office shall provide a report to the mental health oversight committee and the joint fiscal committee describing the financing arrangement for a new psychiatric wing at RRMC and the results of the accounting and financial analysis, including their conclusions as to whether the financing arrangement is reasonably feasible.

(4) After receipt of the report and no later than November 1, 2009, the mental health oversight committee and the joint fiscal committee may object at

a joint meeting of the two committees to the financing arrangement proposed by the department for a new psychiatric wing at RRMC. A quorum shall be a majority of the combined membership of the committees and, for voting purposes, a majority of those present shall be authorized to act. If the committees object, the department shall discontinue planning for a new psychiatric wing at RRMC.

(d) Simultaneously with any planning for expansion of psychiatric services at RRMC, including conducting the financial analysis under subdivision (c)(1) of this section and whether or not planning for the RRMC option is discontinued as provided for in subdivision (c)(4) of this section, the department shall continue to assess the feasibility, including the cost, of providing acute care services at general or appropriate specialized hospitals in other locations. As part of the planning process described in this subsection, the department shall obtain an independent labor analysis as necessary to demonstrate that a sufficient number of professional staff and other trained staff will be available to support adequately and appropriately any Vermont state hospital successor program at RRMC and at general or appropriate specialized hospitals in other locations being considered for provision of specialized acute or intensive acute care functions, or both, with respect to recruiting and maintaining staffing for any staff-intensive specialized psychiatric services required. The department of labor may provide the labor analysis provided for in this subsection. The commissioner of the department of buildings and general services shall transfer funds necessary for this study from unexpended funds appropriated to the department of buildings and general services in prior capital construction acts for Vermont state hospital planning to the department of mental health for this purpose.

(e) By January 15, 2010, the department shall propose any statutory changes it believes may be necessary for implementation of its master plan.

Sec. 33. Sec. 124d(e) of No. 65 of the Acts of 2007 is amended to read:

(e) For purposes of this section, the council shall cease to exist ~~on~~ when the development of the alternatives to the Vermont state hospital is completed, but no later than July 1, ~~2009~~ 2012.

* * * Corrections * * *

Sec. 34. 28 V.S.A. § 102(b)(16) is added to read:

(16) With the approval of the secretary of human services, to accept federal grants made available through federal crime bill legislation, provided that the commissioner shall report the receipt of a grant under this subdivision to the chairs of the senate committee on institutions, the house committee on corrections and institutions, and the joint fiscal committee.

Sec. 35. CORRECTIONS; HOUSING FOR INMATES AND DETAINEES; COLLABORATION AMONG FEDERAL AND STATE OFFICIALS; USE OF NORTHWEST STATE CORRECTIONAL FACILITY

(a) The commissioner of corrections shall consult with the U.S. marshal to identify opportunities to collaborate to provide secure facilities that meet the needs of federal, state, county, and municipal law enforcement officials regarding space for housing of inmates and detainees. The commissioner shall consider building a new facility with ARRA funds as well as the potential for reconfiguring the e-wing of the Northwest Regional Correctional Facility to house federal, state, county, and municipal inmates and detainees. The commissioner shall report to the corrections oversight committee by October 15, 2009.

(b) The commissioner of buildings and general services and the commissioner of corrections shall explore how to meet the need for a medium security and detainee facility in the northwest area of Vermont and report their findings to the corrections oversight committee on or before November 1, 2009.

* * * Vermont Telecommunications Authority * * *

Sec. 36. Sec. 42 of No. 200 of the Acts of the 2007 Adj. Sess. (2008) is amended to read:

Sec. 42. REPEAL

Sec. 3 of No. 79 of the Acts of 2007, relating to a broadband development grant program, is repealed on ~~June 30, 2009~~ June 20, 2011.

* * * Natural Resources * * *

Sec. 37. 3 V.S.A. § 2822(e) is added to read:

(e) The secretary, with the approval of the secretary of administration, may transfer any unexpended funds appropriated in a capital construction act to other projects authorized in the same section of that act.

Sec. 38. 24 V.S.A. § 4753b is added to read:

§ 4753b. ACCEPTANCE OF FUNDS

(a) The commissioner of environmental conservation, with the approval of the secretary of natural resources, may accept federal grants made available through the federal Clean Water Act and the federal Drinking Water Act in accordance with this chapter. Acceptance of this grant money is hereby approved, provided all notifications are made under subsection 4760(a) of this title.

(b) The commissioner shall report receipt of a grant under this section to the chairs of the senate committee on institutions and the house committee on corrections and institutions and the joint fiscal committee.

Sec. 39. Sec. 8(a)(2) of No. 52 of the Acts of 1989, as amended by Sec. 18 of No. 276 of the Acts of the 1989 Adj. Sess. (1990) and Sec. 32 of No. 29 of the Acts of 1999, is amended to read:

(2) That this conveyance shall be completed within ~~20~~ 30 years of the effective date of this act.

Sec. 40. POLLUTION CONTROL REVOLVING LOAN FUND; DRINKING WATER REVOLVING FUND; LOAN FORGIVENESS

(a) Upon awarding a loan to a municipality from the Vermont environmental protection agency pollution control revolving fund or the Vermont environmental protection agency drinking water state revolving fund, the secretary of the agency of natural resources may forgive up to 100 percent of the loan if the award is made from funds appropriated from the American Recovery and Reinvestment Act of 2009 (ARRA).

(b) Notwithstanding 10 V.S.A. § 1624a(b), the assistance provided by a loan from the Vermont environmental protection agency pollution control revolving fund made from ARRA funds may be for up to 100 percent of the eligible project cost.

(c) The secretary shall establish standards, policies, and procedures as necessary for implementing the provisions of this section and for revising standard priority lists in order to comply with regulations associated with the ARRA.

* * * Military * * *

Sec. 41. AUTHORITY TO TRANSFER FUNDS

The military department in the office of the adjutant general may transfer funds appropriated to it in this act to other projects authorized in the same section of the act.

Sec. 42. SALE OF NATIONAL GUARD PROPERTY IN LUDLOW

Notwithstanding 20 V.S.A. § 542, if the board of armory commissioners sells the armory and associated land in Ludlow to the town of Ludlow, it shall sell the property at the fair market value amount reduced by an amount equal to the current fair market value of any and all lands transferred or deeded to the state of Vermont by the town of Ludlow or the town school district of the Town of Ludlow for the establishment of the armory. The fair market value of

the property shall be determined by a property appraisal conducted by a certified general appraiser retained by the town of Ludlow.

* * * Judiciary * * *

Sec. 43. JUDICIARY; CAPITAL FUNDING

In 2008, the general assembly and supreme court established the Vermont commission on judicial operation and charged the commission with evaluating the allocation and management of fiscal resources, including state capital appropriations, for judicial operations. Therefore, due to the possibility that significant changes may occur in the planning, location, and physical plants of the judiciary, the general assembly will not appropriate capital funds for judiciary expenses until it receives the recommendations of the commission.

* * * Administration * * *

Sec. 44. 3 V.S.A. § 2291(c) is amended to read:

(c) The secretary of administration with the cooperation of the commissioners of public service and of buildings and general services shall develop and oversee the implementation of a state agency energy plan for state government. The plan shall be adopted by June 30, 2005, modified as necessary, and readopted by the secretary on or before ~~January 15 of each fifth~~ January 15, 2010 and each sixth year subsequent to ~~2005~~ 2010. The plan shall accomplish the following objectives and requirements:

* * *

Sec. 45. 3 V.S.A. § 2291b is amended to read:

§ 2291b. ADOPTION OF STATE AGENCY ENERGY IMPLEMENTATION PLANS

After review by the commissioner of buildings and general services and approval by the secretary of administration, each state agency shall adopt an implementation plan on or before ~~August 31, 2005~~ August 31, 2010 to ensure compliance with the state agency energy plan. Each agency shall readopt and file its implementation plan biennially with the commissioner to ensure that the implementation plan remains compatible with the state agency energy plan.

* * * Property Transactions * * *

Sec. 46. Sec. 26 of No. 52 of the Acts of 2007 is amended to read:

Sec. 26. PROPERTY TRANSACTIONS; MISCELLANEOUS

The commissioner of buildings and general services is authorized, with the approval of the secretary of administration, to sell the properties listed in this section pursuant to 29 V.S.A. § 166. Of proceeds from the sales, $50,000 is

appropriated to the Friends of the State House for renovations to the state house. The remainder ~~is appropriated to the department of buildings and general services for construction and renovation of building 617 in Essex to house the department of health and department of public safety forensics laboratories~~ shall be paid into a capital fund account pursuant to 29 V.S.A. § 166(d).

* * *

Sec. 47. 16 V.S.A. § 3453a is amended to read:

§ 3453a. EMERGENCY OPERATION CENTERS AND SHELTERS

Any school building ~~for which state construction aid is provided under this chapter for the purpose of its construction, reconstruction or expansion, and~~ which ~~is or~~ may be designated as a local, regional, or state emergency operation center or shelter~~,~~ shall be designed for use as an emergency operations center or shelter. For this purpose, the proposed project shall include the installation of a wiring harness capable of being connected to emergency electric power generation to provide for emergency heating, lighting, and communications. The wiring installation cost to upgrade emergency facilities shall be included in the budgets submitted to the legislature for capital funding pursuant to section 309 of Title 32. The state shall pay 100 percent of such costs, which shall at the department level be itemized and accounted for separately from those costs in which the state only shares in the project cost. The state shall not pay for the costs of purchasing the generator.

Sec. 48. Sec. 32(e)(2) of Act No. 200 of the Acts of the 2007 Adj. Sess. (2008) is amended to read:

(2) the transaction is limited to no more than ~~three~~ ten acres of land or mineral rights;

Sec. 49. CLOSING OF CORRECTIONAL FACILITIES; APPROVAL

The secretary of administration shall not plan to close or significantly reduce operations at any correctional facility unless approval to proceed with such closing or reduction plans is granted by both the joint committee on corrections oversight and the joint fiscal committee. Any plan submitted to the committees shall include an analysis of the regional impact, including how the increased transportation costs will be funded.

* * * Effective Date * * *

Sec. 50. EFFECTIVE DATE

This act shall take effect on passage.

PHILIP B. SCOTT
RICHARD T. MAZZA
JOHN F. CAMPBELL

Committee on the part of the Senate

ALICE M. EMMONS
LINDA K. MYERS
JOHN S. RODGERS

Committee on the part of the House

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

Rules Suspended; Bills on Notice Calendar for Immediate Consideration

On motion of Senator Shumlin, the rules were suspended, and the following bills and joint resolution, pending entry on the Calendar for notice, were ordered to be brought up for immediate consideration:

S. 7, S. 25, S. 26, J.R.S. 32

Report of Committee of Conference Accepted and Adopted on the Part of the Senate

S. 7.

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

To the Senate and House of Representatives:

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

An act to prohibit the use of lighted tobacco products in the workplace.

Respectfully reports that it has met and considered the same and recommends that the Senate accede to the House proposal of amendment and that the bill be further amended in Sec. 1, 18 V.S.A. § 1421, in subsection (c), by striking out the following: "until June 30, 2014" and by striking out the second sentence of the subsection in its entirety.

KEVIN J. MULLIN
MATTHEW A. CHOATE
DOUGLAS A. RACINE

Committee on the part of the Senate

PATSY FRENCH
ANN D. PUGH
MICHAEL MROWICKI

Committee on the part of the House

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

Report of Committee of Conference Accepted and Adopted on the Part of the Senate

S. 26.

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

To the Senate and House of Representatives:

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

An act relating to recovery of profits from crime.

Respectfully reports that it has met and considered the same and recommends that the House recede from its proposal of amendment, and that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 5351(8) is added to read:

(8) "Profits from crimes" means:

(A) any property obtained through or income generated from the commission of a crime in which the defendant was convicted;

(B) any property obtained by or income generated from the sale, conversion, or exchange of proceeds of a crime, including any gain realized by such sale, conversion, or exchange;

(C) any property that the defendant obtained or any income generated as a result of having committed the crime, including any assets obtained through the use of unique knowledge acquired during the commission of or in preparation for the commission of the crime, as well as any property obtained or income generated from the sale, conversion, or exchange of such property and any gain realized by such sale, conversion, or exchange; and

(D) any property defendant obtained or any income generated from the sale of tangible property the value of which is increased by the notoriety

gained from the conviction of an offense by the person accused or convicted of the crime.

Sec. 2. 13 V.S.A. chapter 167, subchapter 4 is added to read:

Subchapter 4. Profits from Crime

§ 5421. NOTICE OF PROFITS FROM A CRIME

(a) Every person, firm, corporation, partnership, association, or other legal entity which knowingly contracts for, pays, or agrees to pay any profits from a crime, as defined in subdivision 5351(8) of this title, to a person charged with or convicted of that crime shall give written notice to the attorney general of the payment or obligation to pay as soon as is practicable after discovering that the payment is or will be a profit from a crime.

(b) The attorney general, upon receipt of notice of a contract, agreement to pay, or payment of profits of the crime shall send written notice of the existence of such profits to all known victims of the crime at their last known addresses.

§ 5422. ACTIONS TO RECOVER PROFITS FROM A CRIME

(a) Notwithstanding any other provision of law, including any statute of limitations, any crime victim shall have the right to bring a civil action in a court of competent jurisdiction to recover money damages from a person convicted of that crime, or the legal representative of that convicted person, within three years of the discovery of any profits from the crime. Any damages awarded in such action shall be recoverable only up to the value of the profits of the crime. This section shall not limit the right of a victim to proceed or recover under another cause of action.

(b) The attorney general may, within three years of the discovery of any profits from the crime, bring a civil action on behalf of the state to enforce the subrogation rights described in section 5357 of this title.

(c) If the full value of any profits from the crime has not yet been claimed by either the victim of the crime or the victim's representative, the attorney general, or both, within three years of the discovery of such profits, then the state may bring a civil action in a court of competent jurisdiction to recover the costs incurred by providing the defendant with counsel, if any, and other costs reasonably incurred or to be incurred in the incarceration of the defendant.

(d) Upon the filing of an action pursuant to subsection (a) of this section, the victim shall deliver a copy of the summons and complaint to the attorney general. Upon receipt of a copy of the summons and complaint, the attorney general shall send written notice of the alleged existence of profits from the crime to all other known victims at their last known addresses.

(e) To avoid the wasting of assets identified in the complaint as newly discovered profits of the crime, the attorney general, acting on behalf of the plaintiff and all other victims, shall have the right to apply for all remedies that are also otherwise available to the victim.

Sec. 3. 14 V.S.A. chapter 85 is added to Part 3 to read:

CHAPTER 85. GENERAL PRINCIPLES

§ 1971. INTENTIONAL KILLING; OFFENDER NOT TO BENEFIT

(a) The acquisition of any property, interest, power, or benefit by a person as the result of the person's commission of an intentional and unlawful killing shall be treated in accordance with the principle that a killer cannot profit from his or her wrong, and a court shall have the power to distribute, reform, revoke, or otherwise dispose of such property, interest, power, or benefit in accord with the principles of this section.

(b) The distribution, reformation, revocation, or disposition of any property, interest, power, or benefit subject to subsection (a) of this section shall not affect any valid liens or mortgages on such property, interest, power, or benefit.

Sec. 4. REPEAL

Chapters 41, 43, and 45 of Title 14 are repealed.

Sec. 5. 14 V.S.A. chapter 42 is added to Part 2 to read:

CHAPTER 42. DESCENT AND SURVIVORS' RIGHTS

Subchapter 1. General Provisions

§ 301. INTESTATE ESTATE

(a) Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs, except as modified by the decedent's will.

(b) A decedent's will may expressly exclude or limit the right of an individual or a class to inherit property. If such an individual or member of such a class survives the decedent, the share of the decedent's intestate estate which would have passed to that individual or member of such a class passes subject to any such limitation or exclusion set forth in the will.

(c) Nothing in this section shall preclude the surviving spouse of the decedent from making the election and receiving the benefits provided by section 319 of this title.

§ 302. DOWER AND CURTESY ABOLISHED

The estates of dower and curtesy are abolished.

§ 303. AFTERBORN HEIRS

For purposes of this chapter and chapter 1 of this title relating to wills, an individual in gestation at a particular time is treated as living at that time if the individual lives 120 hours or more after birth.

Subchapter 2. Survivors' Rights and Allowances

§ 311. SHARE OF SURVIVING SPOUSE

After payment of the debts, funeral charges, and expenses of administration, the intestate share of the decedent's surviving spouse is as follows:

(1) The surviving spouse shall receive the entire intestate estate if no descendant of the decedent survives the decedent or if all of the decedent's surviving descendants are also descendants of the surviving spouse.

(2) In the event there shall survive the decedent one or more descendants of the decedent who are not descendants of the surviving spouse and are not excluded by the decedent's will from inheriting from the decedent, the surviving spouse shall receive one-half of the intestate estate.

§ 312. SURVIVING SPOUSE TO RECEIVE HOUSEHOLD GOODS

Upon motion, the surviving spouse of a decedent may receive out of the decedent's estate all furnishings and furniture in the decedent's household when the decedent leaves no descendants who object. If any objection is made by any of the descendants, the court shall decide what, if any, of such personalty shall pass under this section. Goods and effects so assigned shall be in addition to the distributive share of the estate to which the surviving spouse is entitled under other provisions of law. In making a determination pursuant to this section, the court may consider the length of the decedent's marriage, or civil union, the sentimental and monetary value of the property, and the source of the decedent's interest in the property.

§ 313. SURVIVING SPOUSE; VESSEL, SNOWMOBILE, OR ALL-TERRAIN VEHICLE

Whenever the estate of a decedent who dies intestate consists principally of a vessel, snowmobile, or all-terrain vehicle, the surviving spouse shall be deemed to be the owner of the vessel, snowmobile, or all-terrain vehicle, and title to the vessel, snowmobile, or all-terrain vehicle shall automatically pass to the surviving spouse. The surviving spouse may register the vessel, snowmobile, or all-terrain vehicle pursuant to section 3816 of Title 23.

§ 314. SHARE OF HEIRS OTHER THAN SURVIVING SPOUSE

(a) The balance of the intestate estate not passing to the decedent's surviving spouse under section 311 of this title passes to the decedent's descendants by right of representation.

(b) If there is no taker under subsection (a) of this section, the intestate estate passes in the following order:

(1) to the decedent's parents equally if both survive or to the surviving parent;

(2) to the decedent's siblings and the descendants of any deceased siblings by right of representation;

(3) one-half of the intestate estate to the decedent's paternal grandparents equally if they both survive or to the surviving paternal grandparent and one-half of the intestate estate to the decedent's maternal grandparents equally if they both survive or to the surviving maternal grandparent and if decedent is survived by a grandparent, or grandparents on only one side, to that grandparent or those grandparents;

(4) in equal shares to the next of kin in equal degree.

(c) If property passes under this section by right of representation, the property shall be divided into as many equal shares as there are children or siblings of the decedent, as the case may be, who either survive the decedent or who predecease the decedent leaving surviving descendants.

§ 315. PARENT AND CHILD RELATIONSHIP

For the purpose of intestate succession, an individual is the child of his or her parents, regardless of their marital status, but a parent shall not inherit from a child unless the parent has openly acknowledged the child and not refused to support the child. The parent and child relationship may be established in parentage proceedings under subchapter 3A of chapter 5 of Title 15.

§ 316. SUPPORT OF SURVIVING SPOUSE AND FAMILY DURING SETTLEMENT

The probate court may make reasonable allowance for the expenses of maintenance of the surviving spouse and minor children or either, constituting the family of a decedent, out of the personal estate or the income of real or personal estate from date of death until settlement of the estate, but for no longer a period than until their shares in the estate are assigned to them or, in case of an insolvent estate, for not more than eight months after administration

is granted. This allowance may take priority, in the discretion of the court, over debts of the estate.

§ 317. ALLOWANCE TO CHILDREN BEFORE PAYMENT OF DEBTS

When a person dies leaving children under 18 years of age, an allowance may be made for the necessary maintenance of such children until they become 18 years of age. Such allowance shall be made before any distribution of the estate among creditors, heirs, or beneficiaries by will.

§ 318. ALLOWANCE TO CHILDREN AFTER PAYMENT OF DEBTS

Before any partition or division of an estate among the heirs or beneficiaries by will, an allowance may be made for the necessary expenses of the support of the children of the decedent under 18 years of age until they arrive at that age. The probate court may order the executor or administrator to retain sufficient estate assets for that purpose, except where some provision is made by will for their support.

§ 319. WAIVER OF WILL BY SURVIVING SPOUSE

(a) A surviving spouse may waive the provisions of the decedent's will and in lieu thereof elect to take one-half of the balance of the estate, after the payment of claims and expenses.

(b) The surviving spouse must be living at the time this election is made. If the surviving spouse is mentally disabled and cannot make the election personally, a guardian or attorney in fact under a valid durable power of attorney may do so.

§ 320. EFFECT OF DIVORCE ORDER

A final divorce order from any state shall have the effect of nullifying a gift by will or inheritance by operation of law to an individual who was the decedent's spouse at the time the will was executed if the decedent was no longer married to or in a civil union with that individual at the time of death, unless his or her will specifically states to the contrary.

§ 321. CONVEYANCES TO DEFEAT SPOUSE'S INTEREST

A voluntary transfer of any property by an individual during a marriage or civil union and not to take effect until after the individual's death, made without adequate consideration and for the primary purpose of defeating a surviving spouse in a claim to a share of the decedent's property so transferred, shall be void and inoperative to bar the claim. The decedent shall be deemed at the time of his or her death to be the owner and seised of an interest in such property sufficient for the purpose of assigning and setting out the surviving spouse's share.

§ 322. UNLAWFUL KILLING AFFECTING INHERITANCE

Notwithstanding sections 311 through 314 of this title or provisions otherwise made, in any case in which an individual is entitled to inherit or receive property under the last will of a decedent, or otherwise, such individual's share in the decedent's estate shall be forfeited and shall pass to the remaining heirs or beneficiaries of the decedent if the individual intentionally and unlawfully kills the decedent. In any proceedings to contest the right of an individual to inherit or receive property under a will or otherwise, the record of that individual's conviction of intentionally and unlawfully killing the decedent shall be admissible in evidence and shall conclusively establish that such individual did intentionally and unlawfully kill the decedent.

Subchapter 3. Descent, Omitted Issue, and Lapsed Legacies

§ 331. DEGREES; HOW COMPUTED: KINDRED OF HALF-BLOOD

Kindred of the half-blood shall inherit the same share they would inherit if they were of the whole blood.

§ 332. SHARE OF AFTERBORN CHILD

When a child of a testator is born after the making of a will and provision is not therein made for that child, he or she shall have the same share in the estate of the testator as if the testator had died intestate unless it is apparent from the will that it was the intention of the testator that provision should not be made for the child.

§ 333. SHARE OF CHILD OR DESCENDANT OF CHILD OMITTED FROM WILL

When a testator omits to provide in his or her will for any of his or her children, or for the descendants of a deceased child, and it appears that the omission was made by mistake or accident, the child or descendants, as the case may be, shall have and be assigned the same share of the estate of the testator as if the testator had died intestate.

§ 334. AFTERBORN AND OMITTED CHILD; FROM WHAT PART OF ESTATE SHARE TAKEN

When a share of a testator's estate is assigned to a child born after the making of a will, or to a child or the descendant of a child omitted in the will, the share shall be taken first from the estate not disposed of by the will, if there is any. If that is not sufficient, so much as is necessary shall be taken from the devisees or legatees in proportion to the value of the estate they respectively receive under the will. If the obvious intention of the testator, as to some

specific devise, legacy, or other provision in the will, would thereby be defeated, the specific devise, legacy, or provision may be exempted from such apportionment and a different apportionment adopted in the discretion of the court.

§ 335. BENEFICIARY DYING BEFORE TESTATOR: DESCENDANTS TO TAKE

When a testamentary gift is made to a child or other kindred of the testator, and the designated beneficiary dies before the testator, leaving one or more descendants who survive the testator, such descendants shall take the gift that the designated beneficiary would have taken if he or she had survived the testator, unless a different disposition is required by the will.

§ 336. INDIVIDUAL ABSENT AND UNHEARD OF; SHARE OF ESTATE

If an individual entitled to a distributive share of the estate of a decedent is absent and unheard of for six years, two of which are after the death of the decedent, the probate court in which the decedent's estate is pending may order the share of the absent individual distributed in accordance with the terms of the decedent's will or the laws of intestacy as if such absent individual had not survived the decedent. If the absent individual proves to be alive, he or she shall be entitled to the share of the estate notwithstanding prior distribution, and may recover in an action on this statute any portion thereof which any other individual received under order. Before an order is made for the payment or distribution of any money or estate as authorized in this section, notice shall be given as provided by the Vermont Rules of Probate Procedure.

§ 337. REQUIREMENT THAT INDIVIDUAL SURVIVE DECEDENT FOR 120 HOURS

Except as provided in the decedent's will, an individual who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent for purposes of homestead allowance, exempt property, intestate succession, and taking under decedent's will, and the decedent's heirs and beneficiaries shall be determined accordingly. If it is not established by clear and convincing evidence that an individual who would otherwise be an heir or beneficiary survived the decedent by 120 hours, it is deemed that the individual failed to survive for the required period. This section is not to be applied if its application would result in escheat.

§ 338. DISTRIBUTION; ORDER IN WHICH ASSETS APPROPRIATED; ABATEMENT

(a)(1) Except as provided in subsection (b) of this section, shares of distributees given under a will abate, without any preference or priority as between real and personal property, in the following order:

(A) property not disposed of by the will;

(B) residuary devises and bequests;

(C) general devises and bequests;

(D) specific devises and bequests.

(2) For purpose of abatement, a general devise or bequest charged on any specific property or fund is a specific devise or bequest to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general devise or bequest to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

(b) If the will expresses an order of abatement or if the testamentary plan or the express or implied purpose of a devise or bequest would be defeated by the order of abatement listed in subsection (a) of this section, the shares of the distributees shall abate as may be necessary to give effect to the intention of the testator.

(c) If the subject of a preferred devise or bequest is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

Sec. 6. 23 V.S.A. § 2023 is amended to read:

§ 2023. TRANSFER OF INTEREST IN VEHICLE

(a) If an owner transfers his or her interest in a vehicle, other than by the creation of a security interest, he or she shall, at the time of delivery of the vehicle, execute an assignment and warranty of title to the transferee in the space provided therefor on the certificate or as the commissioner prescribes, and of the odometer reading or hubometer reading or clock meter reading of the vehicle at the time of delivery in the space provided therefor on the certificate, and cause the certificate and assignment to be mailed or delivered to the transferee or to the commissioner. Where title to a vehicle is in the name of more than one person, the nature of the ownership must be indicated by one of the following on the certificate of title:

(1) TEN ENT (tenants by the entirety);

(2) JTEN (joint tenants);

(3) TEN COM (tenants in common); ~~or~~

(4) PTNRS (partners); or

(5) TOD (transfer on death).

(b) Upon request of the owner or transferee, a lienholder in possession of the certificate of title shall, unless the transfer was a breach of his or her security agreement, either deliver the certificate to the transferee for delivery to the commissioner or, upon receipt from the transferee of the owner's assignment, the transferee's application for a new certificate and the required fee, mail or deliver them to the commissioner. The delivery of the certificate does not affect the rights of the lienholder under his security agreement.

(c) If a security interest is reserved or created at the time of the transfer, the certificate of title shall be retained by or delivered to the person who becomes the lienholder, and the parties shall comply with the provisions of section 2043 of this title.

(d) Except as provided in section 2024 of this title and as between the parties, a transfer by an owner is not effective until the provisions of this section and section 2026 of this title have been complied with; however, an owner who has delivered possession of the vehicle to the transferee and has complied with the provisions of this section and section 2026 of this title requiring action by him or her is not liable as owner for any damages thereafter resulting from operation of the vehicle.

(e) Notwithstanding other provisions of the law, whenever the estate of an individual who dies intestate consists principally of an automobile, the surviving spouse shall be deemed to be the owner of the motor vehicle and title to the same shall automatically and by virtue hereof pass to said surviving spouse. Registration of the vehicle in the name of the surviving spouse shall be effected by payment of a transfer fee of $7.00. This transaction is exempt from the provisions of the purchase and use tax on motor vehicles.

(1) Notwithstanding other provisions of the law, and except as provided in subdivision (2) of this subsection, whenever the estate of an individual consists in whole or in part of a motor vehicle, and the person's will or other testamentary document does not specifically address disposition of motor vehicles, the surviving spouse shall be deemed to be the owner of the motor vehicle and title to the motor vehicle shall automatically pass to the surviving spouse. Registration and title of the motor vehicle in the name of the surviving spouse shall be effected by payment of a transfer fee of $7.00. This transaction is exempt from the provisions of the purchase and use tax on motor vehicles.

(2) This subsection shall apply to no more than two motor vehicles, and shall not apply if the motor vehicle is titled in the name of one or more persons other than the decedent and the surviving spouse.

(f) Where the title identifies a person who will become the owner upon the death of the principal owner (transfer on death), the principal owner shall have all rights of ownership and rights of transfer until his or her death. The designated transferee shall have no rights of ownership until such time as the principal owner has died as established by a valid death certificate. At that time, the transferee shall become the owner of the vehicle subject to any existing security interests.

Sec. 7. 23 V.S.A. § 3816 is amended to read:

§ 3816. TRANSFER OF INTEREST IN VESSEL

* * *

(e) Pursuant to the provisions of 14 V.S.A. § ~~403a~~ 313, whenever the estate of an individual who dies intestate consists principally of a vessel, snowmobile, or all-terrain vehicle, the surviving spouse shall be deemed to be the owner of the vessel, snowmobile, or all-terrain vehicle and title to the vessel, snowmobile, or all-terrain vehicle shall automatically pass to the surviving spouse. The surviving spouse may register the vessel, snowmobile, or all-terrain vehicle by paying a transfer fee not to exceed $2.00.

Sec. 8. 27 V.S.A. §§ 101 and 102 are amended to read:

§ 101. DEFINITION; EXEMPTION FROM ATTACHMENT AND EXECUTION

The homestead of a natural person consisting of a dwelling house, outbuildings and the land used in connection therewith, not exceeding ~~$75,000.00~~ $125,000.00 in value, and owned and used or kept by such person as a homestead together with the rents, issues, profits, and products thereof, shall be exempt from attachment and execution except as hereinafter provided.

§ 102. DESIGNATING HOMESTEAD IN CASE OF LEVY

When an execution is levied upon real estate of the person of which a homestead is a part or upon that part of a homestead in excess of the limitation of ~~$75,000.00~~ $125,000.00 in value, that person may designate and choose the part thereof, not exceeding the limited value, to which the exemption created in section 101 of this title shall apply. Upon designation and choice or refusal to designate or choose, the officer levying the execution, if the parties fail to agree upon appraisers, shall appoint three disinterested freeholders of the vicinity who shall be sworn by him or her and who shall fix the location and boundaries of the homestead to the amount of ~~$75,000.00~~ $125,000.00 in value. The officer shall then proceed with the sale of the residue of the real estate on the execution as in other cases, and the doings in respect to the homestead shall be stated in the return upon the execution.

Sec. 9. 14A V.S.A. § 418 is added to read:

§ 418. INTENTIONAL AND UNLAWFUL KILLING; TERMINATION OF INTEREST IN TRUST

(a) A person who commits an intentional and unlawful killing shall forfeit an interest in a trust:

(1) to the extent the trust was funded by the victim of the intentional and unlawful killing or would be funded by the victim's estate;

(2) to the extent the person's interest in the trust is augmented or advanced by the termination of the victim's interest in the trust as the result of the person's intentional and unlawful killing of the victim, and the interest is attributable to funding by someone other than the person or the victim of the intentional and unlawful killing;

(3) if the interest was created as the result of an exercise of a power of appointment held by the victim.

(b) An interest in a trust that is forfeited under subsection (a) of this section shall be administered and distributed in accordance with the terms of the trust as if the person whose interest is forfeited died on the date of the intentional and unlawful killing.

(c) A person who commits an intentional and unlawful killing shall be removed as trustee of a trust:

(1) that was funded by the victim of the intentional and unlawful killing or would be funded by the victim's estate;

(2) in which the person's interest in the trust is augmented or advanced by the termination of the victim's interest in the trust as the result of the person's intentional and unlawful killing of the victim, and the interest is attributable to funding by someone other than the person or the victim of the intentional and unlawful killing;

(d) For purposes of this section, the record of a conviction of a person for an intentional and unlawful killing of another shall be conclusive evidence that the person committed an intentional and unlawful killing of the other person.

(e) In the absence of a final judgment of conviction, a beneficiary or trustee of a trust may petition the probate court for a determination, or the court may on its own initiative determine, that the interest of a person who commits an intentional and unlawful killing has been forfeited under subsection (a) of this section, or that a person should be removed as trustee under subsection (c) of this section.

(f) This section shall apply to any interest in a trust that is or will be distributed on or after January 1, 2009.

Sec. 10. 27 V.S.A. § 1270 is amended to read:

§ 1270. DECEASED OWNERS; MULTIPLE CLAIMANTS

(a) If the treasurer holds unclaimed property in the name of a deceased owner, the treasurer may deliver the property as follows:

(1) In the case of an open estate, to the administrator or executor.

(2) In the case of a closed estate and the unclaimed property is valued at less than ~~$2,500.00~~ $5,000.00, in accordance with the probate court decree of distribution.

(3) In the absence of an open estate or probate court decree of distribution, and the unclaimed property is valued at less than ~~$2,500.00~~ $5,000.00 to the surviving spouse of the deceased owner, or, if there is no surviving spouse, then to the next of kin according to section 551 of Title 14.

(4) In all other cases where the treasurer holds property in the name of a deceased owner, a probate estate shall be opened by the claimant, or other interested party, in order to determine the appropriate distribution of the unclaimed property. Where an estate is opened solely to distribute unclaimed property under this section, the probate court may waive any filing fees.

(b) If the treasurer holds unclaimed property valued at $100.00 $250.00 or less which more than one person owns, the treasurer may deliver the property as follows:

(1) If the property has been listed on the treasurer's website for less than one year, a proportionate share to each of the persons who owns the property and who files a claim.

(2) If the property has been listed on the treasurer's website for a year or more, to the first person who files a claim and who owns at least a share of the property.

Sec. 11. 8 V.S.A. § 14304 is added to read:

§ 14304. CARD HOLDER REPRESENTED BY LEGAL COUNSEL

(a) A credit card company or its creditor or collection agency shall not contact a card holder regarding a debt, late fee, or other charge once informed that the card holder is disputing the debt, late fee, or other charge; is represented by legal counsel in the dispute; and the card holder has provided the credit card company or its creditor or collection agency with the name, address, and telephone number of the legal counsel.

(b) A credit card company or its creditor or collection agency that violates subsection (a) of this section shall be fined not more than $10,000.00.

(c) Each violation of subsection (a) of this section shall be considered a separate offense.

Sec. 12. 12 V.S.A. § 1612 is amended to read:

§ 1612. ~~PATIENTS'~~ PATIENT'S PRIVILEGE

(a) Confidential information privileged. Unless the patient waives the privilege or unless the privilege is waived by an express provision of law, a person authorized to practice medicine, chiropractic, or dentistry, a registered professional or licensed practical nurse, or a mental health professional as defined in 18 V.S.A. § 7101(13) shall not be allowed to disclose any information acquired in attending a patient in a professional capacity, including joint or group counseling sessions, and which was necessary to enable the provider to act in that capacity.

(b) Identification by dentist; crime committed against patient under ~~sixteen~~ 16. A dentist shall be required to disclose information necessary for identification of a patient. A physician, dentist, chiropractor, or nurse shall be required to disclose information indicating that a patient who is under the age of ~~sixteen~~ 16 years has been the victim of a crime.

(c) Mental or physical condition of deceased patient.

(1) A physician, chiropractor, or nurse shall be required to disclose any information as to the mental or physical condition of a deceased patient privileged under subsection (a) of this section, except information which would tend to disgrace the memory of the decedent, either in the absence of an objection by a party to the litigation or when the privilege has been waived:

~~(1)~~(A) by the personal representative, or the surviving spouse, or the next of kin of the decedent; or

~~(2)~~(B) in any litigation where the interests of the personal representative are deemed by the trial judge to be adverse to those of the estate of the decedent, by any party in interest; or

~~(3)~~(C) if the validity of the will of the decedent is in question, by the executor named in the will, or the surviving spouse or any heir-at-law or any of the next of kin or any other party in interest.

(2) A physician, dentist, chiropractor, mental health professional, or nurse shall be required to disclose any information as to the mental or physical condition of a deceased patient privileged under subsection (a) of this section upon request to the chief medical examiner.

Sec. 13. STUDY

The committee on judicial operation created by Sec. 5.101.1 of No. 192 of the Acts of the 2007 Adj. Sess. (2008) shall, in addition to its other duties, study the issue of allowing a single person to simultaneously hold the offices of assistant judge and probate judge. The study shall include an analysis of whether simultaneously holding both offices by a single person is constitutional as well as an analysis of its impact on the administration of justice.

Sec. 14. EFFECTIVE DATE

(a) Secs. 1, 2, 3, 4, 5, 7, 10, 14, and 15 of this act shall take effect on passage. Sec. 5 of this act shall apply only to the estates of persons dying on or after the effective date of Sec. 5 of this act.

(b) Secs. 6, 8, 9, 11, 12, and 13 of this act shall take effect July 1, 2009.

Sec. 15. REPEAL

Sec. 2a of No. 161 of the Acts of the 2005 legislative session (sunset of subsection regarding multiple claimants of unclaimed property valued at $100.00 or less) is repealed so that 27 V.S.A. § 1270(b) shall not be repealed on July 1, 2009.

After passage, the title of the bill is to be amended to read:

AN ACT RELATING TO RECOVERY OF PROFITS FROM CRIME, THE DISPOSITION OF PROPERTY UPON DEATH, TRANSFER OF INTEREST IN VEHICLE UPON DEATH, HOMESTEAD EXEMPTION, UNCLAIMED PROPERTY, CREDIT CARD FEE DISPUTES, AND PATIENT'S PRIVILEGE.

KEVIN J. MULLIN
JOHN F. CAMPBELL
RICHARD W. SEARS

Committee on the part of the Senate

WILLEM JEWETT
MARGARET FLORY
ELDRED FRENCH

Committee on the part of the House

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

House Proposal of Amendment Concurred In

J.R.S. 32.

House proposal of amendment to joint Senate resolution entitled:

Joint resolution authorizing the commissioner of forests, parks and recreation to enter into land exchanges and to sell a portion of Camel's Hump State Park.

Was taken up.

The House proposes to the Senate to amend the bill in the first Resolved clause following the words "wind turbines on the leased premises" by inserting the following: in a manner consistent with the terms of the lease

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

House Proposals of Amendment Concurred In

S. 25.

House proposals of amendment to Senate bill entitled:

An act relating to the repeal or revision of certain state agency reporting requirements.

Were taken up.

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

First: By striking out Sec. 1 in its entirety and inserting in lieu thereof a new Sec. 1 to read to read as follows:

Sec. 1. 2 V.S.A. § 20 is amended to read:

§ 20. LIMITATION ON DISTRIBUTION AND DURATION OF AGENCY REPORTS

* * *

(d) Unless otherwise provided by law, whenever an agency is required by law to submit an annual, biennial, or other periodic report to the general assembly, that requirement shall no longer be required after five years or after five years from July 1, 2009, whichever date is later. The legislative council, pursuant to section 424 of Title 2, may revise the Vermont Statutes Annotated accordingly.

Second: By striking out Sec. 25 in its entirety and inserting in lieu thereof a new Sec. 25 to read as follows:

Sec. 25. 10 V.S.A. § 1253(d) is amended to read:

(d) The board shall determine what degree of water quality and classification should be obtained and maintained for those waters not classified by it before 1981 following the procedures in sections 1254 and 1258 of this title. Those waters shall be classified in the public interest. The secretary shall revise all 17 basin plans by January 1, 2006, and update them every five years thereafter. On or before January 1 of each year, the secretary shall report to the house committees on agriculture ~~and~~, natural resources and energy, and on fish, wildlife and water resources, and to the senate committees on agriculture and on natural resources and energy regarding the progress made and difficulties encountered in revising basin plans. By January 1, 1993, the secretary shall prepare an overall management plan to ensure that the water quality standards are met in all state waters.

Third: By striking out Secs. 26, 27, 28, 29, 30, 33, 39, 46, and 47 in their entirety.

Fourth: By striking out Sec. 48 in its entirety and inserting in lieu thereof a new Sec. 48 to read as follows:

Sec. 48. 28 V.S.A. § 102(c)(13) is amended to read:

(13) ~~To report biennially to the general assembly, submitting a summary of the operations of the department during the preceding two years.~~ [Deleted]

Fifth: By striking out Sec. 49 in its entirety.

Sixth: By striking out Sec. 52 in its entirety and inserting in lieu thereof a new Sec. 52 to read as follows:

Sec. 52. 28 V.S.A. § 761 is amended to read:

§ 761. OFFENDER WORK PROGRAMS BOARD

(a) Offender work programs board established. An offender work programs board is established for the purpose of advising the commissioner on the use of offender labor for the public good. The board shall base its considerations and recommendations to the commissioner on a review of plans for offender work programs pursuant to subsection (b) of this section, and on other information as it deems appropriate.

* * *

(3) The board shall report on its activities at the request of the commissioner, and at least annually to the commissioner and to the joint fiscal ~~office~~ committee.

* * *

(b) Review of the annual report and two-year plan. In reviewing the annual report and two-year plan submitted by the director of offender work programs as required by subsection 751b(f) of this title, and forming its recommendations concerning them to the commissioner, the board shall:

* * *

(2) forward annually by January 1 to the joint fiscal ~~office~~ committee a maximum level of offender work program activity in each market segment during the term of the plan; and

* * *

Seventh: By deleting Secs. 53, 64, 66, 67, and 77 in their entirety

Eighth: In Sec. 83, by deleting subdivisions (b)(3), (e)(3), (e)(4), and (e)(13) in their entirety and by striking the semicolon at the end of (e)(12) and inserting in lieu thereof a period

Ninth: In Sec. 83, by striking out subdivision (l)(1) in its entirety and inserting in lieu thereof a new subdivision (l)(1) to read as follows:

(1) § 752(f) (reports of the joint fiscal office in years 2001, 2002, and 2003);

Tenth: In Sec. 83(l), by striking out the period at the end of (3) and inserting in lieu thereof a semicolon and by adding a new subdivision (4) to read as follows:

(4) chapter 15, subchapter 2 (Weeks School).

Eleventh: In Sec. 83, by deleting subdivisions (n)(3), (n)(4), (o)(2), (p)(2), and (w)(2) in their entirety.

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

Bill Recommitted

S. 137.

Senate bill entitled:

An act relating to the Vermont recovery and reinvestment act of 2009.

Was taken up.

Thereupon, pending the question, Shall the bill pass?, on motion of Senator Shumlin, the bill was recommitted to the Committee on Economic Development, Housing and General Affairs.

Rules Suspended; Proposals of Amendment; Third Reading Ordered; Rules Suspended; Bill Passed in Concurrence with Proposals of Amendment

H. 125.

Pending entry on the Calendar for notice, on motion of Senator Shumlin, the rules were suspended and House bill entitled:

An act relating to the sale of unpasteurized milk.

Was taken up for immediate consideration.

Senator Kittell, for the Committee on Agriculture, to which the bill was referred, reported recommending that the Senate propose to the House to amend the bill as follows:

First: In Sec. 2, 6 V.S.A. § 2777(d), by striking out subdivision (1) (registration) and renumbering the remaining subdivisions to be numerically correct.

Second: In Sec. 2, 6 V.S.A. § 2777(d), by striking out existing subdivision (2)(D) (annual reporting of total gallons sold)

Third: In Sec. 2, 6 V.S.A. § 2777(f), by adding two new subdivisions to be numbered subdivisions (4) and (5) to read as follows:

(4) Registration. Each producer operating under this subsection shall register with the agency.

(5) Reporting. On or before March 1 of each year, each producer shall submit to the agency a statement of the total gallons of unpasteurized milk sold in the previous 12 months.

And by renumbering the current subdivision (4) to be subdivision (6).

Fourth: In Sec. 2, 6 V.S.A. § 2777(f)(3), by striking out subdivisions (B) and (C) and inserting in lieu thereof new subdivisions (B) and (C) to read as follows:

(B) The producer shall assure that all test results are forwarded to the agency, by the laboratory, upon completion of testing or within five days of receipt of the results by the producer.

(C) The producer shall keep test results on file for one year and shall post results on the farm in a prominent place that is easily visible to customers. The producer shall provide test results to the farm's customers if requested.

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, the proposals of amendment were collectively agreed to, and third reading of the bill was ordered on a roll call, Yeas 19, Nays 2.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Bartlett, Carris, Choate, Cummings, Doyle, Flanagan, Giard, Kittell, MacDonald, Maynard, McCormack, Mullin, Nitka, Racine, Shumlin, Snelling, Starr, White.

Those Senators who voted in the negative were: Brock, Sears.

Those Senators absent and not voting were: Ayer, Campbell, Hartwell, Illuzzi, Kitchel, Lyons, Mazza, Miller, Scott.

Thereupon, on motion of Senator Shumlin, the rules were suspended and the bill was placed on all remaining stages of its passage in concurrence with proposals of amendment.

Thereupon, the bill was read the third time and passed in concurrence with proposals of amendment on a roll call, Yeas 22, Nays 3.

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: Ashe, Bartlett, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Giard, Hartwell, Kitchel, Kittell, MacDonald, Maynard, McCormack, Mullin, Nitka, Racine, Scott, Shumlin, Snelling, White.

Those Senators who voted in the negative were: Brock, Mazza, Sears.

Those Senators absent and not voting were: Ayer, Illuzzi, Lyons, Miller, Starr.

Message from the House No. 82

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

Mr. President:

I am directed to inform the Senate that:

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

H. 444. An act relating to health care reform.

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

The Governor has informed the House that on the May 7, 2009, he approved and signed bills originating in the House of the following titles:

H. 64. An act relating to eligibility for the state youth hunting programs.

H. 204. An act relating to payment of diversion program fees.

Rules Suspended; House Proposal of Amendment Concurred In

H. 444.

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

An act relating to health care reform.

Was taken up for immediate consideration.

The House proposes to the Senate to amend the Senate proposal of amendment as follows:

First: In Sec. 21(a), by striking out the word "No" and inserting in lieu thereof the following: Upon determination by the secretary of human services, in consultation with the commission on health care reform, that the amendments to be requested pursuant to this subsection will not jeopardize the receipt of the enhanced federal medical assistance percentage funds pursuant to Sec. 5001(f)(1)(A) of Title V of Division B of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, no

Second: In Sec. 39, 26 V.S.A. § 1369(a), after the words "provision of law" by inserting the following: or rule

Third: In Sec. 46, 9 V.S.A. § 2971(b) after the words "or pentaBDE" by inserting the following: in a concentration greater than 0.1 percent by weight and in 9 V.S.A. § 2971(c), after the words "containing decaBDE" by inserting the following: in a concentration greater than 0.1 percent by weight and in 9 V.S.A. §2971(d), after the words "containing decaBDE" by inserting the following: in a concentration greater than 0.1 percent by weight and in 9 V.S.A. §2971(g)(2) by striking out the following: "Classified as a "human carcinogen" or "probable human carcinogen"" and inserting in lieu thereof the following: Classified as "carcinogenic to humans" or "likely to be carcinogenic to humans and in 9 V.S.A. §2971(i) by striking out the following: "10 days" and inserting in lieu thereof the following: 30 days

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

Message from the House No. 83

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

Mr. President:

I am directed to inform the Senate that:

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

S. 48. An act relating to marketing of prescription drugs.

S. 136. An act relating to reducing the drop-out rate in Vermont secondary schools to zero by the year 2020.

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

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

S. 89. An act relating to stabilization of prices paid to Vermont dairy farmers.

And has adopted the same on its part.

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

H. 136. An act relating to executive branch fees.

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

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

H. 436. An act relating to decommissioning and decommissioning funds of nuclear energy generation plants.

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

Rules Suspended; Bills Messaged

On motion of Senator Shumlin, the rules were suspended, and the following bills were severally ordered messaged to the House forthwith:

H. 125, H. 444, H. 445.

Rules Suspended; Bills Delivered

On motion of Senator Shumlin, the rules were suspended, and the following bills were severally ordered delivered to the Governor forthwith:

S. 7, S. 25, S. 26.

Committee of Conference Appointed

H. 83.

An act relating to underground storage tanks and the petroleum cleanup fund.

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

Senator MacDonald
Senator McCormack
Senator Snelling

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

Recess

On motion of Senator Shumlin the Senate recessed until seven o'clock and thirty minutes.

Called to Order

At seven o'clock and forty-five minutes the Senate was called to order by the President.

Rules Suspended; Report of Committee of Conference; Consideration Postponed

H. 442.

Pending entry on the Calendar for notice, on motion of Senator Shumlin, the rules were suspended and the report of the Committee of Conference on House bill entitled:

An act relating to miscellaneous tax provisions.

Was taken up for immediate consideration.

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

To the Senate and House of Representatives:

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

H. 442. An act relating to miscellaneous tax provisions.

Respectfully reports that it has met and considered the same and recommends that the Senate recede from its proposals of amendment and that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Proposed Miscellaneous Tax Amendments * * *

Sec. H.1. INCREASING THE NUMBER OF COMPLIANCE PERSONNEL IN THE DEPARTMENT OF TAXES

(a) In addition to any other funds appropriated to the department of taxes in fiscal year 2010, there is appropriated from the general fund to the department $535,000.00 in fiscal year 2010 for the purpose of hiring nine full-time limited service employees to augment the department's compliance division. The department shall use the funds so appropriated to hire four tax field examiners, two desk audit examiners, one collector, one desk audit supervisor, and either one attorney or a second collector.

(b) In addition to any other funds appropriated to the department of taxes in fiscal year 2011, there is appropriated from the general fund to the department $935,000.00 in fiscal year 2011 for the purpose of retaining the nine full-time limited service employees hired pursuant to subsection (a) of this section and hiring six additional full-time limited service employees to further augment the department's compliance division. The department shall use the additional funds so appropriated to hire four tax field examiners and two desk audit examiners.

(c) It is the intent of the legislature to further augment the department's compliance efforts in fiscal year 2012 by appropriating additional funds for fiscal year 2012 for the purpose of retaining the 15 full-time limited service employees hired pursuant to subsections (a) and (b) of this section and hiring five additional limited service employees.

(d) The positions created pursuant to subsections (a) and (b) of this section shall not be new state employee positions but instead shall be transferred and converted from the vacant position pool as and only when such positions in the vacant position pool become available.

(e) Notwithstanding any other provision of law, the positions created by this section shall be created as limited service positions and shall not be funded for a period in excess of three years.

Sec. H.2. ADDING COMPLIANCE PERSONNEL TO THE DEPARTMENT OF LABOR

(a) In addition to any other funds appropriated to the department of labor in fiscal year 2010, there is appropriated from the general fund to the department $308,212.00 in fiscal year 2010 for the purpose of hiring four full-time limited service employees as workers' compensation fraud staff who will investigate the classification of workers as either contractors or employees and enforce compliance of the proper classification by businesses.

(b) The positions created pursuant to subsection (a) of this section shall not be new state employee positions but instead shall be transferred and converted from the vacant position pool as and only when such positions in the vacant position pool become available.

(c) Notwithstanding any other provision of law, the positions created by this section shall be created as limited service positions and shall not be funded for a period in excess of three years.

* * * Tax Amnesty * * *

Sec. H.3. TAX AMNESTY

(a) Notwithstanding any law to the contrary, the commissioner of taxes shall establish a tax amnesty program during which all penalties that could be assessed by the commissioner may be waived without the need for any showing by the taxpayer of reasonable cause or the absence of willful neglect if the taxpayer, prior to the expiration of the amnesty period, files proper returns for any tax types and any period for which the taxpayer has or had a filing obligation and pays the full amount of tax shown on such return together with all interest due thereon. The amnesty program shall be established for a period of six consecutive weeks to be determined by the commissioner, to expire not later than October 2, 2009.

(b) The amnesty program shall apply to a tax liability of any tax type for any periods for which the due date of the return was before January 26, 2009 but shall not apply to those penalties which the commissioner would not have the sole authority to waive, including fuel taxes administered under the International Fuel Tax Agreement or under the local option portions of taxes.

(c)(1) The commissioner shall maintain records of the amnesty provided under this section, including:

(A) the number of taxpayers provided with amnesty;

(B) the types of tax liability for which amnesty was provided and, for each type of liability:

(i) the amount of tax liability collected by the commissioner; and

(ii) the amount of penalties forgone by virtue of the amnesty; and

(iii) the total outstanding tax liability due to the state, for the period through June 30, 2009, after the collection of all funds under this section.

(2) The commissioner shall file a report detailing the information required by subdivision (1) of this subsection with the clerk of the house of representatives and the secretary of the senate, the joint fiscal committee, the house committee on ways and means, and the senate committee on finance not later than December 15, 2009; provided, however, that the report shall not contain information sufficient to identify an individual taxpayer or the amnesty an individual taxpayer was provided under this section.

Sec. H.4. APPROPRIATION

In addition to any other funds appropriated to the department of taxes in fiscal year 2010, there is appropriated from the general fund to the department $132,000.00 in fiscal year 2010 for the purpose of marketing the tax amnesty program provided for in Sec. H.3 of this act. In order to help stimulate the local economy, the legislature asks in determining what resources or marketing firms to use, the department give priority to Vermont-based firms.

* * * Sale of State-Owned Personal Property * * *

Sec. H.5. SALE OF STATE-OWNED SURPLUS PERSONAL PROPERTY

In order to raise capital and to free space in buildings owned or leased by the state, the commissioner of buildings and general services is authorized and directed to conduct a "spring cleaning" to identify and sell surplus personal property of the state. Each department and agency of the state shall, in accordance with section 1556 of Title 29, transfer all surplus personal property to the commissioner, who is authorized to sell such surplus personal property pursuant to subdivision 1556(6). Notwithstanding section 1557 of Title 29, the proceeds of such sale, net of the commissioner's administrative costs, shall be deposited into the general fund.

* * * Department of Revenue * * *

Sec. H.6. DEPARTMENT OF TAXES; DEPARTMENT OF REVENUE; TRANSITION

(a) In accordance with the report of the commissioner of taxes dated January 22, 2007, the department of taxes shall be converted into a department of revenue no later than June 30, 2012.

(b) To accomplish the requirement set out in subsection (a) of this section, there is hereby established a revenue transition committee to review and approve the commissioner's plan to transition the department of taxes to a department of revenue, which shall be responsible for collecting taxes, fees, levies, and other assessments as determined pursuant to subsection (c) of this section. The revenue transition committee shall be composed of the following seven members:

(1) The commissioner of finance and management or designee;

(2) The state treasurer or designee;

(3) A member of the house committee on ways and means, appointed by the speaker of the house;

(4) A member of the house committee on government operations, appointed by the speaker of the house;

(5) A member of the senate committee on finance, appointed by the committee on committees;

(6) A member of the senate committee on government operations, appointed by the committee on committees;

(7) The court administrator or designee.

(c) The commissioner shall review each state revenue source and determine whether the management of such revenue source should:

(1) remain substantially as is;

(2) be transferred to the treasurer's lockbox services contract;

(3) be transferred to the department of taxes, which shall ultimately be redesignated the department of revenue; or

(4) be transferred to another entity.

(d) The revenue transition committee shall meet as needed to review and approve the commissioner's implementation plan for the transition to a revenue department. The commissioner shall report to the revenue transition committee the findings and recommendations required pursuant to subsection (c) of this section, and the commissioner will implement any changes upon the approval of the revenue transition committee.

(e) No later than February 15 of each of the three years following the effective date of this act, the committee shall issue a report to the general assembly on its findings and containing specific recommendations concerning

the implementation of the transition, efficiencies, technology, staffing issues, and recommendations with respect to subsection (c) of this section.

(f) The legislative members shall be entitled to per diem compensation and reimbursement of necessary expenses as provided to members of standing committees under 2 V.S.A. § 406 for attendance at a meeting when the general assembly is not in session.

Sec. H.7. STATUTORY REVISION

After June 30, 2012, the legislative council is directed to revise the Vermont Statutes Annotated to reflect the redesignation of the department of taxes as the department of revenue. When applicable, the term "commissioner of taxes" shall be substituted with the term "commissioner of revenue"; and when applicable, the term "department of taxes" shall be substituted with the term "department of revenue."

* * * Education Property Tax Rates * * *

Sec. H.8. FISCAL YEAR 2010 EDUCATION PROPERTY TAX RATE REDUCTION

(a) For fiscal year 2010 only, the education property tax imposed under subsection 5402(a) of Title 32 shall be reduced from the rate of $1.59 and $1.10 and shall instead be at the following rates:

(1) the tax rate for nonresidential property shall be $1.35 per $100.00; and

(2) the tax rate for homestead property shall be $0.86 multiplied by the district spending adjustment for the municipality, per $100.00 of equalized property value as most recently determined under section 5405 of Title 32.

(b) For claims filed in 2010 only, "applicable percentage" in subdivision 6066(a)(2) of Title 32 shall be reduced from 2.0 percent and instead shall be 1.80 percent multiplied by the fiscal year 2010 district spending adjustment for the municipality in which the homestead residence is located; but in no event shall the applicable percentage be less than 1.80 percent.

* * * Fiscal Year 2010 Education Base Payment Amount * * *

Sec. H.9. FISCAL YEAR 2010 EDUCATION BASE PAYMENT AMOUNT

Notwithstanding subsection 4011(b) of Title 16 or any other provision of law, the base education payment for fiscal year 2010 only shall be $8,485.00.

* * * Electronic Filing of Property Transfer Tax * * *

Sec. H.10. DEVELOPMENT OF ELECTRONIC SYSTEM FOR FILING AND PAYING PROPERTY TRANSFER TAXES

No later than August 1, 2009, the department of taxes shall file with the joint fiscal committee an implementation plan for the electronic filing of property transfer tax returns and the electronic payment of property transfer taxes.

* * * VHFA: Moral Obligation for Pledged Equity Funds * * *

Sec. H.11. FINDINGS AND INTENT

Moral obligation of the state is used by municipal bond insurers, such as the Vermont Housing and Finance Agency (VHFA), as a discretionary capitalization obligation. By expanding VHFA's ability to pledge the state's existing commitment of moral obligation without increasing the amount of the state's existing potential obligation, the general assembly can provide VHFA with another tool to increase confidence and attract new financial partners so that the agency can continue its housing programs for low- and moderate-income Vermonters, even in these challenging economic times.

Sec. H.12. 10 V.S.A. § 631(f) is amended to read:

(f) The agency, subject to such agreements with noteholders or bondholders as may then exist, shall have power out of any funds available therefor to purchase notes or bonds of the agency~~, which shall thereupon be cancelled,~~ at a price ~~not exceeding:~~ as shall be determined in the economic best interests of the agency.

~~(1) if the notes or bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment thereon, or~~

~~(2) if the notes or bonds are not then redeemable, the redemption price applicable on the first date after such purchase upon which the notes or bonds become subject to redemption plus accrued interest to such date.~~

Sec. H.13. REPEAL

10 V.S.A. § 632 (authorizing the Vermont housing and finance agency to establish reserve funds) is repealed.

Sec. H.14. 10 V.S.A. § 632a is added to read:

§ 632a. RESERVE AND PLEDGED EQUITY FUNDS

(a) The agency may create and establish one or more special funds, herein referred to as "debt service reserve funds" or "pledged equity funds."

(b) The agency shall pay into each debt service reserve fund:

(1) any moneys appropriated and made available by the state for the purpose of such fund;

(2) any proceeds of the sale of notes, bonds, or other debt instruments to the extent provided in the resolution or resolutions of the agency authorizing their issuance; and

(3) any other moneys or financial instruments such as surety bonds, letters of credit, or similar obligations which may be made available to the agency for the purpose of such fund from any other source or sources. All moneys or financial instruments held in any debt service reserve fund created and established under this section except as hereinafter provided shall be used, as required, solely for the payment of the principal of the bonds, notes, or other debt instruments secured in whole or in part by such fund or of the payments with respect to the bonds, notes, or other debt instruments specified in any resolution of the agency as a sinking fund payment, the purchase or redemption of the bonds, the payment of interest on the bonds, notes, or other debt instruments, or the payment of any redemption premium required to be paid when the bonds, notes, or other debt instruments are redeemed prior to maturity, or to reimburse the issuer of a liquidity or credit facility, bond insurance, or other credit enhancement for the payment by such party of any of the foregoing amounts on the agency's behalf; provided, however, that the moneys or financial instruments in any such debt reserve fund shall not be drawn upon or withdrawn therefrom at any time in such amounts as would reduce the amount of such funds to less than the debt service reserve requirement established by resolution of the agency for such fund as provided in this section except for the purpose of paying, when due, with respect to bonds secured in whole or in part by such fund, the principal, interest, redemption premiums, and sinking fund payments and of reimbursing, when due, the issuer of any credit enhancement for any such payments made by it, for the payment of which other moneys of the agency are not available. Any income or interest earned by or increment to any debt service reserve fund due to the investment thereof may be transferred by the agency to other funds or accounts of the agency to the extent it does not reduce the amount of such debt service reserve fund below the debt service reserve requirement for such fund.

(c) The agency shall pay into each pledged equity fund:

(1) any moneys appropriated and made available by the state for the purpose of such fund;

(2) any proceeds of the sale of notes, bonds, or other debt instruments to the extent provided in the resolution or resolutions of the agency authorizing the issuance thereof; and

(3) any other moneys or financial instruments such as surety bonds, letters of credit, or similar obligations which may be made available to the agency for the purpose of such fund from any other source or sources. All moneys or financial instruments held in any pledged equity fund created and established under this section except as provided in this section shall be used, as required, solely to provide pledged equity or over-collateralization of any trust estate of the agency to the issuer of a liquidity or credit facility, bond insurance, or other credit enhancement obtained by the agency; provided, however, that the moneys or financial instruments in any pledged such equity fund shall not be drawn upon or withdrawn from such fund at any time in such amounts as would reduce the amount of such funds to less than the pledged equity requirement established by resolution of the agency for such fund as provided in this section except for the purposes set forth in and in accordance with the governing resolution. Any income or interest earned by or increment to, any pledged equity fund due to the investment thereof may be transferred by the agency to other funds or accounts of the agency to the extent it does not reduce the amount of such pledged equity fund below the requirement for such fund. Anything in this subdivision to the contrary notwithstanding, upon the defeasance of the bonds, notes, or other debt instruments with respect to which the pledged equity requirement was established, the agency may transfer amounts in such fund to another fund or account of the agency proportionately to the amount of such defeasance; provided that the agency shall repay to the state any amount appropriated by the state pursuant to subsection (f) of this section.

(d) The debt service reserve and pledged equity requirements for any fund established under this section shall be established by resolution of the agency prior to the issuance of any bonds, notes, or other debt instruments secured in whole or in part by a debt service reserve fund or prior to entering into any credit enhancement agreement and shall be the amount determined by the agency to be reasonably required in light of the facts and circumstances of the particular debt issue or credit enhancement; provided that the maximum amount of the state's commitment with respect to any pledged equity fund shall be determined by the agency at or prior to entering into any credit enhancement agreement related to such pledged equity fund. The agency shall not at any time issue bonds, notes, or other debt instruments secured in whole or in part by a debt service reserve fund or enter into any credit enhancement agreement that requires establishment of a pledged equity fund created and established under this section unless:

(1) the agency at the time of such issuance or execution shall deposit in such fund from the proceeds of such bonds, notes, or other debt instruments or from other sources an amount which, together with the amount then in such

fund, will not be less than the requirement established for such fund at that time;

(2) the agency has made a determination at the time of the authorization of the issuance of such bonds, notes, or other debt instruments or at the time of entering into such credit enhancement agreement that the agency will derive revenues or other income from the mortgage loans that secure such bonds, notes, or other debt instruments or that relate to any credit enhancement agreement sufficient to provide, together with all other available revenues and income of the agency other than any amounts appropriated by the state pursuant to this section for the payment or purchase of such bonds, notes, and other debt instruments and reimbursement to the issuer of any credit enhancement the payment of any expected deposits into any pledged equity fund established with respect to such credit enhancement, and the payment of all costs and expenses incurred by the agency with respect to the program or purpose for which such bonds, notes, or other debt instruments are issued; and

(3) the state treasurer or his or her designee has provided written approval to the agency that the agency may issue such bonds, notes, or other debt instruments and enter into any related credit enhancement agreement.

(e) In computing the amount of the debt service reserve or pledged equity funds for the purpose of this section, securities in which all or a portion of such funds shall be invested shall be valued at par if purchased at par or at amortized value, as that term is defined by resolution of the agency, if purchased at other than par.

(f) In order to assure the maintenance of the debt service reserve fund requirement in each debt service reserve fund established by the agency under this section, there may be appropriated annually and paid to the agency for deposit in each fund a sum as shall be certified by the chair of the agency to the governor, the president of the senate, and the speaker of the house as is necessary to establish or restore each such debt service reserve fund to an amount equal to the requirement for each such fund. The chair shall annually, on or about February 1, make, execute, and deliver to the governor, the president of the senate, and the speaker of the house a certificate stating the sum required to restore each such fund to the amount required by this section, and the sum so certified may be appropriated and, if appropriated, shall be paid to the agency during the then-current state fiscal year. In order to assure the funding of the pledged equity fund requirement in each pledged equity fund established by the agency under this section at the time and in the amount determined at the time of entering into any credit enhancement agreement related to a pledged equity fund, there may be appropriated and paid to the agency for deposit in each fund a sum as shall be certified by the chair of the

agency to the governor, the president of the senate, and the speaker of the house as is necessary to establish each pledged equity fund to an amount equal to the amount determined by the agency at the time of entering into any credit enhancement agreement related to a pledged equity fund; provided that the amount requested, together with any amounts previously appropriated pursuant to this subsection for a particular pledged equity fund, shall not exceed the maximum amount of the state's commitment as determined by the agency pursuant to subsection (d) of this section. The chair shall, on or about the February 1 next following the designated date for fully funding a pledged equity fund, make, execute, and deliver to the governor, the president of the senate, and the speaker of the house a certificate stating the sum required to bring each fund to the amount required by this section or to otherwise satisfy the state's commitment with respect to each fund, and the sum so certified may be appropriated and, if appropriated, shall be paid to the agency during the then-current state fiscal year. The combined principal amount of bonds, notes, and other debt instruments outstanding at any time and secured in whole or in part by a debt service reserve fund established under this section and the aggregate commitment of the state to fund pledged equity funds pursuant to this subsection shall not exceed $155,000,000.00 at any time, provided that the foregoing shall not impair the obligation of any contract or contracts entered into by the agency in contravention of the Constitution of the United States. Notwithstanding anything in this section to the contrary, the state's obligation with respect to funding any pledged equity fund shall be limited to its maximum commitment, as determined by the agency pursuant to subsection (d) of this section, and the state shall have no other obligation to replenish or maintain any pledged equity fund.

Sec. H.15. SAVINGS CLAUSE

Nothing in Sec. H.14 of this act shall be construed to impair the obligation of any preexisting contract or contracts entered into by the agency or by the state.

* * * Tax Expenditure Reporting Requirement * * *

Sec. H.16. 32 V.S.A. § 306 is amended to read:

§ 306. BUDGET REPORT

(a) The governor shall submit to the general assembly, not later than the third Tuesday of every annual session, a budget which shall embody his or her estimates, requests and recommendations for appropriations or other authorizations for expenditures from the state treasury. In the first year of the biennium, the budget shall relate to the two succeeding fiscal years. In the second year of the biennium, it shall relate to the succeeding fiscal year.

(b) The governor shall also submit to the general assembly, not later than the third Tuesday of each session of every biennium, a tax expenditure budget which shall embody his or her estimates, requests, and recommendations. The tax expenditure budget shall be provided to the house committee on ways and means and the senate committee on finance, which committees shall review the tax expenditure budget and shall report their recommendations in bill form.

Sec. H.17. 32 V.S.A. § 307 is amended to read:

§ 307. FORM OF BUDGET

(a) The budget shall be arranged and classified so as to show separately the following estimates and recommendations:

(1) Expenses of state administration.

(2) Deficiencies, overdrafts, and unexpended balances in appropriations of former years.

(3) Bonded debt, loans and interest charges.

(4) All requests and proposals for expenditures for new projects, new construction, additions, improvements, and other capital outlay.

(5) With respect to the tax expenditure budget required under subsection 306(b) of this chapter, all requests and proposals for new, amended, or continued tax expenditures as defined in section 312 of this chapter.

* * *

* * * Vermont State-Sponsored Affinity Card Program * * *

Sec. H.18. 32 V.S.A. § 584 is added to read:

§ 584. VERMONT STATE-SPONSORED AFFINITY CARD PROGRAM

(a) The state treasurer is hereby authorized to sponsor and participate in an affinity card program for the benefit of the residents of this state upon his or her determination that such a program is feasible and may be procured at rates and terms in the best interest of the cardholders. In selecting an affinity card issuer, the treasurer shall consider the issuer's record of investments in the state and shall take into consideration program features which will enhance the promotion of the state-sponsored affinity card, including consumer-friendly terms, favorable interest rates, annual fees, and other fees for using the card.

(b) The treasurer shall consult with other state agencies about potential public purpose projects to be designated for the program and shall allow cardholders to designate that funds be used either to support sustainable agricultural programs, renewable energy programs, state parks and forestland programs, or any combination of these. The net proceeds of the state fees or

royalties generated by this program shall be transmitted to the state and shall be deposited in a state-sponsored affinity card fund and subsequently transferred to the designated state programs and purposes as selected by the cardholders. The funds received shall be held by the treasurer until transferred for the purposes directed by participating state-sponsored affinity cardholders in accordance with the trust fund provisions of section 462 of this title.

(c) All program balances at the end of the fiscal year shall be carried forward and shall not revert to the general fund. Interest earned shall remain in the program. The treasurer's annual financial report to the governor and the general assembly shall contain an accounting of receipts, disbursements, and earnings of the state-sponsored affinity card program.

(d) The state shall not assume any liability for lost or stolen credit cards nor any other legal debt owed to the financial institutions.

(e) The state treasurer is authorized to adopt such rules as may be necessary to implement the Vermont state-sponsored affinity card program.

* * * Government Licenses and Employment * * *

Sec. H.19. 32 V.S.A. § 3113 is amended to read:

§ 3113. REQUIREMENT FOR OBTAINING LICENSE ~~OR,~~ GOVERNMENTAL CONTRACT, OR EMPLOYMENT

* * *

(c) Every agency shall, upon request of the commissioner, furnish a list of licenses and contracts issued or renewed by such agency during the reporting period; provided, however, that the secretary of state shall, with respect to certificates of authority to transact business issued to foreign corporations, furnish to the commissioner only those certificates originally issued by the secretary of state during the reporting period and not renewals of such certificates. The lists ~~should~~ shall include the name, address, ~~social security~~ Social Security or federal identification number of such licensee or provider, and such other information as the commissioner may require.

* * *

(i) No agency of the state shall hire any person as a full-time, part-time, temporary, or contractual employee unless the person shall first sign a written declaration under the pains and penalties of perjury that the person is in good standing with respect to or in full compliance with a plan to pay any and all taxes due as of the date such declaration is made. This requirement applies only to the initial hire of an individual into a position that is paid using the state of Vermont federal taxpayer identification number, other than as a county

employee, and not to an employee serving in such position or who returns to any position in state government as a result of a placement right or reduction in force recall right.

* * * Unclaimed Property * * *

Sec. H.20. 32 V.S.A. § 3113a is added to read:

§ 3113a. ABANDONED PROPERTY; SATISFACTION OF TAX LIABILITIES

The commissioner may request from the office of the treasurer the names and Social Security or federal identification numbers of owners of unclaimed property prior to notice being given to such persons pursuant to section 1249 of Title 27. If any such owner owes taxes to the state, the commissioner, after notice to the owner, may request and the treasurer shall transfer the abandoned property of such owner to the department for setoff of the taxes owed. The notice shall advise the owner of the action being taken and the right to appeal the setoff if the tax debt is not the owner's debt; or if the debt has been paid; or if the tax debt was appealed within 60 days from the date of the assessment and the appeal has not been finally determined; or if the debt was discharged in bankruptcy.

* * * Mapping Program * * *

Sec. H.21. 32 V.S.A. § 3409 is amended to read:

§ 3409. PREPARATION OF PROPERTY MAPS

Consistent with available resources and pursuant to a memorandum of understanding entered into between the commissioner and the Vermont center for geographic information, the ~~director shall prepare~~ center shall provide regional planning commissions, state agencies, and the general public with orthophotographic maps of the state at a scale appropriate for the production and revision of town property maps. Periodically, such maps shall be revised and updated to reflect land use changes, new settlement patterns and such additional information as may have become available to the director or the center.

(1) The ~~director~~ center shall supply to the clerk and to the listers or assessors of each town such maps as have been prepared by ~~the director~~ it of the total area of that town. Any map shall be available, without charge, for public inspection ~~both~~ in the office of the ~~Vermont mapping program and in the office of the~~ town clerk to whom the map was supplied.

(2) The ~~director may~~ state of Vermont shall retain the copyright of any map prepared ~~under this section~~ by the Vermont mapping program and the

center and the Vermont mapping program shall jointly own the copyright to any map prepared on or after the effective date of this act.

(3) A person~~,~~ who, without the written authorization of the director and the center, copies, reprints, duplicates, sells, or attempts to sell any map prepared under this chapter shall be fined an amount not to exceed $1,000.00.

(4) At a reasonable charge to be established by the center and the director, the ~~director~~ center shall supply to any person or agency other than a town clerk or lister a copy of any map prepared under this section.

* * * Unorganized Towns and Gores and Unified Towns and Gores * * *

Sec. H.22. 32 V.S.A. § 4408 is amended to read:

§ 4408. HEARING BY BOARD

(a) On the date so fixed by the town clerk and from day to day thereafter, the board of civil authority shall hear such appellants as appear in person or by agents or attorneys, until all such objections have been heard and considered. All objections filed in writing with the board of civil authority at or prior to the time fixed for hearing appeals shall be determined by the board notwithstanding that the person filing the objections fails to appear in person, or by agent or attorney.

(b) Ad hoc board for unorganized towns and gores and unified towns and gores. For purposes of hearing appeals under this subchapter only, the supervisor shall create an ad hoc board composed of:

(1) the supervisor; and

(2) one member from each adjoining municipality's board of civil authority, to be appointed by each respective board of civil authority, representing no fewer than three and no more than five of the adjoining municipalities, at the discretion of the supervisor.

(c) The ad hoc board provided for in subsection (b) of this section shall, for purposes of hearing appeals under this subchapter only, act as a board of civil authority, and an aggrieved party shall have further appeal rights as though the party had appealed to a board of civil authority.

* * * Education Property Tax Information Insert * * *

Sec. H.23. 32 VSA § 5402(b)(1) is amended to read:

(1) The commissioner of taxes shall determine for each municipality the education tax rates under subsection (a) of this section, divided by the municipality's most recent common level of appraisal. The legislative body in each municipality shall then bill each property taxpayer at the homestead or

nonresidential rate determined by the commissioner under this subdivision, multiplied by the education property tax grand list value of the property, properly classified as homestead or nonresidential property and without regard to any other tax classification of the property. Tax bills shall show the tax due and the calculation of the rate determined under subsection (a) of this section, divided by the municipality's most recent common level of appraisal, multiplied by the current grand list value of the property to be taxed. ~~Each homestead property tax bill shall include a copy of the document entitled "About Your 20XX Taxes 'The more you spend the more you pay'," updated annually for each town by the commissioner of taxes.~~

* * * Unsigned Declaration of Homestead * * *

Sec. H.24. 32 V.S.A. § 5410(c) is added to read:

(c) In the event that an unsigned but otherwise completed homestead declaration is filed with the declarant's signed state income tax return, the commissioner may treat such declaration as signed by the declarant.

* * * Unrelated Business Income of Nonprofit Corporations * * *

Sec. H.25. 32 V.S.A. § 5811(3) and (18) are amended to read:

(3) "Corporation" means any business entity subject to income taxation as a corporation, and any entity qualified as a small business corporation, under the laws of the United States, with the exception of the following entities which are exempt from taxation under this chapter:

(A) Railroad and insurance~~, surety and guaranty~~ companies~~, mutual or otherwise~~ that are taxed under chapter 211 of this title;

(B) ~~Life, fire and marine insurance companies and mutual life, fire and marine insurance companies;~~

~~(C) Farmers' or other mutual hail, cyclone, fire or life insurance companies, mutual water, mutual or cooperative telephone companies or similar organizations of a purely local character, the income of which companies consists solely of assessments, dues and fees collected from the members for the sole purpose of meeting the expenses of the company;~~

~~(D) Farmers', fruit growers', or like associations organized and operated on a cooperative basis:~~

~~(i) for the purpose of processing, preparing for market, handling or marketing the farm products of members or other producers and turning back to them the proceeds of sales, less the necessary marketing, handling and processing expenses, on the basis of either quantity or the value of the products furnished by them;~~

~~(ii) for the purpose of purchasing supplies and equipment for the use of the members and other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses; or~~

~~(iii) for the purpose of processing, preparing for market, or marketing handcraft products as defined in section 991 of Title 11 of members or other producers and turning~~ ~~back to them the proceeds of sales, less the necessary marketing, handling and processing expenses;~~

~~(E)~~ Credit unions organized under chapter 71 of Title 8 and federal credit unions;

~~(F)~~(C) Nonprofit hospital service corporations organized under chapter 123 of Title 8;

~~(G)~~(D) Nonprofit medical service corporations organized under chapter 125 of Title 8~~;~~

~~(H) Free public library corporations organized under chapter 3 of Title 22;~~

~~(I) Cemetery corporations and associations, labor, agricultural or horticultural organizations, fraternal beneficiary societies, no part of the net earnings of which inures to any member or stockholder;~~

~~(J) Sanitary corporations and corporations organized for religious, charitable, scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual member;~~

~~(K) Business organizations, chambers of commerce or boards of trade and area development organizations not organized for profit, no part of the net earnings of which inures to the benefit of any private stockholder or individual member;~~

~~(L) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare;~~

~~(M) Clubs organized and operated exclusively for pleasure and recreation and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual member; or~~

~~(N) Any political organization which is exempt from or does not owe any federal income taxes as provided in the federal internal revenue code~~.

* * *

(18) "Vermont net income" means, for any taxable year and for any corporate taxpayer:

* * *

(D) For a corporation with federal exempt status, "Vermont net income" means all income that is subject to federal income tax, including unrelated business income under Section 511 of the Internal Revenue Code and any income arising from debt-financed property subject to taxation under Section 514 of the Internal Revenue Code.

* * * Annual Update of Links to Federal Law * * *

Sec. H.26. 32 V.S.A. § 5824 is amended to read:

§ 5824. ADOPTION OF FEDERAL INCOME TAX LAWS

The statutes of the United States relating to the federal income tax, as in effect for taxable year ~~2007~~ 2008, but without regard to federal income tax rates under Section 1 of the Internal Revenue Code, are hereby adopted for the purpose of computing the tax liability under this chapter.

* * * Trustee Process * * *

Sec. H.27. 32 V.S.A. § 5892 is amended to read:

§ 5892. ACTION TO COLLECT TAXES; LIMITATIONS

(a) Action may be brought by the attorney general of the state at the instance of the commissioner in the name of the state to recover the amount of the tax liability of any taxpayer, if the action is brought within six years after the date the tax liability was collectible under section 5886 of this title. The action shall be returnable in the county where the taxpayer resides or has a place of business, and if the taxpayer neither resides nor has a place of business in this state, the action shall be returnable in Washington ~~county~~ County.

(b) Notwithstanding sections 3167 and 3168 of Title 12, a motion may be brought by the attorney general of the state at the instance of the commissioner in the name of the state for issuance of trustee process at the same time as an action is brought under subsection (a) of this section, and, if judgment is granted in that action, the court may proceed immediately to hear and render a decision on the trustee process.

* * * Repeal of Certain Tax Credits * * *

Sec. H.28. REPEAL

(a) 32 V.S.A. § 5930v (providing an income tax credit for eligible venture capital investment) is repealed effective for tax years beginning on or after January 1, 2010.

(b) 32 V.S.A. § 3802(13) (exempting fallout shelters from property tax) is repealed for grand lists prepared for April 1, 2010 and after.

* * * Property Tax Adjustments * * *

Sec. H.29. 32 V.S.A. § 6066a is amended to read:

§ 6066a. DETERMINATION OF PROPERTY TAX ADJUSTMENTS

* * *

(c) The commissioner shall notify the municipality of any claim and refund amounts unresolved by September 15 at the time of final resolution, including adjudication if any; provided, however, that towns will not be notified of any additional adjustment amounts after ~~December 31~~ September 15 of the claim year, and such amounts shall be paid to the claimant by the commissioner.

* * *

(f) Property tax bills.

* * *

(4) If the property tax adjustment amount as described in subsection ~~(b)~~(e) of this section exceeds the property tax, penalties and interest, due for the current and all prior years, the municipality shall refund the excess to the taxpayer, without interest, within 20 days of the first date upon which taxes become due and payable or 20 days after notification by the commissioner of education, whichever is later.

* * *

* * * Clarifying the Homestead Declaration Requirements * * *

Sec. H.30. DECLARATION OF HOMESTEAD

The commissioner of taxes shall ensure that the homestead declaration form clearly informs taxpayers that a homestead declaration must be filed each year regardless of whether or not the taxpayer is applying for an income sensitivity adjustment and that homestead declarations must be timely filed even if the taxpayer is granted an extension of time to file his or her return.

* * * Estate Tax * * *

Sec. H.31. 32 V.S.A. § 7442a is amended to read:

§ 7442a. IMPOSITION OF A VERMONT ESTATE TAX AND RATE OF TAX

(a) A tax is hereby imposed on the transfer of the Vermont estate of every decedent dying on or after January 1, 2002, who, at the time of death, was a resident of this state. The base amount of this tax shall be a sum equal to the amount ~~by which~~ of the credit for state death taxes allowable to a decedent's estate under Section 2011~~, as in effect on January 1, 2001,~~ of the Internal

Revenue Code~~, hereinafter sometimes referred to as the "credit," exceeds the lesser of~~ as in effect on January 1, 2001. This base amount shall be reduced by the lesser of the following:

(1) The total amount of all constitutionally valid state death taxes actually paid to other states; or

(2) A sum equal to the proportion of the credit which the value of the property taxed by other states bears to the value of the decedent's total gross estate for federal estate tax purposes.

(b) A tax is hereby imposed on the transfer of the Vermont estate of every decedent dying on or after January 1, 2002, who, at the time of death, was not a resident of this state. The amount of this tax shall be a sum equal to the proportion of the ~~credit~~ base amount of tax under subsection (a) of this section which the value of Vermont real and tangible personal property taxed in this state bears to the value of the decedent's total gross estate for federal estate tax purposes.

(c) The Vermont estate tax shall not exceed the amount of the tax imposed by Section 2001 of the Internal Revenue Service Code calculated using the applicable credit amount under Section 2010 as in effect on January 1, 2008, with no deduction under Section 2058.

(d) All values shall be as finally determined for federal estate tax purposes.

Sec. H.32. 32 V.S.A. § 7444 is amended to read:

§ 7444. RETURN BY EXECUTOR

In all cases where ~~the federal gross estate at the time of the death of the decedent exceeds the applicable federal exclusion amount or where the estate is subject to federal estate tax~~ a tax is imposed upon the estate under section 7442a of this chapter, the executor shall make a return with respect to the estate tax imposed by this chapter. If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he or she shall include in his or her return (to the extent of his or her knowledge or information) a description of such part and the name of every person holding a legal or beneficial interest therein. Upon notice from the commissioner such person shall in like manner make a return as to such part of the gross estate. A return made by one of two or more joint fiduciaries shall be sufficient compliance with the requirements of this section. A return made pursuant to this section shall contain a statement that the return is, to the best of the knowledge and belief of the fiduciary, true and correct.

Sec. H.33. 32 V.S.A. § 7445 is amended to read:

§ 7445. COPIES OF FEDERAL ESTATE TAX RETURNS TO BE FILED

It shall be the duty of the executor of every person who may die a resident of Vermont or a nonresident with real estate or tangible personal property having an actual situs in Vermont to file with the commissioner a duplicate of all federal estate tax returns which he or she is required to make to the federal authorities, or, if no federal estate tax return is required, a pro forma federal estate tax return for the estate of a decedent with a Vermont estate tax liability shall be filed with the commissioner.

Sec. H.34. 32 V.S.A. § 7446 is amended to read:

§ 7446. WHEN RETURNS TO BE FILED

The estate tax return required under section 7444 of this title shall be filed ~~at the time the federal estate tax return is required to be filed under the laws of the United States, including any extensions of time for filing granted by the federal authorities~~ within nine months of the death of the decedent. Prior to expiration of the filing period, executors may apply for a six-month extension.

Sec. H.35. 32 V.S.A. § 7475 is amended to read:

§ 7475. ADOPTION OF FEDERAL ESTATE AND GIFT TAX LAWS

The laws of the United States, relating to federal estate and gift taxes as in effect on January 1, ~~2008~~ 2009, are hereby adopted for the purpose of computing the tax liability under this chapter, except:

(1) ~~with~~ the credit for state death taxes shall remain as provided for under ~~Section~~ Sections 2011 and 2604 of the Internal Revenue Code as in effect on January 1, 2001~~,~~;

(2) the applicable credit amount shall remain as provided for under section 2010 of the Internal Revenue Code~~,~~ as in effect on January 1, 2008; and

(3) ~~without any~~ the deduction for state death taxes under Section 2058 of the Internal Revenue Code shall not apply.

* * * Cigarette and Tobacco Taxes* * *

Sec. H.36. 32 V.S.A. § 7702 is amended to read:

§ 7702. DEFINITIONS

The following words and phrases, as used in this chapter, shall have the following meanings, unless the context otherwise requires:

* * *

(13) "Snuff" means any finely cut, ground, or powdered tobacco that is not intended to be smoked, has a moisture content of no less than 45 percent, and is not offered in individual single-dose tablets or other discrete single-use units.

* * *

(15) "Tobacco products" means ~~cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff, snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweeping of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking~~ any product manufactured from, derived from, or containing tobacco that is intended for human consumption by smoking, chewing, or in any other manner; but shall not include cigarettes, little cigars, roll-your-own tobacco, moist snuff, or new smokeless tobacco as defined in this section.

* * *

(20) "New smokeless tobacco" means any tobacco product manufactured from, derived from, or containing tobacco that is not intended to be smoked, has a moisture content of less than 45 percent, or is offered in individual single-dose tablets or other discrete single-use units.

Sec. H.37. 32 V.S.A. § 7771(c) is amended to read:

(c) The tax imposed under this section shall be at the rate of ~~89.5~~ 112 mills per cigarette or little cigar and for each 0.09 ounces of roll-your-own tobacco. The interest and penalty provisions of section 3202 of this title shall apply to liabilities under this section.

Sec. H.38. 32 V.S.A. § 7811 is amended to read:

§ 7811. IMPOSITION OF TOBACCO PRODUCTS TAX

There is hereby imposed and shall be paid a tax on all tobacco products except roll-your-own tobacco and little cigars taxed under section 7771 of this title possessed in the state of Vermont by any person for sale on and after July 1, 1959 which were imported into the state or manufactured in the state after said date, except that no tax shall be imposed on tobacco products sold under such circumstances that this state is without power to impose such tax, or sold to the United States, or sold to or by a voluntary unincorporated organization of the armed forces of the United States operating a place for the sale of goods pursuant to regulations promulgated by the appropriate executive agency of the United States. Such tax ~~on~~ is intended to be imposed only once upon the wholesale sale of any tobacco ~~products~~ product and shall be at the

rate of ~~41~~ 92 percent of the wholesale price for all tobacco products except moist snuff, which shall be taxed at $1.66 per ounce, or fractional part thereof, ~~and is intended to be imposed only once upon any tobacco product~~ and new smokeless tobacco, which shall be taxed at the greater of $1.66 per ounce or, if packaged for sale to a consumer in a package that contains less than 1.2 ounces of the new smokeless tobacco, at the rate of $1.99 per package. Provided, however, that upon payment of the tax within 10 days, the distributor or dealer may deduct from the tax two percent of the tax due. It shall be presumed that all tobacco products within the state are subject to tax until the contrary is established and the burden of proof that any tobacco products are not taxable hereunder shall be upon the person in possession thereof. Wholesalers of tobacco products shall state on the invoice whether the price includes the Vermont tobacco products tax.

Sec. H.39. 32 V.S.A. § 7814 is amended to read:

§ 7814. FLOOR STOCK TAX

* * *

(b) Cigarettes, little cigars, or roll-your-own tobacco. Notwithstanding the prohibition against further tax on stamped cigarettes, little cigars, or roll-your-own tobacco under section 7771 of this title, a floor stock tax is hereby imposed upon every dealer of cigarettes, little cigars, or roll-your-own tobacco in this state who is either a wholesaler, or a retailer who at 12:01 a.m. ~~o'clock~~ on July 1~~, 2006~~ following enactment of this act, has more than 10,000 cigarettes or little cigars or who has $500.00 or more of wholesale value of roll-your-own tobacco, for retail sale in his or her possession or control. The amount of the tax shall be the amount by which the new tax exceeds the amount of the tax already paid for each cigarette, little cigar, or roll-your-own tobacco in the possession or control of the wholesaler or retailer at 12:01 a.m. ~~o'clock~~ on July 1~~, 2006~~ following enactment of this act, and on which cigarette stamps have been affixed before July 1~~, 2006~~ following enactment of this act. A floor stock tax is also imposed on each Vermont cigarette stamp in the possession or control of the wholesaler at 12:01 a.m. ~~o'clock~~ on July 1~~, 2006~~ following enactment of this act, and not yet affixed to a cigarette package, and the tax shall be at the rate of ~~$0.60~~ $0.25 per stamp. Each wholesaler and retailer subject to the tax shall, on or before July 25~~, 2006~~ following enactment of this act, file a report to the commissioner in such form as the commissioner may prescribe showing the cigarettes, little cigars, or roll-your-own tobacco and stamps on hand at 12:01 a.m. ~~o'clock~~ on July 1~~, 2006~~ following enactment of this act, and the amount of tax due thereon. The tax imposed by this section shall be due and payable on or before July 25~~, 2006~~ following enactment of this act, and thereafter shall bear interest at the rate established under section

3108 of this title. In case of timely payment of the tax, the wholesaler or retailer may deduct from the tax due two and three-tenths of one percent of the tax. Any cigarettes, little cigars, or roll-your-own tobacco with respect to which a floor stock tax has been imposed under this section shall not again be subject to tax under section 7771 of this title.

* * *

* * * Sales and Use Tax on Digital Downloads * * *

Sec. H.40. 32 V.S.A. § 9701(45), (46), and (47) are added to read:

(45) Transferred electronically: means obtained by the purchaser by means other than tangible storage media.

(46) Specified digital products: means digital audio-visual works, digital audio works, digital books, or ringtones that are transferred electronically.

(A) Digital audio-visual works: means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any;

(B) Digital audio works: means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones;

(C) Digital books: means works that are generally recognized in the ordinary and usual sense as "books."

(D) Ringtones: means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication.

(47) End user: means any person other than a person who received by contract a product transferred electronically for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution, or exhibition of the product, in whole or in part, to another person or persons.

Sec. H.41. 32 V.S.A. § 9771 is amended to read:

§ 9771. IMPOSITION OF SALES TAX

Except as otherwise provided in this chapter, there is imposed a tax on retail sales in this state. The tax shall be paid at the rate of six percent of the sales

price charged for, but in no case shall any one transaction be taxed under more than one of, the following:

* * *

(8) Specified digital products transferred electronically to an end user.

Sec. H.42. 32 V.S.A. § 9772 is amended to read:

§ 9772. AMOUNT OF TAX TO BE COLLECTED

(a) For the purpose of adding and collecting the tax imposed by this chapter, or an amount equal as nearly as possible or practicable to the average equivalent thereof, to be reimbursed to the vendor by the purchaser, the vendor shall ~~use either the calculation in subdivision (1) of this subsection or the formula in subdivision (2). The tax required to be remitted shall be the rate specified in section 9771 of this title multiplied by the total sales price of all the taxable transactions; provided, however, the tax required to be remitted shall be no more than the amount required to be collected. The vendor shall be entitled to retain any amount lawfully collected by the person in excess of the tax imposed by this chapter.~~

~~(1) The~~ multiply the total sales price of all the ~~transaction multiplied~~ transactions taxable by the rate specified in section 9771 of this title carried to the third decimal place and rounded up to the nearest whole cent if the third decimal point is greater than four and rounded down to the nearest whole cent if the third decimal point is four or less. The tax may be computed on either the total invoice amount or on each taxable item.

~~Amount of Sale~~	~~Amount of Tax~~
~~$0.01-0.10~~	~~No Tax~~
~~0.11-0.16~~	~~$.01~~
~~0.17-0.33~~	~~.02~~
~~0.34-0.50~~	~~.03~~
~~0.51-0.66~~	~~.04~~
~~0.67-0.83~~	~~.05~~
~~0.84-1.00~~	~~.06~~

~~In addition to a tax of $0.06 on each full dollar, a tax shall be collected on each part of a dollar in excess of a full dollar in accordance with the following formula:~~

~~$ 0.01-0.16~~	~~$ .01~~
~~0.17-0.33~~	~~.02~~
~~0.34-0.50~~	~~.03~~
~~0.51-0.66~~	~~.04~~
~~0.67-0.83~~	~~.05~~
~~0.84-0.99~~	~~.06~~

* * *

Sec. H.43. 32 V.S.A. § 9773 is amended to read:

§ 9773. IMPOSITION OF COMPENSATING USE TAX

Unless property has already been or will be subject to the sales tax under this chapter, there is imposed on every person a use tax at the rate of six percent for the use within this state, except as otherwise exempted under this chapter:

* * *

(2) Of any tangible personal property manufactured, processed or assembled by the user, if items of the same kind of tangible personal property are offered for sale by him or her in the regular course of business, but the mere storage, keeping, retention or withdrawal from storage of tangible personal property or the use for demonstrational or instructional purposes of tangible personal property by the person who manufactured, processed or assembled such property shall not be deemed a taxable use by him or her; and for purposes of this section only, the sale of electrical power generated by the taxpayer shall not be considered a sale by him or her in the regular course of business if at least 60 percent of the electrical power generated annually by the taxpayer is used by the taxpayer in his or her trade or business; ~~and~~

(3) Of any tangible personal property, however acquired, where not acquired for purposes of resale, upon which any taxable services described in subdivision 9771(3) of this title have been performed; and

(4) Specified digital products transferred electronically to an end user.

* * * Sales Tax on Spirituous Liquor * * *

Sec. H.44. 32 V.S.A. § 9743(1) is amended to read:

(1) The state of Vermont, or any of its agencies, instrumentalities, public authorities, public corporations (including a public corporation created pursuant to agreement or compact with another state) or political subdivisions when it is the purchaser, user or consumer, or when it is a vendor of services or

property of a kind not ordinarily sold by private persons, or when it charges for admission to any amusement; except that a performance jointly produced or presented by it and another person shall not be exempt from amusement tax unless it meets the joint production requirements imposed on a qualified organization under subdivision (3)(B) of this section and sales of alcoholic beverages shall not be exempt from sales tax.

* * * Returns Upon Business Closing * * *

Sec. H.45. 32 V.S.A. § 9775 is amended to read:

§ 9775. RETURNS

(a) Except as otherwise provided in this section, every person required to collect or pay tax under this chapter shall, where the sales and use tax liability under this chapter for the immediately preceding calendar year has been (or would have been in cases when the business was not operating for the entire year) $500.00 or less, pay the tax imposed by this chapter in one annual payment on or before the 25th day of January of each year. Every person required to collect or pay tax under this chapter shall, where the sales and use tax liability under this chapter for the immediately preceding calendar year has been (or would have been in cases when the business was not operating for the entire year) more than $500.00 but less than $2,500.00, pay the tax imposed by this chapter in quarterly installments on or before the 25th day of the calendar month succeeding the quarter ending on the last day of March, June, September, and December of each year. In all other cases, except as provided in ~~subsection~~ subsections (e) and (g) of this section, the tax imposed by this chapter shall be due and payable monthly on or before the 25th (23rd of February) day of the month following the month for which the tax is due. Payment by electronic funds transfer does not affect the requirement to file returns. The return of a vendor of tangible personal property shall show such information as the commissioner may require.

* * *

(g) A person required to report sales and use tax annually who cancels his, her, or its sales and use tax account shall file a final return not later than 60 days after such cancellation.

* * * Land Gains Tax * * *

Sec.H.46. 32 V.S.A. § 10009(b) is amended to read:

(b) All the administrative provisions of chapter 151 of this title, including those relating to the collection and enforcement by the commissioner of the withholding tax and the income tax, and of chapter 103, including those

relating to interest and penalty charges, shall apply to the tax imposed by this chapter.

* * * Capital Gains Exemption and Partial Exclusion of Deduction for State Income Taxes * * *

Sec. H.47. 32 V.S.A. § 5811(21) is amended to read:

(21) "Taxable income" means federal taxable income determined without regard to Section 168(k) of the Internal Revenue Code and:

(A) Increased by the following items of income (to the extent such income is excluded from federal adjusted gross income):

(i) interest income from non-Vermont state and local obligations; ~~and~~

(ii) dividends or other distributions from any fund to the extent they are attributable to non-Vermont state or local obligations; and

(iii) the amount in excess of $5,000.00 of state and local income taxes deducted from federal adjusted gross income for the taxable year, but in no case in an amount that will reduce total itemized deductions below the standard deduction allowable to the taxpayer; and

(B) Decreased by the following items of income (to the extent such income is included in federal adjusted gross income):

(i) income from United States government obligations; ~~and~~

(ii) ~~40 percent of adjusted net capital gain income as defined in Section 1(h) of the Internal Revenue Code, but the total amount of decrease under this subdivision (ii) shall not exceed 40 percent of federal taxable income~~ the first $5,000.00 of adjusted net capital gain income as defined in Section 1(h) of the Internal Revenue Code; and

(iii) recapture of state and local income tax deductions not taken against Vermont income tax.

* * * Deduction for Vehicle Purchase Sales Tax * * *

Sec. H.47b. INCLUSION IN INCOME OF AMOUNT OF DEDUCTION TAKEN FOR SALES AND USE TAX ON PURCHASE OF NEW VEHICLE

(a) For taxable year 2009 only, a taxpayer shall increase his or her taxable income calculated pursuant to section 5811(21) by the amount of any deduction taken pursuant to Sec. 164(a)(6) of the Internal Revenue Code.

(b) There is appropriated the sum of $100,000.00 from the general fund to the joint legislative government accountability committee established in Sec. 5 of No. 206 of the Acts of the 2008 General Assembly (adj. sess.) for the

purpose of hiring consultants to make recommendations for further efficiencies in state government.

* * * Reduction of Income Tax Rates * * *

Sec. H.48. REDUCTION OF PERSONAL INCOME TAX RATES

For taxable year 2009 and subsequent taxable years, income tax rates under 32 V.S.A. § 5822, after taking into account any inflation adjustments to taxable income as required under subdivision 5822(b)(2), shall be as follows:

For taxable income which, without the passage of this act, would be subject to tax at the following rate:	That taxable income shall instead be taxed at the following rate:
3.60%	3.55%
7.20%	6.80%
8.50%	7.80%
9.00%	8.80%
9.50%	8.95%

Sec. H.48a. STATUTORY REVISION

The legislative council is directed to revise the Vermont Statutes Annotated to reflect the income tax rate changes in Sec. H.48 of this act.

Sec. H.49. HEALTH CARE REFORM PROPERTY TAX EXEMPTION

In fiscal years 2010 and 2011, the following two properties shall be exempt from education property tax under chapter 135 of Title 32: Buildings and land owned and occupied by a health, recreation, and fitness organization which is exempt under Section 501(c)(3) of the Internal Revenue Code, the income of which is entirely used for its exempt purpose, one of which is designated by the Springfield Hospital and the other designated by the North Country Hospital, to promote exercise and healthy lifestyles for the community and to serve citizens of all income levels in this mission. This exemption shall apply notwithstanding the provisions of subdivision 3832(7) of Title 32.

* * * Digital Business Entities * * *

Sec. H.50. LEGISLATIVE INTENT

The purpose of the following sections of this act concerning digital business entities is to build on the momentum created by Secs. 74 through 100 of No. 190 of the Acts of the 2007 Adj. Sess. (2008), which provided for Vermont

companies to conduct much of their statutorily required corporate affairs using electronic media, including e-mail, facsimile, and web-based filings.

Sec. H.51. 32 V.S.A. § 5811(26) is added to read:

(26) "Digital business entity" means a business entity which, during the entire taxable year:

(A) was not a member of an affiliated group or engaged in a unitary business with one or more members of an affiliated group that is subject to Vermont income taxation; did not have any Vermont property, payroll, or sales and did not perform any activities in this state which would constitute doing business for purposes of income taxation except activities described in subdivisions (15)(C)(i) (fulfillment operations) and (C)(ii) (web page or Internet site maintenance) of this section; and

(B) used mainly computer, electronic, and telecommunications technologies in its formation and in the conduct of its business meetings, in its interaction with shareholders, members, and partners, in executing any other formal requirements.

Sec. H.52. 32 V.S.A. § 5832(2) is amended to read:

(2)(A) $75.00 for small farm corporations. "Small farm corporation" means any corporation organized for the purpose of farming, which during the taxable year is owned solely by active participants in that farm business and receives less than $100,000.00 gross receipts from that farm operation, exclusive of any income from forest crops; or

(B) An amount determined in accordance with section 5832a of this title for a corporation which qualifies as and has elected to be taxed as a digital business entity for the taxable year; or

(C) $250.00 for all other corporations.

Sec. H.53. 32 V.S.A. § 5832a is added to read:

§ 5832a. DIGITAL BUSINESS ENTITY FRANCHISE TAX

(a) There is imposed upon every business entity which qualifies as and has elected to be taxed as a digital business entity an annual franchise tax equal to:

(1) the greater of 0.02 percent of the current value of the tangible and intangible assets of the company or $250.00, but in no case more than $500,000.00; or

(2) where the authorized capital stock does not exceed 5,000 shares, $250.00; where the authorized capital stock exceeds 5,000 shares but is not more than 10,000 shares, $500.00; and the further sum of $250.00 on each 10,000 shares or part thereof.

(b) In no case shall the tax on any corporation for a full taxable year, whether computed under subdivision (a)(1) or (2) of this section, be more than $500,000.00 or less than $250.00.

(c) In the case of a corporation that has not been in existence during the whole year, the amount of tax due, at the foregoing rates and as provided, shall be prorated for the portion of the year during which the corporation was in existence.

(d) In the case of a corporation changing during the taxable year the amount of its authorized capital stock, the total annual franchise tax payable at the foregoing rates shall be arrived at by adding together the franchise taxes calculated pursuant to subdivision (a)(2) of this section as prorated for the several periods of the year during which each distinct authorized amount of capital stock was in effect.

(e) For the purpose of computing the taxes imposed by this section, the authorized capital stock of a corporation shall be considered to be the total number of shares that the corporation is authorized to issue without regard to whether the number of shares that may be outstanding at any one time is limited to a lesser number.

(f) The franchise tax under this section shall be reported and paid in the same manner as the tax under subdivision 5832(2)(B) of this title; provided, however, that an electing corporation shall also provide the commissioner with a copy of its federal tax return.

Sec. H.54. 32 V.S.A. § 5838 is added to read:

§ 5838. DIGITAL BUSINESS ENTITY ELECTION

A corporation shall not be subject to the tax imposed by section 5832 of this title if the corporation qualifies as and elects to be taxed as a digital business entity for the taxable year.

Sec. H.55. REPORT TO THE GENERAL ASSEMBLY ON DIGITAL BUSINESS ENTITY INCOME

Beginning in 2011 and every year thereafter, by January 15 the commissioner of taxes shall report to the house committee on ways and means and to the senate committee on finance on the amount of income reported to date to the department by businesses electing to be taxed as digital businesses, an estimate of the amount of income taxes exempted as a result, and details as to the size of businesses reporting. The committees shall review the report and make their recommendation to the general assembly as to whether to continue the taxpayer option of a digital business election and whether to extend the

option to pass-through entities. If the digital business election is repealed, the commissioner's reporting requirement of this section shall no longer apply.

* * * Blue Ribbon Tax Structure Commission * * *

Sec. H.56. BLUE RIBBON TAX STRUCTURE COMMISSION

(a) Composition of commission. There is hereby established a blue ribbon tax structure commission composed of three to five members to be selected as follows:

(1) The speaker of the house, the president pro tempore of the senate, and the governor shall each appoint one member; and

(2) The three members appointed pursuant to subdivision (1) of this subsection may select one or two additional members.

(b) The commission shall be appointed as soon as possible after the effective date of this act. The panel shall elect a chair and a vice chair from among its members.

(c) Purpose and goals. The commission shall prepare a structural analysis of the state's revenue system and offer recommendations for improvements and modernization and provide a long-term vision for the tax structure. The commission shall have as its goal a tax system that provides sustainability, appropriateness, and equity. For guidance, the commission may use the Principles of a High-Quality State Revenue System as prepared by the National Conference of State Legislatures as of June 2007. A high-quality revenue system:

(1) Comprises elements that are complementary, including the finances of both state and local governments.

(2) Produces revenue in a reliable manner. Reliability involves stability, certainty, and sufficiency.

(3) Relies on a balanced variety of revenue sources.

(4) Treats individuals equitably. Minimum requirements of an equitable system are that it imposes similar tax burdens on people in similar circumstances, it minimizes regressivity, and it minimizes taxes on low income individuals.

(5) Facilitates taxpayer compliance. It is easy to understand and minimizes compliance costs.

(6) Promotes fair, efficient, and effective administration. It is as simple as possible to administer, raises revenue efficiently, is administered professionally, and is applied uniformly.

(7) Is responsive to interstate and international economic competition.

(8) Minimizes its involvement in spending decisions and makes any such involvement explicit.

(9) Is accountable to taxpayers.

(d) The blue ribbon commission shall receive technical support from the department of taxes, the legislative joint fiscal office, and consultants. The following reports will be provided to the commission:

(1) Changes in personal income, arranged by decile, over the last five years;

(2) House site and homestead value arranged by adjusted gross income (AGI) and, where available, household income;

(3) Gross and net school taxes paid, arranged by adjusted gross income and, where available, by household income.

(e) The joint fiscal office with the assistance of the legislative council and the department of taxes may contract with one or more consultants to provide assistance with achieving the goals for the commission. The consultants shall have extensive experience with state tax systems and shall have participated in at least one other study of a state tax system.

(f) Work Plan.

(1) Year 1 – Examine Vermont's income tax structure and analyze, among other things, whether the principles of sustainability, appropriateness, and equity would be better met by using adjusted gross income rather than federal taxable income. This shall include an examination of personal exemptions, deductions, brackets, credits, and other adjustments to income. The commission shall prepare a work plan by September 15, 2009, preliminary findings by November 1, 2009, and a final report due January 1, 2010 submitted to the governor, the speaker, the president pro tempore, the house committee on ways and means and the senate committee on finance.

(2) Year 2 – The commission, by February 1, 2010, shall also present a proposed work plan which shall include a delivery date prior to February 1, 2011 for examining tax expenditures, fees, consumption taxes, and business taxes. The work plan shall include examining whether fees are being used to fund general responsibilities of government and whether such use is sustainable, appropriate, and equitable. The work plan shall include an analysis of the process for reviewing tax expenditures under section 312 of Title 32.

(g) There is appropriated in fiscal year 2010 the sum of $200,000.00 from the general fund to the joint fiscal office for the purpose of hiring consultants and other support for the commission.

(h) Non-legislative members of the commission shall be entitled to compensation as provided under 32 V.S.A. § 1010. Any legislative members of the commission shall be entitled to the same per diem compensation and reimbursement of necessary expenses for attendance at a meeting when the general assembly is not in session as provided to members of standing committees under 2 V.S.A. § 406.

* * * Financing and Effectiveness of the Vermont Education System * * *

SEC. H.57. FINANCING AND EFFECTIVENESS OF THE VERMONT EDUCATION SYSTEM IN THE 21ST CENTURY; COMMITTEE

(a) Findings.

(1) The future of Vermont's economic and social well-being is dependent on a strong, efficient public education system.

(2) Pressures on Vermont's education funding system, the state's general fund, and the Vermont economy as a whole make it increasingly difficult to ensure that Vermonters will continue to have access to the high quality education they have come to expect.

(b) Committee created. There is created a committee to examine potential improvements to the structure and funding of the Vermont educational system in light of the state's limited financial resources. When performing the duties assigned to it, the committee shall consider the work of the committee convened by the governor, the speaker of the house, and the president pro tempore during the 2009 legislative session. Among other issues, the committee shall:

(1) Examine the role and the effectiveness of the policy-making, management, and administrative structure that creates and implements Vermont education policy, including consideration of the functions of the legislature, the governor, the state board of education, the department of education, supervisory unions, local school boards, parents, students, community members, and other entities and individuals.

(2) Consider the types of decisions the identified entities and individuals make and how these decisions influence decisions made by others, with a focus on how they shape educational outcomes and drive funding requirements.

(3) Identify and evaluate the long-range sustainability of current and potential funding sources and mechanisms.

(4) Determine whether and to what extent each identified funding source and mechanism advances the mission of Vermont's educational system, including whether it complies with Brigham v. State, 166 Vt. 246 (1997).

(c) Committee membership. The committee shall have 15 members who shall be:

(1) The chairs of the house committees on education and on ways and means or their designees, plus two additional members of the house of representatives appointed by the speaker of the house.

(2) The chairs of the senate committees on education and on finance or their designees, plus two additional members of the senate appointed by the committee on committees.

(3) The commissioner of education or the commissioner's designee.

(4) Six members from constituencies such as the business community, superintendents, school boards, teachers, parents, and community members to be selected by July 15, 2009 as follows: two by the speaker of the house, two by the committee on committees, and two by the governor.

(d) Committee's overall composition. Persons making appointments under subsection (c) of this section shall consider the overall composition of the committee and shall attempt to ensure both that committee members have a broad understanding of the current education funding system and that the committee includes both supporters and critics of the system.

(e) Initial meeting. The commissioner of education shall convene the first meeting of the committee on or before July 30, 2009. The committee shall select a chair from among its members at the first meeting.

(f) Committee staff. The department of education and the joint fiscal office shall provide administrative and fiscal services to the committee. The committee shall rely upon the legislative council to draft all proposed legislation.

(g) Compensation for legislators. For attendance at a meeting when the general assembly is not in session, legislative members of the committee shall be entitled to compensation for services and reimbursement of expenses as provided in 2 V.S.A. § 406(a).

(h) Compensation for private citizens. Committee members who are not full-time state employees shall be entitled to expenses as provided in 32 V.S.A. § 1010 from money appropriated for this purpose by the general assembly.

(i) Number of meetings authorized. The committee shall meet no more than six times unless specifically authorized by the speaker of the house and the president pro tempore of the senate.

(j) Report. On or before December 15, 2009, the committee shall present detailed written findings and recommendations to the members of the house and senate committees on education, the house committee on ways and means, the senate committee on finance, and the governor. It shall provide draft legislation designed to implement its recommendations to the same parties by January 15, 2010.

Sec. H.58. EFFECTIVE DATES

This section. and Secs. H.1–H.57 of this act shall take effect upon passage, except:

(1) Sec. H.22 (establishing an ad hoc board of civil authority for unorganized towns and gores and unified towns and gores) shall apply to appeals filed on or after July 1, 2009.

(2) Sec. H.23 (repealing tax information insert) shall apply to homestead property tax bills mailed in 2009 and after.

(3) Sec. H.24 (unsigned declaration of homestead) shall apply to declarations filed in calendar year 2010 and after.

(4) Sec. H.25 (taxation of unrelated business income of nonprofit corporations) shall take effect for taxable years beginning on and after January 1, 2010.

(5) Sec. H.26 (update of link to federal income tax laws) shall apply to taxable years beginning on and after January 1, 2008.

(6) Sec. H.29 (deadline for notice from department to towns regarding adjustment amounts) shall apply to homestead declarations filed in 2009 and after.

(7) Secs. H.31–H.35 (estate taxes) shall apply to estates of individuals dying on or after January 1, 2009.

(8) Secs. H.36–H.39 (tax on cigarettes and other tobacco products) shall take effect on July 1, 2009.

(9) Secs. H.40–H.43 (sales and use tax on digital downloads) shall take effect on July 1, 2009.

(10) Sec. H.44 (sales tax on spirituous liquor) shall take effect on July 1, 2009).

(11) Sec. H.45 (cancellation of sales and use tax account) shall take effect with respect to cancellations on or after July 1, 2009.

(12) Sec. H.47 (capital gains exemption and state income tax deduction) shall apply to taxable years beginning on or after January 1, 2009.

(13) Sec. H.50-H.55 (digital business entities) shall take effect on January 1, 2010.t

ANN E. CUMMINGS
WILLIAM CARRIS
ROBERT M. HARTWELL

Committee on the part of the Senate

JANET ANCEL
JAMES CONDON
MICHAEL J. OBUCHOWSKI

Committee on the part of the House

Thereupon, pending the question, Shall the Senate accept and adopt the report of the Committee of Conference?, on motion of Senator Shumlin, consideration of the bill was postponed.

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

H. 438.

Pending entry on the Calendar for notice, on motion of Senator Shumlin, the rules were suspended and the report of the Committee of Conference on House bill entitled:

An act relating to the state's transportation program.

Was taken up for immediate consideration.

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

To the Senate and House of Representatives:

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

H. 438. An act relating to the state's transportation program.

Respectfully reports that it has met and considered the same and recommends that the Senate recede from its proposal of amendment and that

the bill be amended by striking out all after the enacting clause and by inserting in lieu thereof the following:

Sec. 1. TRANSPORTATION PROGRAM

(a) The state's proposed fiscal year 2010 transportation program appended to the agency of transportation's proposed fiscal year 2010 budget, as amended by this act, is adopted to the extent federal, state, and local funds are available.

(b) As used in this act, unless otherwise indicated:

(1) the term "agency" means the agency of transportation;

(2) the term "secretary" means the secretary of transportation;

(3) the table heading "As Proposed" means the transportation program referenced in subsection (a) of this section; the table heading "As Amended" means the amendments as made by this act; the table heading "Change" means the difference obtained by subtracting the "As Proposed" figure from the "As Amended" figure; and the term "change" or "changes" in the text refers to the project- and program-specific amendments, the aggregate sum of which equals the net "Change" in the applicable table heading;

(4) the term "bonding" refers to the net proceeds of transportation bonds which were included in the agency's proposed fiscal year 2010 transportation program;

(5) the term "ARRA funds" refers to federal funds allocated to the state by the American Recovery and Reinvestment Act of 2009;

(6) the term "TIB funds" refers to monies deposited in the transportation infrastructure bond fund in accordance with 19 V.S.A. § 11f.

* * * TIB Funds * * *

Sec. 2. TIB FUNDS

All spending of TIB funds authorized by this act with respect to an agency program and all appropriations of TIB funds shall be limited to eligible projects as defined in 19 V.S.A. § 11f(b) and shall further be limited in amounts to the monies deposited in the transportation infrastructure bond fund during the fiscal year in which the spending is authorized and the appropriation is made.

* * * ARRA Funds * * *

Sec. 3. FEDERAL ECONOMIC RECOVERY FUNDS

(a) Division A – Title XII of the American Recovery and Reinvestment Act (ARRA) of 2009 allocates federal funds to the state for transportation-related

projects. The secretary of transportation is authorized to obligate and expend ARRA funds:

(1) to projects as indicated in the document titled "VT Agency of Transportation – Proposed ARRA Project Plan" dated May 6, 2009.

(2) Up to $5,000,000 to additional town highway paving projects that meet federal eligibility and readiness criteria. Individual projects shall not exceed $750,000 in federal funds, unless approved by the secretary of transportation. Any exceptions shall be reported to the joint transportation oversight committee.

(3) Up to $5,000,000 to additional town highway structures projects that meet federal eligibility and readiness criteria. Individual projects shall not exceed $750,000 in federal funds, unless approved by the secretary of transportation. Any exceptions shall be reported to the joint transportation oversight committee.

(b) Any proposed obligation and expenditure of ARRA funds other than as authorized under subsection (a) of this section shall be subject to the approval of the joint transportation oversight committee.

(c) The agency shall report on the obligation and expenditure of ARRA funds to the joint transportation oversight committee at the committee's regular and specially scheduled 2009 meetings.

(d) All reports from the agency to the joint transportation oversight committee (JTOC) required under this section when the legislature is not in session shall take place at meetings of the committee called by the chair.

* * * Paving * * *

Sec. 4. PROGRAM DEVELOPMENT – PAVING

(1) Spending authority in the paving statewide preventive maintenance program is amended to read:

FY10	As Proposed	As Amended	Change
PE	0	0	0
ROW	0	0	0
Construction	500,000	0	-500,000
Total	500,000	0	-500,000
Source of funds			
State	500,000	0	-500,000
Total	500,000	0	-500,000

(2) Under Sec. 3(a)(3) of this act, a new project is added to authorize the expenditure of up to $5,000,000 in ARRA funds on additional town highway

paving projects that meet federal eligibility and readiness criteria for the use of ARRA funds.

(3) Including the changes in subsections (1) and (2) of this section, total spending authority in the paving program is amended to read:

FY10	As Proposed	As Amended	Change
PE	2,405,000	2,405,000	0
Row	0	0	0
Construction	66,229,802	116,019,718	49,789,916
Total	68,634,802	118,424,718	49,789,916
Source of funds			
State	13,018,034	3,912,806	-9,105,228
TIB funds	0	2,592,739	2,592,739
Federal	55,616,768	27,247,723	-28,369,045
ARRA funds	0	84,671,450	84,671,450
Total	68,634,802	118,424,718	49,789,916

* * * Roadway * * *

Sec. 5. PROGRAM DEVELOPMENT – ROADWAY

(1) Spending authority for the Cabot-Danville US 2 FEGC F 028-3(26)C/1 roadway project is amended to read:

FY10	As Proposed	As Amended	Change
PE	0	0	0
ROW	0	0	0
Construction	4,000,000	2,500,000	-1,500,000
Other	0	0	0
Total	4,000,000	2,500,000	-1,500,000
Source of funds			
State	200,000	0	-200,000
TIB funds	0	125,000	125,000
Federal	3,800,000	2,375,000	-1,425,000
Total	4,000,000	2,500,000	-1,500,000

(2) Spending authority for the Morristown VT 100 STP F 029-1(2) roadway project is amended to read:

FY10	As Proposed	As Amended	Change
PE	200,000	200,000	0
ROW	500,000	2,000,000	1,500,000
Construction	0	0	0
Other	200,000	200,000	0
Total	900,000	2,400,000	1,500,000

Source of funds			
State	182,440	0	-182,440
TIB funds	0	482,440	482,440
Federal	717,560	1,917,560	1,200,000
Total	900,000	2,400,000	1,500,000

(3) Spending authority for the Winooski NH 089-3(65) roadway project is amended to read:

FY10	As Proposed	As Amended	Change
PE	100,000	100,000	0
ROW	0	0	0
Construction	1,000,000	1,000,000	0
Other	0	0	0
Total	1,100,000	1,100,000	0
Source of funds			
State	110,000	0	-110,000
TIB funds	0	10,000	10,000
Federal	990,000	1,090,000	100,000
Total	1,100,000	1,100,000	0

(4) Spending authority for the Derby IM 091-3(45) roadway border crossing project is amended to read:

FY10	As Proposed	As Amended	Change
Other	287,500	0	-287,500
Total	287,500	0	-287,500
Source of funds			
State	287,500	0	-287,500
Federal	0	0	0
Total	287,500	0	-287,500

(5) Including the changes made in subsections (1) through (4) of this section, total spending authority in the roadway program is amended to read:

FY10	As Proposed	As Amended	Change
PE	5,446,892	5,446,892	0
Row	7,115,000	8,615,000	1,500,000
Construction	43,752,270	45,561,882	1,809,612
Other	1,087,500	800,000	-287,500
Total	57,401,662	60,423,774	3,022,112
Source of funds			
State	2,749,362	641,762	-2,107,600
Bonding	4,390,980	0	-4,390,980
TIB funds	0	6,477,842	6,477,842

Federal	48,710,890	50,353,740	1,642,850
ARRA funds	0	1,400,000	1,400,000
Local	1,550,430	1,550,430	0
Total	57,401,662	60,423,774	3,022,112

* * * Bridge Programs * * *

Sec. 6. PROGRAM DEVELOPMENT – STATE BRIDGE

Spending authority in the state bridge program is amended to read:

FY10	As Proposed	As Amended	Change
PE	3,550,576	3,550,576	0
Row	1,181,202	1,181,202	0
Construction	19,002,022	21,610,522	2,608,500
Other	0	0	0
Total	23,733,800	26,342,300	2,608,500
Source of funds			
State	500,000	3,529,579	3,029,579
Bonding	4,686,420	0	-4,686,420
TIB funds	0	1,385,241	1,385,241
Federal	18,547,380	17,460,980	-1,086,400
ARRA funds	0	3,966,500	3,966,500
Total	23,733,800	26,342,300	2,608,500

Sec. 7. PROGRAM DEVELOPMENT – INTERSTATE BRIDGE

(1) Spending authority in the Brattleboro I-91 IM 091-1(50) project is amended to read:

FY10	As Proposed	As Amended	Change
PE	50,000	50,000	0
Row	1,000	1,000	0
Construction	0	1,500,000	1,500,000
Other	0	0	0
Total	51,000	1,551,000	1,500,000
Source of funds			
State	5,100	5,100	0
Federal	45,900	45,900	0
ARRA funds	0	1,500,000	1,500,000
Total	51,000	1,551,000	1,500,000

(2) Including the change made in subsection (1) of this section, total spending authority in the interstate bridge program is amended to read:

FY10	As Proposed	As Amended	Change
PE	607,500	607,500	0
Row	26,000	26,000	0
Construction	5,315,000	6,815,000	1,500,000
Other	0	0	
Total	5,948,500	7,448,500	1,500,000
Source of funds			
State	100,000	594,850	494,850
Bonding	494,850	0	-494,850
TIB funds	0	0	0
Federal	5,353,650	5,353,650	0
ARRA funds	0	1,500,000	1,500,000
Total	5,948,500	7,448,500	1,500,000

Sec. 8. TOWN HIGHWAY BRIDGE

(1) Under Sec. 3(a)(3) of this act, a new project is added to authorize the expenditure of up to $5,000,000 in ARRA funds on additional town highway bridge and culvert projects that meet federal eligibility and readiness criteria for the use of ARRA funds.

(2) Including the change made in subsection (1) of this section, total spending authority in the town bridge program is amended to read:

FY10	As Proposed	As Amended	Change
PE	1,663,952	1,663,952	0
Row	588,278	588,278	0
Construction	18,418,870	23,817,186	5,398,316
Total	20,671,100	26,069,416	5,398,316
Source of funds			
State	1,540,899	500,000	-1,040,899
Bonding	1,500,000	0	-1,500,000
TIB funds	0	1,875,976	1,875,976
Federal	16,273,728	12,858,036	-3,415,692
ARRA funds	0	9,442,034	9,442,034
Local	1,356,473	1,393,370	36,897
Total	20,671,100	26,069,416	5,398,316

Sec. 9. BRIDGE MAINTENANCE

Spending authority in the bridge maintenance program is amended to read:

FY10	As Proposed	As Amended	Change
PE	410,000	410,000	0
Row	21,500	21,500	0
Construction	17,192,200	33,619,840	16,427,640

Total	17,623,700	34,051,340	16,427,640
Source of funds			
State	6,844,140	4,011,751	-2,832,389
TIB funds	0	234,020	234,020
Federal	10,779,560	23,561,522	12,781,962
ARRA funds	0	6,244,047	6,244,047
Total	17,623,700	34,051,340	16,427,640

* * * Safety and Traffic Operations * * *

Sec. 10. SAFETY AND TRAFFIC OPERATIONS

Spending authority in the safety and traffic operations program is amended to read:

FY10	As Proposed	As Amended	Change
Other	4,900,000	4,900,000	0
PE	1,170,316	1,170,316	0
ROW	563,750	563,750	0
Construction	9,833,278	17,201,278	7,368,000
Total	16,467,344	23,835,344	7,368,000
Source of funds			
State	407,343	407,343	0
Federal	16,010,001	23,378,001	7,368,000
Local	50,000	50,000	0
ARRA funds	0	0	0
Total	16,467,344	23,835,344	7,368,000

* * * Bike and Pedestrian Facilities * * *

Sec. 11. BIKE AND PEDESTRIAN FACILITIES

(1) A new project is added for the rehabilitation of rail trails STP NWRT() with the following spending authority:

FY10	As Proposed	As Amended	Change
Construction	0	694,194	694,194
Total	0	694,194	694,194
Source of funds			
ARRA	0	694,194	694,194
Total	0	694,194	694,194

(2) A new project is added for curb ramp modifications STP RAMP() with the following spending authority:

FY10	As Proposed	As Amended	Change
Construction	0	552,500	552,500
Total	0	552,500	552,500

Source of funds			
ARRA	0	552,500	552,500
Total	0	552,500	552,500

* * * Transportation Buildings * * *

Sec. 12. TRANSPORTATION BUILDINGS

(1) Spending authority for the transportation buildings Berlin project is amended to read:

FY10	As Proposed	As Amended	Change
PE	100,000	0	-100,000
ROW	200,000	0	-200,000
Construction	650,000	0	-650,000
Total	950,000	0	-950,000
Source of funds			
State	190,000	0	-190,000
Federal	760,000	0	-760,000
Total	950,000	0	-950,000

(2) The agency shall study alternatives for the siting of the materials testing lab and report to the house and senate committees on transportation by January 15, 2010.

* * * DMV * * *

Sec. 13. DEPARTMENT OF MOTOR VEHICLES

Spending authority for the department of motor vehicles is amended to read:

FY10	As Proposed	As Amended	Change
Personal Services	17,063,642	16,913,642	-150,000
Operating Expenses	8,176,673	8,116,673	-60,000
Grants	50,000	50,000	0
Total	25,290,315	25,080,315	-210,000
Source of funds			
State	23,807,821	23,597,821	-210,000
Federal	1,482,494	1,482,494	0
Total	25,290,315	25,080,315	-210,000

* * * Rail * * *

Sec. 14. RAIL

(a) Spending authority for passenger rail service (Amtrak contract) is amended to read:

FY10	As Proposed	As Amended	Change
Other	3,300,000	3,700,000	400,000
Total	3,300,000	3,700,000	400,000
Source of funds			
State	3,300,000	3,700,000	400,000
Total	3,300,000	3,700,000	400,000

(b) Spending authority for rail property lease and encroachment management is amended to read:

FY10	As Proposed	As Amended	Change
Other	300,000	212,761	-87,239
Total	300,000	212,761	-87,239
Source of funds			
State	300,000	212,761	-87,239
Federal	0	0	0
Total	300,000	212,761	-87,239

(c) In the event the July 2009 consensus forecast for fiscal year 2010 transportation fund revenue is increased by at least $800,000, $800,000 of transportation funds and $3,200,000 of western rail corridor federal earmark funds shall be used to purchase $4,000,000 of continuously welded rail for installation along the western corridor.

* * * Maintenance * * *

Sec. 15. MAINTENANCE

Total authorized spending in the maintenance program is amended as follows:

FY10	As Proposed	As Amended	Change
Personal Services	34,028,928	34,028,928	0
Operating Expenses	32,991,361	32,011,361	-980,000
Grants	278,020	278,020	0
Total	67,298,309	66,318,309	-980,000
Source of funds			
State	64,315,237	63,335,237	-980,000
Federal	2,883,072	2,883,072	0
Other	100,000	100,000	0
Total	67,298,309	66,318,309	-980,000

* * * Finance and Management * * *

Sec. 16. FINANCE AND MANAGEMENT

Spending authority for the finance and management division is amended to read:

FY10	As Proposed	As Amended	Change
Personal services	10,071,137	10,071,137	0
Operating expenses	2,538,262	2,438,262	-100,000
Total	12,609,399	12,509,399	-100,000
Source of funds			
State	12,109,399	12,009,399	-100,000
Federal	500,000	500,000	0
Total	12,609,399	12,509,399	-100,000

* * * Town Highway Class 2 * * *

Sec. 17. TOWN HIGHWAY CLASS 2 ROADWAY PROGRAM

Spending authority for the town highway class 2 roadway program is amended to read:

FY10	As Proposed	As Amended	Change
Grants	6,448,750	5,748,750	-700,000
Total	6,448,750	5,748,750	-700,000
Source of funds			
TFunds	6,448,750	5,748,750	-700,000
ARRA	0		0
Total	6,448,750	5,748,750	-700,000

* * * Enhancements * * *

Sec. 18. ENHANCEMENTS

Spending authority for the enhancement program is amended to read:

FY10	As Proposed	As Amended	Change
Other	0	800,000	800,000
PE	533,005	533,005	0
ROW	512,650	512,650	0
Construction	2,162,402	2,162,402	0
Total	3,208,057	4,008,057	800,000
Source of funds			
State	73,000	73,000	0
Federal	2,566,446	2,566,446	0
ARRA	0	800,000	800,000
Local	568,611	568,611	0
Total	3,208,057	4,008,057	800,000

* * * Public Transit * * *

Sec. 19. PUBLIC TRANSIT

Spending authority for the public transit capital assistance program is amended to read:

FY10	As Proposed	As Amended	Change
Other	4,565,331	8,492,254	3,926,923
Total	4,565,331	8,492,254	3,926,923
Source of funds			
TFunds	1,129,273	629,273	-500,000
Fed	3,436,058	3,936,058	500,000
ARRA	0	3,926,923	3,926,923
Total	4,565,331	8,492,254	3,926,923

* * * Aviation * * *

Sec. 20. AVIATION

Spending authority for the Berlin Phase I parallel taxiway-terminal apron project is amended to read:

FY10	As Proposed	As Amended	Change
PE	0	0	0
Construction	250,000	4,000,000	3,750,000
Total	250,000	4,000,000	3,750,000
Source of funds			
TFunds	25,000	0	-25,000
Fed	225,000	0	-225,000
ARRA	0	4,000,000	4,000,000
Total	250,000	4,000,000	3,750,000

* * * Applying for ARRA funds * * *

Sec. 21. APPLYING FOR AMERICAN RECOVERY ANDREINVESTMENT ACT FUNDS

The agency shall apply for a grant of rail infrastructure discretionary ARRA funds to cover, in whole or in part, the cost of upgrading the state's western rail corridor for intercity passenger rail service to and from Burlington, Rutland, Bennington, Vermont and Albany, New York. In applying for a grant, the agency shall consider all possible sources of nonfederal match dollars which could be included in and would thereby strengthen the application. The grant application shall state that priority will be given to the purchase and installation of continuously welded rail for the western corridor.

* * * Motor Fuel Transportation Infrastructure Assessments * * *

Sec. 22. 23 V.S.A. § 3003(a) is amended to read:

(a) A tax of ~~25 cents per gallon and~~ $0.25, a fee of ~~one cent per gallon is imposed on each gallon of fuel~~ $0.01 established pursuant to the provisions of 10 V.S.A. § 1942, and a $0.03 motor fuel transportation infrastructure assessment, which for purposes of the International Fuel Tax Agreement only shall be deemed to be a surcharge, are imposed on each gallon of fuel:

(1) sold or delivered by a distributor; or

(2) used by a user.

Sec. 23. 23 V.S.A. § 3003(d) is amended to read:

(d)(1) For users, the following uses shall be exempt from ~~taxation~~ the tax and motor fuel transportation infrastructure assessment imposed under this chapter and be entitled to a credit for any tax paid for such uses under section 3020 of this title:

Sec. 24. 23 V.S.A. § 3106(a) is amended to read:

(a) Except for sales of motor fuels between distributors licensed in this state, which sales shall be exempt from the tax and from the motor fuel transportation infrastructure assessment, in all cases not exempt from the tax under the laws of the United States at the time of filing the report required by section 3108 of this title, each distributor shall pay to the commissioner a tax of $0.19 ~~per~~ upon each gallon of motor fuel sold by the distributor, and a motor fuel transportation infrastructure assessment in the amount of two percent of the retail price exclusive of all federal and state taxes upon each gallon of motor fuel sold by the distributor. The retail price shall be based upon the average retail prices for regular gasoline determined and published by the department of public service. The retail price applicable for the January-March quarter shall be the average of the retail prices published by the department of public service the prior October, November, and December; and the retail price applicable in each succeeding calendar quarter shall be equal to the average of the retail prices published by the department of public service in the preceding quarter. The distributor shall also pay to the commissioner a tax and a motor fuel transportation infrastructure assessment in the same ~~amount~~ amounts upon each gallon of motor fuel used within the state by him or her.

Sec. 25. RETAIL PRICE FOR JUNE 2009

The retail price for purposes of the motor fuels transportation infrastructure assessment applicable for June 2009 shall be the average price for regular

unleaded gasoline determined by the department of public service as of May 2009 of $2.03 per gallon.

Sec. 26. DEPARTMENT OF PUBLIC SERVICE

The Department of Public Service shall conduct a monthly survey of businesses selling retail regular gasoline designed to determine a average statewide retail price and publish the survey result no latter than the 20th day of each month starting in June 2009.

* * * Transportation Infrastructure Bonds * * *

Sec. 27. 19 V.S.A. § 11f is added to read:

§ 11f. TRANSPORTATION INFRASTRUCTURE BOND FUND

(a) There is created a special account within the transportation fund known as the transportation infrastructure bond fund to consist of funds raised from the motor fuel transportation infrastructure assessments levied pursuant to 23 V.S.A. §§ 3003(a) and 3106(a). Interest from the fund shall be credited annually to the fund, and the amount in the account shall carry forward from year to year.

(b)(1) Monies in the fund may be used:

(A) to pay principal, interest, and related costs on transportation infrastructure bonds issued pursuant to section 972 of Title 32; and

(B) to pay for:

(i) the rehabilitation, reconstruction, or replacement of state bridges, culverts, roads, railroads, airports, and necessary buildings which, after such work, have an estimated minimum remaining useful life of 10 years;

(ii) the rehabilitation, reconstruction, or replacement of municipal bridges, culverts, and highways which, after such work, have an estimated minimum remaining useful life of 10 years; and

(iii) up to $100,000.00 per year for operating costs associated with administering the capital expenditures.

(2) However, in any fiscal year, no payments shall be made under this subsection unless the amount needed to pay for the following items for that fiscal year, to the extent required by the terms of any trust agreement applicable to the transportation infrastructure bonds, is either in the fund and available to pay for those items, or the items have been paid: debt service due on the bonds for that fiscal year; any associated reserve or sinking funds; and any associated costs of the bonds as defined in subsection 972(b) of Title 32.

(c) The assessments for motor fuel transportation infrastructure assessments paid pursuant to 23 V.S.A. §§ 3003(a) and 3106(a) shall not be reduced below the rates in effect at the time of issuance of any transportation infrastructure bond until the principal, interest, and all costs which must be paid in order to retire the bond have been paid.

* * * Transportation Infrastructure Bonds * * *

Sec. 28. 32 V.S.A. chapter 13, subchapter 4 is added to read:

Subchapter 4. Transportation Infrastructure Bonds

§ 972. TRANSPORTATION INFRASTRUCTURE BONDS

(a) The treasurer may issue bonds pursuant to this subchapter from time to time in amounts authorized by the general assembly in its annual transportation bill. Bonds issued under this section shall be referred to as "transportation infrastructure bonds."

(b) Principal and interest on the bonds and associated costs shall be paid from the transportation infrastructure bond fund established in 19 V.S.A. § 11f. Associated costs of bonds include sinking fund payments; reserves; redemption premiums; additional security, insurance, or other form of credit enhancement required or provided for in any trust agreement entered to secure bonds; and related costs of issuance.

(c) Funds raised from bonds issued under this section may be used to pay for:

(1) the rehabilitation, reconstruction, or replacement of state bridges and culverts; and

(2) the rehabilitation, reconstruction, or replacement of municipal bridges and culverts; and

(3) the rehabilitation, reconstruction, or replacement of state roads, railroads, airports, and necessary buildings which, after such work, have an estimated minimum remaining useful life of 30 years or more;

(d) Pursuant to section 953 of this title, interest and the investment return on the bonds shall be exempt from taxation in this state.

(e) Bonds issued under this section shall be legal investments for all persons without limit as to the amount held, regardless of whether they are acting for their own account or in a fiduciary capacity. The bonds shall likewise be legal investments for all public officials authorized to invest in public funds.

§ 973. ISSUANCE OF BONDS

(a) Transportation infrastructure bonds may be issued at one time or in a series from time to time in any form permitted by law, in such manner and on such terms and conditions as the state treasurer may determine to be in the best interests of the state, except that the state treasurer shall determine the following with the approval of the governor:

(1) date of issuance;

(2) place of payment;

(3) rate of interest (which may be fixed or variable) or the manner of determining such rate of interest;

(4) original stated value;

(5) investment returns or manner of determining the investment returns;

(6) maturity value, time of maturity, and provisions with respect to redemption prior to maturity;

(7) whether to issue the bonds at par, premium, or discount;

(8) sinking fund and reserve requirements;

(9) amount and manner of issuance; and

(10) other particulars as to the form of such bonds within the limitations of this subchapter.

(b) The state treasurer shall determine the annual payment schedule for the bonds, including debt service and sinking fund payments, if any, as he or she may deem to be in the best interests of the state. However, any bond issued under this subchapter shall mature not later than 30 years after the date of issuance. Installments on the bonds need not be payable in substantially equal or diminishing amounts. The last bond payment shall be made not later than 30 years after the date of issuance.

(c) The state treasurer may determine at the time of issuance to apply all or a portion of any net premium to the costs of issuance, other related financing costs, or the payment of the principal or interest to come due. If net premium is applied to costs of issuance, the amount of the premium shall not be included in the net proceeds of the issue. Net premium not applied to costs of issuance shall be included in the net proceeds of the issue and may be used for any of the authorized purposes of the bond proceeds.

(d) The principal, interest, investment returns, and maturity value of transportation infrastructure bonds shall be payable in lawful money of the United States or of the country in which the bonds are sold.

(e) Transportation infrastructure bonds shall be registered pursuant to section 981 of this title.

§ 974. SECURITY DOCUMENTS

(a) The state treasurer is authorized to secure bonds authorized under this subchapter by a trust agreement which pledges or assigns monies in the transportation infrastructure bond fund; by additional security, insurance, or other forms of credit enhancement which may be secured with the bonds on a parity or subordinate basis or by both.

(b) Any trust agreement or credit enhancement agreement entered into pursuant to this section shall be valid and binding from the time of the agreement without any physical delivery or further act and without any filing or recording under the Uniform Commercial Code or otherwise, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise, irrespective of whether such parties have notice thereof.

(c) Any trust agreement or credit enhancement agreement may establish provisions defining defaults and establishing remedies and other matters relating to the rights and security of the holders of the bonds or other secured parties as determined by the state treasurer, including provisions relating to the establishment of reserves; the issuance of additional or refunding bonds, whether or not secured on a parity basis; the application of receipts, monies, or funds pledged pursuant to the agreement; and other matters deemed necessary or desirable by the state treasurer for the security of the bonds, and may also regulate the custody, investment, and application of monies.

(d) For payment of principal, interest, investment returns, and maturity value of transportation infrastructure bonds, the full faith and credit of the state is hereby pledged. However:

(1) if pledging of full faith and credit of the state is not necessary to market a transportation infrastructure bond in the best interest of the state, the treasurer shall enter into an agreement which establishes that the full faith and credit of the state is not pledged for payment of principal, interest, investment returns, and maturity value of the bond. In determining whether to pledge the full faith and credit of the state, the state treasurer shall consider the anticipated effect of such a pledge on the credit standing of the state, the marketability of the transportation infrastructure bond, and other factors he or she deems appropriate; and

(2) the treasurer shall only use other revenues to pay for debt service and associated costs as defined in section 972 of this title on transportation infrastructure bonds to which the full faith and credit of the state has been

pledged in the event that monies in the transportation infrastructure bond fund are insufficient to pay for it.

§ 975. PROCEEDS

(a) Proceeds from the sale of bonds may be expended for the authorized purposes of the bonds; including the expenses of preparing, issuing, and marketing the bonds; any notes issued under section 976 of this title; and amounts for any reserves. However, no purchasers of the bonds shall be bound to see to the proper application of the proceeds thereof.

(b) The treasurer may pay for the interest on, principal of, investment return on, maturity value of, and associated costs as defined in subsection 972(b) of this title of bonds issued under this subchapter from the transportation infrastructure bond fund as they fall due without further order or authority.

(c) The general assembly shall appropriate the amount necessary to pay the maturing principal and interest of, investment return and maturity value of, and sinking fund installments on transportation infrastructure bonds then outstanding in the annual appropriations bill and the principal and interest on, investment return and maturity value of, and sinking fund installments on the transportation infrastructure bonds as may come due before appropriations for payment have been made shall be paid from the transportation infrastructure bond fund, or with respect to bonds to which the full faith and credit of the state has been pledged and in accordance with subdivision 974(d)(2) of this title, from the general fund or other applicable fund.

§ 976. ANTICIPATION OF PROCEEDS

(a) Pending the issue of transportation infrastructure bonds, the state treasurer with the approval of the governor may use any available cash in the transportation infrastructure bond fund for the purposes for which the bonds were authorized, and shall restore the borrowed funds from the proceeds of the bonds.

(b) The state treasurer, with the approval of the governor, may borrow upon notes of the state sums of money in anticipation of the proceeds of the bonds. Notes issued under this subsection shall be issued on such terms and at such times as the treasurer and governor may determine, and shall mature not more than three years from the date of issuance, provided that notes issued for a shorter period may be refunded from time to time by the issue of other such notes maturing within the required period of three years.

(c) The authority granted under this section is in addition to and not in limitation of any other authority.

§ 977. REFUNDING BONDS

The state treasurer with the approval of the governor is hereby authorized to issue transportation infrastructure bonds in order to refund all or any portion of outstanding transportation bonds at any time after the issuance of the bonds to be refunded pursuant to subsections 961(b), (c), and (d) of this title.

§ 978. PLEDGE

The general assembly hereby pledges and covenants with holders of the bonds issued under this subchapter that the state will fulfill the terms of any agreement made with the holders of transportation infrastructure bonds and will not in any way impair the rights or remedies of the holders of the bonds until the bonds, interest, and all costs associated with the bonds are fully paid.

§ 979. AUTHORITIES

In addition to the provisions of this subchapter, the following provisions of this title shall apply to transportation infrastructure bonds:

(1) sections 953, 956, 958, and 960;

(2) subsection 954(c), except that transfers shall be made only among projects to be funded with transportation infrastructure bonds; and

(3) section 957, except that consolidation may be only among transportation infrastructure bonds, and the bonds shall be the lawful obligation of the transportation infrastructure bond fund and not of the remaining revenues of the state unless the treasurer has agreed to pledge the full faith and credit of the state pursuant to subdivision 974(e)(2) of this title.

§ 980. AUTHORITY TO ISSUE TRANSPORTATION INFRASTRUCTURE BONDS

The state treasurer is authorized to issue transportation infrastructure bonds pursuant to section 972 of this title for the purpose of funding future appropriations only as approved by the general assembly.

Sec. 29. PLAN FOR USE OF BOND PROCEEDS IN FUTURE YEARS

On or before January 15, 2010, the agency of transportation shall submit to the joint transportation oversight committee a plan for use of bond proceeds for transportation purposes during state fiscal years 2011, 2012, and 2013, taking into consideration the likely availability of funds from other sources and the needs identified by the transportation project planning process. In no instance shall the total request for bonding authority exceed $100,000,000.

Sec. 30. FISCAL YEAR 2010 BONDING AUTHORITY

Notwithstanding 32 V.S.A. §980, the state treasurer is authorized to issue transportation infrastructure bonds for fiscal year 2010 in a total amount of no more than $10,000,000, provided that the agency requests and the joint transportation oversight committee approves of such issue.

Sec. 31. 32 V.S.A. § 1001(b) is amended to read:

(b)(1) Committee duties. The committee shall review annually the size and affordability of the net state tax-supported indebtedness~~,~~ and submit to the governor and to the general assembly an estimate of the maximum amount of new long-term net state tax-supported debt that prudently may be authorized for the next fiscal year. The estimate of the committee shall be advisory and in no way bind the governor or the general assembly.

(2) The committee shall conduct ongoing reviews of the amount and condition of bonds, notes, and other obligations of instrumentalities of the state for which the state has a contingent or limited liability or for which the state legislature is permitted to replenish reserve funds, and, when deemed appropriate, recommend limits on the occurrence of such additional obligations to the governor and to the general assembly.

(3) The committee shall conduct ongoing reviews of the amount and condition of the transportation infrastructure bond fund established in 19 V.S.A. § 11f and of bonds and notes issued against the fund for which the state has a contingent or limited liability.

Sec. 32. 32 V.S.A. § 1001a is amended to read:

§ 1001a. REPORTS

The capital debt affordability advisory committee shall prepare and submit~~,~~ consistent with 2 V.S.A. § 20(a)~~,~~ a report on:

(1) general obligation debt, pursuant to subsection 1001(c) of this title; and

(2) how many, if any, transportation infrastructure bonds have been issued and under what conditions.

* * * Town Local Match Requirements * * *

Sec. 33. 19 V.S.A. § 309b is amended to read:

§ 309b. LOCAL MATCH; CERTAIN TOWN HIGHWAY PROGRAMS

* * *

(c) Notwithstanding subsections 309a(a), (b), and (c) of this title, a municipality may use a grant awarded under the town highway structures

program or the class 2 town highway roadway program to provide the nonfederal matching funds required to draw down a federal earmark or to match grants provided to towns under the American Recovery and Reinvestment Act of 2009. In all such cases, the grant shall be matched by local funds as provided in this section. The intended use of a town highway grant as matching funds for a federal earmark or for grants provided to towns under the American Recovery and Reinvestment Act of 2009 shall not entitle a municipal grant applicant to any priority for a grant award in any fiscal year. When grants awarded under the town highway structures program or the class 2 town highway roadway program are used to satisfy nonfederal matching requirements for federal earmarks or for grants provided to towns under the American Recovery and Reinvestment Act of 2009, the term "project costs" in subsections (a) and (b) of this section shall refer only to the nonfederal match for the federal earmark or for a grant provided to towns under the American Recovery and Reinvestment Act 2009.

* * * ARRA Funding of Town Projects * * *

Sec. 34. ARRA FUNDING OF TOWN PROJECTS

Any town transportation project which as a matter of state law requires a local match shall retain the local match requirement regardless of the state's use of ARRA funds to fund the project.

* * * Motor Vehicle Fees * * *

Sec. 35. 23 V.S.A. § 114(a)(14) is amended to read:

(a) The commissioner shall be paid the following fees for miscellaneous transactions:

* * *

(14) Certified copy three-year operating record ~~10.00~~ 11.00

Sec. 36. 23 V.S.A. § 115(a) is amended to read:

(a) Any Vermont resident may make application to the commissioner and be issued an identification card which is attested by the commissioner as to true name, correct age, and any other identifying data as the commissioner may require which shall include, in the case of minor applicants, the written consent of the applicant's parent, guardian or other person standing in loco parentis. Every application for an identification card shall be signed by the applicant and shall contain such evidence of age and identity as the commissioner may require. The commissioner shall require payment of a fee of ~~$15.00~~ $17.00 at the time application for an identification card is made.

Sec. 37. 23 V.S.A. § 304(b) and (c) are amended to read:

(b) The authority to issue special motor vehicle number plates or receive applications or petitions for special number plates for safety organizations and service organizations shall reside with the commissioner. Determination of compliance with the criteria contained in this subsection shall be within the discretion of the commissioner. Series of number plates for safety and service organizations which are authorized by the commissioner shall be issued in order of approval, subject to the operating considerations in the department as determined by the commissioner. The commissioner shall issue special number plates marked with initials, letters, or combination of numerals and letters, in the following manner:

(1) Except as otherwise provided, at the request of the registrant of any motor vehicle, upon application and upon payment of an annual fee of ~~$35.00~~ $38.00 in addition to the annual fee for registration. He or she may not issue two sets of special number plates bearing the same initials or letters unless the plates also contain a distinguishing number. Special number plates are subject to reassignment if not renewed within 60 days of expiration of the registration.

(2) For the purposes of this subdivision, "safety organizations" shall include groups which have at least 100 instate members in good standing and provide police and fire protection, rescue squads, national guard, together with those organizations required to respond to public emergencies. It shall include amateur radio operators licensed by the U.S. Federal Communications Commission. For purposes of this subdivision, "service organization" includes any group which (i) has as a primary purpose, service to the community through specific programs for the improvement of public health, education, or environmental awareness and conservation, and are not limited to social activities; (ii) has nonprofit status under Section 501(c)(3) or (10) of the United States Internal Revenue Code, as amended; (iii) is registered as a nonprofit corporation with the office of the secretary of state; and (iv) except for a military veterans group, has at least 100 instate members in good standing. "Service organization" also includes congressionally chartered and noncongressionally chartered United States military service veterans groups.

(A) At the request of the leader of a safety organization or service organization, upon application and payment of a fee of ~~$10.00~~ $15.00 for each set of plates in addition to the annual fee for registration, special plates indicating membership in one of the "safety organizations" or "service organizations" may be issued to registrants of vehicles registered at the pleasure car rate and of trucks registered for less than 26,001 pounds and excluding vehicles registered under the International Registration Plan, who are members of these organizations. The applicant must provide a written

statement from the appropriate official of the organization, authorizing the issuance of the plates.

(B) At the time that an organization requests the plates, it shall deposit ~~$1,000.00~~ $2,000.00 with the commissioner. Notwithstanding section 502 of Title 32, the commissioner may charge the actual costs of production of the plates against the fees collected and the balance shall be deposited in the transportation fund. For ~~each set~~ the first 100 sets of plates issued, ~~$10.00~~ $15.00 of this deposit shall be deemed to be the safety organization or service organization special plate fee for each authorized applicant. Of this deposit, $500.00 shall be retained by the department to recover costs of developing the organization plate. When the initial deposit of ~~$1,000.00~~ $1,500.00 is depleted, applicants shall be required to pay the ~~$10.00~~ $15.00 fee as provided for in subdivision (1) of this subsection. Notwithstanding section 502 of Title 32, the commissioner may charge the actual costs of production of the plates against the fees collected and shall remit the balance to the transportation fund. No organization shall charge its members any additional fee or premium charge for the authorization, right or privilege to display these special number plates. This provision shall not prevent any organization from recovering up to ~~$1,000.00~~ $1,500.00 from applicants for the special plates.

(C) After consulting with representatives of the safety or service organization, the commissioner shall determine the design of the special plates, on the basis that the primary purpose of motor vehicle number plates is vehicle identification. An organization applying for a special plate under this subsection shall present the commissioner with a name and emblem that is not obscene, offensive or confusing to the general public and does not promote, advertise or endorse a product, brand, or service provided for sale, or promote any specific religious belief or political party. The organization's name and emblem must not infringe or violate trademarks, trade names, service marks, copyrights, or other proprietary or property rights and the organization must have the right to use the name and emblem. The organization shall designate an officer or member to act as the principal contact and to submit a distinctive emblem for use on a special number plate, if authorized. An organization may have only one design, regardless of the number of individual organizational units within the state that may provide the same or substantially similar services. Nothing herein shall be construed as authorizing any individual squad, department, or unit to request a unique or specially designed plate different than the plate designed by the commissioner.

* * *

(c) The commissioner shall issue registration numbers 101 through 9999 which shall be known as reserved registration numbers for pleasure cars or

motor trucks that are registered at the pleasure car rate in the following manner:

(1) A person holding a registration number between 101 and 9999 may retain the number for the ensuing registration period, provided application is made prior to or within 60 days of the expiration of the registration.

(2) If the registrant does not renew the registration, the number may be reassigned to a member of the immediate family if application is made within 60 days of the expiration of the registration. As used herein, "immediate family" means the spouse, household member, grandparents, parents, siblings, children, or grandchildren of the registrant.

(3) The commissioner shall restrict the issuance of these registrations to residents of this state and may restrict issuance to applicants who do not already have such a registration issued to them.

(4) A person holding a registration number between 101 and 9999 on a pleasure car may also have the same number on a truck that is registered at the pleasure car rate, and vice versa.

(5) An application for a reserved registration number shall be accompanied by an annual fee of $38.00 in addition to the registration fee.

Sec. 38. 23 V.S.A. § 304b is amended to read:

§ 304b. CONSERVATION MOTOR VEHICLE REGISTRATION PLATES

(a) The commissioner shall, upon application, issue conservation registration plates for use only on vehicles registered at the pleasure car rate and on trucks registered for less than 26,001 pounds, on vehicles registered to state agencies under section 376 of this title and excluding vehicles registered under the International Registration Plan. Plates so acquired shall be mounted on the front and rear of the vehicle. The commissioner of motor vehicles and the commissioner of fish and wildlife shall determine the graphic design of the special plates in a manner which serves to enhance the public awareness of the state's interest in restoring and protecting its wildlife and major watershed areas. The commissioner of motor vehicles and the commissioner of fish and wildlife may alter the graphic design of these special plates provided that plates in use at the time of a design alteration shall remain valid subject to the operator's payment of the annual registration fee. Applicants shall apply on forms prescribed by the commissioner and shall pay an initial fee of ~~$20.00~~ $23.00 in addition to the annual fee for registration. In following years, in addition to the annual registration fee, the holder of a conservation plate shall pay a renewal fee of ~~$20.00~~ $23.00. The commissioner shall adopt rules under 3 V.S.A. chapter 25 to implement the provisions of this subsection. The commissioner of motor vehicles and the commissioner of fish and wildlife

shall annually submit to the members of the house committees on transportation and fish, wildlife and water resources, and the members of the senate committees on transportation and natural resources and energy a report detailing, over a three-year period, the revenue generated, the number of new conservation plates sold and the number of renewals, and recommendations for program enhancements.

(b) Initial fees collected under subsection (a) of this section shall be allocated as follows:

(1) ~~$10.00~~ $11.00 to the transportation fund.

(2) ~~$5.00~~ $6.00 to the department of fish and wildlife for deposit into the nongame wildlife account created in 10 V.S.A. § 4048.

(3) ~~$5.00~~ $6.00 to the department of fish and wildlife for deposit into the watershed management account created in 10 V.S.A. § 4050.

(c) Renewal fees collected under subsection (a) of this section shall be allocated as follows:

(1) ~~$9.00~~ $10.00 to the department of fish and wildlife for deposit into the nongame wildlife account created in 10 V.S.A. § 4048.

(2) ~~$9.00~~ $10.00 to the department of fish and wildlife for deposit into the watershed management account created in 10 V.S.A. § 4050.

(3) ~~$2.00~~ $3.00 to the transportation fund.

Sec. 39. 23 V.S.A. § 307 is amended to read:

§ 307. CARRYING OF REGISTRATION CERTIFICATE

A person shall not operate a motor vehicle nor draw a trailer or semi-trailer unless the registration certificate thereof is carried in some easily accessible place in such motor vehicle. In case of the loss, mutilation or destruction of such certificate the owner of the vehicle described therein shall forthwith notify the commissioner and remit a fee of ~~$12.00~~ $13.00 whereupon the commissioner shall furnish such owner with a duplicate certificate. A corrected registration certificate shall be furnished by the commissioner upon request and receipt of a fee of ~~$12.00~~ $13.00.

Sec. 40. 23 V.S.A. § 323 is amended to read:

§ 323. TRANSFER FEES

A person who transfers the ownership of a registered motor vehicle to another, upon the filing of a new application, and upon the payment of a fee of ~~$20.00~~ $22.00 may have registered in his or her name another motor vehicle

for the remainder of the registration period without payment of any additional registration fee, provided the proper registration fee of the motor vehicle sought to be registered is the same as the registration fee of the transferred motor vehicle. However, if the proper registration fee of the motor vehicle sought to be registered by such person is greater than the registration fee of the transferred motor vehicle, the applicant shall pay, in addition to such fee of ~~$20.00~~ $22.00, the difference between the registration fee of the motor vehicle previously registered and the proper fee for the registration of the motor vehicle sought to be registered.

Sec. 41. 23 V.S.A. § 361 is amended to read:

§ 361. PLEASURE CARS

The annual fee for registration of any motor vehicle of the pleasure car type, and all vehicles powered by electricity, shall be ~~$59.00~~ $64.00, and the biennial fee shall be ~~$108.00~~ $120.00.

Sec. 42. 23 V.S.A. § 364 is amended to read:

§ 364. MOTORCYCLES

The annual fee for registration of a motorcycle, with or without side car, shall be ~~$36.00~~ $40.00.

Sec. 43. 23 V.S.A. § 367(a)(1) is amended to read:

(a)(1) The annual fee for registration of tractors, truck-tractors, or motor trucks except truck cranes, truck shovels, road oilers, bituminous distributors, and farm trucks used as hereinafter specified shall be based on the total weight of the truck-tractor or motor truck including body and cab plus the heaviest load to be carried. In computing the fees for registration of tractors, truck-tractors or motor trucks with trailers or semi-trailers attached, except trailers or semi-trailers with a gross weight of less than 6,000 pounds, the fee shall be based upon the weight of the tractor, truck-tractor or motor truck, the weight of the trailer or semi-trailer, and the weight of the heaviest load to be carried by the combined vehicles. In addition to the fee set out in the following schedule, the fee for vehicles weighing between 10,000 and 25,999 pounds inclusive shall be an additional ~~$29.00~~ $31.47, the fee for vehicles weighing between 26,000 and 39,999 pounds inclusive shall be an additional ~~$58.00~~ $62.93, the fee for vehicles weighing between 40,000 and 59,999 pounds inclusive shall be an additional ~~$203.04~~ $220.30 and the fee for vehicles 60,000 pounds and over shall be an additional ~~$319.07~~ $346.19. The fee shall be computed at the following rates per thousand pounds of weight determined as above specified and rounded up to the nearest whole dollar, the minimum fee for registering a tractor, truck-tractor, or motor truck to 6,000 pounds shall be the same as for the pleasure car type:

~~$12.42~~ $13.48 when the weight exceeds 6,000 pounds but does not exceed 8,000 pounds.

~~$14.21~~ $15.42 when the weight exceeds 8,000 pounds but does not exceed 12,000 pounds.

~~$15.67~~ $17.00 when the weight exceeds 12,000 pounds but does not exceed 16,000 pounds.

~~$16.76~~ $18.18 when the weight exceeds 16,000 pounds but does not exceed 20,000 pounds.

~~$17.53~~ $19.02 when the weight exceeds 20,000 pounds but does not exceed 30,000 pounds.

~~$17.92~~ $19.44 when the weight exceeds 30,000 pounds but does not exceed 40,000 pounds.

~~$18.34~~ $19.90 when the weight exceeds 40,000 pounds but does not exceed 50,000 pounds.

~~$18.51~~ $20.08 when the weight exceeds 50,000 pounds but does not exceed 60,000 pounds.

~~$19.14~~ $20.77 when the weight exceeds 60,000 pounds but does not exceed 70,000 pounds.

~~$19.78~~ $21.46 when the weight exceeds 70,000 pounds but does not exceed 80,000 pounds.

~~$20.42~~ $22.16 when the weight exceeds 80,000 pounds but does not exceed 90,000 pounds.

Sec. 44. 23 V.S.A. § 371(a)(1) is amended to read:

(a)(1) The one-year and two-year fees for registration of a trailer or semi-trailer, except contractor's trailer or farm trailer, shall be as follows:

(A) ~~$20.00 and $40.00~~ $23.00 and $45.00, respectively, when such trailer or semi-trailer has a gross weight of trailer and load of less than 1,500 pounds;

(B) ~~$40.00 and $80.00~~ $46.00 and $90.00, respectively, when such trailer or semi-trailer has a gross weight of trailer and load of 1,500 pounds or more, and is drawn by a vehicle of the pleasure car type;

(C) ~~$40.00 and $80.00~~ $46.00 and $90.00, respectively, when such trailer or semi-trailer is drawn by a motor truck or tractor, when such trailer or semi-trailer has a gross weight of 1,500 pounds or more, but not in excess of 3,000 pounds;

(D) ~~$40.00 and $80.00~~ $46.00 and $90.00, respectively, when such trailer or semi-trailer is used in combination with a truck-tractor or motor truck registered at the fee provided for combined vehicles under section 367 of this title. Excepting for the fees, the provisions of this subdivision shall not apply to trailer coaches as defined in section 4 of this title nor to modular homes being transported by trailer or semi-trailer.

Sec. 45. 23 V.S.A. § 463 is amended to read:

§ 463. SALE OF VEHICLE TO GO OUT OF STATE

A registered motor vehicle dealer is authorized to issue an in-transit registration permit for the purpose of movement over the highways of certain motor vehicles otherwise required to be registered when these vehicles are sold in this state to be transported to and registered in another state or province. The commissioner of motor vehicles shall, upon request, provide registered motor vehicle dealers with such numbers of applications and special in-transit number plates for vehicles sold in this state to be transported to and registered in another state or province as shall be necessary. The commissioner is authorized to charge a fee of ~~$3.00~~ $5.00 for the processing of the plate application and the issuance of the plate. The dealer, upon the sale of a motor vehicle to be transported to and registered in another state or province shall cause the application to be filled out and transmitted to the commissioner and shall attach to the vehicle the in-transit number plate corresponding to the application. No registered motor vehicle dealer shall sell, exchange, give, or transfer any application or in-transit plate to any person other than the person to whom the dealer sells or exchanges a motor vehicle to be registered in another state or province. The application shall be in a form prescribed and furnished by the commissioner. The special in-transit number plate to be attached to the vehicle will be issued in the form and design as prescribed by the commissioner and shall be valid for a period of 30 days from the date of issue.

Sec. 46. 23 V.S.A. § 608(a) amended to read:

(a) The four-year fee required to be paid the commissioner for licensing an operator of motor vehicles shall be ~~$40.00~~ $45.00. The two-year fee required to be paid the commissioner for licensing an operator shall be ~~$25.00~~ $28.00 and the two-year fee for licensing a junior operator shall be ~~$27.00~~ $28.00.

Sec. 47. 23 V.S.A. §§ 617(b) and (d) are amended to read:

(b) Notwithstanding the provisions of subsection (a) of this section, any licensed person may apply to the commissioner of motor vehicles for a learner's permit for the operation of a motorcycle in the form prescribed by the commissioner. The commissioner shall require payment of a fee of $17.00 at

the time application is made. After the applicant has successfully passed all parts of the motorcycle endorsement examination, other than a skill test, the commissioner may issue to the applicant a learner's permit which entitles the applicant, subject to section 615(a) of this title, to operate a motorcycle upon the public highways for a period of 120 days from the date of issuance. A motorcycle learner's permit may be renewed only twice upon payment of a $17.00 fee. If during the original permit period and two renewals, the permittee has not successfully passed the skill test or the motorcycle rider training course, he or she may not obtain another motorcycle learner's permit for a period of 12 months from the expiration of the permit unless he or she has successfully completed the motorcycle rider training course. This section shall not affect section 602 of this title. The fee for the examination shall be $7.00.

(d) An applicant shall pay ~~$15.00~~ $17.00 to the commissioner for each learner's permit that is not a motorcycle learner's permit or a duplicate or renewal thereof.

Sec. 48. 23 V.S.A. § 634(a) is amended to read:

(a) The fee for an examination for a learner's permit shall be ~~$25.00~~ $28.00. The fee for an examination to obtain an operator's license when the applicant is required to pass an examination pursuant to section 632 of this title shall be ~~$15.00~~ $17.00.

Sec. 49. 23 V.S.A § 675(a) is amended to read:

(a) Before a suspension or revocation issued by the commissioner of a person's operator's license or privilege of operating a motor vehicle may be terminated or before a person's operator's license or privilege of operating a motor vehicle may be reinstated, there shall be paid to the commissioner a fee of ~~$65.00~~ $71.00 in addition to any other fee required by statute. This section shall not apply to suspensions issued under the provisions of chapter 11 of this title nor suspensions issued for physical disabilities or failing to pass reexamination. The commissioner shall not reinstate the license of a driver whose license was suspended pursuant to section 1205 of this title until the commissioner receives certification from the court that the costs due the state have been paid.

Sec. 50. 23 V.S.A. § 1230 is amended to read:

For each inspection certificate issued by the department of motor vehicles, the commissioner shall be paid ~~$3.00~~ $4.00 provided that state and municipal inspection stations that inspect only state or municipally owned and registered vehicles shall not be required to pay a fee.

Sec. 51. 23 V.S.A. § 1392(17) is amended to read:

(17) Notwithstanding the gross vehicle weight provisions of subdivision (4) of this section, a truck trailer combination or truck tractor, semi-trailer combination with six or more load bearing axles and specially equipped for hauling unprocessed milk, unprocessed forest or unprocessed quarry products shall be allowed to bear a maximum of 99,000 pounds by special annual permit, which shall expire coincidentally with the vehicle's registration, except for vehicles not registered in Vermont in which case the permit shall become void on January 1 following the date of issue, for operating on designated routes on the state and town highways, subject to the following:

(A) The combination of vehicles must have as a minimum, a distance of 51 feet between extreme axles.

(B) The axle weight provisions of section 1391 of this title and subdivision 1392(6) of this section shall also apply to vehicles permitted under this subdivision.

(C) When determining the fine for a gross overweight violation of this subdivision, the fine for any portion of the first 10,000 pounds over the permitted weight shall be the same as provided in section 1391a of this title, and for overweight violations 10,001 pounds or more over the permitted weight, the fine schedule provided in section 1391a shall be doubled.

(D) The weight permitted by this subdivision shall be allowed for foreign trucks which are registered or permitted for 99,000 pounds in a state or province which recognizes Vermont vehicles for weights consistent with this subdivision.

(E) The provisions of this subdivision shall not apply to operation on the interstate and defense highway system.

(F) The fee for the annual permit as provided in this subdivision shall be ~~$350.00~~ $500.00.

(G) For the purposes of this subdivision, the following definitions shall apply:

(i) unprocessed milk products as defined in 23 V.S.A. § 4(55);

(ii) unprocessed forest products as defined in 23 V.S.A. § 1392(13);

(iii) unprocessed quarry products shall be quarried rock in block or blocks as it would be removed from the quarry.

Sec. 52. 23 V.S.A. § 1402(a) and (b) are amended to read:

(a) Overweight, overwidth, indivisible overlength, and overheight permits. Overweight, overwidth, indivisible overlength and overheight permits shall be signed by the commissioner or by his or her agent and a copy shall be kept in the office of the commissioner or in a location approved by the commissioner. Except as provided in subsection (c) of this section, a copy shall also be available in the towing vehicle and must be available for inspection on demand of a law enforcement officer. Before operating a traction engine, tractor, trailer, motor truck or other motor vehicle, the person to whom a permit to operate in excess of the weight, width, indivisible overlength and height limits established by this title is granted shall pay a fee of ~~$20.00~~ $35.00 for each single trip permit or ~~$70.00~~ $100.00 for a blanket permit, except that the fee for a fleet blanket permit shall be ~~$70.00~~ $100.00 for the first unit and ~~$1.00~~ $5.00 for each unit thereafter. At the option of a carrier, an annual permit for the entire fleet, to operate over any approved route, may be obtained for ~~$70.00~~ $100.00 for the first tractor and ~~$1.00~~ $5.00 for each additional tractor, up to a maximum fee of $1,000.00. The fee for a fleet permit shall be based on the entire number of tractors owned by the applicant. An applicant for a fleet permit may apply for any number of specific routes, each of which shall be reviewed with regard to the characteristics of the route and the type of equipment operated by the applicant. When the weight or size of the vehicle-load are considered sufficiently excessive for the routing requested, the agency of transportation shall, on request of the commissioner, conduct an engineering inspection of the vehicle-load and route, for which a fee of $300.00 will be added to the cost of the permit if the load is a manufactured home. For all other loads of any size or with gross weight limits less than 150,000 pounds, the fee shall be $800.00 for any engineering inspection that requires up to eight hours to conduct. If the inspection requires more than eight hours to conduct, the fee shall be $800.00 plus $60.00 per hour for each additional hour required. If the vehicle and load weigh 150,000 pounds or more but not more than 200,000 pounds, the engineering inspection fee shall be $2,000.00. If the vehicle and load weigh more than 200,000 pounds but not more than 250,000 pounds, the engineering inspection fee shall be $5,000.00. If the vehicle and load weigh more than 250,000 pounds, the engineering inspection fee shall be $10,000.00. The study must be completed prior to the permit being issued. Prior to the issuance of a permit, an applicant whose vehicle weighs 150,000 pounds or more, or is 15 or more feet in width or height, shall file with the commissioner a special certificate of insurance showing minimum coverage of $250,000.00 for death or injury to one person, $500,000.00 for death or injury to two or more persons and $250,000.00 for property damage, all arising out of any one accident.

(b) Overlength permits. Except as provided in ~~subsection 1432(f)~~ subsections 1432(c) and (e) of this title, it shall be necessary to obtain an overlength permit as follows:

(1) For vehicles with a trailer or semitrailer which are longer than ~~68 feet but not longer than 72~~ 75 feet ~~off the truck network established in subsection 1432(c) of this title~~ and the distance between the steering axle and the rearmost tractor axle is ~~23~~ 25 feet or less. In such cases, the vehicle may be operated with a single or multiple trip overlength permit issued by the department of motor vehicles at no cost or, for a fee, by an entity authorized under subsection 1400(d) of this title for routes approved by the agency of transportation.

(2) For vehicles with a trailer or semitrailer longer than ~~68 feet but not longer than 72~~ 75 feet ~~off the truck network established in subsection 1432(c) of this title~~ and the distance between the steering axle and the rearmost tractor axle is more than ~~23~~ 25 feet. In such cases, the vehicle may be operated with a single trip overlength permit issued by the department of motor vehicles at no cost for routes approved by the agency of transportation.

(3) For vehicles with a trailer or semitrailer longer than ~~72~~ 75 feet anywhere in the state on highways approved by the agency of transportation. In such cases, the vehicle may be operated with a single trip overlength permit issued by the department of motor vehicles for a fee of ~~$10.00~~ $25.00. If the vehicle is 100 feet or more in length, the permit applicant shall file with the commissioner of motor vehicles, a special certificate of insurance showing minimum coverage of $250,000.00 for death or injury to one person, $500,000.00 for death or injury to two or more persons and $250,000.00 for property damage, all arising out of any one accident.

(4) Notwithstanding the provisions of this section, the agency of transportation may erect signs at those locations where it would be unsafe to operate vehicles in excess of 68 feet in length.

Sec. 53. 23 V.S.A. § 2002(a) is amended to read:

(a) The commissioner shall be paid the following fees:

(1) For any certificate of title, including a salvage certificate of title, ~~$28.00~~ $31.00;

(2) For each security interest noted upon a certificate of title, including a salvage certificate of title, ~~$7.00~~ $9.00;

(3) For a certificate of title after a transfer, ~~$28.00~~ $31.00;

(4) For each assignment of a security interest noted upon a certificate of title, ~~$7.00~~ $9.00;

(5) For a duplicate certificate of title, including a salvage certificate of title, ~~$28.00~~ $31.00;

(6) For an ordinary certificate of title issued upon surrender of a distinctive certificate, ~~$28.00~~ $31.00;

(7) For filing a notice of security interest, ~~$7.00~~ $9.00;

(8) For a certificate of search of the records of the motor vehicle department, for each motor vehicle searched against, $20.00;

(9) For filing an assignment of a security interest, ~~$7.00~~ $9.00;

(10) For a certificate of title after a security interest has been released, ~~$28.00~~ $31.00;

(11) For a certificate of title for a motor vehicle granted a veteran by the veterans' administration and exempt from registration fees pursuant to section 378 of this title, no fee;

(12) For a corrected certificate of title, ~~$28.00~~ $31.00.

Sec. 54. 23 V.S.A. § 3802(a) is amended to read:

(a) The commissioner shall be paid the following fees:

(1) for filing an application for a first certificate of title, ~~$15.00~~ $19.00;

(2) for each security interest noted upon a certificate of title, ~~$7.00~~ $9.00;

(3) for a certificate of title after a transfer, ~~$15.00~~ $19.00;

(4) for each assignment of a security interest noted upon a certificate of title, ~~$7.00~~ $9.00;

(5) for a duplicate certificate of title, ~~$15.00~~ $19.00;

(6) for an ordinary certificate of title issued upon surrender of a distinctive certificate, ~~$15.00~~ $19.00;

(7) for filing a notice of security interest, ~~$7.00~~ $9.00;

(8) for a certificate of search of the records of the motor vehicle department for each vessel, snowmobile or all-terrain vehicle searched against, $20.00;

(9) for filing an assignment of a security interest, ~~$7.00~~ $9.00;

(10) for a certificate of clear title after the security interest or interests have been released, ~~$15.00~~ $19.00;

(11) for a corrected certificate of title, ~~$15.00~~ $19.00.

Sec. 55. 32 V.S.A. § 8903(a), (b), and (d) are amended to read:

(a)(1) There is hereby imposed upon the purchase in Vermont of a motor vehicle by a resident a tax at the time of such purchase, payable as hereinafter provided. The amount of the tax shall be six percent of the taxable cost of a:

pleasure car as defined in 23 V.S.A. § 4;

motorcycle as defined in 23 V.S.A. § 4;

motor home as defined in subdivision 8902(11) of this title; or

vehicle weighing up to 10,099 pounds, registered pursuant to 23 V.S.A. § 367, other than a farm truck.

(2) For any other motor vehicle it shall be six percent of the taxable cost of the motor vehicle or ~~$1,680.00~~ $1,850.00 for each motor vehicle, whichever is smaller, except that pleasure cars which are purchased, leased or otherwise acquired for use in short-term rentals shall be subject to taxation under subsection (d) of this section.

(b)(1) There is hereby imposed upon the use within this state a tax of six percent of the taxable cost of a:

pleasure car as defined in 23 V.S.A. § 4;
motorcycle as defined in 23 V.S.A. § 4;
motor home as defined in subdivision 8902(11) of this title; or
vehicle weighing up to 10,099 pounds, registered pursuant to 23 V.S.A. § 367, other than a farm truck.

(2) For any other motor vehicle it shall be six percent of the taxable cost of a motor vehicle, or ~~$1,680.00~~ $1,850.00 for each motor vehicle, whichever is smaller, by a person at the time of first registering or transferring a registration to such motor vehicle payable as hereinafter provided, except no use tax shall be payable hereunder if the tax imposed by subsection (a) of this section has been paid, or the vehicle is a pleasure car which was purchased, leased or otherwise acquired for use in short-term rentals, in which case the vehicle shall be subject to taxation under subsection (d) of this section.

(d) There is hereby imposed a use tax on the rental charge of each transaction, in which the renter takes possession of the vehicle in this state, during the life of a pleasure car purchased for use in short-term rentals, which tax is to be collected by the rental company from the renter and remitted to the commissioner. The amount of the tax shall be ~~seven~~ nine percent of the rental charge. Rental charge means the total rental charge for the use of the pleasure car, but does not include a separately stated charge for insurance, or recovery of refueling cost, or other separately stated charges which are not for the use of the pleasure car. In the event of resale of the vehicle in this state for use other

than short-term rental, such transaction shall be subject to the tax imposed by subsection (a) of this section.

Sec. 56. 23 V.S.A. § 476 is added to read:

§ 476. MOTOR VEHICLE WARRANTY FEE

A motor vehicle warranty fee of $5.00 is imposed on the registration of each new motor vehicle in this state not including trailers, tractors, motorized highway building equipment, road-making appliances, snowmobiles, motorcycles, mopeds, or trucks with a gross vehicle weight over 12,000 pounds.

* * * Snowmobile and Motorboat Registration Fees * * *

Sec. 57. 23 V.S.A. § 3204 is amended to read:

§ 3204. REGISTRATION FEES AND DEALER PLATES

(a) Fees. Registration fees for snowmobiles other than as provided for in subsection (b) of this section are ~~$15.00~~ $25.00 for residents and ~~$22.00~~ $32.00 for nonresidents. Duplicate registration certificates may be obtained upon payment of ~~$2.00~~ $5.00.

(b)(1) Dealer; manufacturer and repair plates; fees. Unless exempted pursuant to subsection 3205(d) of this title, any person engaged in the manufacture or sale of snowmobiles shall obtain registration certificates and identifying number plates subject to such rules as may be adopted by the commissioner which shall be valid for the following purposes only: testing; adjusting; demonstrating; temporary use of customers for a period not to exceed 14 days; private business or pleasure use of such person or members of his or her immediate family; and use at fairs, shows or races when no charge is made for such use.

(2) Fees. Fees for dealer registration certificates shall be $40.00 for the first certificate issued to any person and $5.00 for any additional certificate issued to the same person within the current registration period. Fees for temporary number plates shall be $1.00 for each plate issued.

(c) Temporary registration pending issuance of permanent registration. The commissioner, by rules adopted pursuant to 3 V.S.A. chapter 25, shall provide for the issuance of temporary registrations of snowmobiles pending issuance of the permanent registration. VAST shall be an agent of the commissioner for the issuance of such temporary registrations. The fees for the temporary registrations shall be ~~$15.00~~ $25.00 for residents and ~~$22.00~~ $32.00 for nonresidents and shall also constitute payment of the registration fee required by subsection (a) of this section. Temporary registrations shall be

kept with the snowmobile while being operated and shall authorize operation without the registration decal being affixed for a period not to exceed 60 days from the date of issue.

* * *

Sec. 58. 23 V.S.A. § 3214 is amended to read:

§ 3214. ALLOCATION OF FEES AND PENALTIES; LIABILITY

(a) The amount of $5.00 from the sale of every resident and nonresident snowmobile registration shall be allocated to the agency of transportation. The balance of fees and penalties collected under this subchapter, except interest, ~~are~~ is hereby allocated to the agency of natural resources for use by VAST for development and maintenance of the statewide snowmobile trail program (SSTP), for trails' liability insurance, and an amount equal to $5.00 from the sale of every resident and nonresident snowmobile registration shall be allocated to contract for law enforcement services with any constable, sheriff's department, municipal police department, the department of public safety, and the department of fish and wildlife for purposes of trail compliance pursuant to this chapter; the allocation for snowmobile law enforcement shall be included as a part of the annual expenditure plan required by section 3215 of this chapter. The departments of public safety and fish and wildlife are authorized to contract with VAST to provide these law enforcement services. The agency of natural resources may retain for its use up to $11,500.00 during each fiscal year to be used for the oversight of the state snowmobile trail program.

* * *

Sec. 59. 23 V.S.A. § 3305(b) is amended to read:

(b) Annually, the owner of each motorboat required to be registered by this state shall file an application for a number with the commissioner of motor vehicles on forms approved by him or her. The application shall be signed by the owner of the motorboat and shall be accompanied by a fee of ~~$17.00~~ $22.00 and a surcharge of $5.00 for a motorboat in class A; by a fee of ~~$28.00~~ $33.00 and a surcharge of $10.00 for a motorboat in class 1; by a fee of ~~$55.00~~ $60.00 and a surcharge of $10.00 for a motorboat in class 2; by a fee of ~~$121.00~~ $126.00 and a surcharge of $10.00 for a motorboat in class 3. Upon receipt of the application in approved form, the commissioner shall enter the application upon the records of the department of motor vehicles and issue to the applicant a registration certificate stating the number awarded to the motorboat and the name and address of the owner. The owner shall paint on or attach to each side of the bow of the motorboat the identification number in such manner as may be prescribed by rules of the commissioner in order that it may be clearly visible. The registration shall be void one year from the first

day of the month following the month of issue. A vessel of less than 10 horsepower used as a tender to a registered vessel shall be deemed registered, at no additional cost, and shall have painted or attached to both sides of the bow, the same registration number as the registered vessel with the number "1" after the number. The number shall be maintained in legible condition. The registration certificate shall be pocket size and shall be available at all times for inspection on the motorboat for which issued, whenever the motorboat is in operation. A duplicate registration may be obtained upon payment of a fee of $2.00 to the commissioner. Notwithstanding section 3319 of this chapter, $5.00 of each registration fee shall be allocated to the transportation fund. The remainder of the fee shall be allocated in accordance with section 3319 of this title.

Sec. 60. 23 V.S.A. § 3214 is amended to read:

§ 3214. ALLOCATION OF FEES AND PENALTIES; LIABILITY INSURANCE; AUTHORITY TO CONTRACT FOR LAW ENFORCEMENT SERVICES

(a) The amount of $5.00 from the sale of every resident and nonresident snowmobile registration shall be allocated to the agency of transportation. The balance of fees and penalties collected under this subchapter, except interest, ~~are~~ is hereby allocated to the agency of natural resources for use by VAST for development and maintenance of the statewide snowmobile trail program (SSTP), for trails' liability insurance, and an amount equal to $5.00 from the sale of every resident and nonresident snowmobile registration shall be allocated to contract for law enforcement services with any constable, sheriff's department, municipal police department, the department of public safety, and the department of fish and wildlife for purposes of trail compliance pursuant to this chapter; the allocation for snowmobile law enforcement shall be included as a part of the annual expenditure plan required by section 3215 of this chapter. The departments of public safety and fish and wildlife are authorized to contract with VAST to provide these law enforcement services. The agency of natural resources may retain for its use up to $11,500.00 during each fiscal year to be used for the oversight of the state snowmobile trail program.

* * *

Sec. 61. 10 V.S.A. § 501 is amended to read:

§ 501. FEES

Subject to the provisions of ~~section~~ subsection 486(c) of this title, an applicant for an official business directional sign or an information plaza plaque shall pay to the travel information council an initial license fee and an annual renewal fee as established by this section.

(1) Initial license fees shall be as follows:

(A) for full-sized or half-sized business directional signs, ~~$75.00~~ $175.00 per sign;

(B) for information plaza plaques, $25.00 per plaque; however, if more than one plaque is requested by a business at the same time, a ten percent discount shall be given on the second and subsequent plaques.

(2) Annual renewal fees ~~the amount, rounded to the next higher even whole dollar, determined by dividing the estimated cost of maintenance and administration of the official business directional sign and information plaza programs during the following fiscal year by the total number of licensed signs and plaques eligible for renewal during the following fiscal year; except that the renewal fees shall not exceed the following amounts~~ shall be as follows:

(A) for full and half-sized official business directional signs, ~~$60.00~~ $125.00 per sign;

* * *

* * * Passenger Rail Equipment * * *

Sec. 62. PASSENGER RAIL EQUIPMENT

In consultation with the joint fiscal office, the agency shall examine the alternatives and relative costs and benefits and service implications available to the state with respect to the purchase of passenger rail equipment to be used in place of the existing Amtrak equipment employed in the Vermonter and Ethan Allen services, including the purchase of refurbished equipment. The agency shall deliver a report of its analysis to the house and senate committees on transportation on or before January 15, 2010.

* * * State-Owned Railroad Property * * *

Sec. 63. Sec. 17(b)(2) of No. 175 of the Acts of the 2005 Adj. Sess. (2006), as amended by Sec. 31 of No. 164 of the Acts of the 2007 Adj. Sess. (2008), is further amended to read:

(2) town of Morristown; valuation section V50/51; approximately 3.7 acres adjacent to engine house and currently leased for batch plant, to be conveyed to lessee S. T. Griswold & Company, Inc. or assignee; however, if this conveyance is not consummated, the Lamoille Economic Development Corporation shall have the option to purchase; and

Sec. 64. Sec. 17(e) of No. 175 of the Acts of the 2005 Adj. Sess. (2006), as amended by Sec. 31 of No. 164 of the Acts of the 2007 Adj. Sess. (2008), is further amended to read:

(e) The authority granted by this section shall expire on ~~June 30~~ December 31, 2009.

* * * Cancellation of Projects * * *

Sec. 65. CANCELLATION OF PROJECTS

Pursuant to 19 V.S.A. § 10g(f) (legislative approval for cancellation of projects), the general assembly approves cancellation of the following projects:

(1) Town highway bridges:

(A) Albany BRO 1449(23) (BR 30 on TH 25/Poor Farm Road, over Black River) (town has requested termination);

(B) Chester BRO 1442(31) (BR 63 on TH 9/First Avenue, over Williams River) (town has requested termination);

(C) Richford TH3 0305 (BR 28 on TH 18/Noyes Street, over Loveland Brook) (town has requested termination); and

(D) Woodstock BRO 1444(33) (BR 37 on TH 66, over Kedron Brook) (town has requested termination).

(2) Bicycle and pedestrian facilities: Irasburg STP WALK(16) (installation of sidewalks and curbs along VT 58) (town has requested termination).

* * * Transportation Fund; Sales of Surplus Property * * *

Sec. 66. 19 V.S.A. § 11(8) is amended to read:

(8) other miscellaneous sources including the sale of maps, plans and reports, fees collected by the travel information council ~~and~~, leases for property at state-owned airports and railroads, proceeds from the sale of state surplus property under the provisions of 29 V.S.A. §§ 1556 and 1557, and proceeds from the sale of recycled materials.

Sec. 67. 29 V.S.A. § 1557(b) is amended to read:

(b) Transfer charges and credits shall be made against the appropriation of the respective department or agency. Funds credited shall be classified as special funds, and managed in accordance with subchapter 5 of chapter 7 of Title 32; provided, however, that any funds credited to the agency of transportation shall be transferred to the transportation fund.

* * * Relinquishment of State Highway Segments to Municipal Control * * *

Sec. 68. RELINQUISHMENT OF VERMONT ROUTE 15 IN THE VILLAGE OF ESSEX JUNCTION

(a) Under the authority of 19 V.S.A. § 15(2), approval is granted for the secretary of transportation to enter into an agreement with the village of Essex Junction to relinquish to the village's jurisdiction a segment of the state highway known as Vermont Route 15 (Pearl Street) in the village of Essex Junction starting at the Essex Junction village boundary, near the intersection with Susie Wilson Road (TH #4), and extending in an easterly direction for 1.004 miles, connecting to existing class 1 town highway TH #1 at a point 0.261 miles west of West Hillcrest Road (TH #551). The relinquishment shall include the Vermont Route 15 approaches to West Street Extension (TH #5). Upon relinquishment, the former state highway shall become a class 1 town highway.

(b) Control of the highway, not including ownership of the lands or easements within the highway right-of-way, shall be relinquished to the village of Essex Junction. The village of Essex Junction shall not sell or abandon any portion of the relinquishment areas or allow any encroachments within the relinquishment areas without written permission of the agency of transportation.

* * * Town Highways * * *

Sec. 69. 19 V.S.A. § 305(g) is amended to read:

(g) The agency shall provide each town with a map of all of the highways in that town together with the mileage of each class 1, 2, ~~and~~ 3, and 4 highway, as well as each trail, and such other information as the agency deems appropriate.

Sec. 70. 19 V.S.A. § 305(i) is amended to read:

(i)(1) Prior to a vote to discontinue town highways provided in subsection (h) of this section, the legislative body shall hold a public informational hearing on the question by posting warnings at least 30 days prior to the hearing in at least two public places within the municipality and in the town clerk's office. The notice shall include the most recently available map of all town highways prepared by the agency of transportation pursuant to subsection (g) of this section. At least 30 days prior to the hearing, the legislative body shall also deliver the warning and map together with proof of receipt or mail by certified mail, return receipt requested, to each of the following:

(A) The chair of any municipal planning commission in the municipality;

(B) The chair of a conservation commission, established under chapter 118 of Title 24, in the municipality;

(C) The chair of the legislative body of each abutting municipality;

(D) The executive director of the regional planning commission of the area in which the municipality is located; ~~and~~

(E) The commissioner of forests, parks and recreation; and

(F) The secretary of transportation.

(2) The hearing shall be held within the 10 days preceding the meeting at which the legislative body will vote whether to discontinue all town highways as provided in subsection (h) of this section.

* * * Trucks and Buses; Use of Tire Chains * * *

Sec. 71. 23 V.S.A. § 1006c is added to read:

§ 1006c. TRUCKS AND BUSES; CHAINS AND TIRE REQUIREMENTS

(a) The traffic committee may require the use of tire chains or winter tires on specified portions of state highways during periods of winter weather for motor coaches, truck-tractor-semitrailer combinations, and truck-tractor-trailer combinations.

(b) When tire chains or winter tires are required, advance notice shall be given to the traveling public through signage and, whenever possible, through public service announcements. In areas where tire chains or winter tires are required, there shall be an adequate area for vehicles to pull off the traveled way to affix any chains that might be required.

(c) Under chapter 25 of Title 3, the traffic committee may adopt such rules as are necessary to administer this section and may delegate this authority to the secretary.

Sec. 72. USE OF CHAINS; IMPLEMENTATION

The use of chains shall not be required until signage and designated areas are available for vehicles to affix tire chains before proceeding further. Advanced public notice of these requirements shall be given to interested parties in the most feasible manner possible.

* * * Public Transportation Planning * * *

Sec. 73. 24 V.S.A. § 5089 is amended to read:

§ 5089. PLANNING

(a) ~~By January 31, 1996, all public transit systems shall have completed a short-range public transit plan. In the meantime, the agency of transportation may continue to provide funding for capital, statewide operating and new services.~~

~~(b) The short-range public transit plans must be coordinated with the efforts of the regional planning commission under the transportation plan.~~

~~(c)~~ The agency of transportation's public transit plan for the state shall be ~~updated~~ amended no less frequently than every five years ~~so as to include, and incorporate the public transportation elements of regional plans that have not been disapproved under the provisions of chapter 117 of this title~~. The development of the state public transit plan shall include consultation with public transit providers, the metropolitan planning organization, and the regional planning commissions and their transportation advisory committees to ensure the integration of transit planning with the transportation planning initiative as well as conformance with chapter 117 of this title, (municipal and regional planning and development). Regional plans, together with the agency of transportation's public transit plan shall function to coordinate the provision of public, private nonprofit, and private for-profit regional public transit services, in order to ensure effective local, regional and statewide delivery of services.

(b) Recognizing that the growing demand for new regional and commuter services must be considered within the context of the continuing need for local transit services that meet basic mobility needs, the agency of transportation shall consult annually with the regional planning commissions and public transit providers in advance of the award of available planning funds. The agency shall maintain a working list of both short- and long-term planning needs, goals, and objectives that balances the needs for regional service with the need for local service. Available planning funds shall be awarded in accordance with state and federal law and as deemed necessary and appropriate by the agency following consultation with the regional planning commissions and the public transit providers. The agency shall report annually to the general assembly on planning needs, expenditures, and cooperative planning efforts.

Sec. 74. 23 V.S.A. § 372 is amended to read:

§ 372. MOTOR BUS

The annual fee for registration of a motor bus shall be based on the actual weight of such bus, plus passenger carrying capacity at 150 pounds per person, and shall be $1.40 per 100 pounds of such weight, except for motor buses registered under section 372a or 376 of this title. Fractions of a hundred-weight shall be disregarded. The minimum fee for the registration of any motor bus shall be $43.00.

* * * Public Transit * * *

Sec. 75. PUBLIC TRANSIT

From the funds allocated to the public transit general capital program, $100,000 in federal funds shall be held by the agency of transportation in reserve to cover shortfalls in the funding of the elders and persons with disabilities program (E&D) that occur as a result of unanticipated demand for non-Medicaid transportation services. Transit agencies that have grant agreements with the agency for the provision of E&D services shall be eligible to receive disbursements from the reserve. The agency shall develop a written policy to govern the evaluation and prioritization of applications for disbursements from the reserve to ensure access to the reserve funds is limited to transit agencies that have administered appropriately constrained E&D programs. The agency shall notify all transit agencies with grant agreements for the provision of E&D services of the policy no later than July 1, 2009, and all disbursements from the reserve shall be in accordance with the policy.

* * * Local Match for Public Transportation Service * * *

Sec. 76. 23 V.S.A. § 372a is amended to read:

§ 372a. LOCAL TRANSIT PUBLIC TRANSPORTATION SERVICE BUSES; FEE

(a) The annual registration fee for any motor bus used in local transit or public transportation service ~~entirely within any city or town, or not over 10 miles beyond the boundaries thereof,~~ shall be $45.00, except for those vehicles owned by a municipality for such service that are subject to the provisions of section 376 of this title. In the event a bus registered for local transit or public transportation service is thereafter registered for general use during the same registration year, such fee shall be applied towards the fee for general registration.

(b) For the purposes of this section, a public transportation service bus is a bus used by a nonprofit public transit system as defined in 24 V.S.A.

§ 5088(3), and a local transit bus is a motor bus used entirely within or not more than 10 miles beyond the boundaries of a city or town.

* * * Motor Buses; Diesel Tax * * *

Sec. 77. 23 V.S.A. § 3003(d) is amended to read:

(d)(1) For users, the following uses shall be exempt from taxation under this chapter and be entitled to a credit for any tax paid for such uses under section 3020 of this title:

(A) uses, the taxation of which would be precluded by the laws and Constitution of the United States and this state;

(B) uses for agricultural purposes not conducted on the highways of the state;

(C) uses by any state, municipal, school district, fire district or other governmentally owned vehicles for official purposes;

(D) uses by any vehicle off the highways of the state; and

(E) ~~uses by motor buses registered in this state; and~~

~~(F)~~ uses by any vehicle registered as a farm truck under subsection 367(f) of this title.

(2) Provided, however, that no tax shall be due with respect to fuel for use in any state, municipal, school district, fire district, nonprofit public transit system as defined in 24 V.S.A. § 5088(3), or other ~~governmentally-owned~~ vehicle owned, leased, or contracted for other than single-trip use by a government entity, as long as the distributor takes from the purchaser at the time of sale an exemption certificate in the form prescribed by the commissioner; and provided, further, that no tax shall be due with respect to fuel delivered for farm use to a farm bulk fuel storage tank.

* * * Public Transit Report * * *

Sec. 78. PUBLIC TRANSIT REPORT

(a) Public transit report. Consistent with the goals, findings, and recommendations of the two most recent legislative reports prepared by VTrans regarding a review of potential changes to Vermont's public transit service delivery model (Sec. 35 and Sec. 45 reports), VTrans shall, in continued cooperation with the legislature's joint fiscal office, conduct such further analysis as is necessary to generate specific recommendations for improving the efficient and effective delivery of public transit services in Vermont.

(b) Goal of report. The goal of the report is to recommend a governance and funding structure for public transportation that creates the most efficient use of taxpayer funds while simultaneously creating the most efficient system of public transportation services consistent with the statutory policy goals in 24 V.S.A. § 5083. The report shall:

(1) Make use of the data and information currently available and assess the strengths and weaknesses of the public transit delivery system;

(2) Review the pros and cons of realistic alternative service delivery models;

(3) Present a recommendation for a systematic approach toward changing, evolving, or maintaining the existing service delivery model and propose a configuration under which the service delivery model maximizes state, federal, and local investments into the broad range of public transit services.

(c) The agency shall direct the report with the involvement of the agency of human services and of all public transit providers in the state who are direct grantees and subrecipients of state and federal funds.

(d) Consistent with federal United We Ride initiatives, the report shall consider all federal and state funding invested through or by state and federal agencies on public, human services, and related transportation programs and shall evaluate the potential for achieving greater efficiency through coordination of effort or consolidation of funding and effort.

(e) The report shall be delivered to the general assembly on or before February 15, 2010.

* * * VASA Trail Insurance * * *

Sec. 79. 23 V.S.A. § 3513 is amended to read:

§ 3513. LIABILITY INSURANCE; AUTHORITY TO CONTRACT FOR LAW ENFORCEMENT SERVICES

(a) The amount of 85 percent of the fees and penalties collected under this subchapter, except interest, is hereby allocated to the agency of natural resources for use by the Vermont ATV sportsman's association (VASA) for development and maintenance of a statewide ATV trail program ~~on private property~~, for trail liability insurance, and to contract for law enforcement services with any constable, sheriff's department, municipal police department, the department of public safety, and the department of fish and wildlife for purposes of trail compliance pursuant to this chapter. The departments of public safety and fish and wildlife are authorized to contract with VASA to

provide these law enforcement services. The agency of natural resources may retain for its use up to $7,000.00 during each fiscal year to be used for administration of the state grant that supports this program.

* * *

* * * All-Terrain Vehicles * * *

Sec. 80. 23 V.S.A. § 3502 is amended to read:

§ 3502. REGISTRATION

(a) An all-terrain vehicle may not be operated unless registered pursuant to this chapter or any other section of this title~~,~~ by the state of Vermont and unless the all-terrain vehicle displays a valid Vermont ATV Sportsman's Association (VASA) Trail Access Decal (TAD) when operating on a VASA trail, except when operated:

* * *

Sec. 81. 23 V.S.A. § 3506 is amended to read:

§ 3506. OPERATION

* * *

(b) An all-terrain vehicle may not be operated:

* * *

(3) On any privately owned land or body of private water unless:

* * *

(B) the operator has, on his or her person, the written consent of the owner or lessee of the land to operate an all-terrain vehicle in the specific area and during specific hours and/or days in which the operator is operating, ~~or proof that he or she is a member of a club or association to which consent has been given orally or in writing;~~ or the all-terrain vehicle displays a valid TAD decal as required by subsection 3502(a) of this title that serves as proof that the all-terrain vehicle and its operator, by virtue of the TAD, are members of a VASA-affiliated club to which such consent has been given orally or in writing to operate an all-terrain vehicle in the area in which the operator is operating;

* * *

* * * Two-Wheeled All-Terrain Vehicles * * *

Sec. 82. 23 V.S.A. § 3501(5) is amended to read:

(5) "All-terrain vehicle" or "ATV" means any nonhighway recreational vehicle, except snowmobiles, having no less than ~~three~~ two low pressure tires

(10 pounds per square inch, or less), not wider than 60 inches with two-wheel ATVs having permanent, full-time power to both wheels, and having a dry weight of less than 1,700 pounds, when used for cross-country travel on trails or on any one of the following or a combination thereof: land, water, snow, ice, marsh, swampland, and natural terrain. An ATV on a public highway shall be considered a motor vehicle, as defined in section 4 of this title, only for the purposes of those offenses listed in subdivisions 2502(a)(1)(H), (N), (R), (U), (Y), (FF), (GG), (II), and (ZZ); (2)(A) and (B); (3)(A), (B), (C), and (D); (4)(A)~~,~~ and (B) and (5) of this title and as provided in section 1201 of this title. An ATV shall not include an electric personal assistive mobility device.

* * * One Registration Plate Sticker * * *

Sec. 83. 23 V.S.A. § 305 is amended to read:

§ 305. – WHEN ISSUED

* * *

(c) The commissioner may issue number plates to be used for a period of two or more years. ~~Validating stickers~~ One validating sticker shall be issued by the department of motor vehicles upon payment of the registration fee for the second and each succeeding year the plate is used. No plate is valid for the second and succeeding years unless the ~~stickers are~~ sticker is affixed to the rear plate in the manner prescribed by the commissioner.

* * * Bright Futures Plate * * *

Sec. 84. 23 V.S.A. § 304c is amended to read:

§ 304c. MOTOR VEHICLE REGISTRATION PLATES: BUILDING BRIGHT SPACES FOR BRIGHT FUTURES FUND

(a) The commissioner shall, upon application, issue "building bright spaces for bright futures fund," hereinafter referred to as "the bright futures fund," registration plates for use only on vehicles registered at the pleasure car rate, ~~and~~ on trucks registered for less than 26,001 pounds, on vehicles registered to state agencies under section 376 of this title, and excluding vehicles registered under the International Registration Plan. Plates so acquired shall be mounted on the front and rear of the vehicle. The commissioner of motor vehicles shall utilize the graphic design recommended by the commissioner of social and rehabilitation services for the special plates to enhance the public awareness of the state's interest in supporting children's services. Applicants shall apply on forms prescribed by the commissioner of motor vehicles, and shall pay an initial fee of $20.00 in addition to the annual fee for registration. In following years, in addition to the annual registration fee, the holder of a bright futures

fund plate shall pay a renewal fee of $20.00. The commissioner shall adopt rules under 3 V.S.A. chapter 25 to implement the provisions of this subsection.

* * *

* * * Design-Build Contracts * * *

Sec. 85. 19 V.S.A. chapter 26 is added to read:

CHAPTER 26. DESIGN-BUILD CONTRACTS

§ 2601. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings:

(1) "Best value" means the highest overall value to the state, considering quality and cost.

(2) "Design-build contracting" means a method of project delivery whereby a single entity is contractually responsible to perform design, construction, and related services.

(3) "Major participant" means any entity that would have a major role in the design or construction of the project as specified by the agency in the request for proposals.

(4) "Project" means the highway, bridge, railroad, airport, trail, transportation, building, or other improvement being constructed or rehabilitated, including all professional services, labor, equipment, materials, tools, supplies, warranties, and incidentals needed for a complete and functioning product.

(5) "Proposal" means an offer by the proposer to design and construct the project in accordance with all request-for-proposals provisions for the price contained in the proposal.

(6) "Proposer" means an individual, firm, corporation, limited-liability company, partnership, joint venture, sole proprietorship, or other entity that submits a proposal. After contract execution, the successful proposer is the design-builder.

(7) "Quality" means those features that the agency determines are most important to the project. Quality criteria may include quality of design, constructability, long-term maintenance costs, aesthetics, local impacts, traveler and other user costs, service life, time to construct, and other factors that the agency considers to be in the best interest of the state.

§ 2602. AUTHORIZATION

(a) Notwithstanding section 10 of this title or any other provision of law, the agency may use design-build contracting to deliver projects. The agency may evaluate and select proposals on either a best-value or a low-bid basis. If the scope of work requires substantial engineering judgment, the quality of which may vary significantly as determined by the agency, then the basis of award shall be best-value.

(b) The agency shall identify those projects it believes are candidates for design-build contracting, including those involving extraordinary circumstances, such as emergency work, unscheduled projects, or loss of funding.

(c) The agency retains the authority to terminate the contracting process at any time, to reject any proposal, to waive technicalities, or to advertise for new proposals if the agency determines that it is in the best interest of the state.

§ 2603. PREQUALIFICATION

(a) The agency may require that entities be prequalified to submit proposals. If the agency requires prequalification, it shall give public notice requesting qualifications from interested entities electronically through the agency's publicly accessible website or through advertisements in newspapers. The agency shall issue a request-for-qualifications package to all entities requesting one in accordance with the notice.

(b) Interested entities shall supply for themselves and for all major participants all information required by the agency. The agency may investigate and verify all information received. All financial information, trade secrets, or other information customarily regarded as confidential business information submitted to the agency shall be confidential.

(c) The agency shall evaluate and rate all entities submitting a conforming statement of qualifications and select the most qualified entities to receive a request for proposals. The agency may select any number of entities, except that if the agency fails to prequalify at least two entities, the agency shall readvertise the project.

§ 2604. REQUEST FOR PROPOSALS

The agency may issue a request for proposals, which shall set forth the scope of work, design parameters, construction requirements, time constraints, and all other requirements that have a substantial impact on the cost or quality of the project and the project development process, as determined by the agency. The request for proposals shall include the criteria for acceptable proposals. For projects to be awarded on a best-value basis, the scoring

process and quality criteria must also be contained in the request for proposals. In the agency's discretion, the request for proposals may provide for a process, including the establishment of a team to review proposals, for the agency to review conceptual technical elements of each proposal before full proposal submittal for the purposes of identifying defects that would cause rejection of the proposal as nonresponsive. All such conceptual submittals and responses shall be confidential until award of the contract. The request for proposals may also provide for a stipend upon specified terms to unsuccessful proposers that submit proposals conforming to all request-for-proposals requirements.

§ 2605. LOW-BID AWARD

If the basis of the award of responsive proposals is low-bid, then each proposal, including the price or prices, shall be sealed by the proposer and submitted to the agency as one complete package. The agency shall award the design-build contract to the proposer that submits a responsive proposal with the lowest cost, if the proposal meets all request-for-proposals requirements.

§ 2606. BEST-VALUE AWARD

(a) If the basis of the award of responsive proposals is best-value, then each proposal shall be submitted by the proposer to the agency in two separate components: a sealed technical proposal and a sealed price proposal. These two components shall be submitted simultaneously. The agency shall first open, evaluate, and score each responsive technical proposal, based on the quality criteria contained in the request for proposals. The request for proposals may provide that the range between the highest and lowest quality scores of responsive technical proposals must be limited to an amount certain. During this evaluation process, the price proposals shall remain sealed, and all technical proposals shall be confidential.

(b) After completion of the evaluation of the technical proposals, the agency shall open and review each price proposal. The agency shall develop a system for assessing the cost and quality criteria. The agency shall award the contract to the proposer of the project representing the best value to the agency.

Sec. 86. DESIGN-BUILD CONTRACTS; LIMITATIONS ON USE

During fiscal year 2010 the agency of transportation shall limit its exercise of the authority granted by Sec. 78 of this act to not more than four projects.

Sec. 87. PROJECT SIGNAGE

For projects initiated in 2010 using design-build contracts, the agency shall erect signage at the project site for the duration of the project's construction identifying the project and its total cost, provided that the cost of acquiring and

installing the signs does not exceed $2,000.00. The signs shall be designed in accordance with the agency's recommendations regarding size and lettering contained in the agency's 2009 report on the issue.

* * * Joint Transportation Oversight Committee Chairs * * *

Sec. 88. 19 V.S.A. § 12b(a) is amended to read:

(a) There is created a joint transportation oversight committee composed of the chairs of the house and senate committees on appropriations, the house and senate committees on transportation, the house committee on ways and means, and the senate committee on finance. The committee shall be chaired alternately by the chairs of the house and senate committees on transportation, and the two year term shall run concurrently with the biennial session of the legislature. The chair of the senate committee on transportation shall chair the committee during the 2009–2010 legislative session.

* * * State Highway Law; Definitions * * *

Sec. 89. 19 V.S.A. § 1 is amended to read:

§ 1. DEFINITIONS

For the purposes of this title:

(1) "Agency" means the agency of transportation.

(2) "Board" means the transportation board.

(3) "Branch" means a major component of a division of a department or major unit of a department with staff functions.

(4) "Chair" means the chair of the transportation board, unless otherwise specified.

(5) "Commissioner" means the commissioner of the department of motor vehicles responsible to the secretary for the administration of the department.

(6) "Department" means the department of motor vehicles.

(7) "Develop" means the partition or division of any tract of land of any size by a person through sale, lease, transfer or any other means by which any interest in or to the land or a portion of the land is conveyed to another person which will require the construction of permanent new or enlarged points of access to a state or town highway other than a limited access facility pursuant to subsection (a) of section 1702a of this title; excluding however, tracts of land located entirely within a city or incorporated village.

(8) "Director" means the head of a division.

(9) "District" means a geographic subdivision of the state primarily established for maintenance purposes.

(10) "District transportation administrator" means the person in charge of a district.

(11) "Division" means a major unit of the agency engaged in line functions other than the department of motor vehicles.

(12) "Highways" are only such as are laid out in the manner prescribed by statute; or roads which have been constructed for public travel over land which has been conveyed to and accepted by a municipal corporation or to the state by deed or a fee or easement interest; or roads which have been dedicated to the public use and accepted by the city or town in which such roads are located; or such as may be from time to time laid out by the agency or town. The term "highway" includes rights-of-way, bridges, drainage structures, signs, guardrails, areas to accommodate utilities authorized by law to locate within highway limits, areas used to mitigate the environmental impacts of highway construction, vegetation, scenic enhancements, and structures. The term "highway" does not include state forest highways, management roads, easements, or rights-of-way owned by or under the control of the agency of natural resources, the department of forests, parks and recreation, the department of fish and wildlife, or the department of environmental conservation.

(13) "Management road" means a road not designated as a "state forest highway" used for the long-term management of lands owned by or under the control of the department of forests, parks and recreation, the department of fish and wildlife, or the department of environmental conservation to meet the responsibilities and purposes set forth in chapter 83 of Title 10, part 4 of Title 10, and regulations promulgated under those statutes. The term "management road" includes associated easements and rights-of-way. A "management road" is not a "highway" or a "town highway" as defined in this title, is not a public road, and the public has no common law or statutory right of access or use of such a road. A "management road" may be open for temporary, seasonal uses by the public or may be closed temporarily or seasonally at the discretion of the agency of natural resources, the department of forests, parks and recreation, the department of fish and wildlife, or the department of environmental conservation. A "management road" may be closed permanently upon 30 days' notice to the governing body of the municipality in which the road is located and any affected user groups. Designation of a road as a "management road" shall not diminish any deeded rights of way or easements of private landowners on lands owned or controlled by the agency of natural resources,

the department of forests, parks and recreation, the department of fish and wildlife, or the department of environmental conservation.

~~(13)~~(14) "Person" includes a municipality or state agency.

~~(14)~~(15) "Scenic road" means any road designated pursuant to this title.

~~(15)~~(16) "Secretary" means the head of the agency who shall be a member of the governor's cabinet responsible directly to the governor for the administration of the agency.

~~(16)~~(17) "Section" means a major component of a division or department or major unit of the agency.

~~(17)~~(18) "Selectboard" includes village trustees and city councils.

(19) "State forest highway" means a road used for the long-term management of lands owned by or under the control of the department of forests, parks and recreation to meet the responsibilities and purposes set forth in 10 V.S.A. § 2601, et seq. and regulations promulgated under that statute. The term "state forest highway" includes easements and rights-of-way. A "state forest highway" is not a "highway" or a "town highway" as defined in this title, is not a public road, and the public has no common law or statutory right of access or use of such road. A "state forest highway" may be open for temporary, seasonal uses by the public or may be closed temporarily or seasonally for any reason at the discretion of the agency of natural resources or the department of forests, parks and recreation. A "state forest highway" may be closed permanently upon 30 days' notice to the governing body of the municipality in which the road is located and to any affected user groups. Designation of a road as a "state forest highway" shall not diminish any deeded rights of way or easements of private landowners on lands owned or controlled by the agency of natural resources or the department of forests, parks and recreation.

~~(18)~~(20) "State highways" are those highways maintained exclusively by the agency of transportation.

~~(19)~~(21) "Throughway" means a highway specially designated giving traffic traveling on the throughway the right-of-way at all intersections.

~~(20)~~(22) "Town" includes incorporated villages and cities.

~~(21)~~(23) "Town highways" are ~~those~~ class 1, 2, 3 and 4 highways:

(A) that the towns have authority to exclusively or cooperatively maintain; or

(B) that are maintained by the towns except for scheduled surface maintenance performed by the agency pursuant to section 306a of this title.

~~(22)~~(24) "Traffic committee" consists of the secretary of transportation or his or her designee, the commissioner of motor vehicles or his or her designee, and the commissioner of public safety or his or her designee and is responsible for establishing speed zones, parking and no parking areas, regulations for use of limited access highways, and other traffic control procedures.

~~(23)~~(25) "Limited access highway" means a highway where the right of owners or occupants of abutting land or other persons to access, light, air, or view in connection with the highway is fully or partially controlled by public authority, in accordance with chapter 17 of this title. The term "highway" does not include state forest highways, management roads, easements, or rights-of-way owned by or under the control of the agency of natural resources, the department of forests, parks and recreation, the department of fish and wildlife, or the department of environmental conservation.

Sec. 90. 19 V.S.A. § 301 is amended to read:

§ 301. DEFINITIONS

* * *

(7) "Town highways" are ~~those~~ class 1, 2, 3 and 4 highways:

(A) that the towns have authority to exclusively or cooperatively maintain; or

(B) that are maintained by the towns except for scheduled surface maintenance performed by the agency pursuant to section 306a of this title.

* * * Budget Surplus; Towns of Glastenbury and Somerset * * *

Sec. 91. FISCAL YEAR 2009 FUND TRANSFERS

Notwithstanding the provisions of 24 V.S.A. § 1406, in fiscal year 2009, the following amounts shall be transferred to the transportation fund from the funds indicated:

(1) 21345 Unorganized town—-Bennington (Glastenbury) $241,652.

(2) 21355 Unorganized towns—Windham (Somerset) $121,180.

Sec. 92. 32 V.S.A. § 4961 is amended to read:

§ 4961. ASSESSMENT OF TAX

(a) A state tax determined pursuant to this section is hereby annually assessed upon the grand list of the Gore in Chittenden County~~. A state tax of~~

~~$0.50 is hereby annually assessed on~~ and upon the grand list of the town of Glastenbury in the county of Bennington and of the unorganized town of Somerset in the county of Windham.

(b) Annually, on or before August 1, the supervisor of Buel's Gore shall call a meeting of the residents of the Gore for the purpose of presenting the proposed budget and tax rate for the Gore for the ensuing year and inviting discussion thereon. Notice of the meeting shall be sent by first class mail to all residents of the Gore at least 14 days before the meeting. The meeting shall be held at a place within the Gore or within a town that adjoins the Gore. Included with the notice shall be an itemized proposed budget which shall, in the judgment of the supervisor, cover the education, road maintenance and general government costs within the Gore. Also included with the notice shall be proposed tax rates consistent with the budget. Annually, on or before September 10, the supervisor shall adopt a budget and tax rate and notify the residents and appraisers for the Gore.

(c) Annually, on or before August 1, the supervisors of Glastenbury and Somerset shall each present the proposed budget and tax rate for the town for the ensuing year. Upon a finding by the commissioner of taxes before September 10 that the budget and tax rate are reasonable and show no obvious irregularities, the commissioner shall approve the budget and tax rate, and the supervisor shall then adopt the budget and tax rate and notify the residents of the town. If the commissioner does not approve the budget and tax rate by September 10, the budget and tax rate shall remain the same as the budget and tax rate for the prior year, and the supervisor shall so notify the residents of the town.

Sec. 93. 24 V.S.A. § 1406 is amended to read:

§ 1406. TAXES EXPENDED; HOW

Upon allowance of the accounts of supervisors and appraisers for unorganized towns and gores, the commissioner of finance and management shall certify forthwith the amount as allowed to the state treasurer and the balance, if any, of the moneys received from any supervisor, after deducting the amount of the county tax and regional planning costs, if any. The amount of such supervisors' and appraisers' accounts, so certified, shall be used for the laying out, construction and maintenance of highways and bridges in the unorganized towns and gores for which the supervisor is appointed, to be expended by and under the direction of the secretary of transportation, in the same manner as state transportation appropriations. The portion of the money which remains unexpended for more than one year may be ~~used~~ carried

forward in the supervisors' accounts for like purposes ~~and expended in a like manner in towns adjoining unorganized towns and gores~~.

* * * Sidewalks; Landowner Liability * * *

Sec. 94. Chapter 23 of Title 19 is redesignated to read:

CHAPTER 23. BICYCLE ROUTES AND SIDEWALKS

Sec. 95. 19 V.S.A. § 2301 is amended to read:

§ 2301. DEFINITIONS

* * *

(6) "Sidewalk" means the portion of a street or highway right-of-way designated for primary or exclusive pedestrian use.

Sec. 96. 19 V.S.A. § 2309 is amended to read:

§ 2309. LIABILITY OF LANDOWNER

No landowner shall be liable for any property damage or personal injury sustained by any person who is using, for any purpose permitted by state law or by a municipal ordinance, bicycle routes or sidewalks constructed on the landowner's property pursuant to this chapter, unless the landowner charges a fee for the use of the property. Landowner immunity from liability with regard to sidewalks under this section shall not extend to damage or injury to the extent that it arises from negligent, reckless, or willful acts of the landowner.

* * * Year of Manufacture Plates * * *

Sec. 97. 23 V.S.A. § 373 is amended to read:

§ 373. EXHIBITION VEHICLES; YEAR OF MANUFACTURE PLATES

(a) The annual fee for the registration of a motor vehicle which is maintained solely for use in exhibitions, club activities, parades, and other functions of public interest and which is not used for the transportation of passengers or property on any highway, except to attend such functions, shall be $15.00, in lieu of fees otherwise provided by law.

(b) Pursuant to the provisions of section 304 of this title, one registration plate shall be issued to those vehicles registered under subsection (a) of this section.

(c) The Vermont registration plates of any motor vehicle issued prior to 1939 may be displayed instead of the plates issued under this section, if the current plates are maintained within the vehicle and produced upon request of any enforcement officer as defined in subdivision 4(11) of this title.

* * * Aviation Maintenance Equipment * * *

Sec. 98. REPORT; AVIATION MAINTENANCE EQUIPMENT

The agency of transportation shall, by January 15, 2010, submit to the house and senate transportation committees a report regarding the agency's current inventory of aviation maintenance equipment. The report shall set forth equipment type, cost, funding source, and useful life. The report also shall contain a five-year plan for future equipment purchases.

* * * Transportation Buildings * * *

Sec. 99. TRANSPORTATION BUILDINGS

The following modifications are made to the transportation buildings program:

(1) Consistent with the recommendations of the January 15, 2009 legislative report (Sec. 8(2) of No. 164 of the Acts of the 2007 Adj. Sess. (2008)) titled "VTrans' Plans for Maintenance Facilities in Chittenden and Addison Counties," the agency of transportation shall proceed with Option A (Stay at "Fort) for the Colchester "Fort" Facility project and shall proceed with Option B (Truck Inspection/Motorcycle Training Facility only) for the North Ferrisburgh Facility project.

(2) As part of the Colchester "Fort" Facility renovation project, the agency shall sell the 25 +/- acre property located off VT Route 117 with the proceeds credited as provided in 19 V.S.A. § 26.

* * * Burlington Airport Pilot Project; Creative Financing * * *

Sec. 100. PILOT PROJECT FOR BURLINGTON INTERNATIONAL AIRPORT; CREATIVE FINANCING

A pilot project to examine the potential for a public-private initiatives program shall be pursued for the advancing of an interchange on Interstate 89 along Vermont Route 116 in South Burlington to explore improving future access to the Burlington International Airport and to relieve the overburdened interchanges at Interstate 89 exits 12 and 14. Implementation of the pilot study shall be carried out in cooperation, consultation, and with the support of the Vermont agency of transportation, the Chittenden County metropolitan planning organization (CCMPO), and other affected local jurisdictions and project partners. The CCMPO, with the cooperation of the agency of transportation, is directed to prepare a creative financing plan for the advancement of a project to construct an interchange at the above-mentioned location and deliver the plan to the legislature by November 1, 2009.

* * * Regional Planning Commissions * * *

Sec. 101. PROJECT PRIORITIZATION PROCESS AND PROPOSAL OF NEW PROJECTS FOR THE STATE TRANSPORTATION PROGRAM BY REGIONAL PLANNING COMMISSIONS

(a) To better reflect regional economic development, land use, and project priorities, the agency of transportation, in cooperation with the regional planning commissions, shall modify the existing project prioritization system to ensure that local input is assigned appropriate weighting in the system.

(b) The agency and the regional planning commissions shall jointly develop and adopt and the agency shall implement a written procedure that allows a regional planning commission to propose that a new project be substituted for an existing project or projects within the same region that are in the state transportation program. The procedure shall:

(1) ensure that the proposed new project for addition to the transportation program and the existing project or projects to be deleted from the program are roughly comparable in cost, using updated cost estimates;

(2) consider for removal from the transportation program only projects that are in candidate status;

(3) describe the project identification requirements and time line requirements that an RPC must satisfy to present the proposed change in the transportation program to the general assembly in a particular fiscal year; and

(4) describe the agency-regional planning commission communication protocols that will apply to the process.

(c) Each year, the agency's proposed transportation program shall include a separate report entitled "RPC Proposals" which shall describe all regional planning commission-proposed changes to the state's transportation program made in accordance with the procedure adopted pursuant to subsection (b) of this section.

(d) The agency and regional planning commissions shall report on the adopted procedure described in subsection (b) of this section and on changes made to the priority system in response to subsection (a) of this section to the committees on transportation by January 15, 2010.

* * * State Speed Zones * * *

Sec. 102. 23 V.S.A. § 1003 is amended to read:

§ 1003. STATE SPEED ZONES

(a) When the traffic committee constituted under 19 V.S.A. § 1(22) determines, on the basis of an engineering and traffic investigation, that a

maximum speed limit established by this chapter is greater or less than is reasonable or safe under conditions found to exist at any place or upon any part of a state highway, except the national system of interstate and defense highways, it may determine and declare a reasonable and safe limit which is effective when appropriate signs stating the limit are erected. This limit may be declared to be effective at all times or at times indicated upon the signs; and differing limits may be established for different times of day, different types of vehicles, varying weather conditions, or based on other factors, bearing on safe speeds which are effective when posted upon appropriate fixed or alterable signs.

(b) When establishing a maximum speed limit on a state highway contiguous to a school, the traffic committee shall consider, along with the engineering and traffic investigation, data collected for the purpose of promulgating a school travel plan under the Vermont Safe Routes to School program.

* * * Special DMV Examinations * * *

Sec. 103. 23 V.S.A. § 636(a) is amended to read:

(a) Whenever the commissioner has good cause to believe that any holder of an operator's license, or any applicant for renewal of an operator's license, is incompetent or otherwise not qualified to be licensed, he may require such person to submit to a special examination to determine his capabilities or mental or physical fitness, but no person shall be required to pay to the state a fee for such special examination. Such examination shall be given at such time and place as the commissioner may determine. If the commissioner determines that a special examination is warranted, then a driving examination shall be administered. If, under the commissioner's discretion, extenuating circumstances exist, the commissioner may also administer a written or oral examination.

* * * Truck Permits * * *

Sec. 104. 23 V.S.A. § 1432 is amended to read:

§ 1432. LENGTH OF VEHICLES; AUTHORIZED HIGHWAYS

(a) Operation of vehicles with or without a trailer or semitrailer. No motor vehicle without a trailer or semitrailer attached, which is longer than 46 feet overall, shall be operated upon any highway except under special permission from the commissioner of motor vehicles. A motor vehicle with a trailer or semitrailer shall be operated, with regard to the length of the vehicle, pursuant to this section. If there is a trailer or semitrailer, the distance between the kingpin of the semitrailer to the center of the rearmost axle group shall not

exceed ~~43~~ 41 feet. An "axle group" is defined as two or more axles where the centers of all the axles are spaced at an equal distance apart.

(1) ~~Vehicles with a trailer or semitrailer not exceeding 72 feet on the truck network. If the overall length of a vehicle with a trailer or semitrailer does not exceed 72 feet, it may be operated without a permit on the truck network established in subsection (c) of this section.~~

~~(2)~~ Vehicles with a trailer or semitrailer not exceeding ~~68~~ 75 feet ~~off the truck network~~. If the overall length of a vehicle with a trailer or semitrailer does not exceed ~~68~~ 75 feet, it may be operated without a permit ~~off the truck network~~.

~~(3)~~(2) ~~Vehicles with a trailer or semitrailer longer than 68 feet but not longer than 72 feet off the truck network; tractor 23 feet or less. If the overall length of a vehicle with a trailer or semitrailer is longer than 68 feet but not longer than 72 feet, and if the distance between the steering axle to the rearmost tractor axle is 23 feet or less, a permit may be issued pursuant to subdivision 1402(b)(1) of this title.~~ A receiver or shipper of goods located in Vermont may request from the agency of transportation, access to a state highway~~, not on the truck network,~~ for a commercial motor vehicle where the overall length exceeds ~~68 feet but is not longer than 72~~ 75 feet. ~~The~~ If the total vehicle length is in excess of 75 feet or the distance from the steering axle to the rearmost tractor axle is longer than 25 feet, a permit may be requested from the commissioner. In that event, the agency of transportation shall review the route or routes requested, making its determination for approval based on safety and engineering considerations, after considering input from local government and regional planning commissions or the metropolitan planning organization. The agency shall maintain consistency in its application of acceptable highway geometry when approving other routes. The agency may authorize safety precautions on these highways, if warranted, which shall include, but not be limited to, precautionary signage, intelligent transportation system signage, special speed limits and use of flashing lights.

~~(4) Vehicles with a trailer or semitrailer longer than 68 feet but not longer than 72 feet off the truck network; tractor greater than 23 feet. If the overall length of a vehicle with a trailer or semitrailer is longer than 68 feet but not longer than 72 feet, and if the distance between the steering axle to the rearmost tractor axle is greater than 23 feet in length, a permit may be issued pursuant to subdivision 1402(b)(2) of this title.~~

~~(5)~~(3) Vehicles with a trailer or semitrailer longer than ~~72~~ 75 feet. If the overall length of a vehicle with a trailer or semitrailer is longer than ~~72~~ 75 feet, a permit may be issued pursuant to subdivision 1402(b)(3) of this title.

(b) Rear-end protective devices on trailers. A trailer or semitrailer not in excess of 53 feet may be operated provided the semitrailer is equipped with a rear-end protective device of substantial construction consisting of a continuous lateral beam extending to within four inches of the lateral extremities of the semitrailer and located not more than 22 inches from the surface as measured with the vehicle empty and on a level surface.

(c) ~~The truck network. The truck network shall consist of the following: U.S. Route 2 between the New Hampshire state line and the junction of U.S. Route 5; U.S. Route 2 from the junction of exit 21 on I-91 to exit 8 on Interstate 89; U.S. Route 2 between the New York state line and VT Route 78; VT Route 2A; U.S. Route 4 from the New York state line to the junction of VT Route 100 south; VT Route 279 from the New York state line to the junction of U.S. Route 7; U.S. Route 5 from the junction of U.S. Route 2 to the junction of exit 20 of I-91; U.S. Route 5 between I-91 at exit 22 to the south entrance of the St. Johnsbury-Lyndonville industrial park; U.S. Route 5 south from I-91 at exit 22 to the intersection of St. Johnsbury Railroad Street and Hastings Hill Street; U.S. Route 7; VT Route 9 from the New York state line to the junction of exit 2 on I-91; VT Route 9 from the junction of exit 3 on I-91 to the New Hampshire state line; VT Route 18 from U.S. Route 2 to the New Hampshire state line; VT Route 22A between U.S. Route 4 and U.S. Route 7; VT Route 78; VT Route 103; VT Route 105 from the junction of U.S. Route 7 to the junction of VT Route 100, then southerly on VT Route 100 to the junction of VT Route 100 and VT Route 14, then easterly on VT Route 14 to the junction of VT Route 14 and U.S. Route 5, then northerly on U.S. Route 5 to the junction of U.S. Route 5 and VT Route 105, then easterly on VT Route 105 from the junction of U.S. Route 5 to the New Hampshire border; VT Route 104 from VT Route 105 to I-89 at exit 19; VT Route 253 from the New Hampshire border to the Canadian border; VT Route 289; and U.S. Route 302. The commissioner is authorized to place special restrictions applying to motor vehicles on any route of the truck network when, in his or her opinion, the restrictions would provide for the safe operation of all vehicles on the route.~~

~~(d)~~ Operation on U.S. Route 4. ~~Vehicles~~ Notwithstanding any other law to the contrary, vehicles with a trailer or semitrailer which are longer than 68 feet but not longer than 72 feet may be operated with a single or multiple trip overlength permit issued at no cost by the department of motor vehicles or, for a fee, by an entity authorized in subsection 1400(d) of this title on U.S. Route 4 from the New Hampshire state line to the junction of VT Route 100 south, provided the distance from the kingpin of the semitrailer to the center of the rearmost axle group is not greater than ~~43~~ 41 feet.

~~(e)~~(d) Operation of pole semitrailers. The provisions of this section shall not be construed to prevent the operation of so-called pole dinkeys or pole semitrailers when being used to support the ends of poles, timbers, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections, the overall length of which may exceed ~~60~~ 75 feet under special permission from the commissioner of motor vehicles.

~~(f)~~(e) Operation on Interstate highways. Notwithstanding subsection (a) of this section, on the National System of Interstate and Defense Highways and those classes of qualifying Federal-aid Primary System highways as designated by the Secretary, United States Department of Transportation, and on highways leading to or from the Dwight D. Eisenhower National System of Interstate and Defense Highways for a distance of one mile, unless the agency of transportation finds the use of a specific highway to be unsafe, no overall length limits for tractor-semitrailer or tractor semitrailer-trailer combination shall apply. On these highways, no semitrailer in a tractor-semitrailer combination longer than 53 feet and no trailer or semitrailer in a tractor-semitrailer-trailer combination longer than 28 feet shall be operated. However, the limits established by this section shall not be construed in such a manner as to prohibit the use of semitrailers in a tractor-semitrailer combination of such dimensions as were in actual and lawful use in this state on December 1, 1982.

~~(g)~~(f) List of approved highways. The commissioner shall prepare a list of each highway that has been approved for travel by vehicles referred to in subsection (a) of this section. The list shall be furnished, without charge, to each permitting service, electronic dispatching service, or other similar service authorized to do business in this state and, upon request, to any interested person.

* * * Transportation Enhancement Grants * * *

Sec. 105. ENHANCEMENT GRANTS; FISCAL YEAR 2010

(a) Notwithstanding 19 V.S.A. § 38, the transportation enhancement grant committee shall award grants up to fiscal year 2010 in the amount of federal funds made available to the state under the American Recovery and Reinvestment Act of 2009 (ARRA) which are exclusively reserved for enhancement projects as defined in 23 U.S.C. § 101(a)(35), estimated to be $3,773,739. The transportation enhancement grant committee shall award grants authorized in this section in a separate grant round before June 30, 2009. The agency shall notify potential applicants of the separate grant round and fix a deadline for the filing of applications of May 15, 2009. All enhancement grant awards authorized in this section shall require a local match in accordance with the same rules that apply to annual enhancement grants.

(b) Any amounts authorized in subsection (a) of this section that are not awarded by the committee by June 30, 2009, up to $3,773,739 shall be included in the fiscal year 2010 enhancement grant program.

(c) To the extent that any grants awarded using ARRA enhancement funds cannot be fully obligated by November 30, 2009, and to the extent necessary to satisfy any deadlines for obligation of ARRA enhancement funds, the secretary of transportation is authorized to obligate ARRA federal funds made available to the state which are exclusively reserved for enhancement projects as defined in 23 U.S.C. § 101(a)(35) to eligible projects in the approved fiscal year 2010 transportation program. The following projects are added to program development – bike and pedestrian facilities – candidates list:

Statewide - STP RAMP (1) – Reconstruction of curb ramps on state highway system to comply with ADA requirements.

Statewide - STP NWRT (1) – Rehabilitate aggregate surfaces on rail trails.

Sec. 106. ENHANCEMENT GRANTS FISCAL YEAR 2010

Notwithstanding 19 V.S.A. § 38, the fiscal year 2010 enhancement grant program shall include a second grant round with respect to non-ARRA funds. For purposes of determining the amount of the grant program, the percentage applicable in 19 V.S.A. § 38(c)(1) shall be 5.0 percent. The provisions of 19 V.S.A. § 38 shall otherwise apply to such grants.

* * * Rest Area Commercialization * * *

Sec. 107. REST AREA COMMERCIALIZATION

By July 1, 2009, the secretary of the agency of transportation shall:

(1) request from the Federal Highway Administration a waiver from the provisions of Title 23, section 111 of the United States Code prohibiting commercial establishments from operating at rest areas along the interstate highway system; and

(2) seek the assistance of the state's federal congressional delegation for the purpose of securing the waiver.

* * * Rest Area Revitalization * * *

Sec. 108. LEGISLATIVE INTENT

It is the intent of the general assembly to require agencies to provide justification for reducing services to the public by:

(1) analyzing current service delivery methods;

(2) reexamining the assumptions that underlie the choice of the current delivery method;

(3) right-sizing when necessary; and

(4) exploring alternate delivery methods that could provide similar services at a lower cost to taxpayers.

Sec. 109. PERMANENT CLOSING OF REST AREA FACILITIES

(a) The commissioner of buildings and general services (BGS) is instructed to permanently close rest area facilities at Highgate on Interstate 89, at Sharon South on Interstate 89, at Hartford North on Interstate 91, and at Randolph North on Interstate 89. These four facilities and all operating and maintenance costs associated with them, including the costs of operating WiFi, are hereby transferred to the Vermont agency of transportation (VTrans) effective July 1, 2009.

(b) VTrans is hereby instructed to explore ways these buildings might be used for state purposes other than operating a rest area or those purposes that would meet with FHWA approval or, absent a public need, may have the structures removed. In the event VTrans decides to have the structures removed, it will notify the members of the Rest Area Advisory Committee established in 19 V.S.A. § 12c with 30 days' advance notice prior to removal.

(c) VTrans, at its discretion, may decide to close the sites to traffic or to have them remain open to either truck or pleasure car traffic or both. Responsibilities for maintaining the grounds will become the responsibility of VTrans. Erection of barriers to traffic or fencing as necessary to limit the public use of these facilities shall be the responsibility of VTrans.

Sec. 110. HOURS OF OPERATION

The commissioner of buildings and general services (BGS) is hereby authorized to adjust the hours of operation for all remaining rest areas. The commissioner shall make decisions on hours of operation based on budgetary considerations, numbers of visitors, and seasonal fluctuations.

Sec. 111. PILOT PROJECT FOR OPERATION OF INFORMATION CENTERS

(a) Pursuant to Sec. 19e(c) of No. 38 of the Acts of 1997, the commissioner of buildings and general services (BGS) is authorized to commence a three-year pilot project to operate facilities at Alburgh, Georgia North, and Georgia South.

(b) Pursuant to Sec. 39(3) of No. 18 of the Acts of 1999, the commissioner is authorized to explore the possibility of creating privately operated travel

information centers at exits along the interstate and along the state highway system. The secretary of transportation is instructed to support this initiative by working with BGS and the FHWA to explore a signage strategy that clearly directs travelers to these service opportunities.

Sec. 112. FUTURE CONSTRUCTION

The commissioner of buildings and general services (BGS) is instructed to take steps to plan for and build the Bennington welcome center at an amount not to exceed the federal earmarks and state matching funds identified for this project. It is the expectation of the house and senate committees on transportation that the site will be operated by the Bennington area chamber of commerce under Sec. 19e(c) of No 38 of the Acts of 1997 and under an agreement approved by the Federal Highway Administration. Therefore, the commissioner of BGS and the chamber shall report back to the rest area advisory committee on or before January 15, 2010, as to the plan for operation and the proposed cost.

* * * Authority to Sell Salt Shed Property in Montpelier * * *

Sec. 113. AUTHORIZATION TO CONVEY "SALT SHED" PROPERTY IN MONTPELIER

(a) Upon receiving satisfactory evidence of release of any interest of the Washington County Railroad Company, the secretary of transportation, as agent for the state of Vermont, is authorized to convey to Connor Brothers Stonecutters, LLC (Connor) for fair market value a parcel of land in the city of Montpelier between Stone Cutters Way and the Winooski River. Conveyance of this parcel of land, sometimes known as 575 Stone Cutters Way or the "salt shed property," shall include the state's interest in a December 16, 1999 lease, as amended, between the state of Vermont, agency of transportation, joined by Washington County Railroad Company, and the Pyralisk Arts Center, Inc. The secretary, in his or her discretion, may adjust the boundaries of the land to be conveyed to Connor to accommodate the building plans of Connor. Connor shall be responsible for obtaining any necessary survey and subdivision approvals. In determining fair market value for this transfer, the secretary shall consider the undertaking of Connor, either through itself or through others, to provide remediation of hazardous wastes and materials on the subject property pursuant to the so-called "Corrective Action Plan (Salt Shed)" dated April 13, 2005, prepared by The Johnson Company, Inc. for Central Vermont Regional Planning Commission, as amended with Connor's consent from time to time.

(b) The authority granted by this section shall expire on June 30, 2011.

* * * Validating Sticker on Registration Plate * * *

Sec. 114. 23 V.S.A. § 305 is amended to read:

§ 305. – WHEN ISSUED

* * *

(c) The commissioner may issue number plates to be used for a period of two or more years. ~~Validating stickers~~ One validating sticker shall be issued by the department of motor vehicles upon payment of the registration fee for the second and each succeeding year the plate is used. No plate is valid for the second and succeeding years unless the ~~stickers are~~ sticker is affixed to the rear plate in the manner prescribed by the commissioner.

* * * Passenger Rail Service * * *

Sec. 115. 2006 STATE RAIL & POLICY PLAN

Consistent with the 2006 State Rail & Policy Plan, the agency shall estimate the total cost of (1) upgrading the western corridor rail line for passenger rail service to and from Burlington, Rutland, Bennington and Albany, New York, (2) operating a passenger rail service from Burlington to Rutland connecting to White Hall, New York and (3) operating a passenger rail service from Burlington to Rutland to Bennington connecting to Albany, New York. The agency shall present its analysis to the House and Senate committees on transportation by January 15, 2010

* * * Central Garage * * *

Sec. 116. TRANSFER TO CENTRAL GARAGE FUND

Notwithstanding 19 V.S.A. § 13(c), the amount of $1,120,000 is transferred from the transportation fund to the central garage fund created in 19 V.S.A. § 13.

* * * Effective Dates * * *

Sec. 117. EFFECTIVE DATES

(a) The following sections of this act shall take effect from passage:

(1) Secs. 3, 21 (ARRA funds).

(2) Sec. 113 (sale of salt shed in Montpelier).

(3) Secs. 105, 106 (enhancement grants).

(4) Secs. 63, 64 (sale of surplus rail property).

(b) Secs. 24-28, 30-32 (motor fuels transportation infrastructure assessments and bond fund) shall take effect on June 1, 2009.

(c) Secs. 22 and 23 (motor fuels infrastructure assessments) shall take effect on September 1, 2010.

(d) All other sections of this act not specifically enumerated in subsections (a), (b), and (c) of this section shall take effect on July 1, 2009.

RICHARD T. MAZZA
PHILIP B. SCOTT
M. JANE KITCHEL

Committee on the part of the Senate

RICHARD A. WESTMAN
DAVE POTTER
PATRICK M. BRENNAN

Committee on the part of the House

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

Rules Suspended; House Proposal of Amendment Concurred In

H. 436.

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

An act relating to decommissioning and decommissioning funds of nuclear energy generation plants.

Was taken up for immediate consideration.

The House proposes to the Senate to amend the Senate proposal of amendment to the bill as follows:

First: In Sec. 1, 30 V.S.A. § 107(c), by striking out the words "and immediate" wherever they occur and by striking out the third sentence and inserting in lieu thereof the following: In this section, "decommissioning" has the meaning stated in subdivisions 260(b)(1)–(3) of this title.

Second: By adding a new section to be numbered Sec. 2 to read as follows:

Sec. 2. 30 V.S.A. § 260 is added to read:

§ 260. DECOMMISSIONING TRUST; NUCLEAR GENERATION

(a) Purpose. The purpose of this section is to promote reclamation of lands on which nuclear energy generation plants are located, as soon as technically possible following cessation of use for electric power generation or of

authority to operate, to a condition that allows future beneficial use of those lands, whether for energy production, industrial use, commercial use, recreational use, or other use consistent with the character and traditional settlement patterns and land uses of the state, region, and locality.

(b) On and after March 22, 2012, any person or entity owning or controlling a nuclear energy generation plant, whether or not the plant is in operation, shall have in place a decommissioning trust that is adequate at all times to fund the full cost of complete decommissioning or, if decommissioning has commenced, to fund the full remaining cost of complete decommissioning and otherwise meet the requirements of this section. For the purpose of this section:

(1) "As soon as technically possible" excludes placing the plant in storage for later decommissioning.

(2) "Decommissioning" means the decommissioning of a nuclear plant in accordance with the decommissioning requirements of the Nuclear Regulatory Commission, management and storage of spent fuel, and return of the site of the plant to a greenfield condition as soon as technically possible after either of the following, whichever is earlier: the permanent cessation of the plant's use for generation of electricity or a date set by the board in a certificate applicable to the plant, person, or company for cessation of authority to operate the plant.

(3) "Greenfield condition" means restoring the site by removal of all structures, equipment, and foundations and, if appropriate, regrading and reseeding the land.

(c) A decommissioning trust shall be funded by cash or a financial instrument or both as long as the instrument is approved by either the Nuclear Regulatory Commission or the public service board and does not rely on placing the plant in storage for later decommissioning. Such an instrument may include a guarantee by a parent corporation.

(d) A decommissioning trust and any included funds and financial instruments shall be subject to the laws of Vermont, shall be usable by the beneficiary only for the purpose of decommissioning, and shall include a spendthrift provision sufficient under Vermont law to restrain both voluntary and involuntary transfers of the beneficiary's interest.

Third: By adding a new section to be numbered Sec. 3 to read as follows:

Sec. 3. 30 V.S.A. § 248(e)(2) is amended to read:

(2) No nuclear energy generating plant within this state may be operated beyond the date permitted in any certificate of public good granted pursuant to

this title, including any certificate in force as of January 1, 2006, unless the general assembly approves and determines that the operation will promote the general welfare, and until the public service board issues a certificate of public good under this section. If the general assembly has not acted under this subsection by July 1, 2008, the board may commence proceedings under this section and under 10 V.S.A. chapter 157, relating to the storage of radioactive material, but may not issue a proposed, preliminary, or final order on the merits of continued operation or certificate of public good until the general assembly determines that operation will promote the general welfare and grants approval for that operation.

And by renumbering the existing Sec. 2 to be Sec. 4.

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

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

H. 136.

Pending entry on the Calendar for notice, on motion of Senator Shumlin, the rules were suspended and House proposals of amendment to Senate proposal of amendment to House bill entitled:

An act relating to executive branch fees.

Was taken up for immediate consideration.

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

First: By striking out sections Secs. 11 – 18

Second: In Sec. 24, after the words "general assembly on" by adding the words or before

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

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

H. 441.

Pending entry on the Calendar for notice, on motion of Senator Shumlin, the rules were suspended and the report of the Committee of Conference on House bill entitled:

An act making appropriations for the support of government.

Was taken up for immediate consideration.

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

To the Senate and House of Representatives:

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

H. 441. An act making appropriations for the support of government.

Respectfully reports that it has met and considered the same and recommends that the Senate recede from its proposal of amendment and that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. A.100 SHORT TITLE

(a) This bill may be referred to as the BIG BILL - Fiscal Year 2010 Appropriations Act.

Sec. A.101 PURPOSE

(a) The purpose of this act is to provide appropriations for the operations of state government during fiscal year 2010. It is the express intent of the general assembly that activities of the various agencies, departments, divisions, boards, and commissions be limited to those which can be supported by funds appropriated in this act or other acts passed prior to June 30, 2009. Agency and department heads are directed to implement staffing and service levels at the beginning of fiscal year 2010 so as to meet this condition unless otherwise directed by specific language in this act or other acts of the general assembly.

Sec. A.102 APPROPRIATIONS

(a) It is the intent of the general assembly that this act serve as the primary source and reference for appropriations for fiscal year 2010.

(b) The sums herein stated are appropriated for the purposes specified in the following sections of this act. When no time is expressly stated during which any of the appropriations are to continue, the appropriations are single

year appropriations only for the purpose indicated and shall be paid from funds shown as the source of funds. If in this act there is an error in either addition or subtraction, the totals shall be adjusted accordingly. Apparent errors in referring to section numbers of statutory titles within this act may be disregarded by the commissioner of finance and management.

(c) Unless codified or otherwise specified, all narrative portions of this act apply only to the fiscal year ending June 30, 2010.

Sec. A.103 DEFINITIONS

(a) For the purposes of this act:

(1) "Encumbrances" means a portion of an appropriation reserved for the subsequent payment of existing purchase orders or contracts. The commissioner of finance and management shall make final decisions on the appropriateness of encumbrances.

(2) "Grants" means subsidies, aid, or payments to local governments, to community and quasi-public agencies for providing local services, and to persons who are not wards of the state for services or supplies, and means cash or other direct assistance, including pension contributions.

(3) "Operating expenses" means property management, repair and maintenance, rental expenses, insurance, postage, travel, energy and utilities, office and other supplies, equipment including motor vehicles, highway materials and construction, expenditures for the purchase of land, and construction of new buildings and permanent improvements, and similar items.

(4) "Personal services" means wages and salaries, fringe benefits, per diems, and contracted third party services, and similar items.

Sec. A.104 RELATIONSHIP TO EXISTING LAWS

(a) Except as specifically provided, this act shall not be construed in any way to negate or impair the full force and effect of existing laws.

Sec. A.105 OFFSETTING APPROPRIATIONS

(a) In the absence of specific provisions to the contrary in this act, when total appropriations are offset by estimated receipts, the state appropriations shall control, notwithstanding receipts being greater or less than anticipated.

Sec. A.106 FEDERAL FUNDS

(a) In fiscal year 2010 the governor, with the approval of the legislature or the joint fiscal committee if the legislature is not in session, may accept federal funds available to the state of Vermont including block grants in lieu of or in addition to funds herein designated as federal. The governor, with the

approval of the legislature or the joint fiscal committee if the legislature is not in session, may allocate all or any portion of such federal funds for any purpose consistent with the purposes for which the basic appropriations in this act have been made.

(b) If, during fiscal year 2010, federal funds available to the state of Vermont and designated as federal in this and other acts of the 2009 session of the Vermont general assembly are converted into block grants or are abolished under their current title in federal law and reestablished under a new title in federal law, the governor may continue to accept such federal funds for any purpose consistent with the purposes for which the federal funds were appropriated. The governor may spend such funds for such purposes for no more than 45 days prior to legislative or joint fiscal committee approval. Notice shall be given to the joint fiscal committee without delay if the governor intends to use the authority granted by this section, and the joint fiscal committee shall meet in an expedited manner to review the governor's request for approval.

Sec. A.107 DEPARTMENTAL RECEIPTS

(a) All receipts shall be credited to the general fund except as otherwise provided and except the following receipts, for which this subsection shall constitute authority to credit to special funds:

(1) Connecticut River flood control;

(2) Public service department - sale of power;

(3) Tax department - unorganized towns and gores.

(b) Notwithstanding any other provision of law, departmental indirect cost recoveries (32 V.S.A. § 6) receipts are authorized, subject to the approval of the secretary of administration, to be retained by the department. All recoveries not so authorized shall be covered into the general fund, or, for agency of transportation recoveries, the transportation fund.

Sec. A.108 NEW POSITIONS

(a) Notwithstanding any other provision of law, the total number of authorized state positions, both classified and exempt, excluding temporary positions as defined in 3 V.S.A. § 311(11), shall not be increased during fiscal year 2010 except for new positions authorized by the 2009 session. Limited service positions approved pursuant to 32 V.S.A. § 5 shall not be subject to this restriction.

Sec. A.109 LEGEND

(a) The bill is organized by functions of government. The sections between B.100 and B.9999 contain appropriations of funds. The sections between E.100 and E.9999 contain language that relates to specific appropriations and/or government functions. The function areas by section numbers are as follows:

B.100–B.199 and E.100–E.199	General Government
B.200–B.299 and E.200–E.299	Protection to Persons and Property
B.300–B.399 and E.300–E.399	Human Services
B.400–B.499 and E.400–E.499	Labor
B.500–B.599 and E.500–E.599	General Education
B.600–B.699 and E.600–E.699	Higher Education
B.700–B.799 and E.700–E.799	Natural Resources
B.800–B.899 and E.800–E.899	Commerce and Community Development
B.900–B.999 and E.900–E.999	Transportation
B.1000–B.1099 and E.1000–E.1099	Debt Service
B.1100–B.1199 and E.1100–E.1199	One-time and other appropriation actions

Sec. B.100 Secretary of administration - secretary's office

Personal services	795,758
Operating expenses	69,411
Total	865,169
Source of funds	
General fund	676,776
Global Commitment fund	188,393
Total	865,169

Sec. B.101 Information and innovation - communications and information technology

Personal services	6,816,269
Operating expenses	2,749,899
Grants	750,000
Total	10,316,168
Source of funds	
General fund	97,094
Internal service funds	9,698,448
Interdepartmental transfers	520,626
Total	10,316,168

Sec. B.102 Information and innovation - heath care information technology

Personal services	90,000
Grants	2,865,674
Total	2,955,674
Source of funds	
Special funds	2,616,174
Global Commitment fund	339,500
Total	2,955,674

Sec. B.103 Finance and management - budget and management

Personal services	1,011,091
Operating expenses	145,343
Total	1,156,434
Source of funds	
General fund	841,780
Interdepartmental transfers	314,654
Total	1,156,434

Sec. B.104 Finance and management - financial operations

Personal services	2,666,280
Operating expenses	205,538
Total	2,871,818
Source of funds	
Internal service funds	2,871,818
Total	2,871,818

Sec. B.105 Human resources - operations

Personal services	2,460,443
Operating expenses	625,941
Total	3,086,384
Source of funds	
General fund	1,888,503
Special funds	280,835
Interdepartmental transfers	917,046
Total	3,086,384

Sec. B.107 Human resources - employee benefits & wellness

Personal services	1,655,935
Operating expenses	395,438
Total	2,051,373
Source of funds	
Internal service funds	2,011,520

Interdepartmental transfers	39,853
Total	2,051,373

Sec. B.108 Libraries

Personal services	2,078,222
Operating expenses	1,561,712
Grants	62,500
Total	3,702,434
Source of funds	
General fund	2,616,539
Special funds	132,500
Federal funds	855,215
Interdepartmental transfers	98,180
Total	3,702,434

Sec. B.109 Tax - administration/collection

Personal services	12,714,125
Operating expenses	2,992,665
Total	15,706,790
Source of funds	
General fund	14,260,386
Special funds	1,191,404
Tobacco fund	58,000
Interdepartmental transfers	197,000
Total	15,706,790

Sec. B.110 Buildings and general services - administration

Personal services	1,371,967
Operating expenses	98,823
Total	1,470,790
Source of funds	
Interdepartmental transfers	1,470,790
Total	1,470,790

Sec. B.111 Buildings and general services - engineering

Personal services	1,989,475
Operating expenses	418,865
Total	2,408,340
Source of funds	
General fund	458,340
Interdepartmental transfers	1,950,000
Total	2,408,340

Sec. B.112 Buildings and general services - information centers

Personal services	2,981,451
Operating expenses	1,183,949
Grants	45,000
Total	4,210,400
Source of funds	
General fund	4,160,400
Special funds	50,000
Total	4,210,400

Sec. B.113 Buildings and general services - purchasing

Personal services	671,569
Operating expenses	204,881
Total	876,450
Source of funds	
General fund	876,450
Total	876,450

Sec. B.114 Buildings and general services - postal services

Personal services	650,910
Operating expenses	184,090
Total	835,000
Source of funds	
General fund	36,116
Internal service funds	798,884
Total	835,000

Sec. B.115 Buildings and general services - copy center

Personal services	725,873
Operating expenses	194,127
Total	920,000
Source of funds	
Internal service funds	920,000
Total	920,000

Sec. B.116 Buildings and general services - fleet management services

Personal services	475,587
Operating expenses	169,413
Total	645,000
Source of funds	
Internal service funds	645,000
Total	645,000

Sec. B.117 Buildings and general services - federal surplus property

Personal services	83,564
Operating expenses	62,936
Total	146,500
Source of funds	
Enterprise funds	146,500
Total	146,500

Sec. B.118 Buildings and general services - state surplus property

Personal services	80,720
Operating expenses	86,060
Total	166,780
Source of funds	
Internal service funds	166,780
Total	166,780

Sec. B.119 Buildings and general services - property management

Personal services	1,196,597
Operating expenses	2,985,033
Total	4,181,630
Source of funds	
Internal service funds	4,181,630
Total	4,181,630

Sec. B.120 Buildings and general services - workers' compensation insurance

Personal services	1,329,914
Operating expenses	309,324
Total	1,639,238
Source of funds	
Internal service funds	1,639,238
Total	1,639,238

Sec. B.121 Buildings and general services - general liability insurance

Personal services	295,114
Operating expenses	125,386
Total	420,500
Source of funds	
Internal service funds	420,500
Total	420,500

Sec. B.122 Buildings and general services - all other insurance

Personal services	33,028
Operating expenses	51,972
Total	85,000
Source of funds	
Internal service funds	85,000
Total	85,000

Sec. B.123 Buildings and general services - fee for space

Personal services	12,684,951
Operating expenses	14,970,941
Total	27,655,892
Source of funds	
Internal service funds	27,655,892
Total	27,655,892

Sec. B.124 Geographic information system

Grants	408,700
Total	408,700
Source of funds	
Special funds	408,700
Total	408,700

Sec. B.125 Executive office - governor's office

Personal services	1,217,326
Operating expenses	386,489
Total	1,603,815
Source of funds	
General fund	1,410,315
Interdepartmental transfers	193,500
Total	1,603,815

Sec. B.126 Legislative council

Personal services	2,164,007
Operating expenses	178,970
Total	2,342,977
Source of funds	
General fund	2,342,977
Total	2,342,977

Sec. B.127 Legislature

Personal services	3,672,884
Operating expenses	3,388,507
Total	7,061,391
Source of funds	
General fund	7,061,391
Total	7,061,391

Sec. B.128 Legislative information technology

Personal services	393,601
Operating expenses	492,357
Total	885,958
Source of funds	
General fund	885,958
Total	885,958

Sec. B.129 Joint fiscal committee

Personal services	1,414,565
Operating expenses	94,632
Total	1,509,197
Source of funds	
General fund	1,509,197
Total	1,509,197

Sec. B.130 Sergeant at arms

Personal services	509,586
Operating expenses	99,931
Total	609,517
Source of funds	
General fund	609,517
Total	609,517

Sec. B.131 Lieutenant governor

Personal services	146,651
Operating expenses	16,983
Total	163,634
Source of funds	
General fund	163,634
Total	163,634

Sec. B.132 Auditor of accounts

Personal services	3,032,314
Operating expenses	139,366
Total	3,171,680
Source of funds	
General fund	437,938
Special funds	51,709
Internal service funds	2,682,033
Total	3,171,680

Sec. B.133 State treasurer

Personal services	2,313,466
Operating expenses	357,079
Grants	6,484
Total	2,677,029
Source of funds	
General fund	1,086,815
Special funds	1,506,190
Interdepartmental transfer	84,024
Total	2,677,029

Sec. B.134 State treasurer - unclaimed property

Personal services	687,596
Operating expenses	237,795
Total	925,391
Source of funds	
Private purpose trust funds	925,391
Total	925,391

Sec. B.135 Vermont state retirement system

Personal services	27,115,165
Operating expenses	773,415
Total	27,888,580
Source of funds	
Pension trust funds	27,888,580
Total	27,888,580

Sec. B.136 Municipal employees' retirement system

Personal services	1,841,374
Operating expenses	346,814
Total	2,188,188
Source of funds	

Pension trust funds	2,188,188
Total	2,188,188

Sec. B.137 State labor relations board

Personal services	166,789
Operating expenses	37,194
Total	203,983
Source of funds	
General fund	198,260
Special funds	2,788
Interdepartmental transfers	2,935
Total	203,983

Sec. B.138 VOSHA review board

Personal services	37,997
Operating expenses	9,815
Total	47,812
Source of funds	
General fund	23,905
Interdepartmental transfers	23,907
Total	47,812

Sec. B.139 Homeowner rebate

Grants	13,725,647
Total	13,725,647
Source of funds	
General fund	13,725,647
Total	13,725,647

Sec. B.140 Renter rebate

Grants	8,476,695
Total	8,476,695
Source of funds	
General fund	2,543,008
Education fund	5,933,687
Total	8,476,695

Sec. B.141 Tax department - reappraisal and listing payments

Grants	3,470,000
Total	3,470,000
Source of funds	

Education fund	3,470,000
Total	3,470,000

Sec. B.142 Use tax reimbursement fund - municipal current use

Grants	10,807,403
Total	10,807,403
Source of funds	
General fund	10,807,403
Total	10,807,403

Sec. B.143 Lottery commission

Personal services	1,555,943
Operating expenses	1,113,662
Total	2,669,605
Source of funds	
Enterprise funds	2,669,605
Total	2,669,605

Sec. B.144 Payments in lieu of taxes

Grants	4,900,000
Total	4,900,000
Source of funds	
Special funds	4,900,000
Total	4,900,000

Sec. B.145 Payments in lieu of taxes - Montpelier

Grants	184,000
Total	184,000
Source of funds	
Special funds	184,000
Total	184,000

Sec. B.146 Payments in lieu of taxes - correctional facilities

Grants	40,000
Total	40,000
Source of funds	
Special funds	40,000
Total	40,000

Sec. B.147 Total general government 184,334,966

Source of funds	
General fund	68,718,349
Education fund	9,403,687

Special funds	11,364,300
Tobacco fund	58,000
Global Commitment fund	527,893
Federal funds	855,215
Enterprise funds	2,816,105
Internal service funds	53,776,743
Pension trust funds	30,076,768
Private purpose trust funds	84,024
Interdepartmental transfers	6,653,882
Total	184,334,966

Sec. B.200 Attorney general

Personal services	6,518,250
Operating expenses	1,055,051
Total	7,573,301
Source of funds	
General fund	3,894,689
Special funds	938,302
Tobacco fund	405,000
Federal funds	677,526
Interdepartmental transfers	1,657,784
Total	7,573,301

Sec. B.201 Vermont court diversion

Grants	1,724,784
Total	1,724,784
Source of funds	
General fund	1,204,784
Special funds	520,000
Total	1,724,784

Sec. B.202 Defender general - public defense

Personal services	7,273,704
Operating expenses	919,387
Total	8,193,091
Source of funds	
General fund	7,691,786
Special funds	501,305
Total	8,193,091

Sec. B.203 Defender general - assigned counsel

Personal services	3,319,857
Operating expenses	77,909
Total	3,397,766
Source of funds	
General fund	3,272,502
Special funds	125,264
Total	3,397,766

Sec. B.204 Judiciary

Personal services	27,238,182
Operating expenses	10,084,796
Grants	70,000
Total	37,392,978
Source of funds	
General fund	30,995,922
Special funds	3,891,636
Tobacco fund	39,112
Federal funds	546,919
Interdepartmental transfers	1,919,389
Total	37,392,978

Sec. B.205 State's attorneys

Personal services	9,685,589
Operating expenses	1,298,616
Total	10,984,205
Source of funds	
General fund	8,754,382
Special funds	56,675
Federal funds	31,000
Interdepartmental transfers	2,142,148
Total	10,984,205

Sec. B.206 Special investigative unit

Grants	1
Total	1
Source of funds	
General fund	1
Total	1

Sec. B.207 Sheriffs

Personal services	3,306,718
Operating expenses	356,269
Total	3,662,987
Source of funds	
General fund	3,662,987
Total	3,662,987

Sec. B.208 Public safety - administration

Personal services	1,696,711
Operating expenses	194,781
Total	1,891,492
Source of funds	
General fund	1,861,340
Federal funds	30,152
Total	1,891,492

Sec. B.209 Public safety - state police

Personal services	42,024,804
Operating expenses	11,413,936
Grants	582,087
Total	54,020,827
Source of funds	
ARRA funds	7,461,782
General fund	16,465,183
Transportation fund	23,731,384
Special funds	1,910,795
Federal funds	2,159,888
Interdepartmental transfers	2,291,795
Total	54,020,827

Sec. B.210 Public safety - criminal justice services

Personal services	6,078,888
Operating expenses	2,976,224
Grants	2,909,394
Total	11,964,506
Source of funds	
General fund	756,092
Transportation fund	4,557,454
Special funds	1,860,980
Federal funds	4,689,372

Interdepartmental transfers	100,608
Total	11,964,506

Sec. B.211 Public safety - emergency management

Personal services	1,778,662
Operating expenses	1,246,992
Grants	819,400
Total	3,845,054
Source of funds	
Transportation fund	63,969
Special funds	168,831
Federal funds	3,612,254
Total	3,845,054

Sec. B.212 Public safety - fire safety

Personal services	4,396,900
Operating expenses	1,590,660
Grants	55,000
Total	6,042,560
Source of funds	
General fund	590,719
Special funds	4,866,202
Federal funds	411,992
Interdepartmental transfers	173,647
Total	6,042,560

Sec. B.213 Public safety - homeland security

Personal services	1,252,863
Operating expenses	4,999,729
Grants	1,050,000
Total	7,302,592
Source of funds	
General fund	395,271
Federal funds	6,907,321
Total	7,302,592

Sec. B.214 Public safety - emergency management - radiological emergency response plan

Personal services	695,571
Operating expenses	273,382
Grants	743,518
Total	1,712,471
Source of funds	

Special funds	1,712,471
Total	1,712,471

Sec. B.215 Military - administration

Personal services	595,055
Operating expenses	185,755
Grants	100,000
Total	880,810
Source of funds	
General fund	880,810
Total	880,810

Sec. B.216 Military - air service contract

Personal services	4,682,496
Operating expenses	1,576,241
Total	6,258,737
Source of funds	
General fund	433,236
Federal funds	5,825,501
Total	6,258,737

Sec. B.217 Military - army service contract

Personal services	3,645,443
Operating expenses	9,174,120
Total	12,819,563
Source of funds	
General fund	107,071
Federal funds	12,712,492
Total	12,819,563

Sec. B.218 Military - building maintenance

Personal services	1,024,137
Operating expenses	386,580
Total	1,410,717
Source of funds	
General fund	1,343,826
Federal funds	66,891
Total	1,410,717

Sec. B.219 Military - veterans' affairs

Personal services	430,316
Operating expenses	133,624

Grants	163,815
Total	727,755
Source of funds	
General fund	575,519
Special funds	83,529
Federal funds	68,707
Total	727,755

Sec. B.220 Center for crime victims' services

Personal services	1,275,841
Operating expenses	261,734
Grants	9,433,056
Total	10,970,631
Source of funds	
ARRA funds	797,067
General fund	1,119,233
Special funds	5,201,380
Federal funds	3,852,951
Total	10,970,631

Sec. B.221 Criminal justice training council

Personal services	1,225,444
Operating expenses	1,135,975
Total	2,361,419
Source of funds	
General fund	1,453,753
Special funds	534,343
Interdepartmental transfers	373,323
Total	2,361,419

Sec. B.222 Agriculture, food and markets - administration

Personal services	707,514
Operating expenses	390,128
Grants	338,351
Total	1,435,993
Source of funds	
General fund	886,626
Special funds	382,449
Federal funds	124,918
Interdepartmental transfers	42,000
Total	1,435,993

Sec. B.223 Agriculture, food and markets - food safety and consumer protection

Personal services	2,041,806
Operating expenses	332,830
Total	2,374,636
Source of funds	
General fund	1,278,611
Special funds	651,025
Federal funds	438,000
Interdepartmental transfers	7,000
Total	2,374,636

Sec. B.224 Agriculture, food and markets - agricultural development

Personal services	688,162
Operating expenses	504,063
Grants	302,500
Total	1,494,725
Source of funds	
General fund	673,775
Special funds	432,950
Federal funds	388,000
Total	1,494,725

Sec. B.225 Agriculture, food and markets - laboratories, agricultural resource management and environmental stewardship

Personal services	3,800,621
Operating expenses	639,708
Grants	4,480,952
Total	8,921,281
Source of funds	
General fund	2,420,363
Special funds	5,433,147
Federal funds	519,517
Interdepartmental transfers	548,254
Total	8,921,281

Sec. B.226 Agriculture, food and markets - state stipend

Grants	175,000
Total	175,000
Source of funds	
General fund	175,000
Total	175,000

Sec. B.227 Agriculture, food and markets - mosquito control

Personal services	20,000
Operating expenses	60,000
Total	80,000
Source of funds	
Special funds	80,000
Total	80,000

Sec. B.228 Banking, insurance, securities, and health care administration - administration

Personal services	1,982,977
Operating expenses	88,470
Total	2,071,447
Source of funds	
Special funds	2,071,447
Total	2,071,447

Sec. B.229 Banking, insurance, securities, and health care administration - banking

Personal services	1,240,658
Operating expenses	248,960
Total	1,489,618
Source of funds	
Special funds	1,489,618
Total	1,489,618

Sec. B.230 Banking, insurance, securities, and health care administration - insurance

Personal services	2,765,146
Operating expenses	450,750
Total	3,215,896
Source of funds	
Special funds	3,215,896
Total	3,215,896

Sec. B.231 Banking, insurance, securities, and health care administration - captive

Personal services	2,998,995
Operating expenses	452,000
Total	3,450,995
Source of funds	

Special funds	3,450,995
Total	3,450,995

Sec. B.232 Banking, insurance, securities, and health care administration - securities

Personal services	418,217
Operating expenses	144,733
Total	562,950
Source of funds	
Special funds	562,950
Total	562,950

Sec. B.233 Banking, insurance, securities, and health care administration - health care administration

Personal services	4,338,993
Operating expenses	326,905
Total	4,665,898
Source of funds	
Special funds	2,767,074
Global Commitment fund	1,898,824
Total	4,665,898

Sec. B.234 Secretary of state

Personal services	5,440,700
Operating expenses	2,086,742
Grants	1,000,000
Total	8,527,442
Source of funds	
General fund	1,710,918
Special funds	4,741,524
Federal funds	2,000,000
Interdepartmental transfers	75,000
Total	8,527,442

Sec. B.235 Public service - regulation and energy

Personal services	9,060,185
Operating expenses	709,206
Grants	68,219,007
Total	77,988,398
Source of funds	
ARRA funds	31,592,500
Special funds	45,238,098

Federal funds	1,157,800
Total	77,988,398

Sec. B.236 Public service - purchase and sale of power

Personal services	18,484
Operating expenses	1,516
Total	20,000
Source of funds	
Special funds	20,000
Total	20,000

Sec. B.237 Public service board

Personal services	2,555,286
Operating expenses	320,000
Total	2,875,286
Source of funds	
Special funds	2,875,286
Total	2,875,286

Sec. B.238 Enhanced 9-1-1 Board

Personal services	2,098,342
Operating expenses	1,565,260
Grants	1,823,443
Total	5,487,045
Source of funds	
Special funds	5,487,045
Total	5,487,045

Sec. B.239 Human rights commission

Personal services	375,041
Operating expenses	68,917
Total	443,958
Source of funds	
General fund	273,219
Federal funds	170,739
Total	443,958

Sec. B.240 Liquor control - administration

Personal services	1,495,953
Operating expenses	543,031
Total	2,038,984
Source of funds	
Tobacco fund	6,661

Enterprise funds	1,789,323
Interdepartmental transfers	243,000
Total	2,038,984

Sec. B.241 Liquor control - enforcement and licensing

Personal services	1,963,476
Operating expenses	344,075
Total	2,307,551
Source of funds	
Tobacco fund	289,645
Enterprise funds	2,017,906
Total	2,307,551

Sec. B.242 Liquor control - warehousing and distribution

Personal services	750,352
Operating expenses	367,561
Total	1,117,913
Source of funds	
Enterprise funds	1,117,913
Total	1,117,913

Sec. B 243 Total Protection to persons and property

	325,883,263
Source of funds	
ARRA funds	39,851,349
General fund	92,877,618
Transportation fund	28,352,807
Special funds	101,271,217
Tobacco fund	740,418
Global Commitment fund	1,898,824
Federal funds	46,391,940
Enterprise funds	4,925,142
Interdepartmental transfers	9,573,948
Total	325,883,263

Sec. B.300 Human services - agency of human services - secretary's office

Personal services	10,016,218
Operating expenses	2,998,915
Grants	5,099,439
Total	18,114,572
Source of funds	
General fund	5,333,921

Special funds	7,517
Tobacco fund	609,730
Global Commitment fund	398,400
Federal funds	8,068,443
Interdepartmental transfers	3,696,561
Total	18,114,572

Sec. B.301 Secretary's office - global commitment

Grants	1,009,425,249
Total	1,009,425,249
Source of funds	
ARRA funds	111,206,921
General fund	56,946,630
Special funds	11,548,420
Tobacco fund	35,651,873
State health care resources fund	156,955,519
Catamount fund	18,903,594
Federal funds	617,849,638
Interdepartmental transfers	362,654
Total	1,009,425,249

Sec. B.302 Rate setting

Personal services	853,246
Operating expenses	81,982
Total	935,228
Source of funds	
Global Commitment fund	935,228
Total	935,228

Sec. B.303 Developmental disabilities council

Personal services	240,797
Operating expenses	48,251
Grants	220,000
Total	509,048
Source of funds	
Federal funds	509,048
Total	509,048

Sec. B.304 Human services board

Personal services	299,820
Operating expenses	66,441
Total	366,261
Source of funds	

General fund	51,912
Federal funds	157,174
Interdepartmental transfers	157,175
Total	366,261

Sec. B.305 AHS - administrative fund

Personal services	500,000
Operating expenses	4,500,000
Total	5,000,000
Source of funds	
Interdepartmental transfers	5,000,000
Total	5,000,000

Sec. B.306 Office of Vermont health access - administration

Personal services	32,311,860
Operating expenses	2,330,388
Grants	1,018,000
Total	35,660,248
Source of funds	
General fund	429,107
Special funds	400,000
Global Commitment fund	31,887,944
Catamount fund	94,739
Federal funds	2,848,458
Total	35,660,248

Sec. B.307 Office of Vermont health access - Medicaid program - global commitment

Grants	522,020,786
Total	522,020,786
Source of funds	
Global Commitment fund	522,020,786
Total	522,020,786

Sec. B.308 Office of Vermont health access - Medicaid program - long term care waiver

Grants	203,305,257
Total	203,305,257
Source of funds	
ARRA funds	22,465,253
General fund	61,072,899

Federal funds	119,767,105
Total	203,305,257

Sec. B.309 Office of Vermont health access - Medicaid program - state only

Grants	33,024,951
Total	33,024,951
Source of funds	
General fund	28,195,859
Global Commitment fund	1,510,264
Catamount fund	3,318,828
Total	33,024,951

Sec. B.310 Office of Vermont health access - Medicaid non-waiver matched

Grants	46,551,748
Total	46,551,748
Source of funds	
ARRA funds	1,060,380
General fund	16,976,310
Federal funds	28,515,058
Total	46,551,748

Sec. B.311 Health - administration and support

Personal services	6,222,550
Operating expenses	2,812,966
Grants	2,892,000
Total	11,927,516
Source of funds	
General fund	1,083,788
Special funds	324,678
Global Commitment fund	4,419,832
Federal funds	6,027,218
Interdepartmental transfers	72,000
Total	11,927,516

Sec. B.312 Health - public health

Personal services	35,134,321
Operating expenses	7,080,700
Grants	32,906,545
Total	75,121,566
Source of funds	
General fund	6,951,822
Special funds	4,611,472
Tobacco fund	1,166,803

Global Commitment fund	25,630,654
Catamount fund	4,349,418
Federal funds	31,809,266
Permanent trust funds	10,000
Interdepartmental transfers	592,131
Total	75,121,566

Sec. B.313 Health - alcohol and drug abuse programs

Personal services	3,195,089
Operating expenses	1,299,901
Grants	26,950,849
Total	31,445,839
Source of funds	
General fund	3,063,665
Special funds	236,210
Tobacco fund	2,382,834
Global Commitment fund	17,177,920
Federal funds	8,435,210
Interdepartmental transfers	150,000
Total	31,445,839

Sec. B.314 Mental health - mental health

Personal services	4,492,095
Operating expenses	562,604
Grants	129,023,870
Total	134,078,569
Source of funds	
General fund	698,915
Special funds	6,836
Global Commitment fund	127,475,501
Federal funds	5,877,317
Interdepartmental transfers	20,000
Total	134,078,569

Sec. B.315 Mental health - Vermont state hospital

Personal services	20,480,654
Operating expenses	2,752,971
Grants	82,335
Total	23,315,960
Source of funds	
General fund	22,132,396
Special funds	170,000

Global Commitment fund	450,000
Federal funds	263,564
Interdepartmental transfers	300,000
Total	23,315,960

Sec. B.316 Department for children and families - administration & support services

Personal services	37,028,517
Operating expenses	7,305,795
Grants	954,425
Total	45,288,737
Source of funds	
ARRA funds	300,000
General fund	15,015,703
Global Commitment fund	15,855,197
Catamount fund	147,950
Federal funds	13,969,887
Total	45,288,737

Sec. B.317 Department for children and families - family services

Personal services	22,307,550
Operating expenses	3,312,909
Grants	66,040,538
Total	91,660,997
Source of funds	
ARRA funds	1,411,224
General fund	18,452,530
Special funds	1,691,637
Tobacco fund	275,000
Global Commitment fund	41,892,793
Federal funds	27,837,813
Interdepartmental transfers	100,000
Total	91,660,997

Sec. B.318 Department for children and families - child development

Personal services	3,473,066
Operating expenses	545,908
Grants	56,106,468
Total	60,125,442
Source of funds	
ARRA funds	2,452,636
General fund	23,481,012
Special funds	1,820,000

Global Commitment fund	5,221,053
Federal funds	27,011,234
Interdepartmental transfers	139,507
Total	60,125,442

Sec. B.319 Department for children and families - office of child support

Personal services	8,905,003
Operating expenses	4,400,851
Total	13,305,854
Source of funds	
ARRA funds	660,000
General fund	2,671,384
Special funds	455,718
Federal funds	9,131,152
Interdepartmental transfers	387,600
Total	13,305,854

Sec. B.320 Department for children and families - aid to aged, blind and disabled

Personal services	1,801,009
Grants	9,705,780
Total	11,506,789
Source of funds	
General fund	7,756,789
Global Commitment fund	3,750,000
Total	11,506,789

Sec. B.321 Department for children and families - general assistance

Grants	6,000,928
Total	6,000,928
Source of funds	
ARRA funds	1,699,412
General fund	2,850,196
Global Commitment fund	340,000
Federal funds	1,111,320
Total	6,000,928

Sec. B.322 Department for children and families - food stamp cash out

Grants	19,031,133
Total	19,031,133
Source of funds	
ARRA funds	2,300,000

Federal funds	16,731,133
Total	19,031,133

Sec. B.323 Department for children and families - reach up

Grants	47,929,876
Total	47,929,876
Source of funds	
ARRA funds	5,485,423
General fund	15,462,246
Special funds	18,025,000
Global Commitment fund	374,400
Federal funds	8,582,807
Total	47,929,876

Sec. B.324 Department for children and families - home heating fuel assistance/LIHEAP

Personal services	20,000
Operating expenses	90,000
Grants	11,502,664
Total	11,612,664
Source of funds	
Federal funds	11,612,664
Total	11,612,664

Sec. B.325 Department for children and families - office of economic opportunity

Personal services	250,236
Operating expenses	78,644
Grants	8,610,062
Total	8,938,942
Source of funds	
ARRA funds	3,775,000
General fund	1,313,017
Special funds	57,810
Federal funds	3,793,115
Total	8,938,942

Sec. B.326 Department for children and families - OEO - weatherization assistance

Personal services	174,293
Operating expenses	130,499
Grants	14,959,936
Total	15,264,728

Source of funds	
ARRA funds	8,421,288
Special funds	4,593,774
Federal funds	2,249,666
Total	15,264,728

Sec. B.327 Department for children and families - Woodside rehabilitation center

Personal services	3,482,661
Operating expenses	630,581
Total	4,113,242
Source of funds	
General fund	4,058,350
Interdepartmental transfers	54,892
Total	4,113,242

Sec. B.328 Department for children and families - disability determination services

Personal services	3,508,357
Operating expenses	624,291
Total	4,132,648
Source of funds	
Global Commitment fund	246,517
Federal funds	3,886,131
Total	4,132,648

Sec. B.329 Disabilities, aging and independent living - administration & support

Personal services	24,693,635
Operating expenses	3,762,989
Total	28,456,624
Source of funds	
General fund	6,952,640
Special funds	1,068,022
Global Commitment fund	6,329,926
Federal funds	11,666,254
Interdepartmental transfers	2,439,782
Total	28,456,624

Sec. B.330 Disabilities, aging and independent living - advocacy and independent living grants

Grants	22,371,437
Total	22,371,437
Source of funds	
ARRA funds	404,000
General fund	10,229,301
Global Commitment fund	3,455,319
Federal funds	7,645,317
Interdepartmental transfers	637,500
Total	22,371,437

Sec. B.331 Disabilities, aging and independent living - blind and visually impaired

Grants	1,486,457
Total	1,486,457
Source of funds	
General fund	364,064
Special funds	223,450
Global Commitment fund	250,000
Federal funds	648,943
Total	1,486,457

Sec. B.332 Disabilities, aging and independent living - vocational rehabilitation

Grants	7,302,971
Total	7,302,971
Source of funds	
ARRA funds	1,334,000
General fund	1,535,695
Global Commitment fund	7,500
Federal funds	4,132,389
Interdepartmental transfers	293,387
Total	7,302,971

Sec. B.333 Disabilities, aging and independent living - developmental services

Grants	140,669,369
Total	140,669,369
Source of funds	
General fund	172,625
Special funds	15,463
Global Commitment fund	140,121,424

Federal funds	359,857
Total	140,669,369

Sec. B.334 Disabilities, aging and independent living -TBI home and community based waiver

Grants	4,127,448
Total	4,127,448
Source of funds	
Global Commitment fund	4,127,448
Total	4,127,448

Sec. B.335 Corrections - administration

Personal services	2,348,301
Operating expenses	302,104
Total	2,650,405
Source of funds	
General fund	2,650,405
Total	2,650,405

Sec. B.336 Corrections - parole board

Personal services	320,374
Operating expenses	58,121
Total	378,495
Source of funds	
General fund	378,495
Total	378,495

Sec. B.337 Corrections - correctional education

Personal services	4,016,553
Operating expenses	306,274
Total	4,322,827
Source of funds	
General fund	413,648
Special funds	500,000
Interdepartmental transfers	3,409,179
Total	4,322,827

Sec. B.338 Corrections - correctional services

Personal services	79,298,255
Operating expenses	34,200,620
Grants	1,695,800
Total	115,194,675

Source of funds	
General fund	110,863,161
Special funds	483,963
Tobacco fund	87,500
Global Commitment fund	3,094,144
Federal funds	584,861
Interdepartmental transfers	81,046
Total	115,194,675

Sec. B.339 Correctional services-out of state beds

Personal services	12,609,534
Total	12,609,534
Source of funds	
General fund	12,609,534
Total	12,609,534

Sec. B.340 Corrections - correctional facilities - recreation

Personal services	436,744
Operating expenses	349,076
Total	785,820
Source of funds	
General fund	125,000
Special funds	660,820
Total	785,820

Sec. B.341 Corrections - Vermont offender work program

Personal services	1,154,973
Operating expenses	554,103
Total	1,709,076
Source of funds	
Internal service funds	1,709,076
Total	1,709,076

Sec. B.342 Vermont veterans' home - care and support services

Personal services	14,896,756
Operating expenses	3,362,067
Total	18,258,823
Source of funds	
Special funds	10,931,473
Global Commitment fund	837,225
Federal funds	6,490,125
Total	18,258,823

Sec. B.343	Commission on women	
	Personal services	224,632
	Operating expenses	67,273
	Total	291,905
	Source of funds	
	General fund	286,905
	Special funds	5,000
	Total	291,905
Sec. B.344	Retired senior volunteer program	
	Grants	131,096
	Total	131,096
	Source of funds	
	General fund	131,096
	Total	131,096
Sec. B.345	Total human services	2,850,461,740
	Source of funds	
	ARRA funds	162,975,537
	General fund	440,711,020
	Special funds	57,837,263
	Tobacco fund	40,173,740
	Global Commitment fund	957,809,475
	State health care resources fund	156,955,519
	Catamount fund	26,814,529
	Federal funds	987,572,167
	Permanent trust funds	10,000
	Internal service funds	1,709,076
	Interdepartmental transfers	17,893,414
	Total	2,850,461,740
Sec. B.400	Labor - administration	
	Personal services	4,900,419
	Operating expenses	577,547
	Total	5,477,966
	Source of funds	
	ARRA funds	1,875,000
	General fund	531,937
	Special funds	266,110
	Catamount fund	25,424
	Federal funds	2,412,145

Interdepartmental transfers	367,350
Total	5,477,966

Sec. B.401 Labor - programs

Personal services	21,048,615
Operating expenses	4,726,026
Grants	7,216,529
Total	32,991,170
Source of funds	
ARRA funds	6,793,753
General fund	2,058,632
Special funds	2,947,118
Catamount fund	368,648
Federal funds	18,786,531
Interdepartmental transfers	2,036,488
Total	32,991,170

Sec. B.402 Labor - domestic and sexual violence survivors' transitional employment program

Grants	30,000
Total	30,000
Source of funds	
Special funds	30,000
Total	30,000

Sec. B 403 Total Labor 38,499,136

Source of funds	
ARRA funds	8,668,753
General fund	2,590,569
Special funds	3,243,228
Catamount fund	394,072
Federal funds	21,198,676
Interdepartmental transfers	2,403,838
Total	38,499,136

Sec. B.500 Education - finance and administration

Personal services	5,498,188
Operating expenses	1,651,304
Grants	12,084,730
Total	19,234,222
Source of funds	
General fund	3,409,206
Special funds	12,951,342

Global Commitment fund	858,212
Federal funds	2,010,732
Interdepartmental transfers	4,730
Total	19,234,222

Sec. B.501 Education - education services

Personal services	13,136,696
Operating expenses	1,873,037
Grants	113,036,906
Total	128,046,639
Source of funds	
General fund	5,410,358
Education fund	1,131,751
Special funds	2,189,254
Federal funds	119,289,540
Interdepartmental transfers	25,736
Total	128,046,639

Sec. B.502 Education - special education: formula grants

Grants	142,687,975
Total	142,687,975
Source of funds	
Education fund	142,457,975
Global Commitment fund	230,000
Total	142,687,975

Sec. B.503 Education - state-placed students

Grants	18,900,000
Total	18,900,000
Source of funds	
Education fund	18,900,000
Total	18,900,000

Sec. B.504 Education - adult education and literacy

Grants	6,463,656
Total	6,463,656
Source of funds	
General fund	2,587,995
Education fund	3,000,000
Federal funds	875,661
Total	6,463,656

Sec. B.505 Education - adjusted education payment

Grants	1,136,100,000
Total	1,136,100,000
Source of funds	
ARRA funds	38,575,036
Education fund	1,097,524,964
Total	1,136,100,000

Sec. B.506 Education - transportation

Grants	15,542,809
Total	15,542,809
Source of funds	
Education fund	15,542,809
Total	15,542,809

Sec. B.507 Education - small school grants

Grants	6,977,336
Total	6,977,336
Source of funds	
Education fund	6,977,336
Total	6,977,336

Sec. B.508 Education - capital debt service aid

Grants	188,000
Total	188,000
Source of funds	
Education fund	188,000
Total	188,000

Sec. B.509 Education - tobacco litigation

Personal services	131,153
Operating expenses	57,584
Grants	800,180
Total	988,917
Source of funds	
Tobacco fund	988,917
Total	988,917

Sec. B.510 Education - essential early education grant

Grants	5,700,000
Total	5,700,000
Source of funds	

Education fund	5,700,000
Total	5,700,000

Sec. B.511 Education - technical education

Grants	12,800,000
Total	12,800,000
Source of funds	
Education fund	12,800,000
Total	12,800,000

Sec. B.512 Education - Act 117 cost containment

Personal services	1,070,398
Operating expenses	121,307
Grants	91,000
Total	1,282,705
Source of funds	
Special funds	1,282,705
Total	1,282,705

Sec. B.513 Appropriation and transfer to education fund

Grants	239,303,944
Total	239,303,944
Source of funds	
General fund	239,303,944
Total	239,303,944

Sec. B.514 State teachers' retirement system

Personal services	26,629,115
Operating expenses	942,527
Grants	40,228,002
Total	67,799,644
Source of funds	
General fund	40,228,002
Pension trust funds	27,571,642
Total	67,799,644

Sec. B 515 Total general education 1,802,015,847

Source of funds	
ARRA funds	38,575,036
General fund	290,939,505
Education fund	1,304,222,835
Special funds	16,423,301

Tobacco fund	988,917
Global Commitment fund	1,088,212
Federal funds	122,175,933
Pension trust funds	27,571,642
Interdepartmental transfers	30,466
Total	1,802,015,847

Sec. B.600 University of Vermont

Grants	40,746,629
Total	40,746,629
Source of funds	
General fund	36,740,473
Global Commitment fund	4,006,156
Total	40,746,629

Sec. B.601 Vermont Public Television

Grants	564,620
Total	564,620
Source of funds	
General fund	564,620
Total	564,620

Sec. B.602 Vermont state colleges

Grants	23,155,213
Total	23,155,213
Source of funds	
General fund	23,155,213
Total	23,155,213

Sec. B.603 Vermont state colleges - allied health

Grants	1,068,537
Total	1,068,537
Source of funds	
General fund	663,130
Global Commitment fund	405,407
Total	1,068,537

Sec. B.604 Vermont interactive television

Grants	785,679
Total	785,679
Source of funds	
General fund	785,679
Total	785,679

Sec. B.605 Vermont student assistance corporation

Grants	18,363,607
Total	18,363,607
Source of funds	
General fund	18,363,607
Total	18,363,607

Sec. B.606 New England higher education compact

Grants	84,000
Total	84,000
Source of funds	
General fund	84,000
Total	84,000

Sec. B.607 University of Vermont - Morgan Horse Farm

Grants	1
Total	1
Source of funds	
General fund	1
Total	1

Sec. B 608 Total higher education 84,768,286

Source of funds	
General fund	80,356,723
Global Commitment fund	4,411,563
Total	84,768,286

Sec. B.700 Natural resources - agency of natural resources - administration

Personal services	3,830,378
Operating expenses	1,506,066
Grants	25,000
Total	5,361,444
Source of funds	
General fund	4,794,914
Federal funds	278,120
Interdepartmental transfers	288,410
Total	5,361,444

Sec. B.701 Connecticut river watershed advisory commission

Grants	38,000
Total	38,000
Source of funds	

General fund	38,000
Total	38,000

Sec. B.702 Citizens' advisory committee on Lake Champlain's future

Personal services	3,600
Operating expenses	3,900
Total	7,500
Source of funds	
General fund	7,500
Total	7,500

Sec. B.703 Natural resources - state land local property tax assessment

Operating expenses	2,128,733
Total	2,128,733
Source of funds	
General fund	1,707,233
Interdepartmental transfers	421,500
Total	2,128,733

Sec. B.704 Green up

Operating expenses	7,594
Grants	10,550
Total	18,144
Source of funds	
Special funds	18,144
Total	18,144

Sec. B.705 Fish and wildlife - support and field services

Personal services	12,437,985
Operating expenses	4,482,575
Grants	774,333
Total	17,694,893
Source of funds	
General fund	1,227,419
Fish and wildlife fund	16,230,474
Interdepartmental transfers	237,000
Total	17,694,893

Sec. B.706 Fish and wildlife - watershed improvement

Grants	125,000
Total	125,000
Source of funds	

Fish and wildlife fund	125,000
Total	125,000

Sec. B.707 Forests, parks and recreation - administration

Personal services	1,020,309
Operating expenses	555,710
Grants	1,858,450
Total	3,434,469
Source of funds	
General fund	1,223,859
Special funds	1,305,610
Federal funds	905,000
Total	3,434,469

Sec. B.708 Forests, parks and recreation - forestry

Personal services	4,482,990
Operating expenses	579,205
Grants	343,000
Total	5,405,195
Source of funds	
General fund	3,633,694
Special funds	474,501
Federal funds	1,140,000
Interdepartmental transfers	157,000
Total	5,405,195

Sec. B.709 Forests, parks and recreation - state parks

Personal services	5,381,818
Operating expenses	1,989,011
Total	7,370,829
Source of funds	
General fund	767,889
Special funds	6,602,940
Total	7,370,829

Sec. B.710 Forests, parks and recreation - lands administration

Personal services	443,601
Operating expenses	1,209,081
Total	1,652,682
Source of funds	
General fund	368,477
Special funds	179,205

Federal funds	1,050,000
Interdepartmental transfers	55,000
Total	1,652,682

Sec. B.711 Forests, parks and recreation - youth conservation corps

Grants	751,666
Total	751,666
Source of funds	
General fund	46,000
Special funds	361,666
Federal funds	94,000
Interdepartmental transfers	250,000
Total	751,666

Sec. B.712 Forests, parks and recreation - forest highway maintenance

Personal services	20,000
Operating expenses	159,266
Total	179,266
Source of funds	
General fund	179,266
Total	179,266

Sec. B.713 Environmental conservation - management and support services

Personal services	4,043,142
Operating expenses	806,015
Grants	103,913
Total	4,953,070
Source of funds	
General fund	1,065,644
Special funds	2,425,301
Federal funds	1,407,125
Interdepartmental transfers	55,000
Total	4,953,070

Sec. B.714 Environmental conservation - air and waste management

Personal services	7,183,059
Operating expenses	6,483,565
Grants	1,386,000
Total	15,052,624
Source of funds	
General fund	619,928
Special funds	10,783,016
Federal funds	3,439,680

Interdepartmental transfers	210,000
Total	15,052,624

Sec. B.715 Environmental conservation - office of water programs

Personal services	13,507,863
Operating expenses	1,964,999
Grants	2,165,402
Total	17,638,264
Source of funds	
General fund	6,336,970
Special funds	4,419,321
Federal funds	6,401,973
Interdepartmental transfers	480,000
Total	17,638,264

Sec. B.716 Environmental conservation - tax-loss-Connecticut river flood control

Operating expenses	40,000
Total	40,000
Source of funds	
Special funds	40,000
Total	40,000

Sec. B.717 Natural resources board

Personal services	2,259,294
Operating expenses	347,320
Total	2,606,614
Source of funds	
General fund	816,942
Special funds	1,789,672
Total	2,606,614

Sec. B.718 Total natural resources 84,458,393

Source of funds	
General fund	22,833,735
Fish and wildlife fund	16,355,474
Special funds	28,399,376
Federal funds	14,715,898
Interdepartmental transfers	2,153,910
Total	84,458,393

Sec. B.800 Commerce and community development - agency of commerce and community development - administration

Personal services	1,914,002
Operating expenses	642,659
Grants	1,136,390
Total	3,693,051
Source of funds	
General fund	2,793,051
Federal funds	800,000
Interdepartmental transfers	100,000
Total	3,693,051

Sec. B.801 Housing and community affairs

Personal services	2,333,275
Operating expenses	420,760
Grants	16,529,461
Total	19,283,496
Source of funds	
General fund	1,153,070
Special funds	3,210,948
Federal funds	14,881,478
Interdepartmental transfers	38,000
Total	19,283,496

Sec. B.802 Historic sites - operations

Personal services	593,585
Operating expenses	338,745
Grants	2,850
Total	935,180
Source of funds	
General fund	545,528
Special funds	389,652
Total	935,180

Sec. B.803 Historic sites - special improvements

Personal services	108,200
Operating expenses	76,247
Total	184,447
Source of funds	
Special funds	50,000
Federal funds	113,449

Interdepartmental transfers	20,998
Total	184,447

Sec. B.804 Community development block grants

Grants	9,428,530
Total	9,428,530
Source of funds	
ARRA funds	1,982,000
Federal funds	7,446,530
Total	9,428,530

Sec. B.805 Downtown transportation and capital improvement fund

Personal services	72,978
Grants	327,022
Total	400,000
Source of funds	
Special funds	400,000
Total	400,000

Sec. B.806 Economic development

Personal services	1,530,824
Operating expenses	619,677
Grants	1,741,434
Total	3,891,935
Source of funds	
General fund	2,926,585
Special funds	465,350
Federal funds	500,000
Total	3,891,935

Sec. B.807 Vermont training program

Personal services	197,200
Operating expenses	22,334
Grants	1,483,621
Total	1,703,155
Source of funds	
General fund	1,668,155
Special funds	35,000
Total	1,703,155

Sec. B.808 Tourism and marketing

Personal services	1,448,276
Operating expenses	2,008,976
Grants	171,000
Total	3,628,252
Source of funds	
General fund	3,622,252
Special funds	6,000
Total	3,628,252

Sec. B.809 Vermont life

Personal services	740,669
Operating expenses	110,309
Total	850,978
Source of funds	
Enterprise funds	850,978
Total	850,978

Sec. B.810 Vermont council on the arts

Grants	507,607
Total	507,607
Source of funds	
General fund	507,607
Total	507,607

Sec. B.811 Vermont symphony orchestra

Grants	113,821
Total	113,821
Source of funds	
General fund	113,821
Total	113,821

Sec. B.812 Vermont historical society

Grants	795,669
Total	795,669
Source of funds	
General fund	795,669
Total	795,669

Sec. B.813 Vermont housing and conservation board

Grants	19,933,436
Total	19,933,436

Source of funds	
Special funds	8,326,662
Federal funds	11,606,774
Total	19,933,436

Sec. B.814 Vermont humanities council

Grants	172,670
Total	172,670
Source of funds	
General fund	172,670
Total	172,670

Sec. B 815 Total commerce and community development

	65,522,227
Source of funds	
ARRA funds	1,982,000
General fund	14,298,408
Special funds	12,883,612
Federal funds	35,348,231
Enterprise funds	850,978
Interdepartmental transfers	158,998
Total	65,522,227

Sec. B.900 Transportation - finance and administration

Personal services	10,071,137
Operating expenses	2,438,262
Total	12,509,399
Source of funds	
Transportation fund	12,009,399
Federal funds	500,000
Total	12,509,399

Sec. B.901 Transportation - aviation

Personal services	1,448,274
Operating expenses	20,033,801
Grants	160,000
Total	21,642,075
Source of funds	
ARRA funds	4,000,000
Transportation fund	2,226,575
Federal funds	15,415,500
Total	21,642,075

Sec. B.902 Transportation - buildings

Operating expenses	1,311,500
Total	1,311,500
Source of funds	
Transportation fund	1,311,500
Total	1,311,500

Sec. B.903 Transportation - program development

Personal services	36,275,422
Operating expenses	203,632,747
Grants	25,834,622
Total	265,742,791
Source of funds	
ARRA funds	93,584,644
TIB fund	10,455,822
Transportation fund	20,940,808
Local match	1,600,430
Federal funds	132,384,837
Interdepartmental transfers	6,776,250
Total	265,742,791

Sec. B.904 Transportation - rest areas

Personal services	100,000
Operating expenses	2,850,000
Total	2,950,000
Source of funds	
Transportation fund	379,740
Federal funds	2,570,260
Total	2,950,000

Sec. B.905 Transportation - maintenance state system

Personal services	34,028,928
Operating expenses	32,011,361
Grants	278,020
Total	66,318,309
Source of funds	
Transportation fund	63,335,237
Federal funds	2,883,072
Interdepartmental transfers	100,000
Total	66,318,309

Sec. B.906 Transportation - policy and planning

Personal services	4,099,519
Operating expenses	1,169,550
Grants	5,024,772
Total	10,293,841
Source of funds	
Transportation fund	2,295,512
Federal funds	7,623,486
Interdepartmental transfers	374,843
Total	10,293,841

Sec. B.907 Transportation - rail

Personal services	3,625,048
Operating expenses	16,770,876
Total	20,395,924
Source of funds	
Transportation fund	10,042,149
Federal funds	10,353,775
Total	20,395,924

Sec. B.908 Transportation - bridge maintenance

Operating expenses	34,051,340
Total	34,051,340
Source of funds	
ARRA funds	6,244,047
TIB fund	234,020
Transportation fund	4,011,751
Federal funds	23,561,522
Total	34,051,340

Sec. B.909 Transportation - public transit

Personal services	717,809
Operating expenses	51,301
Grants	25,490,729
Total	26,259,839
Source of funds	
ARRA funds	3,926,923
Transportation fund	6,328,234
Federal funds	16,004,682
Total	26,259,839

Sec. B.910 Transportation - central garage

Personal services	3,454,724
Operating expenses	13,393,351
Total	16,848,075
Source of funds	
Internal service funds	16,848,075
Total	16,848,075

Sec. B.911 Department of motor vehicles

Personal services	16,913,642
Operating expenses	8,116,673
Grants	50,000
Total	25,080,315
Source of funds	
Transportation fund	23,597,821
Federal funds	1,482,494
Total	25,080,315

Sec. B.912 Transportation - town highway structures

Grants	3,833,500
Total	3,833,500
Source of funds	
Transportation fund	3,833,500
Total	3,833,500

Sec. B.913 Transportation - town highway Vermont local roads

Grants	375,000
Total	375,000
Source of funds	
Transportation fund	235,000
Federal funds	140,000
Total	375,000

Sec. B.914 Transportation - town highway class 2 roadway

Grants	5,748,750
Total	5,748,750
Source of funds	
Transportation fund	5,748,750
Total	5,748,750

Sec. B.915 Transportation - town highway bridges

Personal services	3,570,000
Operating expenses	22,499,416
Total	26,069,416
Source of funds	
ARRA funds	9,442,034
TIB fund	1,875,976
Transportation fund	500,000
Local match	1,393,370
Federal funds	12,858,036
Total	26,069,416

Sec. B.916 Transportation - town highway aid program

Grants	24,982,744
Total	24,982,744
Source of funds	
Transportation fund	24,982,744
Total	24,982,744

Sec. B.917 Transportation - town highway class 1 supplemental grants

Grants	128,750
Total	128,750
Source of funds	
Transportation fund	128,750
Total	128,750

Sec. B.918 Transportation - town highway emergency fund

Grants	750,000
Total	750,000
Source of funds	
Transportation fund	750,000
Total	750,000

Sec. B.919 Transportation - municipal mitigation grant program

Grants	2,112,998
Total	2,112,998
Source of funds	
Transportation fund	247,998
Federal funds	1,865,000
Total	2,112,998

Sec. B.920 Transportation - public assistance grant program

Grants	200,000
Total	200,000
Source of funds	
Federal funds	200,000
Total	200,000

Sec. B.921 Transportation board

Personal services	73,502
Operating expenses	13,389
Total	86,891
Source of funds	
Transportation fund	86,891
Total	86,891

Sec. B.922 Total transportation 567,691,457

Source of funds	
ARRA funds	117,197,648
TIB fund	12,565,818
Transportation fund	182,992,359
Local match	2,993,800
Federal funds	227,842,664
Internal service funds	16,848,075
Interdepartmental transfers	7,251,093
Total	567,691,457

Sec. B.1000 Debt service

Debt service	70,804,150
Total	70,804,150
Source of funds	
General fund	64,743,920
Transportation fund	3,560,515
Special funds	2,499,715
Total	70,804,150

Sec. B.1000.1 Short term borrowing

Debt service	1,176,792
Total	1,176,792
Source of funds	
General fund	1,176,792
Total	1,176,792

Sec. B.1001 Total debt service	71,980,942
Source of funds	
General fund	65,920,712
Transportation fund	3,560,515
Special funds	2,499,715
Total	71,980,942

Sec. B.1100 FISCAL YEAR 2010 NEXT GENERATION APPROPRIATION

(a) In fiscal year 2010, the following amount is appropriated from the next generation initiative fund, created in 16 V.S.A. § 2887 as prescribed by Sec. E.1100: $3,293,000

Sec. B.1101 FISCAL YEAR 2010 ONE TIME APPROPRIATIONS

(a) In fiscal year 2010, the following amounts are appropriated from the general fund:

(1) To the University of Vermont. $5,175,298

(2) To the Vermont state colleges. $3,445,674

(3) To the Vermont student assistance corporation. $2,489,990

(4) To the Vermont housing and conservation board for a grant to the Vermont center for independent living to fund the home access program in fiscal year 2010. $1,000,000

(5) To the Vermont state colleges to grow the endowment and to be used in a manner consistent with that specified in Sec. 381a (a)(13) of Act 65 of 2007. $100,000

(6) To the department of tourism and marketing of which $100,000 shall be for a grant to the Vermont convention bureau overseen by the Lake Champlain Regional Chamber of Commerce and $20,000 shall be for a grant to the Shires of Vermont. $120,000

(7) To the legislature, for planning and preparation for the 2009 council of state governments northeast regional meeting in Vermont. $50,000

(8) To the department of economic development for a grant to Sterling College for student residency and program center costs. The department shall determine if the ARRA State Fiscal Stabilization Funds Government Services Funds could be utilized to make this grant. To the extent that ARRA funds are available, this general fund appropriation shall be transferred to the department of public safety-state police in place of ARRA funds appropriated to that department. $350,000

(9) To the state treasurer for costs of the study in Sec. E.135.1 of this act. $150,000

(10) To the legislature for the purposes of Sec. H.47b(b) of this act. $100,000

(11) To the department of economic development for the commissioner to grant to regional planning commission and regional development commissions. $300,000

(b) In fiscal year 2010 the following amounts are appropriated from the American Recovery and Reinvestment: State Fiscal Stabilization Fund Government Services Fund.

(1) Appropriated for economic development activities as specified on Sec. D.109 of this act and H.313 of 2009 to further job creation in Vermont. $3,400,000

(2) To the department of economic development for the program operations of the Vermont Training Program. $200,000

(3) To the department of tourism and marketing. $500,000

Sec. B.1102 REPEAL

(a) Sec. 3(a)(2)(B) of No. 206 of the Acts of 2008 (fiscal year 2010 transportation fund pay act) is repealed.

Sec. B.1103 APPROPRIATION REDUCTION; EXPENDITURE REDUCTION

(a) The secretary of administration shall reduce fiscal year 2010 general and transportation fund appropriations consistent with expenditure reductions, including reductions in positions, and is authorized to substitute appropriation adjustments in other funds and to effect fund transfers to the general and transportation funds to achieve these amounts. The general fund appropriation reduction shall be $14,700,000 and the transportation fund reduction shall be $1,400,000 and shall be made in accordance with the provision of Sec. E.1103 of this act.

(b) The secretary of administration is directed to reduce operating expense appropriations throughout the executive branch of state government by $16,560 in general funds.

Sec. B.1104 AGENCY OF HUMAN SERVICES; GRANT REDUCTIONS

(a) The secretary of human services shall reduce grants and contracts appropriated from general funds in the amount of $740,000, of which no more than $425,000 shall be reduced from the grants and contracts associated with the department for children and families. The secretary may adjust spending of

federal funds or special funds when necessary, because the general funds are providing a funding match. To accomplish this reduction in general funds, the secretary shall use the following criteria to determine which grants and contracts are impacted and by how much. The criteria are:

(1) the preservation of direct services to Vermonters;

(2) the preservation of direct services to vulnerable populations most at risk for negative outcomes, including prioritizing twenty-four hour residential programs and emergency direct services;

(3) the minimization of reductions in services currently provided that would result in an increase in the severity of need and a shift in utilization to more invasive, intensive, or expensive services; and

(4) the minimization of negative impacts on the stability of community organizations receiving grants and contracts in order to promote a range of services to individuals and families.

(b) The agency of human services shall report to the joint fiscal committee at its July 2009 meeting with the grant reduction plan and an explanation for how the plan fits the priorities required in this section. No later than January 15, 2010, the agency shall report to the house committees on appropriations and on human services and the senate committees on appropriations and on health and welfare with an updated grant reduction plan and an explanation for how the plan fits the priorities required in this section.

* * * Fiscal Year 2009 Budget Adjustment * * *

Sec. C.100 Sec. 2.121 of No. 192 of the Acts of 2008, as amended by Sec. 11 of No. 4 of the Acts of 2009 is further amended to read:

Sec. 2.121. Center for crime victims services

Personal services	1,404,168	1,404,168
Operating expenses	318,275	318,275
Grants	~~9,091,834~~	9,474,834
Total	~~10,814,277~~	11,197,277
Source of funds		
General fund	49,809	49,809
Special funds	~~6,899,390~~	7,282,390
Federal funds	3,865,078	3,865,078
Total	~~10,814,277~~	11,197,277

Sec. C.101 Sec. 2.136 of No. 192 of the Acts of 2008 is amended to read:

Sec. 2.136. Public service - regulation and energy

Personal services	~~4,981,246~~	5,165,246
Operating expenses	690,524	690,524
Grants	5,770,007	5,770,007
Total	~~11,441,777~~	11,625,777
Source of funds		
Special funds	~~10,248,977~~	10,432,977
Federal funds	1,157,800	1,157,800
Interdepartmental transfer	35,000	35,000
Total	~~11,441,777~~	11,625,777

Sec. C.102 Sec. 2.145 of No. 192 of the Acts of 2008 as amended by Sec. 13 of No. 4 of the Acts of 2009 is further amended to read:

Sec. 2.145. Total protection to persons and property

	~~259,245,579~~	259,812,579
Source of funds		
General fund	93,104,352	93,104,352
Transportation fund	32,725,324	32,725,324
Special funds	~~66,924,640~~	67,491,640
Tobacco fund	696,306	696,306
Global Commitment fund	1,898,824	1,898,824
Federal funds	49,775,682	49,775,682
Enterprise funds	4,735,317	4,735,317
Interdepartmental transfer	9,385,134	9,385,134
Total	~~259,245,579~~	259,812,579

Sec. C. 103 Sec. 2.223 of No. 192 of the Acts of 2008 as amended by Sec. 29 of No. 4 of the Acts of 2009 is further amended to read:

Sec. 2.223. Department for children and families - child development

Personal services	3,338,891	3,338,891
Operating expenses	~~843,660~~	520,557
Grants	~~51,064,583~~	54,940,903
Total	~~55,247,134~~	58,800,351
Source of funds		
General fund	~~23,228,747~~	25,195,964
Special funds	865,000	865,000
Global Commitment fund	~~4,289,469~~	5,365,469
Federal ARRA funds		426,000
Federal funds	~~26,724,411~~	26,808,411

Interdepartmental transfer	139,507	139,507
Total	~~55,247,134~~	58,800,351

Sec. C 104 Sec. 2.251 of No. 192 of the Acts of 2008 as amended by Sec. 46 of No. 4 of the Acts of 2009 is further amended to read:

Sec. 2.251. Total human services	~~2,649,379,658~~	2,693,603,326
Source of funds		
General fund	~~521,931,597~~	474,056,196
Special funds	~~66,707,178~~	64,844,465
Tobacco fund	45,410,381	45,410,381
Global Commitment fund	~~906,593,258~~	914,305,775
State health care resources fund	~~147,623,246~~	148,261,016
Catamount fund	~~31,073,806~~	23,769,031
Federal funds	~~916,671,195~~	933,916,880
Federal ARRA funds		75,886,880
Permanent trust funds	10,000	10,000
Internal service funds	3,282,548	3,282,548
Interdepartmental transfer	~~10,076,449~~	9,757,097
Total	~~2,649,379,658~~	2,693,603,326

Sec. C.105 FISCAL YEAR 2009 – ARRA APPROPRIATIONS

(a) In addition to funds appropriated elsewhere, the following appropriation of American Recovery and Reinvestment Act funds is authorized in fiscal year 2009.

(1) $60,049 to the agency of human services for the Vermont commission on national and community service.

(2) $1,225,000 to the department for children and families - office of economic opportunity for Community Services Block Grant funding.

(3) $131,911 to the department for children and families - child development as a result of IV-E enhanced match. This is anticipated to allow a like amount of funding to carry forward and be available to offset fiscal year 2010 funding need.

(4) $1,048,199 to the department for children and families - family services as a result of IV-E enhanced match. This is anticipated to allow a like amount of funding to carry forward and be available to offset fiscal year 2010 funding need.

(5) $540,660 to the department for children and families - food stamp cash out for supplemental nutrition assistance program funding.

(6) $280,364 to the department of disabilities, aging, and independent living - vocational rehabilitation for rehabilitation services.

(7) $81,000 to the department of disabilities, aging, and independent living - advocacy and independent living grants for senior nutrition funds.

(8) $3,000 to the department of disabilities, aging, and independent living - advocacy and independent living grants for senior community service employment.

(9) $44,649 to the department of disabilities, aging, and independent living - blind and visually impaired.

(10) $50,000 to the department of labor for state unemployment and employment service operations including job counseling and other assistance to workers.

(11) $350,000 to the department of labor for employment and training assistance to economically disadvantaged youth with employment barriers.

Sec. C.106 FISCAL YEAR 2009 CONTINGENT GENERAL FUND TRANSFERS AND RESERVES

(a) To the extent that after meeting the requirements of 32 V.S.A. § 308, the general fund budget stabilization reserve has not attained its statutory maximum, additional amounts shall be transferred from the human services caseload management reserve established under 32 V.S.A. § 308b as necessary to attain said statutory maximum.

(b) After the general fund budget stabilization reserve attains its statutory maximum, any additional unreserved and undesignated general fund balance shall be reserved in the revenue shortfall reserve established in 32 V.S.A. § 308(d).

Sec. D.100 APPROPRIATIONS; PROPERTY TRANSFER TAX

(a) This act contains the following amounts appropriated from special funds that receive revenue from the property transfer tax. Expenditures from these appropriations shall not exceed available revenues.

(1) The sum of $314,503 is appropriated from the property valuation and review administration special fund to the department of taxes for administration of the use tax reimbursement program. Notwithstanding 32 V.S.A. § 9610(c), amounts above $314,503 from the property transfer tax that are deposited into the property valuation and review administration special fund shall be transferred into the general fund.

(2) The sum of $6,101,662 is appropriated from the Vermont housing and conservation trust fund to the Vermont housing and conservation trust

board. Notwithstanding 10 V.S.A. § 312, amounts above $6,101,662 from the property transfer tax that are deposited into the Vermont housing and conservation trust fund shall be transferred into the general fund.

(3) The sum of $3,449,427 is appropriated from the municipal and regional planning fund. Notwithstanding 24 V.S.A. § 4306(a), amounts above $3,449,427 from the property transfer tax that are deposited into the municipal and regional planning fund shall be transferred into the general fund. The sum of $3,449,427 shall be allocated as follows:

(A) $2,632,027 for disbursement to regional planning commissions in a manner consistent with 24 V.S.A. § 4306(b);

(B) $408,700 for disbursement to municipalities in a manner consistent with 24 V.S.A. § 4306(b);

(C) $408,700 to the Vermont center for geographic information.

(4) It is the intent of the general assembly that in fiscal year 2011, the appropriations in this subsection shall be in accordance with the formulas set forth in 32 V.S.A. § 9610(c), 10 V.S.A. § 312, and 24 V.S.A. § 4306(a) and (b).

Sec. D.101 FUND TRANSFERS

(a) The following amounts are transferred from the funds indicated:

(1) from the general fund to the:

(A) communications and information technology internal service fund established by 22 V.S.A. § 902a: $250,000.

(B) next generation initiative fund established by 16 V.S.A. § 2887: $3,293,000.

(2) from the transportation fund to the downtown transportation and related capital improvement fund established by 24 V.S.A. § 2796 to be used by the Vermont downtown development board for the purposes of the fund: $400,000.

(3) from the public service department regulation special fund to the general fund: $300,000.

(4) an assessment from special funds of no greater than two percent of any fund appropriation to the general fund, of no greater than $3,321,444 in total. Notwithstanding any other provisions of law, the secretary of administration is authorized to reduce special fund appropriations and transfer special funds to the general fund in fiscal year 2010 to achieve this amount and

shall report these actions to the joint fiscal committee at its November 2009 meeting.

(5) from the liquor control fund to the general fund: $200,000.

(b) In fiscal year 2010, to the extent general fund budget stabilization reserve has not attained its statutory maximum, an amount necessary to attain said reserve up to $3,300,000 shall be transferred from the human services caseload management reserve established under 32 V.S.A. § 308b.

Sec. D.102 FUND RESERVE AUTHORIZATION

(a) In fiscal year 2010, the secretary of administration may authorize the secretary of human services to include any available balance in the human services caseload reserve as established in 32 V.S.A. § 308b as an available state match when setting the per-member per-month actuarial rates for Medicaid eligibility groups in the global commitment program for federal fiscal year 2010 and submitting these rates for approval by the Centers for Medicare and Medicaid Services.

Sec. D.103 TOBACCO LITIGATION SETTLEMENT FUND BALANCE

(a) Notwithstanding 18 V.S.A. § 9502(b), the actual balances at the end of fiscal year 2009 in the tobacco litigation settlement fund shall remain for appropriation in fiscal year 2010.

Sec. D.104 TRANSFER OF TOBACCO TRUST FUNDS

(a) Notwithstanding 18 V.S.A. § 9502(a)(3) and (4), the actual amount of investment earnings of the tobacco trust fund at the end of fiscal year 2010 shall be transferred from the tobacco trust fund to the tobacco litigation settlement fund in fiscal year 2010.

Sec. D.105 EXEMPTIONS FROM BUDGET STABILIZATION RESERVES

(a) Transportation fund amounts totaling $3,144,146, reverted under the secretary of administration's carry-forward authority in Sec. 82(a) of No. 90 of the Acts of 2008, are exempt from the fiscal year 2008 transportation fund appropriation total used to calculate the five percent budget stabilization requirement for fiscal year 2009 in 32 V.S.A. § 308a.

Sec. D.106 EDUCATION MEDICAID RECEIPTS IN FISCAL YEARS 2009 AND 2010

(a) Notwithstanding 16 V.S.A. § 2959a(g), during fiscal year 2009 and fiscal year 2010, after the application of subsections (a) through (f), any remaining Medicaid reimbursement funds shall be deposited in the general fund.

Sec. D.107 GROSS RECEIPTS TAX IN FISCAL YEAR 2010

(a) In fiscal year 2010, the first $2,300,000 of gross receipts tax revenue collected under 33 V.S.A. § 2503 shall be deposited in the general fund.

Sec. D.108 AMERICAN RECOVERY AND REINVESTMENT ACT: STATE FISCAL STABILIZATION FUND PROGRAM FOR THE SUPPORT OF PUBLIC ELEMENTARY, SECONDARY, AND HIGHER EDUCATION

(a) The governor is authorized to submit an application as soon as practicable for Vermont's share of the American Recovery and Reinvestment Act (ARRA) State Fiscal Stabilization Fund Program (SFSF) consistent with the intent of the act and this section. $38,575,036, which is one-half of Vermont's SFSF, funds is appropriated to school districts as part of the funding of the state's adjusted education payment under Sec. B.505 of this act.

(b) The commissioner of education shall ensure that federal reporting is carried out as to:

(1) the use of funds provided under the SFSF program;

(2) the estimated number of jobs created or saved with program funds;

(3) estimated tax increases that were averted as a result of program funds;

(4) the state's progress in the areas covered by the application assurances; and

(5) maintaining records to ensure the ability to effectively monitor, evaluate, and audit the state fiscal stabilization fund.

Sec. D.109 AMERICAN RECOVERY AND REINVESTMENT ACT: STATE FISCAL STABILIZATION FUND GOVERNMENT SERVICES FUND

(a) The governor is authorized to submit an application as soon as practicable for Vermont's share of the American Recovery and Reinvestment Act (ARRA) State Fiscal Stabilization Fund Program (SFSF) consistent with the intent of the act and as indicated below:

(1) For Vermont's SFSF government services fund designated for education, public safety, and other government services, estimated at $17,165,683, $8,500,000 is appropriated for fiscal year 2010 in Sec. B.1101 of this act which specifies:

(A) $3,400,000 is appropriated to fund the activities specified in H.313 of 2009 (An Act Relating to the Vermont Recovery and Reinvestment Act of 2009) to further job creation in Vermont as follows:

(i) $2,150,000 to the Vermont Economic Development Authority to provide venture capital to Vermont businesses.

(ii) $1,000,000 to the Vermont Economic Development Authority for interest rate subsidies through the Vermont Jobs Fund.

(iii) $100,000 to the secretary of administration for a grant to the Vermont Sustainable Jobs Funds for the Farm-to-Plate Investment program.

(iv) $150,000 to the secretary of administration for a grant to the Vermont Sustainable Jobs Funds for operations of the fund.

(B) $200,000 to the department of economic development for the program operations of the Vermont Training Program.

(C) $500,000 shall be appropriated to the department of tourism and marketing.

(D) $4,400,000 shall be appropriated to the department of public safety-state police.

(b) The secretary of administration shall ensure that federal reporting is carried out as to:

(1) the use of funds provided under the SFSF program;

(2) the estimated number of jobs created or saved with program funds;

(3) estimated tax increases that were averted as a result of program funds;

(4) the state's progress in the areas covered by the application assurances; and

(5) maintaining records to ensure the ability to effectively monitor, evaluate, and audit the SFSF monies.

Sec. D.110 FEDERAL ECONOMIC RECOVERY FUNDS

(a) Division A – Title XII of the American Recovery and Reinvestment Act (ARRA) of 2009 allocates federal funds to the state for transportation-related projects. The allocation is subject to a requirement that 50 percent of a portion of the allocation be obligated by the state within a 120-day time period and that the remaining funds be obligated by February 2010. To the extent the state needs to obligate ARRA funds to satisfy the February 2010 deadline, subject to the approval of the joint transportation oversight committee, the secretary is authorized to obligate ARRA funds:

(1) to eligible projects in the fiscal year 2010 transportation program; and

(2) to additional town highway projects that meet federal eligibility and readiness criteria.

(b) To the extent ARRA funds are proposed under subsection (a) of this section to be obligated to projects in place of previously authorized state funds or non-ARRA federal funds, the agency shall, subject to the approval of the joint transportation oversight committee, reallocate the authorized funds to advance other projects in the fiscal year 2010 transportation programs in the order of their priority ranking. If the secretary determines that such funds would be more efficiently spent advancing a lower-ranking project due to permitting, right-of-way, or other practical constraints that impede the advancement of a higher ranking project, the secretary may reallocate funds from the higher ranking to the lower ranking project.

(c) To the extent ARRA funds have been obligated and appropriated under other authority to projects in the fiscal year 2009 transportation program to projects in place of previously authorized and appropriated state funds or non-ARRA federal funds, the agency is authorized to reallocate the authorized funds to advance other projects in the fiscal year 2009 transportation program.

(d) The agency shall submit its proposal regarding the obligation of ARRA funds under subsection (a) of this section and its proposal regarding the reallocation of funds under subsection (b) of this section to the joint transportation oversight committee for approval. The agency shall in addition report to the committee on any reallocation of funds executed under authority of subsection (c) of this section.

(e) The secretary of the agency of transportation shall transfer portions of the $66,369,500 of ARRA funds appropriated to program development in Sec. B.903 of this act to other appropriations as required to effect the spending approved by the joint transportation oversight committee. The agency shall report on the expenditure of ARRA funds to the joint transportation oversight committee at the committee's regular and specially scheduled 2009 meetings.

(f) All reports from the agency to the joint transportation oversight committee (JTOC) required under this section when the legislature is not in session shall take place at meetings of the committee called by the chair.

Sec. D.111 STIMULUS OVERSIGHT

(a) The Vermont office of economic stimulus and recovery shall prepare status reports to be posted on the web and electronically mailed or emailed to

the legislative joint fiscal office and other interested parties. The reports shall be posted once every two weeks and shall include:

(1) Notification and summaries of American Recovery and Reinvestment Act (ARRA) state grant proposals under development and any related timelines, discussion meetings, or other opportunities for input;

(2) A list of grants submitted by state agencies, amounts solicited, description of purpose and activities to be carried out, and their status;

(3) Grants received by budget function or policy area.

(b) The president pro tempore of the senate and the speaker of the house shall each designate a legislative representative to the office of economic stimulus and recovery. The legislative representatives shall carry out the following:

(1) Serve as a communication link between the legislature and office of economic stimulus and recovery;

(2) Provide a legislative role in insuring oversight, public information, and quality use of available ARRA funding;

(3) Provide support to the joint fiscal committee in consideration of accepted grants.

(c) Legislative representatives shall be entitled to compensation under 2 V.S.A. § 406(a) for attendance at meetings. This designation shall continue until December 31, 2010.

* * * General Government * * *

Sec. E.100 Secretary of administration – secretary's office (Sec. B.100, #1100010000)

(a) The secretary of administration shall use the Global Commitment funds appropriated in this section for the Vermont Blueprint for Health chronic care initiative director.

(b) The secretary shall reduce operating expenses in the executive branch to achieve the targeted savings in Sec. B.1103(b).

Sec. E.100.1 3 V.S.A. § 2283 is amended to read:

§ 2283. DEPARTMENT OF HUMAN RESOURCES

The department of human resources is created in the agency of administration. In addition to other responsibilities assigned to it by law, the department is responsible for the provision of centralized human resources management services for state government, including the administration of a classification and compensation system for state employees under chapter 13

of this title and the performance of duties assigned to the commissioner of human resources under chapter 27 of this title. The department shall administer the human resources functions of the agency of administration in consultation with the agency of administration commissioners and the state librarian. A department of the agency of administration which receives services of the consolidated agency human resources unit shall be charged for those services through an interdepartmental transfer on a basis established by the commissioner of finance and management in consultation with the commissioner of human resources and with the approval of the secretary of administration.

Sec. E.100.2 22 V.S.A. § 901 is amended to read:

§ 901. CREATION OF DEPARTMENT

There is created the department of information and innovation within the agency of administration. The department shall have all the responsibilities assigned to it by law, including the following:

* * *

(12) to provide technical support and services to the departments of human resources and of finance and management for the statewide central accounting and encumbrance system, the statewide budget development system, the statewide human resources management system, and other agency of administration systems as may be assigned by the secretary.

Sec. E.100.3 32 V.S.A. § 183 is amended to read:

§ 183. FINANCIAL AND HUMAN RESOURCE INFORMATION INTERNAL SERVICE FUND

(a) There is established in the department of finance and management a financial and human resource information internal service fund, to consist of revenues from charges to agencies, departments, and similar units of Vermont state government, and to be available to fund the costs of the division of financial operations in the department of finance and management, and the technical support ~~for the~~ and services provided by the department of information and innovation for the statewide central accounting and encumbrance, budget development, and human resource management ~~system in the department of human resources~~ systems. Expenditures shall be managed in accordance with subsection 462(b) of this title.

* * *

Sec. E.100.4 GOVERNOR'S PRODUCTIVITY TASK FORCE; JOINT LEGISLATIVE GOVERNMENT ACCOUNTABILITY COMMITTEE

(a) The governor's productivity task force, as recommended in the September 8, 2005 report of the Vermont institute on government effectiveness, shall collaborate with the joint legislative government accountability committee on achieving the goals of the strategic enterprise initiative. Specifically, the task force and the committee shall develop initiatives to increase efficiencies in and promote innovation across state government.

Sec. E.101 Information and innovation - communications and information technology (Sec. B.101, #1105500000)

(a) Of this appropriation, $250,000 is for a grant to the Vermont telecommunications authority established in 30 V.S.A. § 8061.

Sec. E.102 Information and innovation – health care information technology (Sec. B.102, #1105503000)

(a) The department of information and innovation (DII) will use the Global Commitment funds appropriated in this section for grants to coordinate with the Vermont Blueprint for Health chronic care initiative and other health care-related statewide information technology programs and projects. These programs and projects will provide public health approaches to improve the health outcomes and the quality of life for all Vermonters, including those who are Medicaid-eligible, and encourage the formation and maintenance of public-private partnerships in statewide health information exchange.

Sec. E.102.1 HEALTH INFORMATION TECHNOLOGY FOR PAYMENT REFORM WORK GROUP

(a) The commissioner of information and innovation shall convene a work group to explore ways to use and fund health information technology to achieve health care payment reform in this state. The work group shall consist of:

(1) The commissioner of information and innovation.

(2) Two members of the Vermont general assembly, one appointed by the speaker of the house of representatives and one appointed by the president pro tempore of the senate who shall jointly chair the work group.

(3) The secretary of administration or designee.

(4) The director of the office of economic stimulus and recovery.

(5) The director of the office of Vermont health access or designee.

(6) A representative from the Vermont Information Technology Leaders, Inc.

(7) A representative from First Data.

(8) A representative from IBM.

(9) A representative from each of the three largest health insurers licensed to do business in Vermont.

(10) Other interested stakeholders, which may include health care professionals, hospitals, and academic institutions.

(b) The work group shall:

(1) Explore opportunities for using health information technology to achieve health care payment reform in Vermont, including consideration of the use of smart card technology and mechanisms to enable real-time eligibility determinations and claims preparation, submission, and adjudication at a health care professional's office or a hospital.

(2) Identify potential sources of funding, including grants and other federal funds.

(3) Develop one or more proposals for appropriate grant funds, including those available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.

(4) Create a working plan for implementation of the health information technology payment reform initiatives identified for further action by the work group.

(c) No later than 90 days following the effective date of this act, the work group shall submit to the joint fiscal committee its recommendations for using health information technology to achieve payment reform, as well as the grant proposals and working plan required in subsection (b) of this section.

Sec. E.103 Finance and management – budget and management (Sec. B.103, #1110003000)

(a) The department of finance and management will use the Global Commitment funds appropriated in this section to support the staff effort needed to manage the Global Commitment fund.

Sec. E.103.1 32 V.S.A. § 311 is amended to read:

§ 311. RETIREMENT FUNDS INTEGRITY REPORT

(a) The governor shall include as a part of the annual budget report required by section 306 of this title, a statement of the extent by which the

recommended appropriations to the teachers' retirement funds and to the Vermont employees' retirement funds differ from the amounts as recommended by the Vermont employees' retirement system retirement board as provided by subsection 471(n) of Title 3, and by the teachers' retirement system board of trustees as provided by subsection 1942(r) of Title 16 and board estimates for current obligations for retiree health care costs. If the governor's recommended appropriations are less than the amounts recommended by one or both of the boards of the two retirement systems for retirement obligations and retiree health care, the governor shall set forth the long-term financial implications to the state of such shortfall and present a plan to achieve and preserve the fiscal integrity of the retirement funds of the retirement system or systems.

(b) At the request of the house or senate committees on government operations or appropriations, the state treasurer and the commissioner of finance and management shall present to the requesting committees the recommendations submitted under subsections 471(n) of Title 3 and 1942(r) of Title 16.

Sec. E.104 Finance and management – financial operations (Sec. B.104, #1115001000)

(a) Pursuant to 32 V.S.A. § 307(e), financial management fund charges not to exceed $6,111,582 plus the costs of fiscal year 2010 salary increases bargained as part of the state/VSEA agreement are hereby approved. Of this amount, $1,343,908 plus the costs of fiscal year 2010 salary increases bargained as part of the state/VSEA agreement shall be used to support the HCM system that is operated by the department of information and innovation.

Sec. E.107 HEALTH CARE AND WORKERS' COMPENSATION INSURANCE FOR STATE FUNDED ENTITIES

(a) The secretary of administration shall review the fiscal implications of inclusion of quasi-public organizations such as the Vermont center for crime victim services and nonprofit organizations that receive 65 percent or more of their funding from Vermont state sources in the state health care program, the state workers' compensation program and other state benefit programs. Such analysis shall assume that these organizations pay 100 percent of the costs of any program inclusion. This study shall be submitted to the house and senate committees on government operations and appropriations on or before December 1, 2009. If the commissioner of human resources and the secretary of administration determine there would be no negative fiscal implications for the state, they are authorized to implement the process of including these entities as soon as practicable.

Sec. E.109 LIMITATION ON FISCAL YEAR 2010 USE VALUE PROPERTY TAX REDUCTION

(a) In fiscal year 2010, notwithstanding any other provision of law, for parcels enrolled in the use value appraisal program under chapter 124 of Title 32, other than parcels owned or leased by a "farmer" as defined in that chapter and parcels enrolled by a qualifying organization under chapter 155 of Title 10, if the listed value, divided by the most recent common level of appraisal, of the total enrolled acres in any one parcel exceeds $5,000 per acre, then the owner shall, in addition to the tax otherwise paid on the use value of the parcel, pay municipal and education property taxes on the amount per acre in excess of $5,000; and the fiscal year 2011 payment to any municipality under section 3760 of this chapter shall be adjusted to account for the effect of this section on the municipal tax revenue.

Sec. E.109.1 CURRENT USE TAX COALITION STUDY

(a) The current use tax coalition is requested to study options for savings of $1,600,000 from the use value appraisal program in fiscal year 2011 and to report its recommendations by December 1, 2009, to the house committee on ways and means and the senate committee on finance.

Sec. E.111 Buildings and general services - engineering (Sec. B.111, #1150300000)

(a) The $1,950,000 interdepartmental transfer in this appropriation shall be from the general bond fund appropriation in 2009 H.445 Sec. 1(8).

Sec. E.112 Buildings and general services – information centers (Sec. B.112, #1150400000)

(a) Of this appropriation, $8,000 will be used to update the Sharon Vietnam honor roll.

Sec. E.120 Buildings and general services – workers' compensation insurance (Sec. B.120, #1160450000)

(a) Pursuant to 32 V.S.A. § 307(e), workers' compensation fund charges not to exceed $9,336,126 are hereby approved.

Sec. E.123 Buildings and general services – fee-for-space (Sec. B.123, #1160550000)

(a) Pursuant to 29 V.S.A. § 160a(b)(3), facilities operations fund charges not to exceed $27,655,892 plus the costs of fiscal year 2010 salary increases bargained as part of the state/VSEA agreement are hereby approved.

(b) The commissioner shall seek alternative locations to house the state offices currently located in the National Life Building in Montpelier. Efforts shall be made to identify locations within or around Montpelier that would result in a cost savings over the current lease agreement with National Life Insurance Company of Vermont.

Sec. E.127 Legislature (Sec. 127, #1210002000)

(a) It is the intent of the general assembly that funding for the legislature in fiscal year 2011 and beyond be included at a level sufficient to support an 18 week legislative session.

Sec. E.128 VIRTUALIZED INFORMATION TECHNOLOGY INFRASTRUCTURE; STUDY

(a) The legislative director of information technology and the commissioner of the department of information and innovation shall study the viability of cloud computing and other virtualized infrastructure options for the state's information technology infrastructure. In conducting the study they shall consider the following:

(1) Current service level and scalability to future service needs;

(2) Physical and virtual data security and recovery;

(3) Potential for technology-related savings;

(4) Opportunities for improved systems performance and capacity;

(5) Specific vendors and relevant vendor policies; and

(6) Potential for legal and regulatory obstacles.

(b) The legislative director of information technology and the commissioner of the department of information and innovation shall submit the results of this study to the general assembly on or before January 15, 2010. The director and the commissioner are respectively authorized to implement virtualized information technology.

Sec. E.129 ACCEPTANCE OF ARRA GRANTS

(a) During fiscal years 2009, 2010, and 2011, the joint fiscal committee shall consider grants under 32 V.S.A. § 5 that are received from the American Recovery and Reinvestment Act (ARRA) with the following procedural changes:

(1) Where a grant is received from ARRA funding, the chairs of the house and senate legislative committees of most relevant jurisdiction, as determined by the chair of the joint fiscal committee, shall be informed of the grant receipt and request for acceptance.

(2) Said chairs may request that a joint fiscal committee member place a grant on the agenda of the joint fiscal committee in a manner consistent with committee policy under 32 V.S.A. § 5(a)(2)

(3) Where a grant is held for the joint fiscal committee agenda, the chairs of the legislative committees of jurisdiction shall be invited to the meeting and may participate in any related discussion.

(b) At joint fiscal committee regular meetings the administration shall report on ARRA grant applications submitted and on the current status of such grant submissions.

Sec. E.133 State treasurer (Sec. B.133, #1260010000)

(a) Of this general fund appropriation, $6,484 shall be deposited into the armed services scholarship fund established in 16 V.S.A. § 2541.

Sec. E.135 Vermont state retirement system (Sec. B.135, #1265020000)

(a) Notwithstanding 3 V.S.A. § 473(d), in fiscal year 2010, investment fees shall be paid from the corpus of the fund.

Sec. E.135.1 COMMISSION ON THE DESIGN AND FUNDING OF RETIREMENT AND RETIREE HEALTH BENEFITS PLANS FOR STATE EMPLOYEES AND TEACHERS

(a) A commission is created to review and report on the design and funding of retirement and retiree health benefit plans for the state employees' and teachers' retirement systems. The commission is charged with making recommendations about plan design, 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. The joint fiscal committee may provide benchmark targets reducing the rate of expenditure growth for retirement and retiree health benefits to the commission to guide the development of recommendations.

(b) The commission shall comprise the following members:

(1) one member of the house of representatives, appointed by the speaker of the house;

(2) one member of the senate, appointed by the president pro tempore of the senate;

(3) the state treasurer, who shall chair the commission;

(4) the secretary of administration or designee;

(5) the commissioner of education or designee;

(6) one member of the public with pension and benefit experience appointed by the governor;

(7) one member of the public with pension and benefit experience appointed jointly by the speaker of the house and the president pro tempore of the senate.

(c) The report shall include, but not be limited to, the following:

(1) an evaluation of current benefits structures and contribution characteristics in comparison to other comparable public and private systems;

(2) an estimate of the cost of current and proposed benefits structures on a budgetary, pay-as-you-go basis and full actuarial accrual basis;

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

(4) based on benefit and funding benchmarks, options for providing new benefit structures with the objective of adequate benefits within the established cost containment benchmarks;

(5) funding methods, including contributions from state, municipalities, and employees, to achieve these objectives; and

(6) an evaluation of whether current governance, oversight, and lines of authority are appropriate and consistent with funding objectives.

(d) During the course of its deliberations and prior to any final recommendations being made, the commission should solicit input from the affected parties, such as employees, taxpayers, and organizations representing those parties, including the Vermont state employees association, Vermont–NEA, and the Vermont league of cities and towns.

(e) The commission may select and oversee outside expert benefit and legal expert advisory services as it deems appropriate. An amount of $150,000 is appropriated for this purpose in Sec. B.1101(a) of this act.

(f) On or before December 18, 2009 the commission shall file a report and recommendations with the governor and the general assembly.

(g) The commission shall also provide the report to the board of trustees of the state employees' and teachers' retirement systems for their consideration, deliberation, and comment to the general assembly.

(h) Administrative support shall be provided by the office of the state treasurer.

(i) Legislative and public members shall be entitled to per diem compensation and expenses as provided for in § 406 of Title 2 and § 1010 of Title 32 respectively.

Sec. E.135.2. STATE EMPLOYEE RETIREMENT INCENTIVE

(a) An individual who is employed by the state on June 1, 2009, has attained eligibility for normal retirement as of July 1, 2009, does not purchase service credit to become so, and is one of the first 300 individuals to apply, shall be eligible for the following retirement incentive:

(1) If the employee applies for retirement by June 30, 2009 for a retirement effective July 1, 2009, the employee shall be entitled to:

(A) Payment by the state of at least 80 percent of the cost of the premium for primary or secondary health insurance coverage for the employee and his or her dependents for at least 10 years following retirement, unless the employee elects the premium reduction option under 3 V.S.A. § 479(e);

(B) $500.00 per year of service if the employee has fewer than five years of creditable service;

(C) $750.00 per year of service if the employee has five years of creditable service or more and fewer than 15 years of creditable service;

(D) $1,000.00 per year of service if the employee has 15 years of creditable service or more.

(2) If the employee applies for retirement between July 1, 2009 and August 31, 2009 for a retirement effective date of August 1, 2009 or September 1, 2009, the employee shall be entitled to:

(A) $500.00 per year of service if the employee has fewer than five years of creditable service;

(B) $750.00 per year of service if the employee has five years of creditable service or more and fewer than 15 years of creditable service;

(C) $1,000.00 per year of service if the employee has 15 years of creditable service or more.

(b) An employer may stagger the retirement dates of multiple retiring employees if necessary to continue the normal of operation of business. However, no retirement date shall be later than six months from the retirement date for which the employee applied.

(c) The incentive set forth in subsection (a) of this section shall not exceed $15,000.00 per employee. The employee shall receive the cash portion of the retirement incentive in two equal payments in fiscal years 2010 and 2011. The

first payment shall be made within 90 days of the retirement date. The second payment shall be made within 30 days of the one year anniversary of the retirement date.

(d) No employee who receives the incentive set forth in subsection (a) of this section may return to state employment for at least one fiscal year unless: the secretary of administration otherwise approves for an executive branch employee; the chief justice of the supreme court otherwise approves for a judicial branch employee; or the speaker of the house and the president pro tempore of the senate otherwise approve for a legislative branch employee. The joint fiscal committee shall be notified of any employees who have received the incentive set forth in subsection (a) of this section and who return to state employment within one fiscal year.

(e) The retirement incentive set forth in subsection (a) of this section shall be treated as a severance payment under subdivision 1344(a)(5)(F) of Title 21 and shall be disqualifying remuneration.

(f) The joint fiscal committee may vote to increase the number of individuals who are eligible for the retirement incentive set forth in this section.

(g) The state treasurer shall report the number of individuals applying for the retirement incentive set forth in this section by agency to the joint fiscal committee by July 1, 2009 and by September 1, 2009.

Sec. E.135.3. NORMAL RETIREMENT; LAID OFF STATE EMPLOYEES

A permanent state employee who is laid off between May 1, 2009 and January 1, 2011 and who is within one year of eligibility for normal retirement may retire without penalty as if the employee met the retirement eligibility criteria for the group plan of which he or she is a member.

Sec. E.141 Tax department-reappraisal and listing payments (B.141, #1140060000)

(a) The amount of $3,470,000 in education funds appropriated in Sec. B.141 of this act in fiscal year 2010 shall be used to implement the provisions of 32 V.S.A. §§ 4041(a), relating to payments to municipalities for reappraisal costs, and 5405(f), relating to payments of $1.00 per grand list parcel.

(b) Of this appropriation, $200,000 shall be transferred to the department of taxes, division of property valuation and review and reserved for payment of expenses associated with a reappraisal as of April 1, 2010 of the hydroelectric plants and other property owned by TransCanada Hydro Northeast, Inc. in the state of Vermont. Expenditures for this purpose shall be considered qualified expenditures under 16 V.S.A. § 4025(c).

Sec. E.143 Lottery commission (Sec. B.143, #2310010000)

(a) Of this appropriation, the lottery commission shall transfer $150,000 to the department of health, office of alcohol and drug abuse programs to support the gambling addiction program.

(b) The Vermont state lottery shall provide assistance and work with the Vermont council on problem gambling on systems and program development.

Sec. E.144 Payments in lieu of taxes (Sec. B.144, #1140020000)

(a) This appropriation is for state payments in lieu of property taxes under subchapter 4 of chapter 123 of Title 32, and the payments shall be calculated in addition to and without regard to the appropriations for PILOT for Montpelier and for correctional facilities elsewhere in this act.

Sec. E.145 Payments in lieu of taxes - Montpelier (Sec. B.145, #1150800000)

(a) Payments in lieu of taxes under this section shall be paid from the PILOT special fund under 32 V.S.A. § 3709.

Sec. E.146 Payments in lieu of taxes – correctional facilities (Sec. B.146, #1140030000)

(a) Payments in lieu of taxes under this section shall be paid from the PILOT special fund under 32 V.S.A. § 3709.

* * * Protection to Persons and Property * * *

Sec. E.200 Attorney general (Sec. B.200, #2100001000)

(a) Of the special fund appropriation, $150,000 shall be from the evidence-based education and advertising fund in section 2004a of Title 33 for analysis of prescription drug data needed by the attorney general's office for enforcement activities.

(b) Notwithstanding any other provisions of law, the office of the attorney general, Medicaid fraud control unit, is authorized to retain one-half of any civil monetary penalty proceeds from global Medicaid fraud settlements. All penalty funds retained shall be used to finance Medicaid fraud and residential abuse unit activities.

Sec. E.204 Judiciary (Sec. B.204, #2120000000)

(a) For compensation paid from July 1, 2009 to June 30, 2010, the supreme court is authorized to reduce by up to five percent salaries established by statute that are paid by the judicial department appropriation and to reduce by up to five percent the hourly rates of nonbargaining-unit employees earning in excess of $15.00 per hour.

Sec. E.204.1 Judiciary (Sec. B.204, #2120000000)

4 V. S. A. § 25 is amended to read:

§ 25. JUDICIAL BRANCH; FURLOUGH DAYS; ADMINISTRATIVE LEAVE

(a) The supreme court is authorized to declare up to 12 unpaid judicial branch furlough days in a fiscal year and on those days may close ~~all~~ courts in the state. For purposes of implementing a furlough day, the supreme court is authorized to reduce on a daily or hourly basis all salaries established by 32 V.S.A. §§ 1003(c), 1141, 1142, and 1181, ~~4 V.S.A. § 461(e),~~ and all other salaries paid by the judicial branch. Furlough days declared under this section shall have the same effect as holidays under 1 V.S.A. § 371 for the purpose of counting time under the rules of court procedure and the Vermont Statutes Annotated.

* * *

Sec. E.204.2 COMMISSION ON JUDICIAL OPERATION; RECOMMENDATIONS

(a) The general assembly acknowledges that the commission on judicial operation was established by the Vermont supreme court in response to Act 192 of 2008, in which the general assembly asked the court to convene a commission to examine the efficient and effective delivery of judicial services and to address the allocation of resources within the judiciary. The commission is now engaged in this work and intends to report its recommendations for resource reallocation and improvement of service-delivery to the general assembly prior to January 1, 2010. The general assembly finds that it would be disruptive of the commission's ongoing processes to make substantial structural changes to the judiciary in fiscal year 2010 and that the interests of justice would be best served by deferring any such changes until after the commission's report is received and considered.

(b) The general assembly expects the work of the commission on judicial operations to make recommendations which will both preserve the ability of the judiciary to meet its constitutional responsibilities as a separate branch of government and to find savings of $1,000,000 in the fiscal year 2011 budget.

(c) Notwithstanding any other provision of law, the judiciary budget shall not be subject to any rescissions during fiscal year 2010.

Sec. E.204.3 JUDICIARY; REGIONAL ARRAIGNMENTS; INCARCERATED DEFENDANT APPEARING BY VIDEO OR TELEPHONE

(a) The court administrator, in consultation with the executive director of the department of state's attorneys and sheriffs, the defender general, and the commissioner of the department of corrections, shall develop procedures for regional arraignments and for an incarcerated defendant's appearance by video or telephone as permitted under rules 5 and 43 of the Vermont rules of criminal procedure and Vermont Supreme Court administrative order 38. The procedures shall be designed to reduce prisoner transportation costs to the greatest extent possible while preserving the defendant's right to a meaningful court appearance.

Sec. E.207 Sheriffs (Sec. B.207, #2130200000)

(a) Of this appropriation, $15,000 shall be transferred to the state's attorneys' office as reimbursement for the cost of the executive director's salary.

Sec. E.209 Public safety - state police (Sec. B.209, #2140010000)

(a) Of this appropriation, $32,000 shall be used to make a grant to the Essex County sheriff's department for law enforcement purposes.

(b) Of this appropriation, $35,000 in special funds shall be available for snowmobile law enforcement activities and $35,000 in general funds shall be available to the southern Vermont wilderness search and rescue team, which comprises state police, the department of fish and wildlife, county sheriffs, and local law enforcement personnel in Bennington, Windham, and Windsor Counties, for snowmobile enforcement.

(c) Of the $255,000 allocated for local heroin interdiction grants funded in this section, $190,000 shall be used by the Vermont drug task force to fund three town task force officers. These town task force officers will be dedicated to heroin and heroin-related drug (e.g., methadone, oxycontin, crack cocaine, and methamphetamine) enforcement efforts. Any additional available funds shall remain as a "pool" available to local and county law enforcement to fund overtime costs associated with heroin investigations. Any unexpended funds from prior fiscal years' allocations for local heroin interdiction shall be carried forward.

Sec. E.211 REPORT OF DEPARTMENT OF PUBLIC SAFETY AND ENHANCED 911 SERVICES AND DISPATCH SYSTEM

(a) The department of public safety, the department of information and innovation, and the Vermont enhanced 911 board shall analyze the current

state of the department of public safety's dispatch and enhanced 911 answering services in order to recommend the most efficient and cost-effective means of integrating these systems and technologies. The report shall also include a recommendation for a process to assess the dispatching services across the state in fiscal year 2011.

(b) On or before January 15, 2010, the department of information and innovation shall report its findings and recommendations to the house and senate committees on appropriations and on government operations.

(c) Pending the completion of the report and implementation of its recommendations, or upon the close of fiscal year 2010, whichever is sooner, any agreement or understanding between the commissioner of public safety and a municipality or any entity that provides services to a municipality or state agency to provide services under 20 V.S.A. § 1875 shall remain unchanged unless otherwise provided in the agreement until a statewide understanding is established.

Sec. E.212 Public safety - fire safety (Sec. B.212, #2140040000)

(a) Of this general fund appropriation, $55,000 shall be granted to the Vermont rural fire protection task force for the purpose of designing dry hydrants.

Sec. E.214 Public safety - emergency management - radiological emergency response plan (Sec. B.214, #2140080000)

(a) Of this special fund appropriation, up to $30,000 shall be available to contract with any radio station serving the emergency planning zone for the emergency alert system.

Sec. E.214.1 LAW ENFORCEMENT SERVICES; COORDINATION BETWEEN AGENCIES; UNFILLED POSITIONS

(a) The departments of fish and wildlife, motor vehicles, and liquor control shall establish memorandums of understanding with the department of public safety to continue the improvement in communication, cooperation, and coordination between the departments with respect to the provision of law enforcement services.

(b) The commissioners of the departments of public safety, fish and wildlife, motor vehicles, and liquor control shall report to the senate and house committees on appropriations on or before January 15, 2010 on progress the departments have made implementing the recommendations made in the Independent Evaluation of Law Enforcement Services report submitted to the general assembly by the Public Safety Strategies Group on February 20, 2009.

(c) The departments of fish and wildlife, motor vehicles, and liquor control shall report to the senate and house committees on appropriations, on judiciary, on government operations, and the joint legislative government accountability committee by September 15, 2009 on the advisability of not filling positions that are not funded by the general fund or the transportation fund.

Sec. E.215 Military - administration (Sec. B.215, #2150010000)

(a) Of this appropriation, $100,000 shall be disbursed to the Vermont student assistance corporation for the national guard educational assistance program established in 16 V.S.A. § 2856.

Sec. E.219 Military - veterans' affairs (Sec. B.219, #2150050000)

(a) Of this appropriation, $5,000 shall be used for continuation of the Vermont medal program, $4,800 shall be used for the expenses of the governor's veterans' advisory council, $7,500 shall be used for the Veterans' Day parade, and $10,000 shall be used for the military, family, and community network.

Sec. E.220 Center for crime victim services (Sec. B.220, #2160010000)

(a) Of this appropriation, the amount of $883,000 from the victims' compensation fund created by 13 V.S.A. § 5359 is appropriated for the Vermont network against domestic and sexual violence initiative. Expenditures for this initiative shall not exceed the revenues raised from the $10.00 increase authorized by Sec. 20 of No. 174 of the Acts of 2008 applied to the assessment in 13 V.S.A. § 7282(a)(8)(B), and from the $20.00 authorized by Sec. 21 of No. 174 of the Acts of 2008 applied to the fee in 32 V.S.A. Sec. 1712(1).

Sec. E.233 Banking, insurance, securities, and health care administration (Sec. B.233, #2210040000)

(a) The department of banking, insurance, securities, and health care administration (BISHCA) shall use the Global Commitment funds appropriated in this section for health care administration for the purpose of funding certain health care-related BISHCA programs, projects, and activities to increase the access of quality health care to uninsured persons, underinsured persons, and Medicaid beneficiaries.

(b) In fiscal year 2010, the commissioner of banking, insurance, securities, and health care administration shall collect the same amount under § 9416(c) of Title 18 as was collected in state fiscal year 2009 for the expenses incurred under that section.

Sec. E.234 Secretary of state (Sec. B.234, #2230010000)

(a) Of this special fund appropriation, $492,991 represents the corporation division of the secretary of state's office, and these funds shall be from the securities regulation and supervision fund in accordance with 9 V.S.A. § 5613.

Sec. E.235 30 V.S.A. § 203a is amended to read:

§ 203a. FUEL EFFICIENCY FUND

(a) Fuel efficiency fund. There is established the fuel efficiency fund to be administered by a fund administrator appointed by the board. Balances in the fund shall be ratepayer funds, shall be used to support the activities authorized in this subdivision, and shall be carried forward and remain in the fund at the end of each fiscal year. These monies shall not be available to meet the general obligations of the state. Interest earned shall remain in the fund. The fund shall contain such sums as appropriated by the general assembly or as otherwise provided by law, in addition to revenues from the sale of credits under the RGGI cap and trade program ~~established~~ as provided for under section 255 of this title.

* * *

Sec. E.235.1 30 V.S.A. § 209(d)(8) is added to read:

(8) Effective January 1, 2010, such revenues from the sale of carbon credits under the cap and trade program as provided for under section 255 of this title shall be deposited into the electric efficiency fund established by this section.

Sec. E.235.2 30 V.S.A. § 255(d) is amended to read:

(d) Appointment of consumer trustees. The public service board, by rule, order, or competitive solicitation, may appoint one or more consumer trustees to receive, hold, bank, and sell tradable carbon credits created under this program. Trustees may include Vermont electric distribution utilities, the fiscal agent collecting and disbursing funds to support the statewide efficiency utility, or a financial institution or other entity with the expertise and financial resources to manage a portfolio of carbon credits for the long-term benefit of Vermont energy consumers. ~~Proceeds~~ Fifty percent of the net proceeds above costs from the sale of carbon credits shall be deposited into the fuel efficiency fund established under section 203a of this title. These funds shall be used to provide expanded fossil fuel energy efficiency services to residential consumers who have incomes up to and including 80 percent of the median income in the state. The remaining 50 percent of the net proceeds above costs shall be deposited into the electric efficiency fund established under subdivision 209(d)(3) of this title. These funds shall be used by the entity or

entities appointed under subdivision 209(d)(2) of this title to help meet the building efficiency goals established under 10 V.S.A. § 581 by delivering fossil fuel energy efficiency services to Vermont heating and process-fuel consumers who are businesses or are residential consumers whose incomes exceed 80 percent of the median income in the state.

Sec. E.235.3 10 V.S.A. § 6523(e) is amended to read:

(e) Management of fund.

(1)(A) There is created the clean energy development fund advisory committee, which shall consist of the commissioner of public service, or a designee, and the chairs of the house and senate committees on natural resources and energy, or their designees.

(B) There is created the clean energy development fund investment committee, which shall consist of seven persons appointed by the clean energy development fund advisory committee.

(2) The commissioner of public service shall:

(A) by no later than October 30, 2006:

(i) develop a five year strategic plan and an annual program plan, both of which shall be developed with input from a public stakeholder process;

(ii) develop an annual operating budget;

(iii) develop proposed program designs to facilitate clean energy market and project development (including use of financial assistance, investments, competitive solicitations, technical assistance, and other incentive programs and strategies); and

(iv) submit the plans, budget, and program designs to the clean energy development fund advisory committee for review and to the clean energy development fund investment committee for approval;

(B) adopt rules ~~by no later than January 1, 2007~~ to carry out the program approved under this subdivision;

(C) explore pursuing joint investments in clean energy projects with other state funds and private investors to increase the effectiveness of the clean energy development fund;

(D) acting jointly with the members of the clean energy development fund investment committee, make decisions with respect to specific grants and investments, after the plans, budget, and program designs have been approved by the clean energy development fund investment committee. ~~This subdivision~~

~~(D) shall be repealed upon the effective date of rules adopted under subdivision (2)(B) of this subsection.~~

(3) During fiscal years after FY 2006, up to five percent of amounts appropriated to the public service department from the fund may be used for administrative costs related to the clean energy development fund and after FY 2007, another five percent of amounts appropriated to the public service department from the fund not to exceed $300,000.00 in any fiscal year shall be transferred to the secretary of the agency of agriculture, food, and markets for agricultural and farm-based energy project development activities.

Sec. E.235.4 STATE ENERGY PROGRAM

(a) The ARRA funds appropriated to the department of public service in Sec. B.235 of this act, consisting of $21,999,000 state energy program funds and $9,593,500 energy efficiency and conservation block grant (EECBG) program funds, shall be transferred and deposited into the clean energy development fund created under 10 V.S.A. § 6523. These funds shall be maintained in a separate account specifically restricted to ARRA funds within the clean energy development fund.

(b) The funds appropriated and transferred under subsection (a) of this section shall be disbursed from the clean energy development fund in a manner that ensures rapid deployment of the funds, is consistent with the requirements of ARRA for administration of funds received, and meets the transparency and accountability requirements of ARRA. These funds shall be for the following:

(1) The Vermont small-scale renewable energy incentive program currently administered by the renewable energy resource center for use in residential and business installations. These funds may be used by the program for all forms of renewable energy as defined by 30 V.S.A. § 8002(2), including biomass and geothermal heating. The disbursement to this program shall seek to promote continuous funding for as long as funds are available.

(2) Grant and loan programs for renewable energy resources, including thermal resources such as district biomass heating that may not involve the generation of electricity.

(3) Grants and loans to thermal energy efficiency incentive programs, community-scale renewable energy financing programs, certification and training for renewable energy workers, promotion of local biomass and geothermal heating, and an anemometer loan program.

(4) $2 million for a public-serving institution efficiency and renewable energy program that may include grants and loans and create a revolving loan fund. For the purpose of this subsection, "public-serving institution" means government buildings and nonprofit public and private universities, colleges,

and hospitals. In this program, awards shall be made through a competitive bid process. On or before January 15, 2011, the department of public service shall report to the general assembly on the status of this program, including each award made and, for each such award, the expected energy savings or generation and the actual energy savings or generation achieved.

(5) $2 million to the Vermont housing and conservation board (VHCB) to make grants and deferred loans to nonprofit organizations for weatherization and renewable energy activities allowed by federal law, including assistance for nonprofit owners and occupants of permanently affordable housing.

(6) $2 million to the Vermont telecommunications authority (VTA) to make grants for installation of small-scale wind turbines and associated towers on which telecommunications equipment is to be collocated and which are developed in association with the VTA.

(7) $880,000 to the 11 regional planning commissions ($80,000 to each such commission) to conduct energy efficiency and energy conservation activities that are eligible under the EECBG program.

(8) Of the funds authorized for use in subdivisions (5), (6), and (7) of this subsection, to the extent permissible under ARRA, up to 5 percent may be spent for administration of the funds received.

Sec. E.238 Enhanced 9-1-1 board (Sec. B.238, #2260001000)

(a) Of this appropriation, $1,823,443 shall be transferred to the department of public safety for 911 call-takers at public safety answering points operated by the department of public safety.

* * * Human Services * * *

Sec. E.300 Human services - agency of human services - secretary's office (Sec. B.300, #3400001000)

(a) Notwithstanding 32 V.S.A. § 706, the secretary may transfer funds allocated for the "high risk pool" and costs related to juvenile justice to the departments in the agency of human services designated to provide these services.

(b) Of this appropriation, $54,000 in tobacco settlement funds shall be used to provide a grant to the project against violent encounters for a statewide program for substance abuse prevention and mentoring for youth.

(c) Of this appropriation, $143,000 in tobacco funds shall be used for a grant to Lamoille County people in partnership for wrap-around services for at-risk youth.

(d) Of this appropriation, $85,000 in tobacco funds with any corresponding federal matching funds shall be for comprehensive treatment services and $15,000 shall be for housing provisions for at-risk youth.

(e) Of the funds appropriated to the secretary, $100,000 shall be available for the pathways to housing program.

(f) The secretary of human services shall identify $250,000 of funds appropriated to the agency in fiscal year 2010 that shall be allocated and granted for start up expenses to establish a Chittenden County pilot program to unify existing substance abuse treatment. The secretary shall report to the joint fiscal committee at its regularly scheduled July, September, and November 2009 meetings on the funds identified and the status of the implementation of the pilot program.

Sec. E.301 Secretary's office – Global Commitment (Sec. B.301, #3400004000)

(a) The agency of human services shall use the funds appropriated in this section for payment of the actuarially certified premium required under the intergovernmental agreement between the agency of human services and the managed care organization in the office of Vermont health access as provided for in the Global Commitment for Health Waiver ("Global Commitment") approved by the Centers for Medicare and Medicaid Services under Section 1115 of the Social Security Act.

(b) In addition to the state funds appropriated in this section, a total estimated sum of $29,674,577 is anticipated to be certified as state matching funds under the Global Commitment as follows:

(1) $12,279,600 certified state match available from local education agencies for eligible special education school-based Medicaid services under the Global Commitment. This amount combined with $28,220,400 of federal funds appropriated in Sec. B.301 equals a total estimated expenditure of $40,500,000. An amount equal to the amount of the federal matching funds for eligible special education school-based Medicaid services under Global Commitment shall be transferred from the Global Commitment fund to the Medicaid reimbursement special fund created in 16 V.S.A. § 2959a.

(2) $8,956,247 certified state match available from local education agencies' school-based health services, including school nurse services, that increases the access of quality health care to uninsured persons, underinsured persons, and Medicaid beneficiaries.

(3) $3,418,532 certified state match available from local education and social service agencies for eligible services provided to eligible persons through children's collaborative services programs.

(4) $5,020,198 certified state match available from local designated mental health and developmental services agencies for eligible mental health services provided under the Global Commitment.

Sec. E.301.1 RETAINING ENHANCED FEDERAL MEDICAL ASSISTANCE PERCENTAGE (FMAP)

(a) Notwithstanding 16 V.S.A. § 2959a, to the extent possible, any additional federal funds received as a result of an enhanced FMAP (Federal Medical Assistance Percentage) that are associated with the certified expenditures specified in subdivisions (b)(1) through (4) of Sec. E.301 of this act shall be retained in the Global Commitment fund and shall not be transferred to the certifying entity.

(b) For the period of the enhanced FMAP, the funding allocated from the Catamount fund for Catamount Health program expenses within the Global Commitment waiver shall be calculated on the base underlying FMAP rate. This allocation may be prorated as necessary to ensure that the fund is in balance at the close of the fiscal year.

Sec. E.306 Office of Vermont health access-administration (Sec. B.306, #341001000)

(a) Generic drug sample pilot project: Of the special fund appropriation, $400,000 shall be from the evidence-based education and advertising fund in section 2004a of Title 33 for the evidence-based education program's generic drug sample pilot project as described in Sec. 15 of No. 80 of the Acts of 2007.

(b) Out-of-state dispensing fees reduction: The office of Vermont health access shall reduce the dispensing fees paid to pharmacies located out of state who participate in Medicaid, VHAP, Dr. Dynasaur, VPharm, or VermontRx to $2.50 per script.

Sec. E.306.1 CHIROPRACTIC; MEDICAID

(a) The agency of human services is directed to reinstate chiropractic coverage only for manipulation of the spine billed under current procedural terminology (CPT) codes 98940, 98941, and 98942 for adults in the Medicaid and VHAP programs effective July 1, 2009.

Sec. E.307 Office of Vermont health access – Medicaid Program - Global Commitment (Sec. B.307, #3410015000)

(a) The office of Vermont health access shall limit payment for select drugs used as maintenance treatment to increments of 90-day supplies in Medicaid, the Vermont Health Access Plan, and VermontRx. This limit shall not apply to drugs generally used to treat acute conditions. The drug utilization review

board shall make recommendations to the director on the drugs to be selected. This limit shall not apply when the patient initially fills the prescription in order to provide an opportunity for the patient to try the medication and for the prescriber to determine that it is appropriate for the patient's medical needs.

Sec. E.307.1 EMERGENCY RULES

(a) In order to administer the provisions of this act relating to establishing co-payments in VPharm, VermontRx, and VHAP provided for in sections E.309.6, E.309.7, E.309.8, and E.309.12; modifying prescriptions for maintenance drugs to 90-day increments provided for in Sec. E.307; establishing a therapeutic equivalency generic drug program in a timely fashion provided for in Sec. E.309.9; and reinstating chiropractic coverage as provided for Sec. E.306.1, the agency of human services shall adopt rules pursuant to emergency rulemaking as provided for in 3 V.S.A. § 844.

Sec. E.307.2 33 V.S.A. § 1973 is amended to read:

§ 1973. VERMONT HEALTH ACCESS PLAN

* * *

(e) An individual who is or becomes eligible for Medicare shall not be eligible for the Vermont health access plan.

(f) For purposes of this section, "uninsured" means:

* * *

Sec. E.307.3 32 V.S.A. § 7823 is amended to read:

§ 7823. DEPOSIT OF REVENUE

The revenue generated by the taxes imposed under this chapter shall be credited to the state health care resources fund established by section 1901d of Title 33 and the Catamount fund established by section 1986 of Title 33.

Sec. E.308 FISCAL YEAR 2010 NURSING HOME INFLATION

(a) Notwithstanding any other provision of law, for state fiscal year 2010, the division of rate setting shall modify its methodology for calculating Medicaid rates for nursing homes by calculating the inflation factors for cost categories as follows. The division shall use the same inflation percentages to calculate the state fiscal year 2010 rates as were used in state fiscal year 2009 for the following cost categories: the director of nursing, resident care, and indirect costs. The state fiscal year inflation percentages limited the incremental state fiscal year 2009 inflation to one-half of the percentage change in the inflation factors between 2008 and 2009. The division will not apply any additional inflation to the following cost categories for state fiscal year 2010: director of nursing, resident care, and indirect costs.

(b) For the nursing care cost category, the division shall first calculate the inflation percentage from calendar year 2007 to state fiscal year 2008. The division shall next calculate the inflation percentage from calendar year 2007 to state fiscal year 2009. The difference in inflation between the state fiscal year 2008 and state fiscal year 2009 inflation calculations will be halved and this one-half difference will be added to the 2008 inflation to arrive at the inflation percentage to be used for the 2010 rate period. The division will not apply any additional inflation for state fiscal year 2010.

Sec. E.308.1 FISCAL YEAR 2010 NURSING HOMES; HIT INCENTIVES

(a) The division of rate setting shall provide an incentive or rate adjustment by rule to nursing homes to install electronic medical records in order to improve quality of care by avoiding medical errors and to achieve savings in health care costs through streamlined administration. The incentive or rate adjustment shall be in addition to any current adjustment for capital costs. The incentive or rate adjustment shall be available to nursing homes that have installed electronic medical records prior to the adoption of the rule.

Sec. E.309 33 V.S.A. § 2072(c) is added to read:

(c) If an individual becomes ineligible for assistance under this subchapter, the secretary shall terminate assistance to the individual.

Sec. E.309.1 33 V.S.A. § 2077(a) is amended to read:

(a) The programs established under this subchapter shall be designed to provide maximum access to program participants, to incorporate mechanisms that are easily understood and require minimum effort for applicants and health care providers, and to promote quality, efficiency, and effectiveness through cost controls and utilization review. Applications may be filed at any time and shall be reviewed annually. OVHA may contract with a fiscal agent for the purpose of processing claims and performing related functions required in the administration of the pharmaceutical programs established under this subchapter.

Sec. E.309.2 33 V.S.A. § 1998(f)(1) and (2) are amended to read:

(f)(1) The drug utilization review board shall make recommendations to the director for the adoption of the preferred drug list. The board's recommendations shall be based upon evidence-based considerations of clinical efficacy, adverse side effects, safety, appropriate clinical trials, and cost-effectiveness. "Evidence-based" shall have the same meaning as in section 4622 of Title 18. The director shall provide the board with evidence-based information about clinical efficacy, adverse side effects, safety,

appropriate clinical trials, and shall provide information about cost-effectiveness of available drugs in the same therapeutic class.

(2) The board shall meet at least quarterly. The board shall comply with the requirements of subchapter 2 of chapter 5 of Title 1 (open meetings) and subchapter 3 of chapter 5 of Title 1 (open records), except that the board may go into executive session to discuss drug alternatives and receive information on the relative price, net of any rebates, of a drug under discussion and the drug price in comparison to the prices, net of any rebates, of alternative drugs available in the same class to determine cost-effectiveness, and in order to comply with subsection 2002(c) of this title to consider information relating to a pharmaceutical rebate or to supplemental rebate agreements, which is protected from disclosure by federal law or the terms and conditions required by the Centers for Medicare and Medicaid Services as a condition of rebate authorization under the Medicaid program.

Sec. E.309.3 DUR BOARD EXECUTIVE SESSION

(a) If necessary in order to comply with 33 V.S.A. § 1998(f), the director of the office of Vermont health access shall renegotiate the contract with the pharmacy benefits manager to ensure that the drug utilization review (DUR) board receives in executive session information relating to costs of prescription drugs.

Sec. E.309.4 STUDY ON THE PROMOTION OF GENERICS IN MEDICAID

(a) The office of Vermont health access shall determine the impacts of modifying the co-payment structure in Medicaid and VPharm from a three-tiered structure which varies depending on the cost of the drug to a two-tiered structure with a higher co-payment for a brand-name drug than for a generic drug. The office shall analyze the impacts of changing the fee structure on spending in the Medicaid and VPharm programs, on patient utilization of generic drugs and brand-name drugs, and on any access issues.

(b) The office shall report its analysis to the health access oversight committee no later than October 15, 2009. The health access oversight committee shall review the report and, as part of its annual report, make a recommendation to the general assembly on changing the fee structure.

Sec. E.309.5 VPHARM; VERMONTRX; REBATES

(a) As required by sections 2002, 2073(f), and 2074(d) of Title 33, the director of the office of Vermont health access shall require any manufacturer of pharmaceuticals purchased by individuals receiving assistance from VPharm or VermontRx to pay a rebate in an amount at least as favorable as the rebate or price discount paid to the office in connection with the Medicaid

program. The director shall negotiate with pharmaceutical companies for the payment of these rebates or price discounts. The department shall explore negotiation strategies taken by other states in order to maximize the rebates or discounts achieved. If the Centers for Medicare and Medicaid Services approve the amendment requested to include VPharm and VermontRx in the Global Commitment to Health Medicaid Section 1115 waiver, the director shall establish rebates or price discounts for these programs as part of Medicaid.

Sec. E.309.6 33 V.S.A. § 2073(c) is amended to read:

(c) V-Pharm shall provide supplemental benefits by paying or subsidizing:

* * *

(2) any other cost-sharing required by Medicare part D, except for co-payments for individuals eligible for Medicaid and as provided for in subdivision (d)(1) of this section;

Sec. E.309.7 33 V.S.A. § 2073(d)(1) is amended to read:

(d)(1) ~~The secretary of the agency of human services shall develop by rule the manner by which an individual shall contribute the individual's cost established in subdivision (2) of this subsection, except that individuals eligible for Medicaid shall only be subject to the cost-sharing requirements established by Medicaid and Medicare. The rule shall seek to minimize the possibility of inadvertent loss of eligibility for Medicare part D and V-Pharm benefits. Prior to filing the rule, the secretary shall submit the proposed rule to the health access oversight committee. The health access oversight committee shall review and advise on the agency rules and policies developed under this subsection and shall submit for consideration any recommendations to the joint legislative committee on administrative rules~~ An individual shall contribute a co-payment of $1.00 for prescriptions where the cost-sharing amount required by Medicare Part D is $29.99 or less and a co-payment of $2.00 for prescriptions where the cost-sharing amount required by Medicare Part D is $30.00 or more. A pharmacy may not refuse to dispense a prescription to an individual who does not provide the co-payment.

Sec. E.309.8 33 V.S.A. § 2074(c) is amended to read:

(c) Benefits under Vermont-Rx shall be subject to payment of a premium ~~amount~~ and co-payment amounts by the recipient in accordance with the provisions of this section.

* * *

(4) A recipient shall contribute a co-payment of $1.00 for prescriptions costing $29.99 or less and a co-payment of $2.00 for prescriptions costing $30.00 or more. A pharmacy may not refuse to dispense a prescription to an individual who does not provide the co-payment.

Sec. E.309.9 VPHARM; THERAPEUTIC EQUIVALENCY PILOT PROGRAM

(a) No later than July 1, 2009, the office of Vermont health access shall implement a pilot program to maximize the use of over-the-counter (OTC) and generic drugs used to treat the conditions specified in subsection (b) of this section by individuals enrolled in a Medicare Part D prescription drug plan and VPharm.

(b)(1) The VPharm therapeutic equivalency pilot program shall require the use of an OTC or generic drug in order to receive coverage of the Medicare Part D cost-sharing or of the prescription when the drug would be paid for entirely by VPharm, except that:

(A) an individual who is taking a brand name drug on June 30, 2009, after approval through a prior authorization program, may continue to receive coverage under VPharm for that drug; and

(B) a prescriber may override the substitution of a generic or OTC drug using the same criteria provided for under section 4606 of Title 18 (generic substitutions) by including a detailed explanation regarding:

(i) the OTC or generic drug or drugs that have been previously tried by the patient and:

(I) were ineffective; or

(II) resulted in the adverse or harmful side effects to the patient; or

(ii) the reasons why the provider expects that the OTC or generic drug or drugs may be ineffective or result in adverse or harmful side effects to the patient if the patient has not previously tried the drug or drugs.

(2) The designated pilot classes are lipotropics, which are statins most commonly used for the treatment of high cholesterol, and gastrointestinal proton pump inhibitors, which are most commonly used to reduce gastric acid. The drug utilization review (DUR) board shall determine the list of OTC and generic drugs that shall be available for coverage in each class and shall ensure that the list of generic drugs includes drugs available on the formularies of 90 percent of the Medicare Part D prescription drug plans available in Vermont. In designing the list, the DUR board shall maximize access to a variety of OTC and generic drugs for consumers.

(c) The office of Vermont health access shall notify prescribers and pharmacists about the pilot program and the requirement for the use of OTC and generics in the pilot classes described in subsection (b) of this section in order to receive coverage for those classes under VPharm.

(d) The office of Vermont health access, in collaboration with the DUR board, shall evaluate the pilot program and provide a report no later than January 15, 2010. The evaluation and report shall include an estimate of the savings from the increased use of OTC and generic drugs, negative impacts on consumer choice, and other positive or negative outcomes of the pilot program.

Sec. E.309.10 VPHARM AND VHAP CO-PAYMENTS

(a) Prior to December 5, 2009, the joint fiscal committee may suspend the co-payments in VPharm, VermontRx, and VHAP established under sections E.309.6, E.309.7, E.309.8, and E.309.12 of this act pending further action of the general assembly:

(1) if the Centers for Medicare and Medicaid Services approve the office of Vermont health access' request for an amendment to the Global Commitment for Health Section 1115 Medicaid waiver to include the VPharm program as part of that waiver; or

(2) if the VPharm program is included as a managed care organization (MCO) investment under the Global Commitment for Health.

Sec. E.309.11 MEDICAID COST CONTAINMENT STUDY

(a) The office of Vermont health access shall determine the feasibility of creating a preferred list of or entering into agreements with other states for purchasing medical devices and biologics to maximize the ability of the Medicaid program to ensure high quality products while negotiating favorable prices and containing costs.

(b) No later than January 15, 2010, the office shall report its analysis on the feasibility, including the potential benefits and harms to the senate committees on appropriations and on health and welfare and the house committees on appropriations and on human services.

Sec. E.309.12 VHAP; PRESCRIPTION DRUG CO-PAYMENTS

(a) An individual enrolled in the Vermont health access plan (VHAP) with income at or above 100 percent of the federal poverty guideline shall contribute a co-payment of $1.00 for prescriptions costing $29.99 or less and a co-payment of $2.00 for prescriptions costing $30.00 or more. A pharmacy may not refuse to dispense a prescription to an individual who does not provide the co-payment.

Sec. E.311 Health – administration and support (Sec. B.311, #3420010000)

(a) Area health education center: Of this appropriation, $500,000 shall be granted to the area health education center (AHEC) to support the work and infrastructure of the statewide AHEC network to ensure an adequate and appropriate health care workforce, to bring quality improvement programs to health care professionals, and to create partnerships across community-based health care services to improve health care access and integration. Any funds not expended shall be carried forward to be available for use in subsequent fiscal years. The AHEC will provide the department of health with a final progress report and financial report detailing the unexpended funds to be carried forward at the close of the fiscal year.

(b) Health care provider loan forgiveness and repayment programs:

(1) The department of health may carry forward any unspent portion of funds designated for health professional loan repayment. The department and the grantee shall amend contracts to redistribute unexpended funds based on funding needs for identified disciplines. These funds may be used either alone or to match federal National Health Service Corps loan repayment funds, local funds, or private funds and shall be deposited into the loan repayment fund established under 18 V.S.A. § 10a or for the Vermont student assistance corporation for loan forgiveness programs for health care providers through the dental hygienist incentive loan program, the nursing incentive loan program, and the dental student incentive loan program.

(2) Of this Global Commitment fund appropriation, $870,000 shall be used for the purposes of loan repayment for health care providers and health care educators pursuant to 18 V.S.A. § 10a.

(3) Of this appropriation, $100,000 is allocated for the Vermont student assistance corporation for loan forgiveness programs for health care providers through the dental hygienist incentive loan program, the nurse incentive loan program, and the dental student incentive loan program.

(c) Vermont academic detailing program:

(1) Of the special fund appropriation, $300,000 shall be from the evidence-based education and advertising fund in section 2004a of Title 33 and used for the purposes of supporting the evidence-based education program established under subchapter 2 of Title 18, a university-based educational outreach program for health care professionals administered by the University of Vermont (UVM) College of Medicine office of primary care. The goal of this program is to promote high-quality, evidence-based, patient-centered, cost-effective medication treatment decisions. This program shall present an

objective overview of what evidence from studies shows about various drugs used to treat a medical condition.

(2) The UVM office of primary care may collaborate with other states, countries, or entities that are working on similar programs.

(3) The UVM office of primary care may request information and collaboration from the Vermont department of health, the office of Vermont health access, prescribers, pharmacists, private insurers, hospitals, pharmacy benefit managers, drug utilization review boards, state agencies, and other programs in order to best utilize resources, prevent redundancies of effort, and facilitate appropriate linkages to complementary programs, such as the Vermont Blueprint for Health.

(d) Of these Global Commitment funds, $750,000 shall be used to support the Vermont coalition of clinics for the uninsured health care and dental services provided by clinics for uninsured individuals and families and for federally qualified health center (FQHC) development, service expansion, and uncompensated care.

Sec. E.312 Health – public health (Sec. B.312, #3420021000)

(a) AIDS/HIV funding:

(1) The amount of $335,000 of the general fund/Global Commitment fund appropriation shall be appropriated to the following Vermont AIDS service organizations and peer-support organizations for client-based support services. It is the intent of the general assembly that if Global Commitment fund monies in this subsection are unavailable, the total funding for Vermont AIDS service organizations and peer-support organizations for client-based support services shall be maintained through the general fund or other state-funding sources. The department of health AIDS program shall meet at least quarterly with the HIV/AIDS Community Advisory Group (CAG) with current information and data relating to service initiatives. The funds shall be allocated as follows:

(A) AIDS Project of Southern Vermont, $71,863;

(B) ACORN, $28,745;

(C) IMANI, $37,985;

(D) VT CARES, $131,407;

(E) Twin States Network, $30,000;

(F) People with AIDS Coalition, $35,000.

(2) Of the federal funds, Ryan White Title II funds for AIDS services and the AIDS Medication Assistance Program shall be distributed in accordance with federal guidelines. These guidelines shall not apply to programming funded by state general funds.

(3) The amount of $100,000 of this general fund appropriation shall be appropriated to Vermont AIDS service organizations and other Vermont HIV/AIDS prevention providers for community-based HIV prevention programming which is currently not supported by federal funds due to federal restrictions. These funds shall be used for HIV/AIDS prevention purposes, including improving the availability of confidential and anonymous HIV testing; prevention work with at-risk groups such as women, intravenous drug users, and people of color; anti-stigma campaigns; and promotion of needle exchange programs. No more than 15 percent of the funds may be used for the administration of such services by the recipients of these funds. The method by which these prevention funds shall be distributed shall be determined by mutual agreement of the department of health, AIDS service organizations, the community planning group (CPG), and CAG. The department of health AIDS program shall be guided and advised by CPG and CAG on an ongoing basis in prioritizing prevention service needs in the disbursement of these funds.

(4) The secretary of human services shall immediately notify the joint fiscal committee if, at any time, there are insufficient funds in AMAP to assist all eligible individuals. The secretary shall work in cooperation with persons living with HIV/AIDS to develop a plan to continue access to AMAP medications until such time as the general assembly can take action.

(5) The secretary of human services shall work in conjunction with the AMAP advisory committee, which shall be composed of no less than 50 percent of members who are living with HIV/AIDS. The committee shall make recommendations regarding the program's formulary of approved medication, related laboratory testing, nutritional supplements, and eligibility for the program.

(6) The amount of $140,000 general fund carry-forward funds from fiscal year 2009 shall be used for assistance to individuals in the HIV/AIDS Medication Assistance Program (AMAP), including the costs of prescribed medications, related laboratory testing, and nutritional supplements. These funds may not be used for any administrative purposes by the department of health or by any other state agency or department. Any remaining AMAP general funds at the end of the fiscal year shall be distributed to Vermont AIDS service organizations in the same proportions as those outlined under this subsection.

(b) Funding for the tobacco programs in fiscal year 2010 shall consist of the $1,166,803 in tobacco funds and $529,704 in Global Commitment funds appropriated in Sec. B.312 of this act; and $212,709 of the tobacco funds appropriated in Sec. B.300 of this act. The tobacco control board shall determine how these funds are allocated to tobacco cessation, community based, media, public education, surveillance, and evaluation activities. This allocation shall include funding for tobacco cessation programs that serve pregnant women.

(c) Blueprint: Of this appropriation, $5,051,400 is allocated to the Vermont Blueprint for Health. $1,300,000 of the funds shall be used to provide incentive grants and stipends to physician practices and hospitals participating in the pilot projects developed under the Vermont Blueprint for Health established in 18 V.S.A. § 702.

Sec. E.313 Health - alcohol and drug abuse programs (Sec. B.313, #3420060000)

(a) For the purpose of meeting the need for outpatient substance abuse services when the preferred provider system has a waiting list of five days or more or there is a lack of qualified clinicians to provide services in a region of the state, a state-qualified alcohol and drug abuse counselor may apply to the department of health, division of alcohol and drug abuse programs, for time-limited authorization to participate as a Medicaid provider to deliver clinical and case coordination services, as authorized.

(b)(1) In accordance with federal law, the division of alcohol and drug abuse programs may use the following criteria to determine whether to enroll a state-supported Medicaid and uninsured population substance abuse program in the division's network of designated providers, as described in the state plan:

(A) The program is able to provide the quality, quantity, and levels of care required under the division's standards, licensure standards, and accreditation standards established by the commission of accreditation of rehabilitation facilities, the joint commission on accreditation of health care organizations, or the commission on accreditation for family services.

(B) Any program that is currently being funded in the existing network shall continue to be a designated program until further standards are developed, provided the standards identified in this subdivision (b)(1) are satisfied.

(C) All programs shall continue to fulfill grant or contract agreements.

(2) The provisions of subdivision (1) of this subsection shall not preclude the division's "request for bids" process.

(c) Of the interdepartmental transfer in this section, $150,000 shall be used to support the program dealing with gambling addiction.

(d) Of this appropriation, $35,000 shall be used to support the drug court program in Chittenden County, $25,000 shall be used to support the drug court program in Rutland County, and $25,000 shall be used for court coordination in Bennington County.

(e) The department of health shall be advised by an executive council of Vermont's recovery center network on an ongoing basis to prioritize service and funding needs for recovery centers, to assist with the review of recovery center funding proposals, and to provide recommendations for disbursement of funds to the recovery centers and their support needs. The executive council shall consist of a board member of each recovery center. The executive council shall work with a network coordinator who provides technical assistance and training to recovery centers. The executive council, working with the department of health, shall have oversight of the recovery centers.

(f) Of this appropriation, $45,000 shall be granted to the Vermont recovery center network. Of the appropriation, $458,000 is the allocated share of the DETER program for recovery centers and shall be granted to the recovery centers in operation as of June 30, 2008.

(g) It is the intent of the general assembly that Maple Leaf Farm, Serenity House, and Valley Vista will undergo a formal, cost-based rate setting process prior to July 1, 2010. The division of alcohol and drug abuse programs shall report to the joint fiscal committee at its July 2009 meeting with draft rules or a draft procedure for establishing these rates.

(h) The total appropriation reflects a reduction of $150,000 in treatment services. Prior to taking actions that distribute this savings to providers, the division of alcohol and drug abuse prevention must provide a plan to the joint fiscal committee at the July 2009 meeting for its review and approval.

(i) Of this appropriation, $500,000 shall be available for operating expenses for a Chittenden County pilot program to unify existing treatment efforts in the county that will demonstrate savings in hospital expenditures related to detoxification and emergency treatment sufficient to offset the initial start-up investment by the end of the second year of operation and savings that exceed 50 percent of the program operation by the end of the third year of operation.

Sec. E.315 Mental health – Vermont state hospital (Sec. B.315, #3150080000)

(a) The community recovery residential program developed under this section shall be consistent with the goals identified in the existing "futures plan."

Sec. E.316 Department for children and families – administration and support services (Sec. B.316, #3440010000)

(a) Of this appropriation, $14,000 in general funds shall be provided as a grant to the Vermont Girl Scouts for a program enabling girl scouts and their siblings to visit their mothers in prison.

Sec. E.317 FISCAL YEAR 2010 PAYMENT RATES FOR PRIVATE NONMEDICAL INSTITUTIONS PROVIDING RESIDENTIAL CHILD CARE SERVICES

(a) Notwithstanding any other provisions of law, for state fiscal year 2010, the division of rate setting shall calculate payment rates for private nonmedical institutions (PNMI) providing residential child care services consistent with Sec. B.1104 (AHS Grant Reductions) of this act and as provided for under this section.

(b) General rule. The division of rate setting shall calculate PNMI per-diem rates for state fiscal year 2010 as a percentage of each program's final per diem rate in effect on June 30, 2009. This percentage will equal a number ranging from 96 to 100 percent of each program's final per diem rate in effect on June 30, 2009, depending on funds available as determined by the secretary of human services as provided for in Sec. B.1104 of this act. Each PNMI program per diem rate will be set with the same percentage. The following is the one exception to this general rule:

(1) For programs categorized by the placement authorizing departments as crisis-stabilization programs with typical lengths of stay from 0 to 10 days, rates for state fiscal year 2010 shall be set retroactively as follows:

(i) The allowable budget shall be set by applying the same percentage used in subsection (a) of this section to the final approved budget for the rate year which includes June 30, 2009. The monthly allowable budget shall be the allowable budget divided by 12.

(ii) Within five days of the end of each month in state fiscal year 2010, the program shall submit the prior month's census to the division of rate setting. The per-diem rate shall be set for the prior month by dividing the monthly allowable budget amount by the total number of resident days for the month just ended.

(c) Providers are not required to submit funding applications pursuant to section 3 of the PNMI rate setting rules for state fiscal year 2010.

(d) Rates set for state fiscal year 2010 shall be issued as final. The division shall send notices of each PNMI provider's per diem rate by July 1, 2009.

(e) For state fiscal year 2010, the three-month waiting provision of section 8.1(b) of the PNMI rate setting rules for the submission of a rate adjustment application is waived.

(f) For state fiscal year 2010, approved section 8 rate amounts, excluding financial relief, shall be reduced by the appropriate percentage consistent with the percentage used in calculating rates pursuant to subsection (a) of this section.

(g) The division shall ensure that setting rates of new PNMI residential programs does not disadvantage PNMI residential programs affected by subsection (a) of this section.

Sec. E.318 CHILD CARE ELIGIBILITY AND RATES; PROCESS

(a) It is the intent of the general assembly to address disparities in the child care subsidy program established in subchapter 2 of chapter 35 of Title 33, both in income eligibility for the program and in child care provider rates. Currently, income eligibility is based on the federal poverty guideline and median income levels from 2000, and child care rates are insufficient for many families, requiring large co-payments or the approval of case-by-case variances.

(b) The purpose of this section is to direct the department to review and create a detailed proposal to reconstruct the current child care provider rate structure during the interim. The proposal would increase the income eligibility amounts to reflect 2009 federal poverty guideline (FPL) income levels while setting the floor for the upper income limit at no less than 200 percent of FPL. This change would increase the current upper income limit for a child care subsidy for a family of four from $43,747 to $44,088 and would allow for a higher upper income limit in the future if state funds are available.

(c)(1) The department for children and families shall create a proposal to restructure the child care subsidy rate structure to provide incentives for regulated child care providers to improve quality, reflect increased payments available through pre-kindergarten funding, and allow for a rate structure that is sufficient and not dependent on providing exceptions to existing rates.

(2)(A) The department shall report to the joint fiscal committee no later than its September 2009 meeting with a proposal meeting the intent and purposes of this section and the criteria in this subsection (c).

(B) The department shall also provide a summary of the proposal to the house committee on human services and the senate committee on health and welfare one week prior to the joint fiscal committee. The chairs of the house committee on human services and the senate committee on health and welfare may comment on the proposal to the joint fiscal committee.

(C) The joint fiscal committee may approve, deny, or suggest modifications to the proposal. If the joint fiscal committee suggests modifications, the department may accept the modifications at the next scheduled joint fiscal committee meeting or may revise its proposal for presentation at the next scheduled joint fiscal committee.

(d)(1) The department may simultaneously begin the rulemaking process provided for in chapter 26 of Title 3 to modify the child care subsidy program to conform to the proposal developed under this section. The department shall provide a copy of the draft rule to the joint fiscal committee with its proposal.

(2) Notwithstanding the time limitations in chapter 26 of Title 3 provided for review by the legislative committee on rules (LCAR), the rule modifications provided for in this subsection (d) shall not be approved by LCAR until and unless the joint fiscal committee has approved the department's proposal as provided for in subsection (c) of this section.

Sec. E.318.1 33 V.S.A. § 3512(b) is amended to read:

(b) The subsidy authorized by this section shall be on a sliding scale basis. The scale shall be established by the commissioner, by rule, and shall bear a reasonable relationship to income and family size. The lower limit of the fee scale shall include families whose gross income is up to and including 100 percent of the federal poverty guidelines. The upper income limit of the fee scale shall be neither less than ~~82.5 percent~~ 200 percent of the federal poverty guidelines nor more than 100 percent of the state median income, adjusted for the size of the family. The scale shall be structured so that it encourages employment.

Sec. E.320 Department for children and families-aid to aged, blind and disabled (Sec. B.320, #3440050000)

(a) Notwithstanding chapter 13 of Title 33, the secretary of human services may reduce the state supplemental payment only by an amount equal to or less than 50 percent of the amount of the cost of living increase provided under the federal Supplemental Security Income (SSI) program. If individuals receiving SSI do not receive a cost of living increase, the secretary shall not reduce the state supplemental payment.

Sec. E.321. Sec. 137 of No. 65 of the Acts of 2007, as amended by Sec. 49 of No. 90 of the Acts of 2008 and Sec. 5.216 of No. 192 of the Acts of 2008 is further amended to read:

Sec. 137. GENERAL ASSISTANCE BENEFITS; FLEXIBILITY PROGRAM

(a) Commencing with state fiscal year 2007, the agency of human services may establish ~~an~~ a housing assistance program within the general assistance program to create flexibility to provide these general assistance benefits. The purpose of the program is to mitigate poverty and serve applicants more effectively than they are currently served with the same amount of general assistance funds. The program shall operate consistent within existing statutes and rules except that it may grant exceptions to this program's eligibility rules and may create programs and services as alternatives to these rules.

~~(c)~~(b) The program may operate in up to 12 districts designated by the secretary of human services. This program will be budget neutral. For each district in which the agency operates the program, it shall establish procedures for evaluating the pilot and its effects. The agency shall report annually to the general assembly on its findings from the programs, its recommendations for changes in the general assistance program, and a plan for further implementation of the program.

(c) The agency shall continue to engage interested parties, including both statewide organizations and local agencies, in the design, implementation, and evaluation of the general assistance flexibility program.

Sec. E.321.1 HOUSING ASSISTANCE; ARRA FUNDS

(a) This section shall not apply to the administration of housing assistance funded with general funds provided through the general assistance program under Sec. E.321 of this act and existing rules.

(b) In fiscal year 2010, the agency of human services may establish a housing assistance program with homelessness prevention and rapid rehousing program (HPRP) funds from the American Recovery and Reinvestment Act of 2009, Public Law 111-5. HPRP funds shall be granted to direct-service community organizations which demonstrate experience and expertise in serving the homeless or those at risk for homelessness. The funds shall also be granted in accordance with requirements established by the U.S. Department of Housing and Urban Development (HUD).

(c) The agency shall engage interested parties in the design of the program requirements, including a core set of services to be provided; implementation of the program; and evaluation of the program.

(d)(1) The agency shall establish procedures to ensure equitable access to housing assistance provided by direct service community organizations with HPRP funds, in compliance with chapter 139 of Title 9, through a standard application and assessment process.

(2) The agency shall ensure that grantees of these funds provide an appropriate grievance and appeal process for applicants and recipients of the funds, including for expedited appeals.

(e)(1) The agency shall establish reporting procedures for all grantees receiving HPRP funds to provide housing assistance and collect sufficient information to determine that grantees are following all requirements and to evaluate the program's effectiveness

(2) The agency of human services field service directors shall monitor the housing assistance programs provided by direct service community organizations granted HPRP funds and assess the effectiveness of these programs.

Sec. E.322 33 V.S.A. § 1701 is amended to read:

§ 1701. ~~FOOD STAMP~~ SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM

(a) The state of Vermont may participate in the federal ~~food stamp~~ supplemental nutrition assistance program which is provided for under Public Law 88-525, also known as the Food Stamp Act of 1964, as amended. The commissioner may adopt, and from time to time amend or repeal, regulations governing the operation of the program in the state.

(b) ~~[Repealed.]~~ An individual domiciled in Vermont shall be exempt from the disqualification provided for in 21 U.S.C. § 862a.

* * *

Sec. E.322.1 SCHOOL NUTRITION PROGRAM PILOT PROJECT

(a) No later than August 1, 2009, the department of education shall apply to the Food and Nutrition Service for permission to conduct a pilot project under 42 U.S.C. § 1769i to simplify the certification process for families receiving the earned income tax credit who are categorically eligible for the state nutrition assistance program (SNAP). The pilot project shall be designed to allow families receiving the earned income tax to enroll in the school nutrition programs by providing the school with a receipt of proof of earned income tax credit without having to apply for SNAP. The pilot shall be implemented no earlier than August 1, 2010.

Sec. E.322.2 SUPPLEMENTAL NUTRITION ASSISTANCE; AGENCY ERRORS

(a) No later than July 1, 2009, the department for children and families shall submit a cost analysis to the Food and Nutrition Service (FNS) for permission to not establish an overpayment in the supplemental nutrition assistance program, called 3SquaresVt, when the overpayment to the household resulted from agency error and the overpayment amount is $500 or less.

Sec. E.323 33 V.S.A. § 1103(c)(8) is added to read:

(8) An individual domiciled in Vermont shall be exempt from the disqualification provided for in 21 U.S.C. § 862a.

Sec. E.323.2 33 V.S.A. § 1203a is added to read:

§ 1203a. APPLICATION OF 21 U.S.C. § 862a

An individual domiciled in Vermont shall be exempt from the disqualification provided for in 21 U.S.C. § 862a.

Sec. E.324 Department for children and families – home heating fuel assistance/LIHEAP (Sec. B.324, #3440090000)

(a) Of the funds appropriated for home heating fuel assistance/LIHEAP in this act, no more than $350,000 shall be expended for crisis fuel direct service/administration exclusive of statewide after-hours crisis coverage.

Sec. E.324.1 HOME HEATING FUEL ASSISTANCE/LIHEAP

(a) For the purpose of a crisis set-aside, for seasonal home heating fuel assistance through December 31, 2009, and for program administration, the commissioner of finance and management shall transfer $2,550,000 from the home weatherization assistance trust fund to the home heating fuel assistance fund to the extent that federal LIHEAP or similar federal funds are not available. An equivalent amount shall be returned to the home weatherization trust fund from the home heating fuel assistance fund to the extent that federal LIHEAP or similar federal funds are received. Should a transfer of funds from the home weatherization assistance trust fund be necessary for the 2009–2010 crisis set-aside and for seasonal home heating fuel assistance through December 31, 2009, and if LIHEAP funds awarded as of December 31, 2009 for fiscal year 2010 do not exceed $2,550,000, subsequent payments under the home heating fuel assistance program shall not be made prior to January 30, 2010. Notwithstanding any other provision of law, payments authorized by the office of home heating fuel assistance shall not exceed funds available, except that for fuel assistance payments made through December 31, 2009, the

commissioner of finance and management may anticipate receipts into the home weatherization assistance trust fund.

Sec. E.324.2 33 V.S.A. § 2606(e) is added to read:

(e) Notwithstanding subsections (a) and (b) of this section, the secretary may accept applications on an ongoing basis for the 2010–2011 heating season beginning on March 1, 2010 and may establish by rule the procedure for accepting applications and determining eligibility under this subsection. No later than January 15, 2010, the secretary shall provide draft legislation to modify the process for application, eligibility, and calculation and issuance of benefits under the seasonal fuel assistance program using a new eligibility system to the house committee on human services and the senate committee on health and welfare.

Sec. E.324.3 33 V.S.A. § 2604(c)(2) is amended to read:

(2) Residents of housing units subsidized by the federal, state, or local government shall be deemed to have incurred no annual home heating fuel costs, except to the extent required by any federal law or regulation if federal funds are utilized for the home heating fuel assistance program, and with the following additional exception. Housing unit residents ~~that receive Temporary Assistance to Needy Families (TANF),~~ who participate in Reach Up under chapter 11 of this title, or who receive Supplemental Security Income/Aid to the Aged, Blind, or Disabled (SSI/AABD), ~~TANF~~ emergency assistance, or general assistance benefits that are used in whole or in part to pay for their housing or utility costs and do not receive other federal, state, or local government assistance targeted specifically to their housing or utility needs shall, with the exception of households for which the cost of heat is supplied by the landlord, be assumed to incur annual home heating fuel costs and their eligibility for annual heating fuel assistance shall not be limited by this subsection.

Sec. E.324.4 33 V.S.A. § 2605(c) is amended to read:

(c) Annually, based on the number of eligible households that have applied, and for which the cost of heat is not supplied by the landlord, these households' individual incomes and individual annual heating fuel cost, based on the proxy table established pursuant to ~~section~~ subsection 2604(b) of this title, the number of eligible households that have applied and for which the cost of heat is supplied by the landlord, the cost of benefits for these households, and the amount of funds available in the home heating fuel assistance ~~trust~~ fund for the purpose of providing annual home heating fuel assistance benefits, the secretary shall, by procedure, set the payment rate that shall be used to determine the amount of annual home heating fuel assistance

for which each household for which the cost of heat is not supplied by the landlord qualifies. In no event shall the payment rate be greater than 100 percent of the maximum percentage established by rule as required by subsection (b) of this section.

Sec. E.324.5 33 V.S.A. § 2609 is amended to read:

§ 2609. CRISIS RESERVES

Annually, the secretary shall determine by rule an appropriate amount of funds in the home heating fuel assistance ~~trust~~ fund to be set aside for expenditure for the crisis reserve component of the home heating fuel program. The secretary shall also adopt rules to define crisis situations for the expenditure of the home heating fuel crisis reserve, and to establish the income and asset eligibility requirements of households for receipt of crisis reserve home heating fuel assistance, provided that no household shall be eligible whose household income is greater than 150 percent of the federal poverty level based on the income of all persons residing in the household.

Sec. E.325 Department for children and families - office of economic opportunity (Sec. B.325, #3440100000)

(a) Of the general fund appropriation in this section, $792,000 shall be granted to community agencies for homeless assistance by preserving existing services, increasing services, or increasing resources available statewide. These funds may be granted alone or in conjunction with federal McKinney emergency shelter funds. Grant decisions shall be made with assistance from the coalition of homeless Vermonters.

Sec. E.326 Department for children and families - OEO - weatherization assistance (Sec. B.326, #3440110000)

(a) Of the special fund appropriation in this section, $400,000 is for the replacement and repair of home heating equipment.

(b) As part of the administration's annual budget testimony before the house and senate committees on appropriations, the office of economic opportunity shall report on appropriations utilizing existing resources within state government available in the office of economic opportunity's weatherization data management system that compiles performance data available on households weatherized in the past year to include:

(1) the number of households weatherized;

(2) the average program expenditure per household for energy efficiency;

(3) the average percent in energy savings;

(4) the energy and non-energy benefits combined;

(5) the benefits saved for every dollar spent;

(6) the average savings per unit for heating fuels;

(7) the gallons of oil saved related to the equivalent number of homes heated;

(8) projected number of households to be weatherized in the current program year; and

(9) the projected program expenditures for the current program year ending March 31.

(c) Appropriations from the weatherization trust fund may be limited based on the revenue forecast for the fund from the gross receipts tax as adopted pursuant to 32 V.S.A. § 305a.

Sec. E.326.1 FISCAL YEAR 2010 STATE WEATHERIZATION EFFORTS

(a) The general assembly recognizes the importance of weatherization activities as a key component of housing affordability in Vermont. To this end, for fiscal year 2010, the following state resources shall be targeted to furthering weatherization efforts:

(1) $5,160,000 of proceeds from the gross receipts tax to the weatherization trust fund to support weatherization activities of the office of economic opportunity;

(2) $3,496,000 of Regional Greenhouse Gas Initiative (RGGI) funds through the Vermont department of public service and through the electric efficiency fund to deliver fossil fuel energy efficiency services to Vermont heating and process-fuel consumers to help meet the state's building efficiency goals established by 10 V.S.A. § 581.

(b) The Vermont housing conservation board and the Vermont housing finance agency shall carry out its affordable housing activities, to the extent possible, to improve weatherization and building envelope efficiency.

(c) In carrying out its affordable housing activities, to the maximum extent feasible, the Vermont housing and conservation board shall utilize appropriate amounts from the funds authorized in this act together with other available weatherization resources and programs in Vermont to ensure that new construction and rehabilitation of affordable apartments and homes with funding support from the board will achieve increased short- and long-term energy efficiencies.

Sec. E.330 Disabilities, aging, and independent living - advocacy and independent living (Sec. B.330, #3460020000)

(a) Of this appropriation, $100,000 shall be granted to support a supportive housing demonstration project managed by Cathedral Square Corporation. It is the intent of the general assembly that these funds be used as matching funds for a two-year period for grants to conduct research on cost-efficient and quality services in senior housing. Cathedral Square, in conjunction with the department of disabilities, aging, and independent living, shall identify the programmatic interventions intended to achieve measurable outcomes, including savings from services not needed because of the demonstration project services or improvements in participants' physical and mental well-being. The general assembly recognizes the imperative to develop a long-term care system in Vermont designed to meet the needs of a senior population projected to double by the year 2030. The general assembly endorses this demonstration project as the potential foundation for a home-centered long-term care policy in Vermont. The department and demonstration shall report to the health access oversight committee no less than every six months on the progress of the demonstration project.

(b) Certification of adult day providers shall require a demonstration that the new program is filling an unmet need for adult day services in a given geographic region and does not have an adverse impact on existing adult day services.

(c) Of this appropriation, $23,655 in general funds shall be allocated for special assistance to adult day service providers. The department shall develop criteria on the use of these funds in consultation with the adult day programs. Funds remaining in this allocation after March 30, 2010 shall be distributed on an equitable basis to adult day programs by the close of the fiscal year.

(d) Of this appropriation, $109,995 in general funds shall be allocated for base funds to adult day programs in the same proportion as they were allocated in fiscal year 2009.

(e) At the end of fiscal year 2009, of the remaining moderate needs group (MNG) funds originally allocated to adult day services, the department shall allocate $12,367 to cover lifting the MNG 30-hour cap to 50 hours and $97,108 to adult day services programs that have overutilized their MNG funds. All adult day services shall agree to stay within their allocations for fiscal year 2010, even if people have to go on waiting lists.

Sec. E.335 Corrections- administration (Sec. B.335, #3480001000)

(a) The department is authorized to explore the transition of the northern correctional facility (Newport) in whole or in part to a detention center that can

be leased to the federal government that is sufficient to cover the cost of operating any leased portion which would remain operated by state employees. The department shall provide a status update at each meeting of the joint corrections oversight committee. Prior to implementing a transition, the department shall submit a plan for approval to both the joint corrections oversight committee and joint fiscal committee. The plan shall include how offender programs at the facility would be addressed in such a transition, specifically whether programs would be continued, moved, reduced, or eliminated.

Sec. E.337 Corrections – correctional education (Sec. B.337, # 3480003000)

(a) The appropriation in this section shall be made, notwithstanding 28 V.S.A. § 120(g).

Sec. E.338 Corrections – correctional services (Sec. B.338, # 3480004000)

(a) Of this general fund appropriation, $106,820 shall be used as a grant to Dismas House of Vermont, Inc.

(b) Of the funds appropriated, up to $8,000 shall be for equipment purchased for the "wood warms" program in Bennington.

(c) Of the funds allocated for transitional housing, $200,000 shall be transferred to the agency of human services central office. It is the intent of the general assembly that the secretary of the agency of human services and the department of corrections in partnership with appropriate community providers and local or state housing authorities create a rental subsidy pilot program that results in successful reentry of eligible offenders. The program shall be designed to meet the following:

(1) Does not result in a concentration of reentrant populations in a single building, immediate group of buildings, or neighborhood.

(2) Is not limited to particular communities but can be applied statewide.

(3) Provides direct vendor payments to landlords for up to six months on a month-to-month basis.

(4) Conditions of release incorporate lease requirements.

(5) Savings from the program which can be reinvested in a manner that maintains or expands this pilot project or both or in other transitional housing activities that result in successful offender reentry.

(6) Coordination with offender reentry plans to assure necessary community services and case management.

Sec. E.342 Vermont veterans' home – care and support services (Sec. B.342, #3300010000)

(a) If Global Commitment fund monies are unavailable, the total funding for the Vermont veterans' home shall be maintained through the general fund or other state funding sources.

(b) The Vermont veterans' home will use the Global Commitment funds appropriated in this section for the purpose of increasing the access of quality health care to uninsured persons, underinsured persons, and Medicaid beneficiaries.

* * * Labor * * *

Sec. E.400 DEPARTMENT OF LABOR; AGENCY OF COMMERCE AND COMMUNITY DEVELOPMENT; LEGISLATIVE COMMITTEE

(a) A committee is created to consist of the following members: three members at large appointed by the speaker of the house; three members at large appointed by the committee on committees; and three members at large appointed by the governor. A chair shall be appointed jointly by the speaker, the committee on committees, and the governor.

(b) The committee shall make recommendations for the possible restructuring of the agency of commerce and community development and the department of labor so that these agencies are better able to serve their respective constituencies by:

(1) Identifying areas for enhanced collaboration and increased efficiencies, including combining information technology resources and fiscal and accounting services and sharing regional information and common customer resource and service management.

(2) Reviewing funding sources for the agency and the department, the requirements and limitations for those sources, and evaluating how they will be affected by the restructuring plan.

(3) Examining the likelihood of general fund savings resulting from restructuring.

(4) Identifying staffing and compliance issues resulting from the receipt of federal funding.

(5) Examining management structures, including the duties and responsibilities of commissioners, deputy commissioners, and exempt division directors.

(6) Recommending a new organizational structure, possibly with a focus on grouping divisions or departments around common functions and constituencies.

(7) Examining alternative co-locations for administrative and operational functions located in Montpelier and regionally.

(8) Considering other areas of state government that might appropriately be included in the recommended structure.

(9) Establishing a time line for restructuring that provides the least disruption of essential services, particularly at a time of high unemployment, and that may contemplate a phased implementation plan.

(10) Gathering information on other models in other states.

(c) Prior to making its recommendations, the committee shall meet with, seek input from, and discuss restructuring with potentially affected constituencies, including: the secretary of commerce and community development, the commissioners of the departments of the agency of commerce and community development, the commissioner of labor, employees of the agency of commerce and community development and the department of labor, all state entities connected with these agencies, the Vermont league of cities and towns, municipalities, private planners and community development consultants, regional planning commissions, regional development corporations, chambers of commerce, historic preservationists, workforce investment boards, the Vermont Bar Association's workers' compensation committee, labor unions, training and education providers, housing entities, the Vermont institute on government effectiveness, and the general business community. The committee shall also utilize and build upon existing studies and research.

(d) The committee shall meet with the joint legislative government accountability committee in order to coordinate recommendations.

(e) The committee may meet up to eight times while the legislature is not in session.

(f) The legislative council shall provide professional and administrative support to the committee. Committee members are entitled to compensation and reimbursement of expenses as provided under section 406 of Title 2.

(g) The committee shall submit its recommendations to the legislative committees of jurisdiction no later than January 15, 2010.

Sec. E.401 Labor - programs (Sec. B.401, 4100500000)

(a) The workforce development council shall allocate funding to the workforce investment boards based upon the performance of the local workforce investment boards, measured according to standards established by the council.

Sec. E.401.1 10 V.S.A. § 543(f) is amended to read:

(f) Awards. Based on guidelines set by the council, the commissioner of labor shall make awards to the following:

(1) Training Programs. Public, private, and nonprofit entities for existing or new innovative training programs. There shall be a preference for programs that include training for newly created or vacant positions. Awards may be made to programs that retrain incumbent workers. ~~The department shall ensure there are resources available in each quarter of the fiscal year.~~ Awards under this subdivision shall be made to programs or projects that do all the following:

* * *

* * * K–12 Education * * *

Sec. E.500 Education – finance and administration (Sec. B.500, #5100010000)

(a) The Global Commitment funds appropriated in this section for school health services, including school nurses, shall be used for the purpose of funding certain health-care-related projects. It is the goal of these projects to reduce the rate of uninsured or underinsured persons or both in Vermont and to increase the access of quality health care to uninsured persons, underinsured persons, and Medicaid beneficiaries.

Sec. E.500.1 THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009; EDUCATION

(a) The American Recovery and Reinvestment Act of 2009.

(1) The American Recovery and Reinvestment Act of 2009 (ARRA) provides billions of dollars in federal funds to stimulate the economy in the short term and to invest in education and other essential public services necessary to ensure the long-term economic health of the nation.

(2) Four principles guide distribution of ARRA funds:

(A) Spend funds quickly to save and create jobs.

(B) Improve student achievement through school reform.

(C) Ensure transparency, reporting, and accountability.

(D) Invest one-time ARRA funds thoughtfully to minimize unsustainable recurring costs in the future.

(b) Title VIII of the ARRA. In Title VIII, the ARRA appropriates additional funding to supervisory unions and school districts through existing federal programs, such as Title I of the Elementary and Secondary Education Act (Title I) and the Individuals with Disabilities Education Act (IDEA), to enhance and develop educational practices and outcomes for students who are disadvantaged or disabled, to provide supports for the lowest performing schools, and to promote innovation and improvement in education for all students.

(c) Department of education. The general assembly recognizes that, if it has the capacity, the department of education shall help supervisory unions and school districts to use IDEA, Title I, and other federal stimulus funds, both within and among these entities, in coordinated, fiscally prudent ways that advance the educational purposes of the ARRA. Therefore, it is the intent of the general assembly to ensure that the department has the positions and funding that it needs to help supervisory unions and school districts. Examples of departmental assistance include:

(1) Developing, coordinating, or providing professional development models to assist implementation of evidence-based strategies to:

(A) Increase student participation and achievement levels, such as through responsiveness to intervention (RTI), positive behavioral supports (PBS), differentiated instruction (DI), the Vermont integrated instructional model (VIIM), and the formative assessment project.

(B) Provide effective prevention and intervention strategies to support students at risk of not completing high school.

(C) Promote secondary school transformation.

(D) Support early intervention and early childhood education.

(2) Coordinating early intervention and early education services statewide.

(3) Aiding school districts to provide assistive technology equipment not otherwise available to them through existing funding sources.

(d) Supervisory unions and school districts. It is the intent of the general assembly that federal IDEA, Title I, and any other federal stimulus funds received by supervisory unions or school districts are used in fiscally prudent ways to advance the purposes of the ARRA as it relates to education without creating unsustainable recurring costs, such as:

(1) To provide intensive professional development opportunities in special education and general education that focus on implementing innovative, evidence-based, schoolwide strategies in reading, math, and science and in the use of positive behavioral interventions and supports.

(2) To establish a system to identify and train highly effective teachers to serve as instructional leaders and mentors.

(3) To implement innovative, flexible, evidence-based programs and practices to identify and support students who are at risk of not completing high school.

(4) To implement student progress monitoring systems to assist teachers and administrators to collect and use data to improve instruction and learning for all students.

(5) To provide intensive training and coaching to teachers, administrators, and para-educators to improve services provided to students with disabilities, including autism and emotional behavioral disorders.

(6) To provide additional intervention services for children with disabilities who are eligible for early childhood education as that term is defined in 16 V.S.A. § 11(a)(31).

(7) To support the training and certification of early childhood educators working in a program offered by or through a school district.

(8) To increase the federal share of special education costs.

Sec. E.500.2 FIVE LIMITED SERVICE POSITIONS WITHIN THE DEPARTMENT OF EDUCATION

(a) Five limited service positions are authorized within the department of education to support implementation of Sec. E.500.1 of this act, including one exempt attorney position to specialize in special education law, one program coordinator I position, and three education consultant II positions.

(b) Of the funds appropriated in Sec. B.500 of this act, $325,000 is from the special fund created in subsection 2959a(b) of Title 16 through an allocation made pursuant to subsection 2959a(f) of that title.

Sec. E.501 Education – education services (Sec. B.501 #510003000)

(a) In fiscal year 2010 and fiscal year 2011, $1,131,751 shall be paid by the education fund for early education initiative grants for at-risk preschoolers. In fiscal year 2012, these expenses shall revert to the general fund, and the general fund transfer shall be adjusted accordingly.

Sec. E.501.1 Sec. 9.0001(d) of No 192 of the Acts of 2008 (sunset; teen parent education programs) is amended to read:

(d) Sec. 5.304.1 of this act shall take effect on July 1, 2008 and shall remain in effect until July 1, ~~2009~~ 2010.

Sec. E.502 Education-special education formula grants (Sec. B.502, #5100040000)

(a) The education fund appropriated in this section shall be made notwithstanding 16 V.S.A. §§ 2963(c)(3) and 2967(b).

Sec. E.503 Education – state-placed students (Sec. B.503, #5100050000)

(a) The independence place program of the Lund Family Center shall be considered a 24-hour residential program for the purposes of reimbursement of education costs.

Sec. E.504 Education-adult education and literacy (Sec. B.504, #5100060000)

(a) Of this appropriation, the amount from the education fund shall be distributed to school districts for reimbursement of high school completion services pursuant to 16 V.S.A. § 1049a(c).

Sec. E.505 COMMUNITY HIGH SCHOOL OF VERMONT GRANT

(a) From the education funds appropriated in Sec. B.505 in fiscal year 2010 and fiscal year 2011, a base education payment shall be paid to the community high school of Vermont for full-time equivalent students studying high school equivalency coursework. For fiscal year 2010, this total grant shall be set at the base education payment for 355 full-time equivalent pupils. This amount shall be transferred from the funds appropriated in Sec. B.505 to the department of corrections - correctional education program. These payments shall be made, notwithstanding 16 V.S.A. § 4025(b)(1). In fiscal year 2012, these expenses shall revert to the general fund, and the general fund transfer shall be adjusted accordingly

Sec. E.505.1 Education – adjusted education payment (Sec. B.505, #5100090000)

(a) Any calculations required to identify funding levels for the education fund budget stabilization reserve under 16 V.S.A. § 4026(b) shall be calculated as if in fiscal year 2010 those revenues and appropriations included $38,575,036 in additional revenues and $38,575,036 in additional expenditures.

Sec. E.511 Education-technical education (Sec. B.511, #5100200000)

(a) The appropriation in this section shall be authorized, notwithstanding 16 V.S.A. § 1564.

Sec. E.511.1 REPEAL

(a) 16 V.S.A. § 1564 (equipment replacement fund) is repealed.

Sec. E.512 Education – No. 117 of the Acts of 2000 – cost containment (Sec. B.512, #5100310000)

(a) Notwithstanding any other provisions of law, expenditures made from this section shall be counted under 16 V.S.A. § 2967(b) as part of the state's 60-percent share of the statewide total special education expenditures of funds which are not derived from federal sources.

Sec. E.513 EDUCATION FUND TRANSFER ADJUSTMENT FOR ARRA FUND OFFSET

(a) Notwithstanding 16 V.S.A. § 4025(2), for fiscal year 2010, the general fund transfer to the education fund shall be $239,203,945.

(b) Notwithstanding 16 V.S.A. § 4025(2), it is the intent of the general assembly that the fiscal year 2011 transfer shall be funded at $240,803,945 less any adjustment for changes in the current use program.

(c) It is the intent of the general assembly that the fiscal year 2012 general fund transfer shall be as required in 16 V.S.A. § 4025(2) less any continuing offset for federal state fiscal stabilization funds.

Sec. E.513.1 16 V.S.A. § 4025(b) is amended to read:

(b) Moneys in the education fund shall be used for the following:

(1) To make payments to school districts and supervisory unions for the support of education in accordance with the provisions of section 4028 of this title, other provisions of this chapter, and the provisions of chapter 135 of Title 32.

(2) To cover the cost of fund auditing, accounting, and of short-term borrowing to meet fund cash flow requirements.

(3) To make payments required under subdivisions 6066(a)(1) and (2) of Title 32 and only that portion attributable to education taxes, as determined by the commissioner of taxes, of payments required under subdivisions 6066(a)(3) and 6066(b) of Title 32.

* * *

Sec. E.514 State teachers' retirement system (Sec. B.514, #1265010000)

(a) In accordance with 16 V.S.A. § 1944(g)(2), the amount of the annual contribution to the Vermont state teachers' retirement system shall be $41,503,002 in fiscal year 2010.

(b) In accordance with 16 V.S.A. § 1944(c)(2), of the annual contribution, $19,821,109 is the "normal contribution," and $21,681,893 is the "accrued liability contribution."

(c) The general assembly is proposing that a combination of $40,228,002 in general funds and an estimated $1,275,000 of Medicare Part D reimbursement funds be utilized to achieve funding at the actuarially recommended level.

* * * Higher Education * * *

Sec. E.600 University of Vermont (Sec. B.600, #1110006000)

(a) The commissioner of finance and management shall issue warrants to pay one-twelfth of this appropriation to the University of Vermont on or about the 15th day of each calendar month of the year.

(b) Of this appropriation, $380,326 shall be transferred to EPSCoR (Experimental Program to Stimulate Competitive Research) for the purpose of complying with state matching fund requirements necessary for the receipt of available federal or private funds or both.

(c) If Global Commitment fund monies are unavailable, the total grant funding for the University of Vermont shall be maintained through the general fund or other state funding sources.

(d) The University of Vermont will use the Global Commitment funds appropriated in this section to support Vermont physician training. The University of Vermont prepares students, both Vermonters and out-of-state, and awards approximately 100 medical degrees annually. Graduates of this program, currently representing a significant number of physicians practicing in Vermont, deliver high quality health care services to Medicaid beneficiaries and to the uninsured or underinsured persons or both in Vermont and across the nation.

Sec. E.602 Vermont state colleges (Sec. B.602, #1110009000)

(a) The commissioner of finance and management shall issue warrants to pay one-twelfth of this appropriation to the Vermont state colleges on or about the 15th day of each calendar month of the year.

(b) Of this appropriation, $428,786 shall be transferred to the Vermont manufacturing extension center for the purpose of complying with state matching fund requirements necessary for the receipt of available federal or private funds or both.

Sec. E.603 Vermont state colleges – allied health (Sec. B.603, #1110010000)

(a) If Global Commitment fund monies are unavailable, the total grant funding for the Vermont state colleges shall be maintained through the general fund or other state funding sources.

(b) The Vermont state colleges shall use the Global Commitment funds appropriated in this section to support the dental hygiene, respiratory therapy, and nursing programs which graduate approximately 250 health care providers annually. These graduates deliver direct, high quality health care services to Medicaid beneficiaries and uninsured or underinsured persons or both.

Sec. E.605 Vermont student assistance corporation (Sec. B.605, #1110012000)

(a) Of this appropriation, $25,000 is appropriated from the general fund to the Vermont student assistance corporation to be deposited into the trust fund established in 16 V.S.A. § 2845.

(b) Except as provided in subsection (a) of this section, not less than 100 percent of grants shall be used for direct student aid.

(c) Of state funds available to the Vermont student assistance corporation pursuant to Sec. E.215(a) and E.1100(a)(3)(B) of this act, $242,500 shall be used for the purposes of 16 V.S.A. § 2856. Any unexpended funds from these allocations shall carry forward for this purpose.

* * * Natural Resources * * *

Sec. E.700 Natural Resource – Agency of Natural Resources - Administration

(a) Of the funds appropriated in Sec. B.700, $25,000 is for water management typing for the White River basin and the West, Williams, and Saxons river basin.

(1) $12,500 shall be granted to the Two Rivers Ottauquechee Regional Commission for the purpose of developing recommended water management type designations for the White River basin. In developing its recommendations, the Two Rivers Ottauquechee Regional Commission shall consult with the agency of natural resources watershed coordinator for the White River basin and shall consider the most recent information for the watershed available from the agency of natural resources and other sources.

(2) $12,500 shall be granted to the Windham Regional Commission for the purpose of developing recommended water management type designations for the West, Williams and Saxons River basin. In developing its recommendations, the Windham Regional Commission shall consult with the agency of natural resources watershed coordinator for the White River basin

and shall consider the most recent information for the watershed available from the agency of natural resources and other sources.

Sec. E.700.1 REPORT AND RULEMAKING ON WATER MANAGEMENT TYPING FOR THE WHITE RIVER BASIN AND THE WEST, WILLIAMS, AND SAXONS RIVER BASIN

(a) On or before January 31, 2011, the Two Rivers Ottauquechee Regional Commission and the Windham Regional Commission shall submit to the agency of natural resources and the natural resources board the recommended water management type designations required under Sec. E.700(a)(1) and (2) of this act. Upon receipt of the recommended water management type designations required under this section, the agency of natural resources shall post the recommended water management type designations to its website and shall make the recommendations available to any person upon request.

(b) Within three months of receipt of the recommended water management type designations under this section, the natural resources board shall initiate rulemaking to amend the water management types in order to consider the recommended water management type designations for the White River basin and the West, Williams and Saxons River basin.

Sec. E.700.2 FARMERS' WATERSHED ALLIANCE

(a) The secretary of natural resources shall allocate and grant $125,000 of the funds appropriated to the agency for the Clean and Clear program to the Franklin County watershed alliance. The secretary shall report to the joint fiscal committee by September 15, 2009 regarding how this grant was allocated within the agency Clean and Clear budget. It is the intent of the general assembly that this funding, in coordination with $75,000 of funding allocated through the agency of agriculture, food and markets, will provide a total grant of $200,000 to the Franklin County watershed alliance for fiscal year 2010.

Sec. E.705 FUNDING GOALS FOR FISH & WILDLIFE

(a) It is the intent of the general assembly that the department of fish and wildlife be able to sustain services and seek the federal funds eligible to the state in the future through the generation of revenue and state funding.

(b) The department shall seek to access to the maximum amount the state may be eligible for of Pittman-Robertson, Dingell-Johnson, and other federal revenues. The department shall establish and administer a grant program for Vermont organizations and citizens to utilize the Pittman-Robertson funds for the public sport shooting ranges and the improvement or modification of

existing sport shooting ranges. Sport shooting ranges are defined as per 10 V.S.A. § 5227.

Sec. E.707 FUNDING GOALS FOR FORESTS, PARKS AND RECREATION

(a) It is the intent of the general assembly that the department of forests, parks and recreation be able to sustain services and seek the federal funds eligible to the state in the future through the generation of revenue and state funding.

Sec. E.717 Natural resources board (Sec. B.717, #6215000000)

(a) It is the intent of the general assembly that should the level of funding provided in Sec. B.717 of this act require reductions in personal service expenses in fiscal year 2010, any such reductions shall not reduce enforcement activities of the board. The administration is encouraged to review the need to maintain the board chair position at a full-time level.

* * * Commerce and Community Development * * *

Sec. E.800 COMMUNITY DEVELOPMENT PROGRAM; FUND CONSOLIDATION PLAN; IMPLEMENTATION

(a) Consistent with the requirements of subchapter 1 of chapter 29 of Title 10, a committee chaired by the Vermont league of cities and towns and consisting of the executive directors of the Vermont housing finance agency, the Vermont economic development authority, and the secretary of the agency of commerce and community development or designee, the Vermont housing conservation board, the Vermont bankers association, municipalities, regional development corporations, and other appropriate entities shall develop a proposal for the best use of and administration of community development grants which have previously been awarded to municipalities and that are currently inactive from the community development block grant (CDBG) program authorized by Title I of the federal Housing and Community Development Act of 1974, as amended, 42 U.S.C. § 5301 et seq. The purpose of the proposal is to maximize the availability of CDBG funding for Vermont's municipalities. The proposal shall include criteria and processes for standardizing the administration and oversight of CDBG funds, while preserving a municipality's ability to access funds.

(b) The committee will be staffed by the agency of commerce and community development. The committee shall report its findings to the general assembly on or before January 15, 2010.

Sec. E.801 Housing and community affairs (Sec. B.801, #7110010000)

(a) Of this appropriation, $60,000 shall be granted to the First Stop Program.

Sec. E.804 Community development block grants (Sec. B.804, #7110030000)

(a) Community development block grants shall carry forward until expended.

(b) Community development block grant (CDBG) funds shall be expended in accordance with and in the order of the following priorities:

(1) The greatest priority for the use of CDBG funds will be the creation and retention of affordable housing and jobs.

(2) The overarching priority and fundamental objective in the use of funds for all affordable housing is to achieve perpetual affordability through the use of mechanisms that produce housing resources that will continue to remain affordable over time. It is the goal of the state to maintain at least 45 to 55 percent of CDBG funds for affordable housing applications.

(3) Among affordable housing applications, the highest priorities are to preserve and increase the supply of affordable family housing, to reduce and strive to eliminate childhood homelessness, and to serve families and individuals at or below 30 percent of HUD Area Median Income and people with special needs as described in the Consolidated Plan. Housing for seniors should be considered a priority when it meets clear unmet needs in the region for the lowest income seniors.

(4) Projects which address the ongoing deterioration of the existing housing stock through acquisition, preservation, and rehabilitation of units shall comply with housing quality standards with priority given to lead hazard reduction and energy efficiency.

(5) Preference shall be given to projects that maintain the historic settlement pattern of compact village and downtown centers separated by a rural working landscape. Funds generally should not be awarded to projects that promote or constitute sprawl, defined as dispersed development outside compact urban and village centers, along highways, and in rural countryside.

(c) No less than 50 percent of CDBG-generated loan repayments shall remain available to municipalities awarded community development block grant funds.

(d) The department of housing and community affairs may not restrict CDBG applications for housing to projects which have been previously awarded federal low income housing tax credits.

Sec. E.806 Economic development (Sec. 806, #7120010000)

(a) Of this appropriation, $50,000 shall be used by the Commission on the Future of Economic Development (CFED) to continue the benchmarking process and to develop strategies to implement the four principal goals for economic development recommended to the legislature by CFED in fiscal year 2009.

(b) For fiscal year 2010, the chair of CFED shall convene and chair a working group consisting of the current CFED members and the commissioner of the department of economic development.

(c) The working group shall receive reasonable administrative, fiscal, and legal support from the joint fiscal office and the legislative council.

(d) Legislative members of the committee shall be entitled to per diem compensation and reimbursement of necessary expenses as provided in 2 V.S.A. § 406(a); other members shall be entitled to per diem compensation and reimbursement of necessary expenses as provided in 32 V.S.A. § 1010.

(e) The fiscal year 2010 working group shall:

(1) Collaborate with the state economists to finalize the statistical benchmarking system proposed in fiscal year 2009.

(2) Establish baseline values for each benchmark and subsequently perform an economic development analysis against the baseline values at a suitable interval.

(3) Review and report on the development of the specific goals and benchmarks required of state agencies and departments under 10 V.S.A. § 3(d).

(4) Develop a work plan for CFED for fiscal year 2011.

(f) The working group shall report its findings and recommendations to the senate committee on economic development, housing and general affairs, the house committee on commerce and economic development, and the governor not later than January 15, 2010.

Sec. E.813 10 V.S.A. § 311 is amended to read:

§ 311. CREATION OF THE VERMONT HOUSING AND CONSERVATION BOARD

(a) There is created and established a body politic and corporate to be known as the "Vermont housing and conservation board" to carry out the provisions of this chapter. The board is constituted a public instrumentality exercising public and essential governmental functions, and the exercise by the board of the powers conferred by this chapter shall be deemed and held to be

the performance of an essential governmental function of the state. The board is exempt from licensure under chapter 73 of Title 8.

(b) ~~The board shall consist of nine members, including ex officio the secretary of agriculture, food and markets, the secretary of commerce and community development, the secretary of natural resources and the executive director of the Vermont housing finance agency, or their designees, and five public members who shall be residents of the state and who shall in the opinion of the governor be experienced in creating affordable housing or conserving and protecting Vermont's agricultural land, historic properties, important natural areas or recreational lands. At least one member shall be a representative of lower income Vermonters and one member shall be a farmer as defined in 32 V.S.A. § 3752(7). The public members shall be appointed by the governor with the advice and consent of the senate for three-year terms beginning on February 1 of the year in which the appointment is made, except that the first members appointed by the governor to the board shall be appointed, one for a term of one year, two for a term of two years and two for a term of three years. Vacancies shall be filled in the same manner as the original appointment for the unexpired portion of the term vacated.~~

The board shall consist of the following 11 members:

(1) The secretary of agriculture, food and markets or his or her designee.

(2) The secretary of human services or his or her designee.

(3) The secretary of natural resources or his or her designee.

(4) The executive director of the Vermont housing finance agency or his or her designee.

(5) Three public members appointed by the governor who shall be residents of the state and who shall be experienced in creating affordable housing or conserving and protecting Vermont's agricultural land, historic properties, important natural areas or recreational lands, one of whom shall be a representative of lower income Vermonters and one of whom shall be a farmer as defined in subdivision 3752(7) of Title 32.

(6) One public member appointed by the speaker of the house, who shall not be a member of the general assembly at the time of appointment.

(7) One public member appointed by the senate committee on committees, who shall not be a member of the general assembly at the time of appointment.

(8) Two public members appointed jointly by the speaker of the house and the president pro tempore of the senate as follows:

(A) One member from the nonprofit affordable housing organizations that qualify as eligible applicants under subdivision 303(4) of this title who shall not be an employee or board member of any of those organizations at the time of appointment.

(B) One member from the nonprofit conservation organizations whose activities are eligible under subdivision 303(3) of this title who shall not be an employee or member of the board of any of those organizations at the time of appointment.

(c) The public members shall serve terms of three years beginning July 1 of the year of appointment. However, two of the public members first appointed by the governor shall serve initial terms of one year; and the public members first appointed by the speaker and committee on committees shall serve initial terms of two years. A vacancy occurring among the public members shall be filled by the respective appointing authority for the balance of the unexpired term. A member may be reappointed.

~~(c)~~(d) Annually, the board shall elect from among its public members a chair and vicechair. The board may elect ~~such~~ officers as it may determine. Meetings shall be held at the call of the chair or at the request of three members. A majority of the sitting members shall constitute a quorum and action taken by the board under the provisions of this chapter may be authorized by a majority of the members present and voting at any regular or special meeting.

~~(d)~~(e) Members other than ex officio members shall be entitled to per diem authorized under 32 V.S.A. § 1010 for each day spent in the performance of their duties and each ~~such~~ member shall be reimbursed from the fund for his or her reasonable expenses incurred in carrying out his or her duties under this chapter.

~~(e)~~(f) The board shall employ an executive director to administer, manage and direct the affairs and business of the board, subject to the policies, control and direction of the members. The board may employ technical experts and ~~such~~ other officers, agents and employees as are necessary to effect the purposes of this chapter, and may fix their qualifications, duties and compensation. The board shall use the office of the attorney general for legal services.

Sec. E.813.1 10 V.S.A. § 321 is amended to read:

§ 321. GENERAL POWERS AND DUTIES

(a) The board shall have all the powers necessary and convenient to carry out and effectuate the purposes and provisions of this chapter, including without limitation those general powers provided to a business corporation by

~~section 1852 of Title 11~~ Title 11A and including, without limiting the generality of the foregoing, the power to:

(1) upon application from an eligible applicant in a form prescribed by the board, provide funding in the form of grants or loans for eligible activities;

(2) enter into cooperative agreements with private organizations or individuals or with any agency or instrumentality of the United States or of this state to carry out the purposes of this chapter;

(3) issue rules in accordance with 3 V.S.A. chapter 25 for the purpose of administering the provisions of this chapter;

(4) transfer funds to the department of housing and community affairs to carry out the purposes of this chapter.

(b) The board shall seek out and fund not-for-profit organizations and municipalities that can assist any region of the state which has high housing prices, high unemployment and low per capita incomes in obtaining grants and loans under this chapter for perpetually affordable housing. The board shall administer the "HOME" affordable housing program which was enacted under Title II of the Cranston-Gonzalez National Affordable Housing Act (Title II, P.L. 101-625, 42 U.S.C. 12701-12839). The state of Vermont, as a participating jurisdiction designated by Department of Housing and Urban Development, shall enter into a written memorandum of understanding with the board, as subrecipient, authorizing the use of HOME funds for eligible activities in accordance with applicable federal law and regulations. HOME funds shall be used to implement and effectuate the policies and purposes of this chapter related to affordable housing. The memorandum of understanding shall include performance measures and outcomes that the board will annually report on to the Vermont department of housing and community affairs.

(c) On behalf of the state of Vermont, the board shall be the exclusive designated entity to seek and administer federal affordable housing funds available from the Department of Housing and Urban Development under the national Housing Trust Fund which was enacted under HR 3221, Title 1, Subtitle B, Section 1228 of the Federal Housing Finance Regulatory Reform Act of 2008 to increase perpetually affordable rental housing and home ownership for low and very low income families.

~~(c)~~(d) On behalf of the state of Vermont, the board shall seek and administer federal farmland protection funds to facilitate the acquisition of interests in land to protect and preserve in perpetuity important farmland for future agricultural use. Such funds shall be used to implement and effectuate the policies and purposes of this chapter.

~~(d)~~(e) The board shall inform all grant applicants and recipients of funds derived from the annual capital appropriations and state bonding act of the following: "The Vermont Housing and Conservation Trust Fund is funded by the taxpayers of the State of Vermont, at the direction of the General Assembly, through the annual Capital Appropriation and State Bonding Act." An appropriate placard shall, if feasible, be displayed at the location of the proposed grant activity.

Sec. E.813.2 GRANT STATUS; JFO #2370

(a) In accordance with the legislature's authority under 32 V.S.A. § 5, the U.S. Department of Housing and Urban Development (HUD) Neighborhood Stabilization Program (NSP) grant (JFO #2370), in the amount of $19,600,000 is accepted pursuant to and subject to a memorandum of understanding (MOU) reached between the agency of commerce and community development (ACCD) and the Vermont housing and conservation board (VHCB) dated May 7, 2009, for the use of NSP funds by the Vermont housing and conservation board (VHCB) to grant subgrants to eligible projects. Further, the general assembly concludes that the MOU shall include the reservation of actual costs of $3,000,000 to be solicited and awarded by VHCB, and conveyed by a grant agreement to VHCB. The MOU shall also include, but is not limited to provisions that will allow VHCB to be reimbursed for the actual costs of its administration up to $400,000; a requirement that owners of projects funded with grant funds shall execute housing subsidy covenants to ensure permanent affordability; a requirement that VHCB will act according to and ensure compliance with all applicable state and federal laws and regulations; and that ACCD will provide training and technical assistance to VHCB staff with regard to administration of the NSP grant. It is also understood that the total of the NSP funds awarded to the state of Vermont that are not allocated pursuant to the MOU shall be utilized consistent with the terms of the HUD approval of the NSP grant. The MOU between ACCD and VHCB shall be submitted to the house and senate committees on appropriations and the joint fiscal committee immediately upon its execution.

* * * Transportation * * *

Sec. E.900 19 V.S.A. § 11a is amended to read:

§ 11a. TRANSPORTATION FUNDS APPROPRIATED FOR ~~SUPPORT OF GOVERNMENT~~ THE DEPARTMENT OF PUBLIC SAFETY

(a) ~~The maximum amount of~~ No transportation funds ~~that may~~ shall be appropriated for the support of government~~,~~ other than for the agency of transportation, the transportation board, transportation pay act funds, construction of transportation capital facilities used by the agency of transportation, ~~and~~ transportation debt service ~~shall not exceed $32,852,807.00~~,

and the department of public safety. The amount of transportation funds appropriated to the department of public safety shall:

(1) in fiscal year 2010 not exceed $30,850,000.00;

(2) in fiscal year 2011 not exceed $28,350,000.00; and

(3) in fiscal year 2012 not exceed $25,250,000.00.

Sec. E.910 Transportation – central garage (Sec. B.910, #8110000200)

(a) Of this appropriation, $6,216,757 is appropriated from the transportation equipment replacement account within the central garage fund for the purchase of equipment as authorized in 19 V.S.A. § 13(b).

Sec. E.916 Transportation – town highway aid program (Sec. B.916, #810003000)

(a) This appropriation is authorized, notwithstanding 19 V.S.A. § 306(a).

* * * Miscellaneous * * *

Sec. E.1100 FISCAL YEAR 2010 NEXT GENERATION FUND ALLOCATIONS (Sec. B.1100(a))

(a) The $3,293,000 appropriated in Sec. B.1100(a)(1) of this act from the next generation initiative fund, created in 16 V.S.A. § 2887, shall be as follows:

(1) Workforce development: $1,415,500 as follows:

(A) Workforce Education Training Fund (WETF). The sum of $1,415,500 is appropriated to the Vermont workforce education and training fund, which is administered by the department of labor, for workforce development. Up to seven percent of the funds may be used for administration of the program.

(B) Adult Technical Education Programs. The amount of $410,500 is appropriated to the department of labor, working with the workforce development council. This appropriation is for the purpose of awarding grants to regional technical centers and comprehensive high schools to provide adult technical education, as that term is defined in 16 V.S.A. § 1522, to unemployed and underemployed Vermont adults.

(C) UVM Technology Transfer Program. The amount of $118,750 is appropriated to the University of Vermont. This appropriation is for patent development and commercialization of technology created at the university for the purpose of creating employment opportunities for Vermont residents.

(D) Vermont center for emerging technologies. The amount of $118,750 is appropriated to the agency of commerce and community development for a grant to the Vermont center for emerging technologies to enhance development of high technology businesses and next generation employment opportunities throughout Vermont.

(2) Loan repayment: The sum of $300,000 is appropriated to the agency of human services Global Commitment for the department of health to use for health care loan repayment. The department shall use these funds for a grant to the area health education centers (AHEC) for repayment of commercial or governmental loans for postsecondary health-care-related education or training owed by persons living and working in Vermont in the health care field.

(3) Scholarships and grants: $929,500 as follows:

(A) Nondegree VSAC Grants. The amount of $494,500 is appropriated to the Vermont student assistance corporation. This appropriation shall be for the purpose of providing nondegree grants to Vermonters to improve job skills and increase overall employability, enabling them to enroll in a postsecondary education or training program, including adult-technical education that is not part of a degree or accredited certificate program. A portion of this appropriation shall be used for grants for indirect educational expenses to students enrolled in training programs. The grants shall not exceed $3,000 per student. None of this appropriation shall be used for administrative overhead.

(B) The sum of $150,000 is appropriated to the Vermont student assistance corporation to fund the national guard educational assistance program established in 16 V.S.A. § 2856.

(C) Dual Enrollment Programs. The sum of $285,000 is appropriated to the Vermont state colleges for dual enrollment programs. The state colleges shall develop a voucher program that will allow Vermont students to attend programs at a postsecondary institution other than the state college system when programs at the other institution are better academically or geographically suited to student need.

Sec. E.1103. COST REDUCTION AUTHORIZATION

(a) Due to the current and continuing fiscal stress that will impact the Vermont state budget, the secretary of administration is authorized to develop a plan for submission to the legislative joint fiscal committee to make $14,700,000 in general fund expenditure reductions and proportionate reductions in other funding sources through revisions to payroll and personnel services related expenditures as indicated below.

(b) First, the secretary of administration shall reduce budgeted contract expenditures for fiscal year 2010 by $1,300,000 in general funds. In the event that such expenditure reductions are not identified by October 31, 2009, the secretary of administration shall submit a plan of recommendation to achieve this general fund savings target by alternate reductions in budgeted funds to the joint fiscal committee in November 2009.

(c) Second, the general assembly strongly urges the Vermont state employees' association and the secretary of administration to negotiate contract changes and other personnel adjustments to achieve expenditure reductions of $13,400,000 general funds and proportionate reductions in other funding sources to avoid job cuts. In negotiating contract revisions, the general assembly recommends the parties consider the following principles in achieving a contract modification to produce the savings:

(1) Any such changes or reductions shall include proportional impacts on exempt employees, classified confidential, and other employee classifications; and

(2) Changes should reflect the ability to pay with larger expected savings from higher paid employees.

(d) Third, in the event that the expenditure reductions are not achieved through subsection (c) of this section, the secretary of administration shall develop an alternate savings plan for submission to the legislative joint fiscal committee on or before June 10, 2009. In developing a plan, the secretary shall operate within the following parameters:

(1) Any such plan shall include proportional impacts on exempt employees, classified confidential, and other employee classifications;

(2) Impacts on service delivery, public health, safety, and cost transfers to other levels of government shall be minimized; and

(3) Departments shall have the option, to the extent allowable by contract, to avoid position elimination through reductions of working hours.

(e) No reductions in force shall take place or be effective unless and until they are part of a plan submitted to and approved by the legislative joint fiscal committee. The secretary may include alternatives to position reductions and shall not be limited to positions already submitted to the legislature in list development.

(f) The legislative joint fiscal committee shall treat any plan submitted for approval under the procedures outlined under 32 V.S.A. § 704.

(g) The recommendations in subsections (c) and (d) of this section shall apply to all state employees in all branches of government. Agency or department heads may adjust the salaries or furloughs of exempt employees who have already taken furloughs or salary reductions in excess of the impacts of the plan above to make them consistent with the proposals under subsections (c) and (d) of this section.

(h) The secretary of administration shall not plan to close or significantly reduce operations at any correctional facility unless approval to proceed with such closing or reduction plans is granted by both the joint committee on corrections oversight and the joint fiscal committee. Any plan submitted to the committees shall include an analysis of the regional impact, including how the increased transportation costs will be funded.

Sec. G.100 EFFECTIVE DATES

(a) This section and Secs. C.100, C.101, C.102, C.103, C.104, C.105, D.103, D.105, D.106, D.108, D.109, D.110, E.102.1, E.129, E.135.2, E.135.3, E.204(b), E.207(c), E.209(c), E.307.1, E.322.2, E.330(c), and E.813.2 shall take effect on passage.

(b) Sec. E.318.1 (33 V.S.A. § 3512(b)) shall take effect upon approval by the joint fiscal committee of the proposal provided for in Sec. E.318 of this act. If the proposal is not approved, 33 V.S.A. § 3512(b), as amended by Sec. E.318.1 of this act, shall revert to the language it contained before the passage of this act.

(c) Sec. E.813.2 shall take effect upon passage by the house and senate.

* * * Proposed Miscellaneous Tax Amendments * * *

Sec. H.1. INCREASING THE NUMBER OF COMPLIANCE PERSONNEL IN THE DEPARTMENT OF TAXES

(a) Of the funds appropriated to the department of taxes in this act, $535,000 is for the purpose of hiring nine full-time limited service employees to augment the department's compliance division. The department shall use the funds so appropriated to hire four tax field examiners, two desk audit examiners, one collector, one desk audit supervisor, and either one attorney or a second collector.

(b) It is the intent of the general assembly that the funding of an additional $935,000 be provided to the tax department in fiscal year 2011 for the purpose of retaining the nine full-time limited service employees hired pursuant to subsection (a) of this section and hiring six additional full-time limited service employees to further augment the department's compliance division. The

department shall use the additional funds so appropriated to hire four tax field examiners and two desk audit examiners.

(c) It is the intent of the legislature to further augment the department's compliance efforts in fiscal year 2012 by appropriating additional funds for fiscal year 2012 for the purpose of retaining the 15 full-time limited service employees hired pursuant to subsections (a) and (b) of this section and hiring five additional limited service employees.

(d) The positions created pursuant to subsections (a) and (b) of this section shall not be new state employee positions but instead shall be transferred and converted from the vacant position pool as and only when such positions in the vacant position pool become available.

(e) Notwithstanding any other provision of law, the positions created by this section shall be created as limited service positions and shall not be funded for a period in excess of three years.

Sec. H.2. ADDING COMPLIANCE PERSONNEL TO THE DEPARTMENT OF LABOR

(a) Of the funds appropriated to the department of labor in this act, $308,212 shall be for the purpose of hiring four full-time limited service employees as workers' compensation fraud staff who will investigate the classification of workers as either contractors or employees and enforce compliance of the proper classification by businesses.

(b) The positions created pursuant to subsection (a) of this section shall not be new state employee positions but instead shall be transferred and converted from the vacant position pool as and only when such positions in the vacant position pool become available.

(c) Notwithstanding any other provision of law, the positions created by this section shall be created as limited service positions and shall not be funded for a period in excess of three years.

* * * Tax Amnesty * * *

Sec. H.3. TAX AMNESTY

(a) Notwithstanding any law to the contrary, the commissioner of taxes shall establish a tax amnesty program during which all penalties that could be assessed by the commissioner may be waived without the need for any showing by the taxpayer of reasonable cause or the absence of willful neglect if the taxpayer, prior to the expiration of the amnesty period, files proper returns for any tax types and any period for which the taxpayer has or had a filing obligation and pays the full amount of tax shown on such return together

with all interest due thereon. The amnesty program shall be established for a period of six consecutive weeks to be determined by the commissioner, to expire not later than October 2, 2009.

(b) The amnesty program shall apply to a tax liability of any tax type for any periods for which the due date of the return was before January 26, 2009 but shall not apply to those penalties which the commissioner would not have the sole authority to waive, including fuel taxes administered under the International Fuel Tax Agreement or under the local option portions of taxes.

(c)(1) The commissioner shall maintain records of the amnesty provided under this section, including:

(A) the number of taxpayers provided with amnesty;

(B) the types of tax liability for which amnesty was provided and, for each type of liability:

(i) the amount of tax liability collected by the commissioner; and

(ii) the amount of penalties forgone by virtue of the amnesty; and

(iii) the total outstanding tax liability due to the state, for the period through June 30, 2009, after the collection of all funds under this section.

(2) The commissioner shall file a report detailing the information required by subdivision (1) of this subsection with the clerk of the house of representatives and the secretary of the senate, the joint fiscal committee, the house committee on ways and means, and the senate committee on finance not later than December 15, 2009; provided, however, that the report shall not contain information sufficient to identify an individual taxpayer or the amnesty an individual taxpayer was provided under this section.

Sec. H.4. FUNDING FOR TAX AMNESTY

(a) Of the funds appropriated to the tax department in this act, $132,000 is for the purpose of marketing the tax amnesty program provided for in Sec. H.3 of this act. In order to help stimulate the local economy, the legislature asks in determining what resources or marketing firms to use, the department give priority to Vermont-based firms.

* * * Sale of State-Owned Personal Property * * *

Sec. H.5. SALE OF STATE-OWNED SURPLUS PERSONAL PROPERTY

In order to raise capital and to free space in buildings owned or leased by the state, the commissioner of buildings and general services is authorized and directed to conduct a "spring cleaning" to identify and sell surplus personal property of the state. Each department and agency of the state shall, in

accordance with section 1556 of Title 29, transfer all surplus personal property to the commissioner, who is authorized to sell such surplus personal property pursuant to subdivision 1556(6). Notwithstanding section 1557 of Title 29, the proceeds of such sale, net of the commissioner's administrative costs, shall be deposited into the general fund.

* * * Department of Revenue * * *

Sec. H.6. DEPARTMENT OF TAXES; DEPARTMENT OF REVENUE; TRANSITION

(a) In accordance with the report of the commissioner of taxes dated January 22, 2007, the department of taxes shall be converted into a department of revenue no later than June 30, 2012.

(b) To accomplish the requirement set out in subsection (a) of this section, there is hereby established a revenue transition committee to review and approve the commissioner's plan to transition the department of taxes to a department of revenue, which shall be responsible for collecting taxes, fees, levies, and other assessments as determined pursuant to subsection (c) of this section. The revenue transition committee shall be composed of the following seven members:

(1) The commissioner of finance and management or designee;

(2) The state treasurer or designee;

(3) A member of the house committee on ways and means, appointed by the speaker of the house;

(4) A member of the house committee on government operations, appointed by the speaker of the house;

(5) A member of the senate committee on finance, appointed by the committee on committees;

(6) A member of the senate committee on government operations, appointed by the committee on committees;

(7) The court administrator or designee.

(c) The commissioner shall review each state revenue source and determine whether the management of such revenue source should:

(1) remain substantially as is;

(2) be transferred to the treasurer's lockbox services contract;

(3) be transferred to the department of taxes, which shall ultimately be redesignated the department of revenue; or

(4) be transferred to another entity.

(d) The revenue transition committee shall meet as needed to review and approve the commissioner's implementation plan for the transition to a revenue department. The commissioner shall report to the revenue transition committee the findings and recommendations required pursuant to subsection (c) of this section, and the commissioner will implement any changes upon the approval of the revenue transition committee.

(e) No later than February 15 of each of the three years following the effective date of this act, the committee shall issue a report to the general assembly on its findings and containing specific recommendations concerning the implementation of the transition, efficiencies, technology, staffing issues, and recommendations with respect to subsection (c) of this section.

(f) The legislative members shall be entitled to per diem compensation and reimbursement of necessary expenses as provided to members of standing committees under 2 V.S.A. § 406 for attendance at a meeting when the general assembly is not in session.

Sec. H.7. STATUTORY REVISION

After June 30, 2012, the legislative council is directed to revise the Vermont Statutes Annotated to reflect the redesignation of the department of taxes as the department of revenue. When applicable, the term "commissioner of taxes" shall be replaced by the term "commissioner of revenue"; and when applicable, the term "department of taxes" shall be replaced by the term "department of revenue."

* * * Education Property Tax Rates * * *

Sec. H.8. FISCAL YEAR 2010 EDUCATION PROPERTY TAX RATE REDUCTION

(a) For fiscal year 2010 only, the education property tax imposed under subsection 5402(a) of Title 32 shall be reduced from the rate of $1.59 and $1.10 and shall instead be at the following rates:

(1) the tax rate for nonresidential property shall be $1.35 per $100.00; and

(2) the tax rate for homestead property shall be $0.86 multiplied by the district spending adjustment for the municipality, per $100.00 of equalized property value as most recently determined under section 5405 of Title 32.

(b) For claims filed in 2010 only, "applicable percentage" in subdivision 6066(a)(2) of Title 32 shall be reduced from 2.0 percent and instead shall be 1.80 percent multiplied by the fiscal year 2010 district spending adjustment for

the municipality in which the homestead residence is located; but in no event shall the applicable percentage be less than 1.80 percent.

* * * Fiscal Year 2010 Education Base Payment Amount * * *

Sec. H.9. FISCAL YEAR 2010 EDUCATION BASE PAYMENT AMOUNT

Notwithstanding subsection 4011(b) of Title 16 or any other provision of law, the base education payment for fiscal year 2010 only shall be $8,485.00.

* * * Electronic Filing of Property Transfer Tax * * *

Sec. H.10. DEVELOPMENT OF ELECTRONIC SYSTEM FOR FILING AND PAYING PROPERTY TRANSFER TAXES

No later than August 1, 2009, the department of taxes shall file with the joint fiscal committee an implementation plan for the electronic filing of property transfer tax returns and the electronic payment of property transfer taxes.

* * * VHFA: Moral Obligation for Pledged Equity Funds * * *

Sec. H.11. FINDINGS AND INTENT

Moral obligation of the state is used by municipal bond insurers, such as the Vermont Housing and Finance Agency (VHFA), as a discretionary capitalization obligation. By expanding VHFA's ability to pledge the state's existing commitment of moral obligation without increasing the amount of the state's existing potential obligation, the general assembly can provide VHFA with another tool to increase confidence and attract new financial partners so that the agency can continue its housing programs for low and moderate income Vermonters, even in these challenging economic times.

Sec. H.12. 10 V.S.A. § 631(f) is amended to read:

(f) The agency, subject to such agreements with noteholders or bondholders as may then exist, shall have power out of any funds available therefor to purchase notes or bonds of the agency~~, which shall thereupon be cancelled,~~ at a price ~~not exceeding:~~

~~(1) if the notes or bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment thereon, or~~

~~(2) if the notes or bonds are not then redeemable, the redemption price applicable on the first date after such purchase upon which the notes or bonds become subject to redemption plus accrued interest to such date~~.

as shall be determined in the economic best interests of the agency.

Sec. H.13. REPEAL

10 V.S.A. § 632 (authorizing the Vermont housing and finance agency to establish reserve funds) is repealed.

Sec. H.14. 10 V.S.A. § 632a is added to read:

§ 632a. RESERVE AND PLEDGED EQUITY FUNDS

(a) The agency may create and establish one or more special funds, herein referred to as "debt service reserve funds" or "pledged equity funds."

(b) The agency shall pay into each debt service reserve fund:

(1) Any moneys appropriated and made available by the state for the purpose of such fund.

(2) Any proceeds of the sale of notes, bonds, or other debt instruments to the extent provided in the resolution or resolutions of the agency authorizing their issuance.

(3) Any other moneys or financial instruments such as surety bonds, letters of credit, or similar obligations which may be made available to the agency for the purpose of such fund from any other source or sources. All moneys or financial instruments held in any debt service reserve fund created and established under this section except as hereinafter provided shall be used, as required, solely for the payment of the principal of the bonds, notes, or other debt instruments secured in whole or in part by such fund or of the payments with respect to the bonds, notes, or other debt instruments specified in any resolution of the agency as a sinking fund payment, the purchase or redemption of the bonds, the payment of interest on the bonds, notes, or other debt instruments, or the payment of any redemption premium required to be paid when the bonds, notes, or other debt instruments are redeemed prior to maturity, or to reimburse the issuer of a liquidity or credit facility, bond insurance, or other credit enhancement for the payment by such party of any of the foregoing amounts on the agency's behalf; provided, however, that the moneys or financial instruments in any such debt reserve fund shall not be drawn upon or withdrawn therefrom at any time in such amounts as would reduce the amount of such funds to less than the debt service reserve requirement established by resolution of the agency for such fund as provided in this section except for the purpose of paying, when due, with respect to bonds secured in whole or in part by such fund, the principal, interest, redemption premiums, and sinking fund payments and of reimbursing, when due, the issuer of any credit enhancement for any such payments made by it, for the payment of which other moneys of the agency are not available. Any income or interest earned by or increment to any debt service reserve fund due to the investment thereof may be transferred by the agency to other funds or

accounts of the agency to the extent it does not reduce the amount of such debt service reserve fund below the debt service reserve requirement for such fund.

(c) The agency shall pay into each pledged equity fund:

(1) Any moneys appropriated and made available by the state for the purpose of such fund.

(2) Any proceeds of the sale of notes, bonds, or other debt instruments to the extent provided in the resolution or resolutions of the agency authorizing the issuance thereof.

(3) Any other moneys or financial instruments such as surety bonds, letters of credit, or similar obligations which may be made available to the agency for the purpose of such fund from any other source or sources. All moneys or financial instruments held in any pledged equity fund created and established under this section except as provided in this section shall be used, as required, solely to provide pledged equity or over-collateralization of any trust estate of the agency to the issuer of a liquidity or credit facility, bond insurance, or other credit enhancement obtained by the agency; provided, however, that the moneys or financial instruments in any pledged such equity fund shall not be drawn upon or withdrawn from such fund at any time in such amounts as would reduce the amount of such funds to less than the pledged equity requirement established by resolution of the agency for such fund as provided in this section except for the purposes set forth in and in accordance with the governing resolution. Any income or interest earned by or increment to any pledged equity fund due to the investment thereof may be transferred by the agency to other funds or accounts of the agency to the extent it does not reduce the amount of such pledged equity fund below the requirement for such fund. Anything in this subdivision to the contrary notwithstanding, upon the defeasance of the bonds, notes, or other debt instruments with respect to which the pledged equity requirement was established, the agency may transfer amounts in such fund to another fund or account of the agency proportionately to the amount of such defeasance; provided that the agency shall repay to the state any amount appropriated by the state pursuant to subsection (f) of this section.

(d) The debt service reserve and pledged equity requirements for any fund established under this section shall be established by resolution of the agency prior to the issuance of any bonds, notes, or other debt instruments secured in whole or in part by a debt service reserve fund or prior to entering into any credit enhancement agreement and shall be the amount determined by the agency to be reasonably required in light of the facts and circumstances of the particular debt issue or credit enhancement; provided that the maximum

amount of the state's commitment with respect to any pledged equity fund shall be determined by the agency at or prior to entering into any credit enhancement agreement related to such pledged equity fund. The agency shall not at any time issue bonds, notes, or other debt instruments secured in whole or in part by a debt service reserve fund or enter into any credit enhancement agreement that requires establishment of a pledged equity fund created and established under this section unless:

(1) the agency at the time of such issuance or execution shall deposit in such fund from the proceeds of such bonds, notes, or other debt instruments or from other sources an amount which, together with the amount then in such fund, will not be less than the requirement established for such fund at that time;

(2) the agency has made a determination at the time of the authorization of the issuance of such bonds, notes, or other debt instruments or at the time of entering into such credit enhancement agreement that the agency will derive revenues or other income from the mortgage loans that secure such bonds, notes, or other debt instruments or that relate to any credit enhancement agreement sufficient to provide, together with all other available revenues and income of the agency other than any amounts appropriated by the state pursuant to this section for the payment or purchase of such bonds, notes, and other debt instruments and reimbursement to the issuer of any credit enhancement the payment of any expected deposits into any pledged equity fund established with respect to such credit enhancement, and the payment of all costs and expenses incurred by the agency with respect to the program or purpose for which such bonds, notes, or other debt instruments are issued; and

(3) the state treasurer or his or her designee has provided written approval to the agency that the agency may issue such bonds, notes, or other debt instruments and enter into any related credit enhancement agreement.

(e) In computing the amount of the debt service reserve or pledged equity funds for the purpose of this section, securities in which all or a portion of such funds shall be invested shall be valued at par if purchased at par or at amortized value, as that term is defined by resolution of the agency, if purchased at other than par.

(f) In order to assure the maintenance of the debt service reserve fund requirement in each debt service reserve fund established by the agency under this section, there may be appropriated annually and paid to the agency for deposit in each fund a sum as shall be certified by the chair of the agency to the governor, the president of the senate, and the speaker of the house as is necessary to establish or restore each such debt service reserve fund to an amount equal to the requirement for each such fund. The chair shall annually,

on or about February 1, make, execute, and deliver to the governor, the president of the senate, and the speaker of the house a certificate stating the sum required to restore each such fund to the amount required by this section, and the sum so certified may be appropriated and, if appropriated, shall be paid to the agency during the then-current state fiscal year. In order to assure the funding of the pledged equity fund requirement in each pledged equity fund established by the agency under this section at the time and in the amount determined at the time of entering into any credit enhancement agreement related to a pledged equity fund, there may be appropriated and paid to the agency for deposit in each fund a sum as shall be certified by the chair of the agency to the governor, the president of the senate, and the speaker of the house as is necessary to establish each pledged equity fund to an amount equal to the amount determined by the agency at the time of entering into any credit enhancement agreement related to a pledged equity fund; provided that the amount requested, together with any amounts previously appropriated pursuant to this subsection for a particular pledged equity fund, shall not exceed the maximum amount of the state's commitment as determined by the agency pursuant to subsection (d) of this section. The chair shall, on or about the February 1 next following the designated date for fully funding a pledged equity fund, make, execute, and deliver to the governor, the president of the senate, and the speaker of the house a certificate stating the sum required to bring each fund to the amount required by this section or to otherwise satisfy the state's commitment with respect to each fund, and the sum so certified may be appropriated and, if appropriated, shall be paid to the agency during the then-current state fiscal year. The combined principal amount of bonds, notes, and other debt instruments outstanding at any time and secured in whole or in part by a debt service reserve fund established under this section and the aggregate commitment of the state to fund pledged equity funds pursuant to this subsection shall not exceed $155,000,000.00 at any time, provided that the foregoing shall not impair the obligation of any contract or contracts entered into by the agency in contravention of the Constitution of the United States. Notwithstanding anything in this section to the contrary, the state's obligation with respect to funding any pledged equity fund shall be limited to its maximum commitment, as determined by the agency pursuant to subsection (d) of this section, and the state shall have no other obligation to replenish or maintain any pledged equity fund.

Sec. H.15. SAVINGS CLAUSE

Nothing in Sec. H.14 of this act shall be construed to impair the obligation of any preexisting contract or contracts entered into by the agency or by the state.

* * * Tax Expenditure Reporting Requirement * * *

Sec. H.16. 32 V.S.A. § 306 is amended to read:

§ 306. BUDGET REPORT

(a) The governor shall submit to the general assembly, not later than the third Tuesday of every annual session, a budget which shall embody his or her estimates, requests and recommendations for appropriations or other authorizations for expenditures from the state treasury. In the first year of the biennium, the budget shall relate to the two succeeding fiscal years. In the second year of the biennium, it shall relate to the succeeding fiscal year.

(b) The governor shall also submit to the general assembly, not later than the third Tuesday of each session of every biennium, a tax expenditure budget which shall embody his or her estimates, requests, and recommendations. The tax expenditure budget shall be provided to the house committee on ways and means and the senate committee on finance, which committees shall review the tax expenditure budget and shall report their recommendations in bill form.

Sec. H.17. 32 V.S.A. § 307 is amended to read:

§ 307. FORM OF BUDGET

(a) The budget shall be arranged and classified so as to show separately the following estimates and recommendations:

(1) Expenses of state administration.

(2) Deficiencies, overdrafts, and unexpended balances in appropriations of former years.

(3) Bonded debt, loans and interest charges.

(4) All requests and proposals for expenditures for new projects, new construction, additions, improvements, and other capital outlay.

(5) With respect to the tax expenditure budget required under subsection 306(b) of this chapter, all requests and proposals for new, amended, or continued tax expenditures as defined in section 312 of this chapter.

* * *

* * * Vermont State-Sponsored Affinity Card Program * * *

Sec. H.18. 32 V.S.A. § 584 is added to read:

§ 584. VERMONT STATE-SPONSORED AFFINITY CARD PROGRAM

(a) The state treasurer is hereby authorized to sponsor and participate in an affinity card program for the benefit of the residents of this state upon his or her determination that such a program is feasible and may be procured at rates

and terms in the best interest of the cardholders. In selecting an affinity card issuer, the treasurer shall consider the issuer's record of investments in the state and shall take into consideration program features which will enhance the promotion of the state-sponsored affinity card, including consumer-friendly terms, favorable interest rates, annual fees, and other fees for using the card.

(b) The treasurer shall consult with other state agencies about potential public purpose projects to be designated for the program and shall allow cardholders to designate that funds be used either to support sustainable agricultural programs, renewable energy programs, state parks and forestland programs, or any combination of these. The net proceeds of the state fees or royalties generated by this program shall be transmitted to the state and shall be deposited in a state-sponsored affinity card fund and subsequently transferred to the designated state programs and purposes as selected by the cardholders. The funds received shall be held by the treasurer until transferred for the purposes directed by participating state-sponsored affinity cardholders in accordance with the trust fund provisions of section 462 of this title.

(c) All program balances at the end of the fiscal year shall be carried forward and shall not revert to the general fund. Interest earned shall remain in the program. The treasurer's annual financial report to the governor and the general assembly shall contain an accounting of receipts, disbursements, and earnings of the state-sponsored affinity card program.

(d) The state shall not assume any liability for lost or stolen credit cards nor any other legal debt owed to the financial institutions.

(e) The state treasurer is authorized to adopt such rules as may be necessary to implement the Vermont state-sponsored affinity card program.

* * * Government Licenses and Employment * * *

Sec. H.19. 32 V.S.A. § 3113 is amended to read:

§ 3113. REQUIREMENT FOR OBTAINING LICENSE ~~OR,~~ GOVERNMENTAL CONTRACT, OR EMPLOYMENT

* * *

(c) Every agency shall, upon request of the commissioner, furnish a list of licenses and contracts issued or renewed by such agency during the reporting period; provided, however, that the secretary of state shall, with respect to certificates of authority to transact business issued to foreign corporations, furnish to the commissioner only those certificates originally issued by the secretary of state during the reporting period and not renewals of such certificates. The lists ~~should~~ shall include the name, address, ~~social security~~

Social Security or federal identification number of such licensee or provider, and such other information as the commissioner may require.

* * *

(i) No agency of the state shall hire any person as a full-time, part-time, temporary, or contractual employee unless the person shall first sign a written declaration under the pains and penalties of perjury that the person is in good standing with respect to or in full compliance with a plan to pay any and all taxes due as of the date such declaration is made. This requirement applies only to the initial hire of an individual into a position that is paid using the state of Vermont federal taxpayer identification number, other than as a county employee, and not to an employee serving in such position or who returns to any position in state government as a result of a placement right or reduction in force recall right.

* * * Unclaimed Property * * *

Sec. H.20. 32 V.S.A. § 3113a is added to read:

§ 3113a. ABANDONED PROPERTY; SATISFACTION OF TAX LIABILITIES

The commissioner may request from the office of the treasurer the names and Social Security or federal identification numbers of owners of unclaimed property prior to notice being given to such persons pursuant to section 1249 of Title 27. If any such owner owes taxes to the state, the commissioner, after notice to the owner, may request and the treasurer shall transfer the abandoned property of such owner to the department for setoff of the taxes owed. The notice shall advise the owner of the action being taken and the right to appeal the setoff if the tax debt is not the owner's debt; or if the debt has been paid; or if the tax debt was appealed within 60 days from the date of the assessment and the appeal has not been finally determined; or if the debt was discharged in bankruptcy.

* * * Mapping Program * * *

Sec. H.21. 32 V.S.A. § 3409 is amended to read:

§ 3409. PREPARATION OF PROPERTY MAPS

Consistent with available resources and pursuant to a memorandum of understanding entered into between the commissioner and the Vermont center for geographic information, the ~~director shall prepare~~ center shall provide regional planning commissions, state agencies, and the general public with orthophotographic maps of the state at a scale appropriate for the production and revision of town property maps. Periodically, such maps shall be revised and updated to reflect land use changes, new settlement patterns and such

additional information as may have become available to the director or the center.

(1) The ~~director~~ center shall supply to the clerk and to the listers or assessors of each town such maps as have been prepared by ~~the director~~ it of the total area of that town. Any map shall be available, without charge, for public inspection ~~both~~ in the office of the ~~Vermont mapping program and in the office of the~~ town clerk to whom the map was supplied.

(2) The ~~director may~~ state of Vermont shall retain the copyright of any map prepared ~~under this section~~ by the Vermont mapping program, and the center and the Vermont mapping program shall jointly own the copyright to any map prepared on or after the effective date of this act.

(3) A person~~,~~ who, without the written authorization of the director and the center, copies, reprints, duplicates, sells, or attempts to sell any map prepared under this chapter shall be fined an amount not to exceed $1,000.00.

(4) At a reasonable charge to be established by the center and the director, the ~~director~~ center shall supply to any person or agency other than a town clerk or lister a copy of any map prepared under this section.

* * * Unorganized Towns and Gores and Unified Towns and Gores * * *

Sec. H.22. 32 V.S.A. § 4408 is amended to read:

§ 4408. HEARING BY BOARD

(a) On the date so fixed by the town clerk and from day to day thereafter, the board of civil authority shall hear such appellants as appear in person or by agents or attorneys, until all such objections have been heard and considered. All objections filed in writing with the board of civil authority at or prior to the time fixed for hearing appeals shall be determined by the board notwithstanding that the person filing the objections fails to appear in person, or by agent or attorney.

(b) Ad hoc board for unorganized towns and gores and unified towns and gores. For purposes of hearing appeals under this subchapter only, the supervisor shall create an ad hoc board composed of:

(1) the supervisor; and

(2) one member from each adjoining municipality's board of civil authority, to be appointed by each respective board of civil authority, representing no fewer than three and no more than five of the adjoining municipalities, at the discretion of the supervisor.

(c) The ad hoc board provided for in subsection (b) of this section shall, for purposes of hearing appeals under this subchapter only, act as a board of civil authority, and an aggrieved party shall have further appeal rights as though the party had appealed to a board of civil authority.

* * * Education Property Tax Information Insert * * *

Sec. H.23. 32 V.S.A. § 5402(b)(1) is amended to read:

(1) The commissioner of taxes shall determine for each municipality the education tax rates under subsection (a) of this section, divided by the municipality's most recent common level of appraisal. The legislative body in each municipality shall then bill each property taxpayer at the homestead or nonresidential rate determined by the commissioner under this subdivision, multiplied by the education property tax grand list value of the property, properly classified as homestead or nonresidential property and without regard to any other tax classification of the property. Tax bills shall show the tax due and the calculation of the rate determined under subsection (a) of this section, divided by the municipality's most recent common level of appraisal, multiplied by the current grand list value of the property to be taxed. ~~Each homestead property tax bill shall include a copy of the document entitled "About Your 20XX Taxes 'The more you spend the more you pay'," updated annually for each town by the commissioner of taxes.~~

* * * Unsigned Declaration of Homestead * * *

Sec. H.24. 32 V.S.A. § 5410(c) is added to read:

(c) In the event that an unsigned but otherwise completed homestead declaration is filed with the declarant's signed state income tax return, the commissioner may treat such declaration as signed by the declarant.

* * * Unrelated Business Income of Nonprofit Corporations * * *

Sec. H.25. 32 V.S.A. § 5811(3) and (18) are amended to read:

(3) "Corporation" means any business entity subject to income taxation as a corporation, and any entity qualified as a small business corporation, under the laws of the United States, with the exception of the following entities which are exempt from taxation under this chapter:

(A) Railroad and insurance~~, surety and guaranty~~ companies~~, mutual or otherwise~~ that are taxed under chapter 211 of this title;

(B) ~~Life, fire and marine insurance companies and mutual life, fire and marine insurance companies;~~

~~(C) Farmers' or other mutual hail, cyclone, fire or life insurance companies, mutual water, mutual or cooperative telephone companies or~~

~~similar organizations of a purely local character, the income of which companies consists solely of assessments, dues and fees collected from the members for the sole purpose of meeting the expenses of the company;~~

~~(D) Farmers', fruit growers', or like associations organized and operated on a cooperative basis:~~

~~(i) for the purpose of processing, preparing for market, handling or marketing the farm products of members or other producers and turning back to them the proceeds of sales, less the necessary marketing, handling and processing expenses, on the basis of either quantity or the value of the products furnished by them;~~

~~(ii) for the purpose of purchasing supplies and equipment for the use of the members and other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses; or~~

~~(iii) for the purpose of processing, preparing for market, or marketing handcraft products as defined in section 991 of Title 11 of members or other producers and turning~~ ~~back to them the proceeds of sales, less the necessary marketing, handling and processing expenses;~~

~~(E)~~ Credit unions organized under chapter 71 of Title 8 and federal credit unions;

~~(F)~~(C) Nonprofit hospital service corporations organized under chapter 123 of Title 8;

~~(G)~~(D) Nonprofit medical service corporations organized under chapter 125 of Title 8~~;~~

~~(H) Free public library corporations organized under chapter 3 of Title 22;~~

~~(I) Cemetery corporations and associations, labor, agricultural or horticultural organizations, fraternal beneficiary societies, no part of the net earnings of which inures to any member or stockholder;~~

~~(J) Sanitary corporations and corporations organized for religious, charitable, scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual member;~~

~~(K) Business organizations, chambers of commerce or boards of trade and area development organizations not organized for profit, no part of the net earnings of which inures to the benefit of any private stockholder or individual member;~~

~~(L) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare;~~

~~(M) Clubs organized and operated exclusively for pleasure and recreation and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual member; or~~

~~(N) Any political organization which is exempt from or does not owe any federal income taxes as provided in the federal internal revenue code~~.

* * *

(18) "Vermont net income" means, for any taxable year and for any corporate taxpayer:

* * *

(D) For a corporation with federal exempt status, "Vermont net income" means all income that is subject to federal income tax, including unrelated business income under Section 511 of the Internal Revenue Code and any income arising from debt-financed property subject to taxation under Section 514 of the Internal Revenue Code.

* * * Annual Update of Links to Federal Law * * *

Sec. H.26. 32 V.S.A. § 5824 is amended to read:

§ 5824. ADOPTION OF FEDERAL INCOME TAX LAWS

The statutes of the United States relating to the federal income tax, as in effect for taxable year ~~2007~~ 2008, but without regard to federal income tax rates under Section 1 of the Internal Revenue Code, are hereby adopted for the purpose of computing the tax liability under this chapter.

* * * Trustee Process * * *

Sec. H.27. 32 V.S.A. § 5892 is amended to read:

§ 5892. ACTION TO COLLECT TAXES; LIMITATIONS

(a) Action may be brought by the attorney general of the state at the instance of the commissioner in the name of the state to recover the amount of the tax liability of any taxpayer, if the action is brought within six years after the date the tax liability was collectible under section 5886 of this title. The action shall be returnable in the county where the taxpayer resides or has a place of business, and if the taxpayer neither resides nor has a place of business in this state, the action shall be returnable in Washington ~~county~~ County.

(b) Notwithstanding sections 3167 and 3168 of Title 12, a motion may be brought by the attorney general of the state at the instance of the commissioner in the name of the state for issuance of trustee process at the same time as an

action is brought under subsection (a) of this section, and, if judgment is granted in that action, the court may proceed immediately to hear and render a decision on the trustee process.

* * * Repeal of Certain Tax Credits * * *

Sec. H.28. REPEAL

(a) 32 V.S.A. § 5930v (providing an income tax credit for eligible venture capital investment) is repealed effective for tax years beginning on or after January 1, 2010.

(b) 32 V.S.A. § 3802(13) (exempting fallout shelters from property tax) is repealed for grand lists prepared for April 1, 2010 and after.

* * * Property Tax Adjustments * * *

Sec. H.29. 32 V.S.A. § 6066a is amended to read:

§ 6066a. DETERMINATION OF PROPERTY TAX ADJUSTMENTS

* * *

(c) The commissioner shall notify the municipality of any claim and refund amounts unresolved by September 15 at the time of final resolution, including adjudication if any; provided, however, that towns will not be notified of any additional adjustment amounts after ~~December 31~~ September 15 of the claim year, and such amounts shall be paid to the claimant by the commissioner.

* * *

(f) Property tax bills.

* * *

(4) If the property tax adjustment amount as described in subsection ~~(b)~~(e) of this section exceeds the property tax, penalties and interest, due for the current and all prior years, the municipality shall refund the excess to the taxpayer, without interest, within 20 days of the first date upon which taxes become due and payable or 20 days after notification by the commissioner of education, whichever is later.

* * *

* * * Clarifying the Homestead Declaration Requirements * * *

Sec. H.30. DECLARATION OF HOMESTEAD

The commissioner of taxes shall ensure that the homestead declaration form clearly informs taxpayers that a homestead declaration must be filed each year regardless of whether or not the taxpayer is applying for an income sensitivity

adjustment and that homestead declarations must be timely filed even if the taxpayer is granted an extension of time to file his or her return.

* * * Estate Tax * * *

Sec. H.31. 32 V.S.A. § 7442a is amended to read:

§ 7442a. IMPOSITION OF A VERMONT ESTATE TAX AND RATE OF TAX

(a) A tax is hereby imposed on the transfer of the Vermont estate of every decedent dying on or after January 1, 2002, who, at the time of death, was a resident of this state. The base amount of this tax shall be a sum equal to the amount ~~by which~~ of the credit for state death taxes allowable to a decedent's estate under Section 2011~~, as in effect on January 1, 2001,~~ of the Internal Revenue Code~~, hereinafter sometimes referred to as the "credit," exceeds the lesser of~~ as in effect on January 1, 2001. This base amount shall be reduced by the lesser of the following:

(1) The total amount of all constitutionally valid state death taxes actually paid to other states; or

(2) A sum equal to the proportion of the credit which the value of the property taxed by other states bears to the value of the decedent's total gross estate for federal estate tax purposes.

(b) A tax is hereby imposed on the transfer of the Vermont estate of every decedent dying on or after January 1, 2002, who, at the time of death, was not a resident of this state. The amount of this tax shall be a sum equal to the proportion of the ~~credit~~ base amount of tax under subsection (a) of this section which the value of Vermont real and tangible personal property taxed in this state bears to the value of the decedent's total gross estate for federal estate tax purposes.

(c) The Vermont estate tax shall not exceed the amount of the tax imposed by Section 2001 of the Internal Revenue Service Code calculated using the applicable credit amount under Section 2010 as in effect on January 1, 2008, with no deduction under Section 2058.

(d) All values shall be as finally determined for federal estate tax purposes.

Sec. H.32. 32 V.S.A. § 7444 is amended to read:

§ 7444. RETURN BY EXECUTOR

In all cases where ~~the federal gross estate at the time of the death of the decedent exceeds the applicable federal exclusion amount or where the estate is subject to federal estate tax~~ a tax is imposed upon the estate under section 7442a of this chapter, the executor shall make a return with respect to the

estate tax imposed by this chapter. If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he or she shall include in his or her return (to the extent of his or her knowledge or information) a description of such part and the name of every person holding a legal or beneficial interest therein. Upon notice from the commissioner such person shall in like manner make a return as to such part of the gross estate. A return made by one of two or more joint fiduciaries shall be sufficient compliance with the requirements of this section. A return made pursuant to this section shall contain a statement that the return is, to the best of the knowledge and belief of the fiduciary, true and correct.

Sec. H.33. 32 V.S.A. § 7445 is amended to read:

§ 7445. COPIES OF FEDERAL ESTATE TAX RETURNS TO BE FILED

It shall be the duty of the executor of every person who may die a resident of Vermont or a nonresident with real estate or tangible personal property having an actual situs in Vermont to file with the commissioner a duplicate of all federal estate tax returns which he or she is required to make to the federal authorities, or, if no federal estate tax return is required, a pro forma federal estate tax return for the estate of a decedent with a Vermont estate tax liability shall be filed with the commissioner.

Sec. H.34. 32 V.S.A. § 7446 is amended to read:

§ 7446. WHEN RETURNS TO BE FILED

The estate tax return required under section 7444 of this title shall be filed ~~at the time the federal estate tax return is required to be filed under the laws of the United States, including any extensions of time for filing granted by the federal authorities~~ within nine months of the death of the decedent. Prior to expiration of the filing period, executors may apply for a six-month extension.

Sec. H.35. 32 V.S.A. § 7475 is amended to read:

§ 7475. ADOPTION OF FEDERAL ESTATE AND GIFT TAX LAWS

The laws of the United States, relating to federal estate and gift taxes as in effect on January 1, ~~2008~~ 2009, are hereby adopted for the purpose of computing the tax liability under this chapter, except:

(1) ~~with~~ the credit for state death taxes shall remain as provided for under ~~Section~~ Sections 2011 and 2604 of the Internal Revenue Code as in effect on January 1, 2001~~,~~;

(2) the applicable credit amount shall remain as provided for under Section 2010 of the Internal Revenue Code~~,~~ as in effect on January 1, 2008; and

(3) ~~without any~~ the deduction for state death taxes under Section 2058 of the Internal Revenue Code shall not apply.

* * * Cigarette and Tobacco Taxes* * *

Sec. H.36. 32 V.S.A. § 7702 is amended to read:

§ 7702. DEFINITIONS

The following words and phrases, as used in this chapter, shall have the following meanings, unless the context otherwise requires:

* * *

(13) "Snuff" means any finely cut, ground, or powdered tobacco that is not intended to be smoked, has a moisture content of no less than 45 percent, and is not offered in individual single-dose tablets or other discrete single-use units.

* * *

(15) "Tobacco products" means ~~cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff, snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweeping of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking~~ any product manufactured from, derived from, or containing tobacco that is intended for human consumption by smoking, chewing, or in any other manner; but shall not include cigarettes, little cigars, roll-your-own tobacco, moist snuff, or new smokeless tobacco as defined in this section.

* * *

(20) "New smokeless tobacco" means any tobacco product manufactured from, derived from, or containing tobacco that is not intended to be smoked, has a moisture content of less than 45 percent, or is offered in individual single-dose tablets or other discrete single-use units.

Sec. H.37. 32 V.S.A. § 7771(c) is amended to read:

(c) The tax imposed under this section shall be at the rate of ~~89.5~~ 112 mills per cigarette or little cigar and for each 0.09 ounces of roll-your-own tobacco. The interest and penalty provisions of section 3202 of this title shall apply to liabilities under this section.

Sec. H.38. 32 V.S.A. § 7811 is amended to read:

§ 7811. IMPOSITION OF TOBACCO PRODUCTS TAX

There is hereby imposed and shall be paid a tax on all tobacco products except roll-your-own tobacco and little cigars taxed under section 7771 of this title possessed in the state of Vermont by any person for sale on and after July 1, 1959 which were imported into the state or manufactured in the state after said date, except that no tax shall be imposed on tobacco products sold under such circumstances that this state is without power to impose such tax, or sold to the United States, or sold to or by a voluntary unincorporated organization of the armed forces of the United States operating a place for the sale of goods pursuant to regulations promulgated by the appropriate executive agency of the United States. Such tax ~~on~~ is intended to be imposed only once upon the wholesale sale of any tobacco ~~products~~ product and shall be at the rate of ~~41~~ 92 percent of the wholesale price for all tobacco products except snuff, which shall be taxed at $1.66 per ounce, or fractional part thereof, ~~and is intended to be imposed only once upon any tobacco product~~ and new smokeless tobacco, which shall be taxed at the greater of $1.66 per ounce or, if packaged for sale to a consumer in a package that contains less than 1.2 ounces of the new smokeless tobacco, at the rate of $1.99 per package. Provided, however, that upon payment of the tax within 10 days, the distributor or dealer may deduct from the tax two percent of the tax due. It shall be presumed that all tobacco products within the state are subject to tax until the contrary is established and the burden of proof that any tobacco products are not taxable hereunder shall be upon the person in possession thereof. Wholesalers of tobacco products shall state on the invoice whether the price includes the Vermont tobacco products tax.

Sec. H.39. 32 V.S.A. § 7814 is amended to read:

§ 7814. FLOOR STOCK TAX

* * *

(b) Cigarettes, little cigars, or roll-your-own tobacco. Notwithstanding the prohibition against further tax on stamped cigarettes, little cigars, or roll-your-own tobacco under section 7771 of this title, a floor stock tax is hereby imposed upon every dealer of cigarettes, little cigars, or roll-your-own tobacco in this state who is either a wholesaler, or a retailer who at 12:01 a.m. ~~o'clock~~ on July 1~~, 2006~~ following enactment of this act, has more than 10,000 cigarettes or little cigars or who has $500.00 or more of wholesale value of roll-your-own tobacco, for retail sale in his or her possession or control. The amount of the tax shall be the amount by which the new tax exceeds the amount of the tax already paid for each cigarette, little cigar, or roll-your-own

tobacco in the possession or control of the wholesaler or retailer at 12:01 a.m. ~~o'clock~~ on July 1~~, 2006~~ following enactment of this act, and on which cigarette stamps have been affixed before July 1~~, 2006~~ following enactment of this act. A floor stock tax is also imposed on each Vermont cigarette stamp in the possession or control of the wholesaler at 12:01 a.m. ~~o'clock~~ on July 1~~, 2006~~ following enactment of this act, and not yet affixed to a cigarette package, and the tax shall be at the rate of ~~$0.60~~ $0.25 per stamp. Each wholesaler and retailer subject to the tax shall, on or before July 25~~, 2006~~ following enactment of this act, file a report to the commissioner in such form as the commissioner may prescribe showing the cigarettes, little cigars, or roll-your-own tobacco and stamps on hand at 12:01 a.m. ~~o'clock~~ on July 1~~, 2006~~ following enactment of this act, and the amount of tax due thereon. The tax imposed by this section shall be due and payable on or before July 25~~, 2006~~ following enactment of this act, and thereafter shall bear interest at the rate established under section 3108 of this title. In case of timely payment of the tax, the wholesaler or retailer may deduct from the tax due two and three-tenths of one percent of the tax. Any cigarettes, little cigars, or roll-your-own tobacco with respect to which a floor stock tax has been imposed under this section shall not again be subject to tax under section 7771 of this title.

* * *

* * * Sales and Use Tax on Digital Downloads * * *

Sec. H.40. 32 V.S.A. § 9701(45), (46), and (47) are added to read:

(45) Transferred electronically: means obtained by the purchaser by means other than tangible storage media.

(46) Specified digital products: means digital audio-visual works, digital audio works, digital books, or ringtones that are transferred electronically.

(A) Digital audio-visual works: means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any;

(B) Digital audio works: means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones;

(C) Digital books: means works that are generally recognized in the ordinary and usual sense as "books."

(D) Ringtones: means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication.

(47) End user: means any person other than a person who received by contract a product transferred electronically for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution, or exhibition of the product, in whole or in part, to another person or persons.

Sec. H.41. 32 V.S.A. § 9771 is amended to read:

§ 9771. IMPOSITION OF SALES TAX

Except as otherwise provided in this chapter, there is imposed a tax on retail sales in this state. The tax shall be paid at the rate of six percent of the sales price charged for but in no case shall any one transaction be taxed under more than one of the following:

* * *

(8) Specified digital products transferred electronically to an end user.

Sec. H.42. 32 V.S.A. § 9772 is amended to read:

§ 9772. AMOUNT OF TAX TO BE COLLECTED

(a) For the purpose of adding and collecting the tax imposed by this chapter, or an amount equal as nearly as possible or practicable to the average equivalent thereof, to be reimbursed to the vendor by the purchaser, the vendor shall ~~use either the calculation in subdivision (1) of this subsection or the formula in subdivision (2). The tax required to be remitted shall be the rate specified in section 9771 of this title multiplied by the total sales price of all the taxable transactions; provided, however, the tax required to be remitted shall be no more than the amount required to be collected. The vendor shall be entitled to retain any amount lawfully collected by the person in excess of the tax imposed by this chapter.~~

~~(1) The~~ multiply the total sales price of all the ~~transaction multiplied~~ transactions taxable by the rate specified in section 9771 of this title carried to the third decimal place and rounded up to the nearest whole cent if the third decimal point is greater than four and rounded down to the nearest whole cent if the third decimal point is four or less. The tax may be computed on either the total invoice amount or on each taxable item.

~~Amount of Sale~~	~~Amount of Tax~~
~~$0.01-0.10~~	~~No Tax~~
~~0.11-0.16~~	~~$.01~~
~~0.17-0.33~~	~~.02~~
~~0.34-0.50~~	~~.03~~
~~0.51-0.66~~	~~.04~~

~~0.67-0.83~~	~~.05~~
~~0.84-1.00~~	~~.06~~

~~In addition to a tax of $0.06 on each full dollar, a tax shall be collected on each part of a dollar in excess of a full dollar in accordance with the following formula:~~

~~$ 0.01-0.16~~	~~$ .01~~
~~0.17-0.33~~	~~.02~~
~~0.34-0.50~~	~~.03~~
~~0.51-0.66~~	~~.04~~
~~0.67-0.83~~	~~.05~~
~~0.84-0.99~~	~~.06~~

* * *

Sec. H.43. 32 V.S.A. § 9773 is amended to read:

§ 9773. IMPOSITION OF COMPENSATING USE TAX

Unless property has already been or will be subject to the sales tax under this chapter, there is imposed on every person a use tax at the rate of six percent for the use within this state, except as otherwise exempted under this chapter:

* * *

(2) Of any tangible personal property manufactured, processed or assembled by the user, if items of the same kind of tangible personal property are offered for sale by him or her in the regular course of business, but the mere storage, keeping, retention or withdrawal from storage of tangible personal property or the use for demonstrational or instructional purposes of tangible personal property by the person who manufactured, processed or assembled such property shall not be deemed a taxable use by him or her; and for purposes of this section only, the sale of electrical power generated by the taxpayer shall not be considered a sale by him or her in the regular course of business if at least 60 percent of the electrical power generated annually by the taxpayer is used by the taxpayer in his or her trade or business; ~~and~~

(3) Of any tangible personal property, however acquired, where not acquired for purposes of resale, upon which any taxable services described in subdivision 9771(3) of this title have been performed; and

(4) Specified digital products transferred electronically to an end user.

* * * Sales Tax on Spirituous Liquor * * *

Sec. H.44. 32 V.S.A. § 9743(1) is amended to read:

(1) The state of Vermont, or any of its agencies, instrumentalities, public authorities, public corporations (including a public corporation created pursuant to agreement or compact with another state) or political subdivisions when it is the purchaser, user or consumer, or when it is a vendor of services or property of a kind not ordinarily sold by private persons, or when it charges for admission to any amusement; except that a performance jointly produced or presented by it and another person shall not be exempt from amusement tax unless it meets the joint production requirements imposed on a qualified organization under subdivision (3)(B) of this section and sales of alcoholic beverages shall not be exempt from sales tax.

* * * Returns Upon Business Closing * * *

Sec. H.45. 32 V.S.A. § 9775 is amended to read:

§ 9775. RETURNS

(a) Except as otherwise provided in this section, every person required to collect or pay tax under this chapter shall, where the sales and use tax liability under this chapter for the immediately preceding calendar year has been (or would have been in cases when the business was not operating for the entire year) $500.00 or less, pay the tax imposed by this chapter in one annual payment on or before the 25th day of January of each year. Every person required to collect or pay tax under this chapter shall, where the sales and use tax liability under this chapter for the immediately preceding calendar year has been (or would have been in cases when the business was not operating for the entire year) more than $500.00 but less than $2,500.00, pay the tax imposed by this chapter in quarterly installments on or before the 25th day of the calendar month succeeding the quarter ending on the last day of March, June, September, and December of each year. In all other cases, except as provided in ~~subsection~~ subsections (e) and (g) of this section, the tax imposed by this chapter shall be due and payable monthly on or before the 25th (23rd of February) day of the month following the month for which the tax is due. Payment by electronic funds transfer does not affect the requirement to file returns. The return of a vendor of tangible personal property shall show such information as the commissioner may require.

* * *

(g) A person required to report sales and use tax annually who cancels his, her, or its sales and use tax account shall file a final return not later than 60 days after such cancellation.

* * * Land Gains Tax * * *

Sec. H.46. 32 V.S.A. § 10009(b) is amended to read:

(b) All the administrative provisions of chapter 151 of this title, including those relating to the collection and enforcement by the commissioner of the withholding tax and the income tax, and of chapter 103, including those relating to interest and penalty charges, shall apply to the tax imposed by this chapter.

* * * Capital Gains Exemption and Partial Exclusion of Deduction for State Income Taxes * * *

Sec. H.47. 32 V.S.A. § 5811(21) is amended to read:

(21) "Taxable income" means federal taxable income determined without regard to Section 168(k) of the Internal Revenue Code and:

(A) Increased by the following items of income (to the extent such income is excluded from federal adjusted gross income):

(i) interest income from non-Vermont state and local obligations; ~~and~~

(ii) dividends or other distributions from any fund to the extent they are attributable to non-Vermont state or local obligations; and

(iii) the amount in excess of $5,000.00 of state and local income taxes deducted from federal adjusted gross income for the taxable year, but in no case in an amount that will reduce total itemized deductions below the standard deduction allowable to the taxpayer; and

(B) Decreased by the following items of income (to the extent such income is included in federal adjusted gross income):

(i) income from United States government obligations; ~~and~~

(ii) ~~40 percent of adjusted net capital gain income as defined in Section 1(h) of the Internal Revenue Code, but the total amount of decrease under this subdivision (ii) shall not exceed 40 percent of federal taxable income~~ the first $5,000.00 of adjusted net capital gain income as defined in Section 1(h) of the Internal Revenue Code; and

(iii) recapture of state and local income tax deductions not taken against Vermont income tax.

* * * Deduction for Vehicle Purchase Sales Tax * * *

Sec. H.47b. INCLUSION IN INCOME OF AMOUNT OF DEDUCTION TAKEN FOR SALES AND USE TAX ON PURCHASE OF NEW VEHICLE

(a) For taxable year 2009 only, a taxpayer shall increase his or her taxable income calculated pursuant to Section 5811(21) by the amount of any deduction taken pursuant to Section 164(a)(6) of the Internal Revenue Code.

(b) The $100,000 appropriation in Sec. B 1101 (a) (10) of the this act is to fund the joint legislative government accountability committee established in Sec. 5 of No. 206 of the Acts of the 2008 General Assembly (adj. sess.) for the purpose of hiring consultants to make recommendations for further efficiencies in state government.

* * * Reduction of Income Tax Rates * * *

Sec. H.48. REDUCTION OF PERSONAL INCOME TAX RATES

For taxable year 2009 and subsequent taxable years, income tax rates under 32 V.S.A. § 5822, after taking into account any inflation adjustments to taxable income as required under subdivision 5822(b)(2), shall be as follows:

For taxable income which, without the passage of this act, would be subject to tax at the following rate:	That taxable income shall instead be taxed at the following rate:
3.60%	3.55%
7.20%	6.80%
8.50%	7.80%
9.00%	8.80%
9.50%	8.95%

Sec. H.48a. STATUTORY REVISION

The legislative council is directed to revise the Vermont Statutes Annotated to reflect the income tax rate changes in Sec. H.48 of this act.

Sec. H.49. HEALTH CARE REFORM PROPERTY TAX EXEMPTION

In fiscal years 2010 and 2011, the following two properties shall be exempt from education property tax under chapter 135 of Title 32: Buildings and land owned and occupied by a health, recreation, and fitness organization which is exempt under Section 501(c)(3) of the Internal Revenue Code, the income of which is entirely used for its exempt purpose, one of which is designated by the Springfield Hospital and the other designated by the North Country Hospital, to promote exercise and healthy lifestyles for the community and to

serve citizens of all income levels in this mission. This exemption shall apply, notwithstanding the provisions of subdivision 3832(7) of Title 32.

* * * Digital Business Entities * * *

Sec. H.50. LEGISLATIVE INTENT

The purpose of the following sections of this act concerning digital business entities is to build on the momentum created by Secs. 74 through 100 of No. 190 of the Acts of the 2007 Adj. Sess. (2008), which provided for Vermont companies to conduct much of their statutorily required corporate affairs using electronic media, including e-mail, facsimile, and web-based filings.

Sec. H.51. 32 V.S.A. § 5811(26) is added to read:

(26) "Digital business entity" means a business entity which, during the entire taxable year:

(A) was not a member of an affiliated group or engaged in a unitary business with one or more members of an affiliated group that is subject to Vermont income taxation; did not have any Vermont property, payroll, or sales and did not perform any activities in this state which would constitute doing business for purposes of income taxation except activities described in subdivisions (15)(C)(i) (fulfillment operations) and (C)(ii) (web page or Internet site maintenance) of this section; and

(B) used mainly computer, electronic, and telecommunications technologies in its formation and in the conduct of its business meetings, in its interaction with shareholders, members, and partners, in executing any other formal requirements.

Sec. H.52. 32 V.S.A. § 5832(2) is amended to read:

(2)(A) $75.00 for small farm corporations. "Small farm corporation" means any corporation organized for the purpose of farming, which during the taxable year is owned solely by active participants in that farm business and receives less than $100,000.00 gross receipts from that farm operation, exclusive of any income from forest crops; or

(B) An amount determined in accordance with section 5832a of this title for a corporation which qualifies as and has elected to be taxed as a digital business entity for the taxable year; or

(C) $250.00 for all other corporations.

Sec. H.53. 32 V.S.A. § 5832a is added to read:

§ 5832a. DIGITAL BUSINESS ENTITY FRANCHISE TAX

(a) There is imposed upon every business entity which qualifies as and has elected to be taxed as a digital business entity an annual franchise tax equal to:

(1) the greater of 0.02 percent of the current value of the tangible and intangible assets of the company or $250.00, but in no case more than $500,000.00; or

(2) where the authorized capital stock does not exceed 5,000 shares, $250.00; where the authorized capital stock exceeds 5,000 shares but is not more than 10,000 shares, $500.00; and the further sum of $250.00 on each 10,000 shares or part thereof.

(b) In no case shall the tax on any corporation for a full taxable year, whether computed under subdivision (a)(1) or (2) of this section, be more than $500,000.00 or less than $250.00.

(c) In the case of a corporation that has not been in existence during the whole year, the amount of tax due, at the foregoing rates and as provided, shall be prorated for the portion of the year during which the corporation was in existence.

(d) In the case of a corporation changing during the taxable year the amount of its authorized capital stock, the total annual franchise tax payable at the foregoing rates shall be arrived at by adding together the franchise taxes calculated pursuant to subdivision (a)(2) of this section as prorated for the several periods of the year during which each distinct authorized amount of capital stock was in effect.

(e) For the purpose of computing the taxes imposed by this section, the authorized capital stock of a corporation shall be considered to be the total number of shares that the corporation is authorized to issue without regard to whether the number of shares that may be outstanding at any one time is limited to a lesser number.

(f) The franchise tax under this section shall be reported and paid in the same manner as the tax under subdivision 5832(2)(B) of this title; provided, however, that an electing corporation shall also provide the commissioner with a copy of its federal tax return.

Sec. H.54. 32 V.S.A. § 5838 is added to read:

§ 5838. DIGITAL BUSINESS ENTITY ELECTION

A corporation shall not be subject to the tax imposed by section 5832 of this title if the corporation qualifies as and elects to be taxed as a digital business entity for the taxable year.

Sec. H.55. REPORT TO THE GENERAL ASSEMBLY ON DIGITAL BUSINESS ENTITY INCOME

Beginning in 2011 and every year thereafter, by January 15, the commissioner of taxes shall report to the house committee on ways and means and to the senate committee on finance on the amount of income reported to date to the department by businesses electing to be taxed as digital businesses, an estimate of the amount of income taxes exempted as a result, and details as to the size of businesses reporting. The committees shall review the report and make their recommendation to the general assembly as to whether to continue the taxpayer option of a digital business election and whether to extend the option to pass-through entities. If the digital business election is repealed, the commissioner's reporting requirement of this section shall no longer apply.

* * * Blue Ribbon Tax Structure Commission * * *

Sec. H.56. BLUE RIBBON TAX STRUCTURE COMMISSION

(a) Composition of commission. There is hereby established a blue ribbon tax structure commission composed of three to five members to be selected as follows:

(1) The speaker of the house, the president pro tempore of the senate, and the governor shall each appoint one member; and

(2) The three members appointed pursuant to subdivision (1) of this subsection may select one or two additional members.

(b) The commission shall be appointed as soon as possible after the effective date of this act. The panel shall elect a chair and a vice chair from among its members.

(c) Purpose and goals. The commission shall prepare a structural analysis of the state's revenue system and offer recommendations for improvements and modernization and provide a long-term vision for the tax structure. The commission shall have as its goal a tax system that provides sustainability, appropriateness, and equity. For guidance, the commission may use the Principles of a High-Quality State Revenue System as prepared by the National Conference of State Legislatures as of June 2007. A high-quality revenue system:

(1) Comprises elements that are complementary, including the finances of both state and local governments.

(2) Produces revenue in a reliable manner. Reliability involves stability, certainty, and sufficiency.

(3) Relies on a balanced variety of revenue sources.

(4) Treats individuals equitably. Minimum requirements of an equitable system are that it imposes similar tax burdens on people in similar circumstances, it minimizes regressivity, and it minimizes taxes on low income individuals.

(5) Facilitates taxpayer compliance. It is easy to understand and minimizes compliance costs.

(6) Promotes fair, efficient, and effective administration. It is as simple as possible to administer, raises revenue efficiently, is administered professionally, and is applied uniformly.

(7) Is responsive to interstate and international economic competition.

(8) Minimizes its involvement in spending decisions and makes any such involvement explicit.

(9) Is accountable to taxpayers.

(d) The blue ribbon commission shall receive technical support from the department of taxes, the legislative joint fiscal office, and consultants. From data provided from the tax department the following reports will be provided to the commission:

(1) Changes in personal income, arranged by decile, over the last five years;

(2) House site and homestead value arranged by adjusted gross income (AGI) and, where available, household income;

(3) Gross and net school taxes paid, arranged by adjusted gross income and, where available, by household income.

(e) The joint fiscal office with the assistance of the legislative council and the department of taxes may contract with one or more consultants to provide assistance with achieving the goals for the commission. The consultants shall have extensive experience with state tax systems and shall have participated in at least one other study of a state tax system.

(f) Work Plan.

(1) Year 1 – Examine Vermont's income tax structure and analyze, among other things, whether the principles of sustainability, appropriateness, and equity would be better met by using adjusted gross income rather than federal taxable income. This shall include an examination of personal exemptions, deductions, brackets, credits, and other adjustments to income. The commission shall prepare a work plan by September 15, 2009, preliminary findings by November 1, 2009, and a final report due January 1, 2010 submitted to the governor, the speaker, the president pro tempore, the house committee on ways and means and the senate committee on finance.

(2) Year 2 – The commission, by February 1, 2010, shall also present a proposed work plan which shall include a delivery date prior to February 1, 2011 for examining tax expenditures, fees, consumption taxes, and business taxes. The work plan shall include examining whether fees are being used to fund general responsibilities of government and whether such use is sustainable, appropriate, and equitable. The work plan shall include an analysis of the process for reviewing tax expenditures under section 312 of Title 32.

(g) Of the funds appropriated to the joint fiscal office, $200,000 is for the purpose of hiring consultants and other support for the commission.

(h) Non-legislative members of the commission shall be entitled to compensation as provided under 32 V.S.A. § 1010. Any legislative members of the commission shall be entitled to the same per diem compensation and reimbursement of necessary expenses for attendance at a meeting when the general assembly is not in session as provided to members of standing committees under 2 V.S.A. § 406.

* * * Financing and Effectiveness of the Vermont Education System * * *

SEC. H.57. FINANCING AND EFFECTIVENESS OF THE VERMONT EDUCATION SYSTEM IN THE 21ST CENTURY; COMMITTEE

(a) Findings.

(1) The future of Vermont's economic and social well-being is dependent on a strong, efficient public education system.

(2) Pressures on Vermont's education funding system, the state's general fund, and the Vermont economy as a whole make it increasingly difficult to ensure that Vermonters will continue to have access to the high quality education they have come to expect.

(b) Committee created. There is created a committee to examine potential improvements to the structure and funding of the Vermont educational system in light of the state's limited financial resources. When performing the duties

assigned to it, the committee shall consider the work of the committee convened by the governor, the speaker of the house, and the president pro tempore during the 2009 legislative session. Among other issues, the committee shall:

(1) Examine the role and the effectiveness of the policy-making, management, and administrative structure that creates and implements Vermont education policy, including consideration of the functions of the legislature, the governor, the state board of education, the department of education, supervisory unions, local school boards, parents, students, community members, and other entities and individuals.

(2) Consider the types of decisions the identified entities and individuals make and how these decisions influence decisions made by others, with a focus on how they shape educational outcomes and drive funding requirements.

(3) Identify and evaluate the long-range sustainability of current and potential funding sources and mechanisms.

(4) Determine whether and to what extent each identified funding source and mechanism advances the mission of Vermont's educational system, including whether it complies with Brigham v. State, 166 Vt. 246 (1997).

(c) Committee membership. The committee shall have 15 members who shall be:

(1) The chairs of the house committees on education, on appropriations, and on ways and means or their designees, plus one additional member of the house of representatives appointed by the speaker of the house.

(2) The chairs of the senate committees on education, on appropriations, and on finance or their designees, plus one additional member of the senate appointed by the committee on committees.

(3) The commissioner of education or the commissioner's designee.

(4) Six members from constituencies such as the business community, superintendents, school boards, teachers, parents, and community members to be selected by July 15, 2009 as follows: two by the speaker of the house, two by the committee on committees, and two by the governor.

(d) Committee's overall composition. Persons making appointments under subsection (c) of this section shall consider the overall composition of the committee and shall attempt to ensure both that committee members have a broad understanding of the current education funding system and that the committee includes both supporters and critics of the system.

(e) Initial meeting. The commissioner of education shall convene the first meeting of the committee on or before July 30, 2009. The committee shall select a chair from among its members at the first meeting.

(f) Committee staff. The department of education and the joint fiscal office shall provide administrative and fiscal services to the committee. The committee shall rely upon the legislative council to draft all proposed legislation.

(g) Compensation for legislators. For attendance at a meeting when the general assembly is not in session, legislative members of the committee shall be entitled to compensation for services and reimbursement of expenses as provided in 2 V.S.A. § 406(a).

(h) Compensation for private citizens. Committee members who are not full-time state employees shall be entitled to expenses as provided in 32 V.S.A. § 1010 from money appropriated for this purpose by the general assembly.

(i) Number of meetings authorized. The committee shall meet no more than six times unless specifically authorized by the speaker of the house and the president pro tempore of the senate.

(j) Report. On or before December 15, 2009, the committee shall present detailed written findings and recommendations to the members of the house and senate committees on education, the house committee on ways and means, the senate committee on finance, and the governor. It shall provide draft legislation designed to implement its recommendations to the same parties by January 15, 2010.

Sec. H.58. EFFECTIVE DATES

This section. and Secs. H.1–H.57 of this act shall take effect upon passage, except:

(1) Sec. H.22 (establishing an ad hoc board of civil authority for unorganized towns and gores and unified towns and gores) shall apply to appeals filed on or after July 1, 2009.

(2) Sec. H.23 (repealing tax information insert) shall apply to homestead property tax bills mailed in 2009 and after.

(3) Sec. H.24 (unsigned declaration of homestead) shall apply to declarations filed in calendar year 2010 and after.

(4) Sec. H.25 (taxation of unrelated business income of nonprofit corporations) shall take effect for taxable years beginning on and after January 1, 2010.

(5) Sec. H.26 (update of link to federal income tax laws) shall apply to taxable years beginning on and after January 1, 2008.

(6) Sec. H.29 (deadline for notice from department to towns regarding adjustment amounts) shall apply to homestead declarations filed in 2009 and after.

(7) Secs. H.31–H.35 (estate taxes) shall apply to estates of individuals dying on or after January 1, 2009.

(8) Secs. H.36–H.39 (tax on cigarettes and other tobacco products) shall take effect on July 1, 2009.

(9) Secs. H.40–H.43 (sales and use tax on digital downloads) shall take effect on July 1, 2009.

(10) Sec. H.44 (sales tax on spirituous liquor) shall take effect on July 1, 2009).

(11) Sec. H.45 (cancellation of sales and use tax account) shall take effect with respect to cancellations on or after July 1, 2009.

(12) Sec. H.47 (capital gains exemption and state income tax deduction) shall apply to taxable years beginning on or after January 1, 2009.

(13) Secs. H.50–H.55 (digital business entities) shall take effect on January 1, 2010.

And by renumbering all of the sections of the bill to be numerically correct (including internal references) and adjusting all of the totals to be arithmetically correct.

SUSAN J. BARTLETT
RICHARD W. SEARS, JR.
DIANE B. SNELLING

Committee on the part of the Senate

MARTHA P. HEATH
MARK LARSON

Committee on the part of the House

Thereupon, the question, Shall the Senate accept and adopt the report of the Committee of Conference?, was decided in the affirmative on a roll call, Yeas 18, Nays 10.

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

Roll Call

Those Senators who voted in the affirmative were: Bartlett, Campbell, Carris, *Choate, Cummings, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Mazza, Miller, Nitka, Sears, Shumlin, Snelling, Starr, White.

Those Senators who voted in the negative were: Ashe, Brock, Doyle, Flanagan, MacDonald, Maynard, McCormack, Mullin, Racine, Scott.

Those Senators absent and not voting were: Ayer, Lyons.

*Senator Choate explained his vote as follows:

"Mr. President:

"I've said many times that I was not in favor of raising more revenues. However, I believe the conference committee has done due diligence to make this a balanced package. Because it holds facilities open, tries to preserve some jobs and spreads the burden evenly, I support this measure."

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

H. 427.

Pending entry on the Calendar for notice, on motion of Senator Shumlin, the rules were suspended and the report of the Committee of Conference on House bill entitled:

An act relating to making miscellaneous amendments to education law.

Was taken up for immediate consideration.

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

To the Senate and House of Representatives:

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

H. 427. An act relating to making miscellaneous amendments to education law.

Respectfully reports that it has met and considered the same and recommends that the Senate recede from its proposal of amendment and that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Cross-References * * *

Sec. 1. 16 V.S.A. § 11(a)(30) is amended to read:

(30) "Hazing" means any act committed by a person, whether individually or in concert with others, against a student in connection with pledging, being initiated into, affiliating with, holding office in, or maintaining membership in any organization which is affiliated with an educational institution; and which is intended to have the effect of, or should reasonably be expected to have the effect of, humiliating, intimidating or demeaning the student or endangering the mental or physical health of a student. Hazing also includes soliciting, directing, aiding, or otherwise participating actively or passively in the above acts. Hazing may occur on or off the campus of an educational institution. Hazing shall not include any activity or conduct that furthers legitimate curricular, extracurricular, or military training program goals, provided that:

(1) the goals are approved by the educational institution; and

(2) the activity or conduct furthers the goals in a manner that is appropriate, contemplated by the educational institution, and normal and customary for similar programs at other educational institutions.

The definitions of ~~educational institution, organization, pledging, and student~~ "educational institution," "organization," "pledging," and "student" shall be the same as those in section ~~151~~ 140a of this title.

* * * Audits and Auditors * * *

Sec. 2. 16 V.S.A. § 261a(10) is amended to read:

(10) submit to the town auditors of each member school district or to the person authorized to perform the duties of an auditor for the school district, on or before January 15 of each year, a summary report of financial operations of the supervisory union for the preceding school year, an estimate of its financial operations for the current school year, and a preliminary budget for the supervisory union for the ensuing school year. This requirement shall not apply to a supervisory district. For each school year, the report shall show the actual or estimated amount ~~of state aid for special education awarded to~~ expended by the supervisory union for special education-related services, including ~~the amount generated by, and the amount allocated to~~:

(A) A breakdown of that figure showing the amount paid by each school district within the supervisory union.

(B) A summary of the services provided by the supervisory union's use of the expended funds.

Sec. 3. 16 V.S.A. § 323 is amended to read:

§ 323. AUDIT BY PUBLIC ACCOUNTANT

Annually, the supervisory union board shall employ a public accountant to audit the financial statement of the supervisory union. The audit shall be conducted in accordance with generally accepted government auditing standards, including the issuance of a report of internal controls over financial reporting that shall be provided to recipients of the financial statements. Any annual report of the supervisory union to member districts shall include notice that an audit has been performed.

Sec. 4. 16 V.S.A. § 563(17) is amended to read:

(17) Shall employ a public accountant at least once in each period of three years to audit the financial statements of the school district. However, if the town has voted to eliminate the office of auditor under section 2651b of Title 17, the school board shall employ a public accountant annually to audit the financial statements of the school district pursuant to that section. Audits performed by public accountants shall be conducted in accordance with generally accepted government auditing standards, including the issuance of a report of internal controls over financial reporting that shall be provided to recipients of the financial statements. The school board may authorize an audit in conjunction with another school district or a supervisory union.

Sec. 5. 17 V.S.A. § 2647 is amended to read:

§ 2647. INCOMPATIBLE OFFICES

(a) An auditor shall not be town clerk, town treasurer, selectman, first constable, collector of current or delinquent taxes, trustee of public funds, town manager, road commissioner, water commissioner, sewage system commissioner, sewage disposal commissioner, or town district school director; nor shall a spouse of or any person assisting any of these officers in the discharge of ~~their~~ official duties be eligible to hold office as auditor. A selectman or school director shall not be first constable, collector of taxes, town treasurer, auditor, or town agent. A selectman shall not be lister. A town manager shall not hold any elective office in the town or town school district. Election officers at local elections shall be disqualified as provided in section 2456 of this title.

(b) Notwithstanding subsection (a) of this section, if a school district prepares and reports its budget independently from the budget of the town and the school district is audited by an independent public accountant, a person shall be eligible to hold office as auditor even if that person's spouse holds office as a school director.

* * * School District Budgets * * *

Sec. 6. 16 V.S.A. § 563(11)(B)(ii) is amended to read:

(ii) ~~Form of vote.~~ The ballot shall be in the following form:

~~"School Budget Question #1:~~

~~Shall the voters of the School District approve a total budget in the amount of [$], which includes the Maximum Inflation Amount of education spending?~~

~~"School Budget Question #2:~~

~~If Question #1 is approved, shall the voters of the School District also approve additional education spending of [$]?"~~

"The total proposed budget of $ is the amount determined by the school board to be necessary to support the school district's educational program. State law requires the vote on this budget to be divided because (i) the school district's spending per pupil last year was more than the statewide average and (ii) this year's proposed budget is greater than last year's budget adjusted for inflation.

"Article #1 (School Budget):

Part A. Shall the voters of the school district authorize the school board to expend $, which is a portion of the amount the school board has determined to be necessary?

Part B. If Part A is approved by the voters, shall the voters of the school district also authorize the school board to expend $, which is the remainder of the amount the school board has determined to be necessary?"

Sec. 7. EFFECTS ON EXISTING LAW

Nothing in Sec. 6 of this act shall repeal or amend the application of the provisions of Sec. 6 of No. 82 of the Acts of 2007 to 16 V.S.A. § 563(11).

Sec. 8. 16 V.S.A. § 563(11)(C) is amended to read:

(C) At a school district's annual or special meeting, the electorate may vote to provide notice of availability of the school budget required by this subdivision to the electorate in lieu of distributing the budget. If the electorate of the school district votes to provide notice of availability, it must specify how notice of availability shall be given, and such notice of availability shall be

provided to the electorate at least 30 days before the district's annual meeting. The proposed budget shall be prepared and distributed at least ten days before a sum of money is voted on by the electorate. Any proposed budget shall show the following information in a format prescribed by the commissioner of education:

(i) all revenues from all sources, and expenses, including as separate items any assessment for ~~a union school district or~~ a supervisory union of which it is a member, and any tuition to be paid to a technical center;

(ii) the specific amount of any deficit incurred in the most recently closed fiscal year and how the deficit was or will be remedied;

(iii) the anticipated homestead tax rate and the percentage of household income used to determine income sensitivity in the district as a result of passage of the budget~~;~~ including those portions of the tax rate attributable to ~~the union school and~~ supervisory union assessments; and

(iv) ~~in the case of a school district:~~

~~(I) other than a union school district,~~ the definition of "education spending," the number of pupils and number of equalized pupils in the school district, and the district's education spending per equalized pupil in the proposed budget and in each of the prior three years~~; or~~

~~(II) in the case of a union school district, the amount of the assessment to each of the member districts and the amount of the assessments per equalized pupil in the proposed budget and for the past three years~~.

Sec. 9. 16 V.S.A. § 563(10) is amended to read:

(10) Shall prepare and distribute to the electorate, not less than ten days prior to the district's annual meeting, a report of the conditions and needs of the district school system, including the superintendent's, supervisory union treasurer's, and school district treasurer's annual report for the previous school year, the balance of any reserve funds established pursuant to 24 V.S.A. § 2804, a summary of the town auditor's report as to fiscal years which are audited by town auditors as required by 24 V.S.A. § 1681, a summary of the public accountant's report as to fiscal years which are audited by a public accountant, and a notice of the time and place where the full report of the town auditor or the public accountant will be available for inspection and copying at cost. Each town auditor's and public accountant's report shall comply with 24 V.S.A. § 1683(a). At a school district's annual meeting, the electorate may vote to provide notice of availability of the report required by this subdivision to the electorate in lieu of distributing the report. If the electorate of the school district votes to provide notice of availability, it must specify how notice of

availability shall be given, and such notice of availability shall be provided to the electorate at least 30 days before the district's annual or special meeting.

* * * Union Districts; Consolidation * * *

Sec. 10. 16 V.S.A. § 706f is amended to read:

§ 706f. CONTENTS OF WARNING ON VOTE TO ESTABLISH THE UNION

The warning for each school district meeting shall contain two articles in substantially the following form:

WARNING

The voters of the town (city, union, etc.) school district of are hereby notified and warned to meet at on the day of , , to vote by Australian ballot between the hours of , at which time the polls will open, and, at which time the polls will close, upon the following articles of business:

Article I

Shall the town (city, union, etc.) school district of which the State Board of Education has found (necessary or advisable) to include in the proposed union school district, join with the school districts of and , which the State Board of Education has found necessary to include in the proposed union school district, and the school districts of and, which the State Board of Education has found advisable to include in the proposed union school district, for the purpose of forming a union school district, as provided in Title 16, Vermont Statutes Annotated, upon the following conditions and agreements:

(a) Grades. The union school district shall operate and manage a school offering instruction in grades _____ through _____.

* * *

Sec. 11. 16 V.S.A. § 721a(b) is amended to read:

(b) When a majority of the voters of a school district present and voting at a school district meeting duly warned for that purpose votes to withdraw from a union school district the vote shall be certified by the clerk of the school district to the secretary of state who shall record the certificate in his or her office and give notice of the vote to the commissioner of education and to the other member districts of the union school district. ~~Those~~ Within 90 days after receiving notice, those member districts shall vote by Australian ballot on the same day during the same hours whether to ratify withdrawal of the member district. Withdrawal by a member district shall be effective only if approved

by an affirmative vote of each of the other member school districts within the union school district.

Sec. 12. SCHOOL DISTRICT CONSOLIDATION

School districts that have entered into a contract to operate schools jointly pursuant to 16 V.S.A. chapter 11, subchapter 1, shall be eligible through June 30, 2010 for any transition aid that is available under Sec. 168a of No. 122 of the Acts of the 2003 Adj. Sess. (2004) as amended by Sec. 23 of No. 66 of the Acts of 2007 under the same terms and conditions as a union, unified union, or interstate school district.

* * * Tuition; Designation; Maintain School * * *

Sec. 13. 16 V.S.A. chapter 21 is amended to read:

CHAPTER 21. MAINTENANCE OF PUBLIC SCHOOLS

§ 821. SCHOOL DISTRICT TO MAINTAIN PUBLIC ELEMENTARY SCHOOLS OR PAY TUITION

(a) Elementary school. Each school district shall provide, furnish, and maintain one or more approved schools within the district in which elementary education for its pupils is provided unless:

(1) The electorate authorizes the school board to provide for the elementary education of the pupils residing in the district by paying tuition in accordance with law to one or more public elementary schools in one or more school districts.

* * *

(b) Kindergarten program. Each school district shall provide public kindergarten education within the district. However, a school district may pay tuition for the kindergarten education of its pupils:

(1) at one or more public schools under subdivision (a)(1) of this section; or

(2) if the electorate authorizes the school board to pay tuition to one or more approved independent schools ~~approved by the state board~~ or independent schools meeting school quality standards, but only if the school district did not operate a kindergarten on September 1, 1984, and has not done so afterward.

(c) Notwithstanding subsection (a) of this section, a school board without previous authorization by the electorate may pay tuition for elementary pupils who reside near a public elementary school in an adjacent district upon request of the pupil's parent or guardian, if in the board's judgment the pupil's education can be more conveniently furnished there due to geographic

considerations. ~~The board's decision shall be final in regard to the institution the pupil may attend~~. Within 30 days of the board's decision, a parent or guardian who is dissatisfied with the decision of the board under this subsection may request a determination by the commissioner, who shall have authority to direct the school board to pay all, some, or none of the pupil's tuition and whose decision shall be final.

(d) Notwithstanding subsection (a) of this section, the electorate of a school district that does not maintain an elementary school may grant general authority to the school board to pay tuition for an elementary ~~pupils~~ pupil at an approved independent ~~nonresidential~~ elementary ~~schools~~ school upon ~~request of a~~ notice given by the pupil's parent or legal guardian~~, if in the board's judgment the pupil's educational interests can be better served there. The board's decision shall be final in regard to the institution the pupil may attend~~ before April 15 for the next academic year; provided the board shall pay tuition for the pupil in an amount not to exceed the least of:

(1) The statewide average announced tuition of Vermont union elementary schools.

(2) The average per-pupil tuition the district pays for its other resident elementary pupils in the year in which the pupil is enrolled in the approved independent school.

(3) The tuition charged by the approved independent school in the year in which the pupil is enrolled.

§ 822. SCHOOL DISTRICTS TO MAINTAIN HIGH SCHOOLS OR PAY TUITION

(a) Each school district shall provide, furnish, and maintain one or more approved high schools in which high school education is provided for its pupils unless:

(1) The electorate authorizes the school board to close an existing high school and to provide for the high school education of its pupils by paying tuition in accordance with law. Tuition for its pupils shall be paid to ~~an approved~~ a public ~~or~~ high school, an approved independent high school, or an independent school meeting school quality standards, to be selected by the parents or guardians of the pupil, within or without the state; or

* * *

(c) The school board may both maintain a high school and furnish high school education by paying tuition to a public school as in the judgment of the board may best serve the interests of the pupils, or to an approved independent school or an independent school meeting school quality standards if the board

judges that a pupil has unique educational needs that cannot be served within the district or at a nearby public school. Its judgment shall be final in regard to the institution the pupils may attend at public cost.

§ 823. ELEMENTARY TUITION

* * *

(b) The tuition paid to an approved independent elementary school or an independent school meeting school quality standards shall not exceed the lesser of: (1) the average announced tuition of Vermont union elementary schools for the year of attendance; or (2) the tuition charged by the independent school. However, the electorate of a school district may authorize the payment of a higher amount at an annual or special meeting warned for the purpose.

§ 824. HIGH SCHOOL TUITION

(a) Tuition for high school pupils shall be paid by the school district in which the pupil is a resident.

(b) Except as otherwise provided for technical students, the district shall pay the full tuition charged its pupils attending a public high school in Vermont or an adjoining state, or a public or approved independent school in Vermont functioning as an approved area technical center, or an independent school meeting school quality standards. ; provided:

(1) If a payment made to a public high school or an independent school meeting school quality standards is three percent more or less than the calculated net cost per secondary pupil in the receiving school district or independent school for the year of attendance then the district or school shall be reimbursed, credited, or refunded pursuant to section 836 of this title.

(2) Notwithstanding the provisions of this subsection or of subsection 825(b) of this title, the boards board of the receiving and sending districts or independent schools public school district, public or approved independent school functioning as an area technical center, or independent school meeting school quality standards may enter into tuition agreements with the boards of sending districts that have terms differing from the provisions of those subsections, provided that the receiving district or school must offer identical terms to all sending districts, and further provided that the statutory provisions apply to any sending district that declines the offered terms.

(c) For students in grades 7-12, the The district shall pay an amount not to exceed the average announced tuition of Vermont union high schools for students in grades 7-12 for the year of attendance for its pupils enrolled in an approved independent school not functioning as a Vermont area technical

center, or any higher amount approved by the electorate at an annual or special meeting warned for that purpose.

* * *

§ 826. NOTICE OF TUITION RATES; SPECIAL EDUCATION CHARGES

(a) A school board, or the board of trustees of an independent school meeting school quality standards ~~which~~ that proposes to increase tuition charges shall notify the school board of the school district from which its nonresident pupils come, and the commissioner, of the proposed increase on or before ~~February 1~~ January 15 in any year; such increases shall not become effective without the notice and not until the following school year.

* * *

§ 827. DESIGNATION OF A PUBLIC HIGH SCHOOL OR AN APPROVED INDEPENDENT HIGH SCHOOL AS THE SOLE PUBLIC HIGH SCHOOL OF A SCHOOL DISTRICT

(a) A school district not maintaining an approved public high school may vote on such terms or conditions as it deems appropriate, to designate an approved independent school or a public school as the public high school of the district.

(b) ~~When~~ Except as otherwise provided in this section, if the board of trustees or the school board of ~~such~~ the designated school votes to accept this designation the school shall be regarded as a public school for tuition purposes under subsection 824(b) of this title and the sending school district shall pay tuition to ~~the~~ that school only, until such time as the sending school district or the ~~board of trustees of the~~ designated school votes to rescind the designation.

(c) A parent or legal guardian who is dissatisfied with the instruction provided at the designated school or who cannot obtain for his or her child the kind of course or instruction desired there, or whose child can be better accommodated in an approved independent or public high school nearer his or her home during the next academic year, may request on or before April 15 that the school board ~~to~~ pay tuition to another approved independent or public high school selected by the parent or guardian.

(d) The school board may pay tuition to another approved high school as requested by the parent or legal guardian if in its judgment that will best serve the interests of the pupil. Its decision shall be final in regard to the institution the pupil may attend. If the board approves the parent's request, the board shall pay tuition for the pupil in an amount not to exceed the least of:

(1) The statewide average announced tuition of Vermont union high schools.

(2) The per-pupil tuition the district pays to the designated school in the year in which the pupil is enrolled in the nondesignated school.

(3) The tuition charged by the approved nondesignated school in the year in which the pupil is enrolled.

§ 828. TUITION TO APPROVED SCHOOLS, AGE, APPEAL

A school district shall not pay the tuition of a pupil except to a public ~~or~~ school, an approved independent school ~~or~~, an independent school meeting school quality standards, a tutorial program approved by the state board, an approved education program, or an independent school in another state or country approved under the laws of that state or country, nor shall payment of tuition on behalf of a person be denied on account of age. Unless otherwise provided, a person who is aggrieved by a decision of a school board relating to eligibility for tuition payments, the amount of tuition payable, or the school he or she may attend, may appeal to the state board and its decision shall be final.

* * *

* * * State-Placed Students * * *

Sec. 14. 16 V.S.A. § 11(a)(28) is amended to read:

(28) "State-placed student" means:

(A) a Vermont pupil who has been placed in a school district other than the district of residence of the pupil's parent, parents or guardian or in an approved residential facility by a Vermont state agency, a Vermont licensed child placement agency, a designated community mental health agency, or any other agency as defined by the commissioner; or

(B) a Vermont pupil who:

(i) is 18 years of age or older;

(ii) is living in a community residence as a result of placement by a Vermont state agency, a Vermont licensed child placement agency or a designated community mental health agency, and whose residential costs are paid for in whole or in part by one of these agencies; and

(iii) resides in a school district other than the district of the pupil's parent or parents; or

~~(C) a pregnant or postpartum pupil attending school at an approved education program in a residential facility or outside the school district of residence pursuant to subsection 1073(b) of this title~~

(D) A Vermont pupil who:

(i) Is in either:

(I) The legal custody of the commissioner for children and families; or

(II) The temporary legal custody of an individual pursuant to subdivision 5308(b)(3) or (4) of Title 33, until a disposition order has been entered pursuant to section 5318 of that title; and

(ii) Is determined by the commissioner of education to be in particular need of educational continuity by attending a school in a district other than the pupil's current district of residence;

(E) ~~"State-placed student"~~ But does not ~~include pupils~~ mean a pupil placed within a correctional facility or in the Woodside Juvenile Rehabilitation Center ~~or The Eldred School operated by the Vermont State Hospital~~.

Sec. 15. 16 V.S.A. § 1075(b) and (c) are amended to read:

(b) The commissioner shall determine the legal residence of all state-placed students pursuant to the provisions of this section. In all other cases, the pupil's legal residence shall be determined by the board of school directors of the district in which the pupil is seeking enrollment or, if the pupil is seeking payment of tuition, the board of directors from which the pupil is seeking tuition payment. If a pupil is denied enrollment at any stage, the pupil and his or her parent or guardian shall be notified in writing, within 24 hours, of the provisions of this section. If the pupil is not in attendance as a result of a preliminary decision by school officials and a decision from the board of school directors will not be available by the end of the second school day after the request for enrollment is made, the commissioner may issue a temporary order requiring enrollment. Any interested person or taxpayer who is dissatisfied with the decision of the board as to the pupil's legal residence may appeal to the commissioner of education, who shall determine the pupil's legal residence, and the decision of the commissioner shall be final. Pending appeal under this subsection, the commissioner shall issue a temporary order requiring enrollment.

(c) State-placed students.

(1) A state-placed student, other than one placed in a 24-hour residential facility and except as otherwise provided in this subsection, shall be educated by the school district in which the pupil is living, unless an alternative plan or facility for the education of the pupil is agreed upon by the commissioner of education. In the case of a dispute as to where a state-placed student is living, the commissioner shall conduct a hearing to determine which school district is

responsible for educating the pupil. The commissioner's decision shall be final.

(2) If a pupil is a state-placed student pursuant to subdivision 11(a)(28)(D)(i)(I) of this title, then the department for children and families shall assume responsibility for the pupil's transportation to and from school, unless the receiving district chooses to provide transportation.

(3) A pupil who is in temporary legal custody pursuant to subdivision 5308(b)(3) or (4) of Title 33 and is a state-placed student pursuant to subdivision 11(a)(28)(D)(i)(II) of this title, shall be enrolled, at the temporary legal custodian's discretion, in the district in which the pupil's parents reside, the district in which either parent resides if the parents live in different districts, the district in which the pupil's legal guardian resides, or the district in which the temporary legal custodian resides. If the pupil enrolls in the district in which the temporary legal custodian resides, the district shall provide transportation in the same manner and to the same extent it is provided to other students in the district. In all other cases, the temporary legal custodian is responsible for the pupil's transportation to and from school, unless the receiving district chooses to provide transportation.

(4) If a pupil who had been a state-placed student pursuant to subdivision 11(a)(28) of this title is returned to live in the district in which one or more of the pupil's parents or legal guardians reside, then, at the request of the pupil's parent or legal guardian, the commissioner of education may order the pupil to continue his or her enrollment for the remainder of the academic year in the district in which the pupil resided prior to returning to the parent's or guardian's district and the pupil will continue to be funded as a state-placed student. Unless the receiving district chooses to provide transportation:

(A) If the pupil remains in the legal custody of the commissioner for children and families, then the department for children and families shall assume responsibility for the pupil's transportation to and from school.

(B) In all other instances under this subdivision (4), the parent or legal guardian is responsible for the pupil's transportation.

* * * Base Education Payment; Base Education Amount * * *

Sec. 16. 16 V.S.A. § 4001(13) is amended to read:

(13) "Base education ~~payment~~ amount" means a number used to calculate tax rates. The base education amount is $6,800.00 per equalized pupil, adjusted as required under section 4011 of this title.

Sec. 17. 16 V.S.A. § 4011 is amended to read:

§ 4011. EDUCATION PAYMENTS

(a) Annually, the general assembly shall appropriate funds to pay for statewide education spending and a portion of a base education ~~payment~~ amount for each adult diploma student.

(b) For each fiscal year, the base education ~~payment~~ amount shall be $6,800.00, increased by the most recent New England Economic Project cumulative price index, as of November 15, for state and local government purchases of goods and services from fiscal year 2005 through the fiscal year, for which the ~~payment~~ amount is being determined, plus an additional

one-tenth of one percent.

* * *

(e) The commissioner shall pay an amount equal to 87 percent of the base education ~~payment~~ amount to the Vermont Academy of Science and Technology for each Vermont resident, 12th grade student enrolled.

(f) Annually, the commissioner shall pay to a department or agency which provides an adult diploma program, an amount equal to 26 percent of the base education ~~payment~~ amount for each student who completed the diagnostic portion of the program, based on an average of the previous two years.

(g) The commissioner shall pay to a school district a percentage of the base education ~~payment~~ amount for each resident student for whom the district is paying a technical tuition to a regional technical center but who is not enrolled in the district and therefore not counted in the average daily membership of the district. The percentage of the base education ~~payment~~ amount to be paid shall be the percentage of the student's full-time equivalent attendance at technical center multiplied by 87 percent.

* * *

Sec. 18. 16 V.S.A. § 1561 is amended to read:

§ 1561. TUITION REDUCTION

* * *

(b) On behalf of a sending school district within Vermont, a technical center shall receive from the education fund for each full-time equivalent student from the district 87 percent of the base education ~~payment~~ amount and an equivalent amount shall be subtracted from the amount due to the sending district under section 4011 of this title. The amount sent to the technical center and subtracted from the sending district shall be considered a revenue and an

expenditure of the district and shall be reported as such in appropriate accounts and in the district's annual budget.

(c) Annually, the general assembly shall appropriate funds to pay for a supplemental assistance grant per full-time equivalent student. The amount of the grant shall be equal to 35 percent of the base education ~~payment~~ amount for that year.

(d) In any year following a year in which fall semester full-time equivalent enrollment of students at a technical center increased by 20 percent or more over the previous fall semester, in addition to other aid, the technical center shall receive an extra supplemental assistance grant equal to two-thirds of the 35 percent of the base education ~~payment~~ amount for that year, multiplied by the actual full-time equivalent enrollment increase. The next year, if the increase in fall semester full-time equivalent enrollment is less than 20 percent, in addition to other aid, the technical center shall receive an extra supplemental assistance grant equal to one-third of the 35 percent of the base education ~~payment~~ amount for the year multiplied by the actual full-time equivalent increase of the previous fall semester.

Sec. 19. CONSISTENT USE OF TERM

Pursuant to its statutory revision authority at 2 V.S.A. § 424, the legislative council is directed to change the phrase "base education payment" wherever it may appear in the Vermont Statutes Annotated to "base education amount."

* * * School Construction Spending; Planning for Merger; Tuition; Programs for At-Risk Students; 21st Century After-School Programs * * *

Sec. 20. 16 V.S.A. § 4001(6) is amended to read:

(6) "Education spending" means the amount of the school district budget, any assessment for a joint contract school, technical center payments made on behalf of the district under subsection 1561(b) of this title, and any amount added to pay a deficit pursuant to 24 V.S.A. § 1523(b) which is paid for by the school district, but excluding any portion of the school budget paid for from any other sources such as endowments, parental fund raising, federal funds, nongovernmental grants, or other state funds such as special education funds paid under chapter 101 of this title.

(A) For purposes of determining whether a proposed budget shall be presented by means of a divided question pursuant to subdivision 563(11)(A) of this title, "education spending" shall not include:

(i) Spending during the budget year for approved school capital construction for a project that received preliminary approval under section 3448 of this title, including interest paid on the debt; provided the district shall

not be reimbursed or otherwise receive state construction aid for the approved school capital construction.

(ii) For a project that received final approval for state construction aid under chapter 123 of this title:

(I) Spending for approved school capital construction during the budget year that represents the district's share of the project, including interest paid on the debt;

(II) Payment during the budget year of interest on funds borrowed under subdivision 563(21) of this title in anticipation of receiving state aid for the project.

(iii) For a district that provides for the education of its resident pupils in one or more grades by paying tuition and does not maintain a school that includes the grade or grades, in the district's discretion, the district's anticipated spending for tuition in the year for which the budget is proposed; alternatively, the district may choose to include within its definition of "education spending" its estimated tuition expenditures for the budget year.

(iv) Spending attributable to the cost of planning the merger of a small school, which for purposes of this subdivision means a school with an average grade size of 20 or fewer students, with one or more other schools.

(v) Spending attributable to the district's share of spending for 21st Century Community Learning Centers after-school programs.

(vi) Spending during the budget year attributable to the costs of providing alternative educational opportunities designed to encourage at-risk high school students to remain enrolled in and to graduate from high school, whether offered by the district or a contracting entity.

(B) For purposes of calculating excess spending pursuant to subdivision 5401(12) of Title 32, "education spending" shall not include:

(i) Spending during the budget year for approved school capital construction for a project that received preliminary approval under section 3448 of this title, including interest paid on the debt; provided the district shall not be reimbursed or otherwise receive state construction aid for the approved school capital construction.

(ii) For a project that received final approval for state construction aid under chapter 123 of this title:

(I) Spending for approved school capital construction during the budget year that represents the district's share of the project, including interest paid on the debt;

(II) Payment during the budget year of interest on funds borrowed under subdivision 563(21) of this title in anticipation of receiving state aid for the project.

(iii) Spending attributable to the cost of planning the merger of a small school, which for purposes of this subdivision means a school with an average grade size of 20 or fewer students, with one or more other schools.

* * * Higher Education * * *

Sec. 21. 6 V.S.A. § 20 is added to read:

§ 20. VERMONT LARGE ANIMAL VETERINARIAN EDUCATIONAL LOAN REPAYMENT FUND

(a) There is created a special fund to be known as the Vermont large animal veterinarian educational loan repayment fund that shall be used for the purpose of ensuring a stable and adequate supply of large animal veterinarians throughout the state. The fund shall be established and held separate and apart from any other funds or monies of the state and shall be used and administered exclusively for the purpose of this section. The money in the fund shall be invested in the same manner as permitted for investment of funds belonging to the state or held in the treasury.

(b) The fund shall consist of:

(1) Sums appropriated or transferred to it from time to time by the general assembly, the state emergency board, or the joint fiscal committee when the general assembly is not in session.

(2) Interest earned from the investment of fund balances.

(3) Sums from any other public or private source accepted for the benefit of the fund.

(c) The agency shall administer the fund and make sums available for loan repayment awards. The agency may contract with a Vermont nonprofit entity for administration of the program, which shall administer awards in compliance with the requirements of Section 108(f) of the Internal Revenue Code.

Sec. 22. LARGE ANIMAL VETERINARIANS; EDUCATIONAL LOAN REPAYMENT PROGRAM; PROPOSAL AND REPORT

(a) There is created a committee to explore the development of a loan repayment program to recruit and retain licensed veterinarians to meet the existing need for large animal veterinarians throughout the state. The committee shall also consider other incentives and outreach efforts to ensure that Vermonters are able to obtain the necessary education or training to work

in this field. The committee shall review available Vermont veterinarian workforce data and consider priorities and criteria on which to base awards. It shall develop recommendations for a loan repayment program, including details concerning the proposed application process. The committee shall identify potential funding sources.

(b) The members of the committee shall be:

(1) The secretary of agriculture, food and markets or the secretary's designee, who shall serve as chair and shall call the first meeting of the committee on or before July 1, 2009.

(2) The Vermont state veterinarian or the state veterinarian's designee.

(3) The president of the Vermont veterinary medical association or the president's designee.

(4) The secretary of commerce and community development or the secretary's designee.

(5) A member of the Vermont workforce development council to be selected by the governor.

(6) A representative of the higher education community to be jointly selected by the speaker of the house and the senate committee on committees.

(7) The director of the area health education centers program of the University of Vermont or the director's designee.

(8) The president of the Vermont student assistance corporation or the president's designee.

(c) On or before December 1, 2009, the committee shall present a detailed proposal to the senate and house committees on education and on agriculture outlining recommendations designed to promote the purposes of this section.

Sec. 23. EDUCATIONAL LOAN REPAYMENT; 2009 INTERIM

(a) If private funds are deposited into the Vermont large animal veterinarian educational loan repayment fund created in Sec. 21 of this act before a loan repayment program is developed and implemented under Sec. 22 of this act, then notwithstanding any provision of law to the contrary, the secretary of agriculture, food and markets may use the money to repay a portion of the outstanding educational loans of one or more licensed veterinarians in exchange for the service commitment to work in the large animal veterinary field in Vermont for a defined number of years, which shall be defined by contract; provided the secretary shall not divulge the identity of the private source or sources of funding to the award recipient. The secretary

may enter into a contract with an entity, such as the area health education centers program of the University of Vermont, to help administer the provisions of this section, and may pay the entity for its administrative costs from fund monies. Payment of awards shall be made directly to the educational loan creditor of the award recipient and shall be available only to a veterinarian who:

(1) Is licensed in Vermont;

(2) Provides large animal veterinarian services in Vermont; and

(3) Has outstanding educational debt acquired in the pursuit of an undergraduate or graduate degree from an accredited college or that exceeds the amount of the loan repayment award.

(b) For purposes of this section, "large animal veterinarian" means a doctor of veterinary medicine accredited by the United States Department of Agriculture who spends at least 60 percent of his or her working veterinary hours in Vermont treating or otherwise servicing food animals, including beef or dairy cows, sheep, pigs, poultry, and others identified by the secretary.

(c) The secretary shall report to the senate and house committees on education and on agriculture regarding:

(1) Private monies received under subsection (a) of this section, within 14 days after receiving the money.

(2) The decision to make some or all of the private monies available for educational loan repayment under this section and the criteria on which the award decisions will be made, at least 14 days prior to announcing publicly the availability of the funds.

(3) The payment of awards, within 14 days after making payment to the creditor of the award recipient.

(d) This section shall take effect on passage and shall remain in effect until June 30, 2010.

* * * Adequate Yearly Progress * * *

Sec. 24. Secs. 13 and 14 of No. 182 of the Acts of the 2005 Adj. Sess. (2006), as amended by Sec. 35 of No. 154 of the Acts of the 2007 Adj. Sess. (2008) are further amended to read:

~~Sec. 35. Secs. 13 and 14 of No. 182 of the Acts of the 2005 Adj. Sess. (2006) are amended to read:~~

Sec. 13. Sec. 2 of No. 64 of the Acts of 2003, as amended by Sec. 4 of No. 114 of the Acts of the 2003 Adj. Sess. (2004), is amended to read:

Sec. 2. COMPLIANCE WITH FEDERAL REQUIREMENTS; MEASURING ADEQUATE YEARLY PROGRESS TOWARD ACHIEVING STATE STANDARDS; CONSEQUENCES

16 V.S.A. § 165 authorizes the commissioner of education to determine how well schools and students are meeting state standards every two years and to impose certain consequences if schools are failing to meet standards after specific time periods. Notwithstanding the provisions of that section, in order to comply with the provisions of Public Law 107-110, known as the No Child Left Behind Act of 2001, ~~during school years 2003–2004 through 2008–2009~~ as amended from time to time (the "Act"), while it is in effect, the commissioner is authorized to determine whether schools and school districts are meeting state standards annually and the state board of education is authorized to impose on schools and school districts consequences allowed in state law and required by the Act within the time frame required in the Act. However, consistent with Title IX, Part E, Subpart 2, Sec. 9527 of the No Child Left Behind Act, neither the state nor any subdivision thereof shall be required to spend any funds or incur any costs not paid for under the Act in order to comply with the provisions of the Act. The state or any subdivision thereof may expend other funds for activities they were already conducting consistent with the Act, or for activities authorized in a state or local fiscal year 2004 budget. It is the intent of the general assembly to continue to study the provisions of the federal law and to seek guidance from the federal government in order to determine permanent changes to Title 16 that will be necessary to comply with federal law and to avoid having federal law cause state and local governments to absorb the cost of unfunded mandates.

Sec. 14. Subsections (b), (c), and (e) of Sec. 3 of No. 64 of the Acts of 2003, as amended by Sec. 5 of No. 114 of the Acts of the 2003 Adj. Sess. (2004), are amended to read:

(b) Notwithstanding the provisions of 16 V.S.A. §§ 1075(e), 1093, and 1128(b) which stipulate that a child of parents who become homeless shall be educated in the school district in which the child is found and that a school district may choose not to accept nonresident pupils, in order to comply with the provisions of Public Law 107-110, known as the No Child Left Behind Act of 2001, as amended from time to time (the "Act"), the provisions of this section shall apply to children who are homeless during ~~school years 2003–2004 through 2008–2009~~ those school years in which the Act is in effect. It is the intent of the general assembly to continue to study the provisions of the federal law and to seek guidance from the federal government in order to determine permanent changes to Title 16 that will be necessary to comply with federal law.

(c) If a child becomes homeless during a school year ~~2005–2006, 2006–2007, 2007–2008, or 2008–2009~~ in which the Act is in effect, the child shall either be educated: in the school of origin for the duration of the homelessness or for the remainder of the academic year if the child becomes permanently housed outside the district of origin; or in the school district in which the child is actually living. The determination as to which school the child shall attend shall be made by the school board of the school district in which the child is living according to the best interests of the child.

(e) Notwithstanding the provisions of 16 V.S.A. § 4001(1)(A) which stipulate that a pupil must be a legal resident of the district attending a school owned and operated by the district in order to be counted in the average daily membership of the district, during the ~~2003–2004 through 2008–2009~~ school years in which the Act is in effect, a child who is homeless during the census period shall be counted in the school district or districts in which the child is enrolled. However, if at any time a homeless child enrolls, pursuant to this section, in a school district other than the district in which the child was counted, the district in which the child is enrolled shall become responsible for the education of the child, including payment of education services and, if appropriate, development and implementation of an individualized education plan.

* * * Miscellaneous * * *

Sec. 25. WAIVERS; SCHOOL QUALITY STANDARDS

(a) The general assembly:

(1) Is committed to promoting the flexibility needed to transform Vermont's educational system.

(2) Takes notice of the state board of education rule enabling school boards to request and, under circumstances protecting school quality, obtain variances from school quality standards.

(3) Authorizes the commissioner of education to act directly on a variance request, if the state board of education fails to render a decision at its first regularly scheduled meeting following receipt of a request for a variance.

(4) Encourages school district and supervisory union boards to request variances pursuant to subdivision (2) of this subsection.

(b) On or before March 1, 2010, the commissioner shall report to the senate and house committees on education regarding variances requested and granted under this section. The report shall highlight innovative approaches for which variances were granted and describe the manner in which the commissioner has informed other districts and supervisory unions of these innovations.

Sec. 26. 33 V.S.A. § 3502 is amended to read:

§ 3502. CHILD CARE FACILITIES; SCHOOL AGE CARE IN PUBLIC SCHOOLS; 21ST CENTURY FUND

(a) Unless exempted under subsection (b) of this section, a person shall not operate a child care facility without a license, or operate a family child care home without registration from the department.

(b) The following persons are exempted from the provisions of subsection (a) of this section:

* * *

(5) An after-school program that serves students in one or more grades from kindergarten through secondary school, that receives funding through the 21st Century Community Learning Centers program, and that is overseen by the department of education, unless the after-school program asks to participate in the child care subsidy program.

* * *

~~(g) In order to facilitate school districts and supervisory unions to apply for and receive federal funds provided by the United States 21st Century Fund, on or before September 1, 2001, the agency of human services for programs that are in and operated by public schools and provide schoolage care before and after school hours shall:~~

~~(1) Accept existing permits and certificates obtained and plans developed by the school as satisfying licensing requirements without further application or review, including permits, certificates, and plans relating to water and wastewater disposal permit, asbestos abatement, insurance, and occupancy.~~

~~(2) Waive compliance with No. 165 of the Acts of 1996 or No. 37 of the Acts of 1997 relating to the abatement of lead paint hazards if the program serves no children who are less than five years old.~~

~~(3) Require screening of all program staff members against the child abuse registry, and require a criminal records check of any program staff member who is not currently a school employee or an employee of a school contractor already subject to a criminal record check as part of the hiring process.~~

* * *

Sec. 27. CODIFY EXISTING SESSION LAW RELATING TO REGIONAL SCHOOL CHOICE FOR PUBLIC SCHOOL STUDENTS IN GRADES 9 THROUGH 12

Pursuant to its statutory revision authority in 2 V.S.A. § 424, the legislative council is directed to codify Secs. 1 and 2 of No. 150 of the Acts of the 1999 Adj. Sess. (2000) (regional school choice for public school students in grades 9 through 12) as amended by Sec. 21 of No. 182 of the Acts of the 2005 Adj. Sess. (2006) (repealing the date on which the original act was scheduled to be repealed). Act 150, as amended, shall be codified as 16 V.S.A. §§ 1621–1622 in a new chapter 41 entitled "Chapter 41. Public High School Choice."

* * *

Sec. 28. REPEAL

Secs. 2 and 3 of No. 31 of the Acts of 2007 (statewide calendar; committee; effective date) are repealed.

Sec. 29. UPDATING STATUTES TO REFLECT CURRENT NAMES OF PROGRAMS AND DEPARTMENTS

Pursuant to its statutory revision authority in 2 V.S.A. § 424, the legislative council is directed to amend Title 16:

(1) By replacing the term "adult basic education" with the term "adult education and literacy" wherever it appears.

(2) By updating references to the names of departments, divisions, programs, and other subgroups within the agency of human services wherever they appear.

Sec. 30. REPEAL

(a) Sec. 17 of No. 66 of the Acts of 2007 (using a 40-day census period for calculating average daily membership) is repealed.

(b) Sec. 18(b) of No. 66 of the Acts of 2007 (effective date for Sec. 17 of No. 66 of 2007) is repealed.

Sec. 31. 16 V.S.A. § 1422 is amended to read:

§ 1422. ~~TESTS~~ PERIODIC HEARING AND VISION SCREENING; GUIDELINES

~~(a) Each year the superintendent shall cause a qualified person to test the hearing of all the pupils under his supervision in grades 1, 2, 3, 5, 7, and 9, using tests recommended by the state department of education in consultation with the department of health, and to keep a record of such tests according to the instructions furnished and to notify in writing the person having legal~~

~~responsibility for a pupil who is found to have defective hearing. All aspects of hearing testing and hearing conservation programs shall be under the supervision and regulation of the commissioners of education and health.~~

~~(b) The superintendent shall also cause a qualified person to test the vision of all pupils under his supervision in grades 1, 3, 5, 7, and 9 or 10, each year, using tests recommended by the state department of education in consultation with the department of health, and to keep a record of such tests according to the instructions furnished and to notify in writing the person having legal responsibility for a pupil who is found to have defective vision.~~

~~(c) The superintendent shall also cause to be tested the sight and hearing of any pupil who appears to have defective vision or hearing, at any time there appears to be a need for such test.~~

~~(d) [Repealed.]~~

~~(e) No child shall be obliged to submit to any test referred to in this section whose parent or guardian objects to the same in writing. Said written notice shall be delivered to the child's teacher or to any person who orders or conducts such test or tests.~~

Periodic hearing and vision screening of school-aged children shall be conducted by school districts and primary care providers pursuant to research-based guidelines developed by the commissioner of health in consultation with the commissioner of education. School districts and primary care providers will attempt to avoid duplicating services provided by the other and will share information as practicable and allowable by law.

* * * Teen Parent Education Programs * * *

Sec. 32. 16 V.S.A. § 11(a)(28)(C) is amended to read:

~~(C) a pregnant or postpartum pupil attending school at an approved education program in a residential facility or outside the school district of residence pursuant to subsection 1073(b) of this title.~~

Sec. 33. 16 V.S.A. § 11(a)(33), (34), and (35) are added to read:

(33)(A) "Pregnant or parenting pupil" means a legal pupil of any age who is not a high school graduate and who:

(i) is pregnant; or

(ii) has given birth, has placed a child for adoption, or has experienced a miscarriage, if any of these has occurred within one year before the public or approved independent school or the approved education program receives a request for enrollment or attendance; or

(iii) is the parent of a child.

(B) "Pregnant or parenting pupil" does not include a person whose parental rights have been terminated, except if the pupil has placed the child for adoption or has voluntarily relinquished parental rights, within one year before the public or approved independent school or the approved education program receives a request for enrollment or attendance.

(34) "Approved education program" means a program that is evaluated and approved by the state board pursuant to written standards, that is neither an approved independent school nor a public school, and that provides educational services to one or more pupils in collaboration with the pupil's or pupils' school district of residence. An "approved education program" includes an "approved teen parent education program."

(35) "Teen parent education program" means a program designed to provide educational and other services to pregnant pupils or parenting pupils or both.

Sec. 34. 16 V.S.A. § 1073(b) is amended to read:

(b) Access to school.

(1) Right to a public education. No legal pupil attending school at public expense, including a married, pregnant, or ~~postpartum~~ parenting pupil, shall be deprived of or denied the opportunity to participate in or complete ~~an elementary and secondary~~ a public school education.

(2) Right to enroll in a public or independent school. Notwithstanding the provisions of sections 822 and 1075 of this title, ~~for reasons related to the pregnancy or birth,~~ a pregnant or ~~postpartum~~ parenting pupil may ~~attend~~ enroll in any approved public school in Vermont or an adjacent state, any approved independent school in Vermont, or any other educational program approved by the state board in which any other legal pupil in Vermont may enroll.

(3) Teen parent education program.

(A) Residential teen parent education programs. The commissioner shall pay the educational costs for a pregnant or ~~postpartum~~ parenting pupil attending a state board approved ~~educational~~ teen parent education program in a 24-hour residential facility for up to eight months after the birth of the child. The commissioner may approve extension of payment of educational costs based on a plan for reintegration of the student into the community or for exceptional circumstances as determined by the commissioner. The district of residence of a pupil in a 24-hour residential facility shall remain responsible for coordination of the pupil's educational program and for planning and facilitating her subsequent educational program.

(B) Nonresidential teen parent education programs.

(i) The pregnant or parenting pupil's district of residence or the approved independent or public school to which that district pays tuition for its students ("the enrolling school") shall be responsible for planning, coordinating, and assessing the enrolled pupil's education plan while attending a teen parent education program and for planning, assessing, and facilitating the pupil's subsequent education plan, including the pupil's transition back to the public or approved independent school. As determined by the district of residence or the enrolling school, as appropriate, the pupil's educational plan while attending a teen parent education program shall include learning experiences that are the substantial equivalent of the learning experiences required by the district of residence or the enrolling school to obtain a high school diploma.

(ii) A pregnant or parenting pupil may attend a nonresidential teen parent education program for a length of time to be determined by agreement of the pupil's district of residence, the enrolling school, the teen parent education program, and the pupil.

(iii) In the event of a dispute regarding any aspect of this subdivision (B), the district of residence, the enrolling school, the teen parent education program, or the pupil or any combination of these may request a determination from the commissioner whose decision shall be final; any determination by the commissioner regarding "substantial equivalency" pursuant to subdivision (i) of this subdivision (b)(3)(B) shall be based on the commissioner's analysis of the course syllabus or the course description provided by the district of residence or enrolling school.

Sec. 35. 16 V.S.A. § 1121 is amended to read:

§ 1121. ATTENDANCE BY CHILDREN OF SCHOOL AGE REQUIRED

A person having the control of a child between the ages of six and 16 years shall cause the child to attend a public school, an approved or recognized independent school, an approved education program, or a home study program for the full number of days for which that school is held, unless the child:

* * *

Sec. 36. CONFORMING LANGUAGE

To ensure consistency of No. 192 of the Acts of the 2007 Adj. Sess. (2008) with this act, the following amendments shall be made to Sec. 5.304.1 of that act:

(1) In subdivision (a)(2), by striking the word "coordinating" and inserting in lieu thereof the following: "planning, coordinating, and assessing".

(2) In subdivision (a)(2), after the word "planning" and before the words "and facilitating" by adding the following: ", assessing,".

(3) In subdivision (b)(3), by striking the final sentence.

Sec. 37. TRANSITIONAL PROVISION

It is the intent of the general assembly that until July 1, 2010, a teen parent education program that has been recognized by the department for children and families shall be considered "an approved education program."

Sec. 38. Sec. 9.0001(d) of No. 192 of the Acts of the 2007 Adj. Sess. (2008) (sunset; teen parent education) is amended to read:

(d) Sec. 5.304.1 of this act shall take effect on July 1, 2008 ~~and shall remain in effect until July 1, 2009~~.

* * *High School Completion; Policy * * *

Sec. 39. ONE HUNDRED PERCENT BY 2020 INITIATIVE; POLICY

It is a priority of the general assembly and the department of education to take all necessary measures to increase the Vermont secondary school completion rate to 100 percent by the year 2020.

* * * Early Identification of Students Who Require Additional Assistance to Successfully Complete Secondary School * * *

Sec. 40. 16 V.S.A. chapter 99 is amended to read:

CHAPTER 99. GENERAL POLICY

§ 2901. SUCCESS FOR ALL STUDENTS IN THE GENERAL EDUCATION ENVIRONMENT

(a) It is the policy of the state that each local school district develop and maintain, in consultation with parents, a comprehensive system of education that will result, to the extent appropriate, in all students succeeding in the general education environment. A comprehensive system of education includes a full range of services and accommodations ~~which~~ that are needed by students in the district. These services could include a separate alternative program if the district finds that some of its students could be better served in an environment outside the classroom, or if the district finds that separate placement is the best way to provide services to a student who is disrupting the class or having difficulty learning in a traditional school setting for educational, emotional, or personal reasons and thereby impairing the ability of the classroom teacher to provide quality services to that student or to ~~the~~ other

~~pupils~~ students. This chapter does not replace or expand entitlements created by federal law, nor is it the intent of this chapter to create a higher standard for maintaining a student in the general classroom than the standard created in the following federal laws: 20 U.S.C. § 1401 et seq., Individuals with Disabilities Act; 29 U.S.C. § 794, Section 504 of the Rehabilitation Act; and 42 U.S.C. § 12101 et seq., Americans with Disabilities Act.

(b) [Repealed.]

(c) No individual entitlement or private right of action is created by this section.

§ 2902. EDUCATIONAL SUPPORT SYSTEM AND EDUCATIONAL SUPPORT TEAM

(a) Within each school district's comprehensive system of educational services, each public school shall develop and maintain an educational support system for ~~children~~ students who require additional assistance in order to succeed or to be challenged in the general education environment. For each school it maintains, a school district board shall assign responsibility for developing and maintaining the educational support system either to the superintendent pursuant to a contract entered into under section 267 of this title~~,~~ or to the principal. The educational support system shall, at a minimum, include an educational support team and a range of support and remedial services, including instructional and behavioral interventions and accommodations.

(b) The educational support system shall:

(1) Be integrated to the extent appropriate with the general education curriculum.

(2) Be designed to increase the ability of the general education system to meet the needs of all students.

(3) Be designed to provide students the support needed regardless of eligibility for categorical programs.

(4) Provide clear procedures and methods for ~~handling a student who~~ addressing student behavior that is disruptive to the learning environment and ~~shall~~ include ~~provision of~~ educational options, support services, and consultation or training for staff where appropriate. Procedures may include ~~provision for~~ removal of ~~the~~ a student from the classroom or the school building for as long as appropriate, consistent with state and federal law and the school's policy on student discipline, ~~and~~ after reasonable effort has been made to support the student in the regular classroom environment.

(5) Ensure collaboration with families, community supports, and the system of health and human services.

(c) ~~Each educational support system shall include an~~ The educational support team ~~which~~ for each public school in the district shall be composed of staff from a variety of teaching and support positions and shall:

(1) ~~Provide a procedure for timely referral for evaluation for special education eligibility when warranted~~ Determine which enrolled students require additional assistance to be successful in school or to complete secondary school based on indicators set forth in guidelines developed by the commissioner, such as academic progress, attendance, behavior, or poverty. The educational support team shall pay particular attention to students during times of academic or personal transition.

(2) ~~Be composed of staff from a variety of teaching and support services positions~~ Identify the classroom accommodations, remedial services, and other supports that have been provided to the identified student.

(3) ~~Screen referrals to determine what classroom accommodations and remedial services have been tried.~~

~~(4)~~ Assist teachers ~~in planning and providing~~ to plan for and provide services and accommodations to students in need of classroom supports or enrichment activities.

(4) Develop an individualized strategy, in collaboration with the student's parents or legal guardian whenever possible, to assist the identified student to succeed in school and to complete his or her secondary education.

(5) Maintain a written record of its actions.

(6) Report no less than annually to the commissioner, in a form the commissioner prescribes, on the ways in which the educational support system has addressed the needs of students who require additional assistance in order to succeed in school or to complete secondary school and on the additional financial costs of complying with this subsection (c).

(d) No individual entitlement or private right of action is created by this section.

(e) The commissioner shall establish guidelines for teachers and administrators in following federal laws relating to provision of services for children with disabilities and the implementation of this section.

(f) It is the intent of the general assembly that a gifted and talented student shall be able to take advantage of services that an educational support team can provide. It is not the intent of the general assembly that funding under

chapter 101 of this title shall be available for a gifted and talented student unless the student has been otherwise determined to be a student for whom funding under that chapter is available.

§ 2903. PREVENTING EARLY SCHOOL FAILURE; READING INSTRUCTION

(a) Statement of policy. The ability to read is critical to success in learning. Children who fail to read by the end of the first grade will likely fall further behind in school. The personal and economic costs of reading failure are enormous both while the student remains in school and long afterward. All students need to receive systematic reading instruction in the early grades from a teacher who is skilled in teaching reading through a variety of instructional strategies that take into account the different learning styles and language backgrounds of the students. Some students may require intensive supplemental instruction tailored to the unique difficulties encountered.

(b) Foundation for literacy. The state board of education, in collaboration with the agency of human services, higher education, literacy organizations, and others, shall develop a plan for establishing a comprehensive system of services for early education in the first three grades to ensure that all students learn to read by the end of the third grade. The plan shall be ~~submitted to the general assembly by January 15, 1998 and shall be~~ updated at least once every five years following its initial submission in 1998.

(c) Reading instruction. A public school ~~which~~ that offers instruction in grades one, two, or three shall provide highly effective, research-based reading instruction to all students. In addition, ~~for~~ a school shall provide:

(1) Supplemental reading instruction to any enrolled student in grade four whose reading ~~performance falls below the level expected in order to achieve third grade reading~~ proficiency falls below third grade reading expectations, as defined under subdivision 164(9) of this title~~, the school shall work to improve the student's reading skills by providing additional research-based reading instruction to the student, and by providing support~~.

(2) Supplemental reading instruction to any enrolled student in grades 5–12 whose reading proficiency creates a barrier to the student's success in school.

(3) Support and information to parents and ~~other family members~~ legal guardians.

§ 2904. REPORTS

Annually, each superintendent shall report to the commissioner in a form prescribed by the commissioner, on the status of the educational support

systems in each school in the supervisory union. The report shall describe the services and supports that are a part of the education support system, how they are funded, and how building the capacity of the educational support system has been addressed in the school action plans, and shall be in addition to the report required of the educational support team in subdivision 2902(c)(6) of this chapter. The superintendent's report shall include a description and justification of how funds received due to Medicaid reimbursement under section 2959a of this title were used.

Sec. 41. 16 V.S.A. § 2959a(e) is amended to read:

(e) School districts shall utilize funds received under this section to pay for reasonable costs of administering the Medicaid claims process, and for prevention and intervention programs in grades pre-K through 12. The programs shall be designed to facilitate early identification of and intervention with children with disabilities and to ensure all students achieve rigorous and challenging standards adopted in the Vermont framework of standards and learning opportunities or locally adopted standards. A school district shall provide an annual written justification to the commissioner of education of the use of the funds. Such annual submission shall show how the funds' use is expressly linked to those provisions of the school district's action plan that directly relate to improving student performance. A school district shall include in its annual report the amount of the prior year's Medicaid reimbursement revenues and the use of Medicaid funds consistent with the purposes set forth in this subsection.

* * * High School Completion Program * * *

Sec. 42. 16 V.S.A. § 1049a is amended to read:

§ 1049a. HIGH SCHOOL COMPLETION PROGRAM

(a) In this section:

(1) "Graduation education plan" means a written plan leading to a high school diploma for a person who is 16 to 22 years of age~~,~~ and has not received a high school diploma, ~~and is not~~ who may or may not be enrolled in a public or approved independent school. The plan shall define the scope and rigor of services necessary for the student to attain a high school diploma, and may describe educational services to be provided by a public high school, an approved independent high school, an approved provider, or a combination of these.

(2) "Approved provider" means an ~~agency~~ entity approved by the commissioner to provide educational services which may be counted for credit toward a high school diploma.

(3) "Contracting agency" means an agency that has entered into a contract with the department of education to provide adult education services in Vermont.

(b) ~~The commissioner shall assign~~ If a ~~student~~ person who wishes to work on a graduation education plan is not enrolled in a public or approved independent school, then the commissioner shall assign the prospective student to a high school district, which shall be the district of residence whenever possible. ~~Upon assignment, the~~ The school district in which a student is enrolled or to which an non-enrolled student is assigned shall work with ~~an agency which has entered into contract with the department of education to provide adult education services in Vermont~~ the contracting agency and the student to develop a graduation education plan. The school district shall award a high school diploma upon successful completion of the plan.

(c) The commissioner shall reimburse, and net cash payments where possible, a ~~town~~ school district~~, city school district, union school district, unified union school district, incorporated school district, or member school district of an interstate school district which~~ that has agreed to a graduation education plan in an amount:

(1) established by the commissioner for development of the graduation education plan and for other educational services typically provided by the assigned district or an approved independent school pursuant to the plan, such as counseling, health services, participation in ~~co-curricular~~ cocurricular activities, and participation in academic or other courses, provided this amount shall not be available to a district that provides services under this section to an enrolled student; and

(2) negotiated by the commissioner and the contracting agency ~~which has entered into contract with the department of education to provide adult education services in Vermont~~, with the approved provider, for services and outcomes purchased from the approved provider on behalf of the student pursuant to the graduation education plan.

(d) On or before January 30 of each year~~, beginning in 2008~~, the commissioner shall report to the senate and house committees on education on the number of students participating in a graduation education plan, the number completing a plan, and the amount paid. The commissioner shall present the information organized by school district, approved independent school, and approved provider.

Sec. 43. HIGH SCHOOL COMPLETION PROGRAM; GRADUATION EDUCATION PLAN; GUIDELINES

(a) The graduation education plan for each 16- and 17-year-old student shall include services relevant to the student's goals, such as:

(1) Career exploration.

(2) Workforce training.

(3) Workplace readiness training.

(4) Preparation for postsecondary training or education and transitioning assistance.

(b) The graduation education plan for each student who is 18 years of age or older should include services relevant to the student's goals, such as those listed in subsection (a) of this section.

(c) The commissioner shall develop and publish guidelines to assist in the implementation of this section.

* * * Commissioner of Education * * *

Sec. 44. MEASURING SECONDARY SCHOOL COMPLETION RATES

(a) On or before December 31, 2009, the commissioner of education shall develop an accurate, uniform, and reliable method for defining and measuring secondary school completion rates on a school-by-school basis, including appropriate cohort identification, and shall set benchmarks for assessing individual school performance relative to the goal of increasing the secondary school completion rate to 100 percent by the year 2020.

(b) On or before January 15 of each year through January 2020, the commissioner shall report to the senate and house committees on education regarding the state's progress in achieving the goal of a 100 percent secondary school completion rate. At the time of the report, the commissioner shall also recommend other initiatives, if any, to improve both graduation rates and secondary school success for all Vermont students.

(c) Annually through 2020, each school district operating one or more secondary schools shall report to the taxpayers at the time school budgets are presented for approval regarding the district's progress in achieving the goal of a 100 percent secondary school completion rate.

Sec. 45. FLEXIBLE PATHWAYS TO GRADUATION

On or before January 15, 2010,

(1) The commissioner of education shall evaluate the prevalence and efficacy of flexible practices and programs currently used by Vermont schools

to identify and support students who require additional assistance or alternative methods to be successful in school or to complete secondary school and shall identify schools that need assistance to begin or enhance their practices.

(2) The commissioner of education shall develop and publish guidelines to assist school districts to identify and support elementary and secondary students who require additional assistance to succeed in school or who would benefit from flexible pathways to graduation. Such guidelines may include strategies such as:

(A) Targeted assistance, including individual tutoring, evidence-based literacy instruction, alternative and extended scheduling, and opportunities to earn necessary credits necessary to obtain a high school diploma.

(B) Flexible programs designed to provide each student identified under 16 V.S.A. § 2902(c) in Sec. 2 of this act with the supports and accommodations necessary to succeed in school and to complete secondary school with the education and skills critical for success after graduation. Examples of flexible program components include:

(i) The assignment of one or more adults from within the school community to provide continuity to the student.

(ii) The development of a personalized education plan or strategy by the student, the assigned adult or adults or another representative of the district, and the student's parents or legal guardian.

(iii) The opportunity to acquire knowledge and skills through applied or work-based learning opportunities.

(iv) The opportunity to participate in dual enrollment courses with tutorial support provided as needed.

(v) Assessments that allow the student to demonstrate proficiency by applying his or her knowledge and skills to tasks that are of interest to that student.

(3) The commissioner of education shall report to the senate and house committees on education regarding implementation of this section and recommend additional legislation, if any, necessary to ensure effective implementation by all school districts in Vermont.

* * * Truancy * * *

Sec. 46. TRUANCY

(a) On or before September 30, 2009, and in consultation and coordination with the executive director of the department of state's attorneys and sheriffs, interested judges of the Vermont district courts, and school district personnel, the commissioner of education shall develop and publish on the department of education's website comprehensive model truancy protocols consistent with the provisions of 16 V.S.A. chapter 25, subchapter 3, that confront truancy on a statewide, countywide, and supervisory unionwide basis and include the post-complaint involvement of both state's attorneys and the court system under 16 V.S.A. § 1127.

(b) On or before December 15, 2009, the commissioner shall propose to the house and senate committees on education any legislative amendments or additions necessary to implement the purposes of this section.

(c) The commissioner shall ensure that, on or before July 1, 2010, the supervisory unions in each county adopt truancy policies that are consistent with and carry forward the purposes of this section.

(d) On or before January 15, 2011, the commissioner shall report to the house and senate committees on education regarding implementation of this section.

Sec. 47. 16 V.S.A. § 261a is amended to read:

§ 261a. DUTIES OF SUPERVISORY UNION BOARD

The board of each supervisory union shall:

* * *

(11) on or before June 30 of each year, adopt a budget for the ensuing school year; and

(12) adopt supervisory unionwide truancy policies consistent with the model protocols developed by the commissioner.

* * * Effective Dates * * *

Sec. 48. EFFECTIVE DATES; APPLICATION

(a) This act shall take effect on passage.

(b) Sec. 13 of this act, 16 V.S.A. § 826, shall apply to tuition rates established for the 2010–2011 academic year and after.

(c) Sec. 20 of this act shall apply to proposed school budgets for the 2010–2011 academic year and after.

(d) Sec. 38 of this act shall supersede and replace any other amendments enacted in this legislative session to the provision amended in Sec. 38.

ROBERT A. STARR
WILLIAM T. DOYLE
ALICE W. NITKA

Committee on the part of the Senate

ANNE H. MOOK
PETER PELTZ
GREGORY S. CLARK

Committee on the part of the House

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

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

H. 83.

Pending entry on the Calendar for notice, on motion of Senator Shumlin, the rules were suspended and the report of the Committee of Conference on House bill entitled:

An act relating to underground storage tanks and the petroleum cleanup fund.

Was taken up for immediate consideration.

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

To the Senate and House of Representatives:

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

H. 83. An act relating to underground storage tanks and the petroleum cleanup fund.

Respectfully reports that it has met and considered the same and recommends that the House accede to the Senate proposal of amendment, and that the bill be further amended as follows:

First: In Sec. 5, 10 V.S.A. § 1942, by striking out subsection (b) in its entirety and inserting in lieu thereof the following:

(b) There is assessed against every seller receiving more than $10,000.00 annually for the retail sale of heating oil ~~or,~~ kerosene, or other dyed diesel fuel sold in this state and not used to propel a motor vehicle, a licensing fee of one-half cent per gallon of such heating oil ~~or,~~ kerosene, or other dyed diesel fuel. This fee shall be subject to the collection, administration, and enforcement provisions of chapter 233 of Title 32, and the fees collected under this subsection by the commissioner of taxes shall be deposited into the petroleum cleanup fund. The secretary, in consultation with the Vermont Petroleum Association and the Vermont Fuel Dealers Association, Inc. shall annually determine whether or not to assess the one-half cent licensing fee for the upcoming year. If the unencumbered balance of heating fuel account of the fund established under subsection 1941(a) of this title is equal to or greater than $3,000,000.00, then the one-half cent licensing assessment for the upcoming year shall not be assessed. If the unencumbered balance in the fund is less than ~~$3,000,000~~ $3,000,000.00, then the annual fee may be assessed. The secretary shall notify all sellers assessing this fee of the status of the fee for the upcoming year. This fee provision shall terminate April 1, ~~2011~~ 2016.

Second: In Sec. 9, 10 V.S.A. § 1944, by striking out subsection (c) in its entirety and inserting in lieu thereof the following:

(c) The loans will be at a zero interest rate, except that a person who owns five or more facilities shall have an interest rate of ~~four~~ two percent. As used in this subsection, "facility" shall mean the property upon which a category one tank is located.

Third: By adding three new sections to be numbered Secs. 9a, 9b, and 9c to read as follows:

Sec. 9a. 33 V.S.A. § 2503 is amended to read:

§ 2503. FUEL GROSS RECEIPTS TAX

(a) There is imposed a gross receipts tax of 0.5 percent on the retail sale of the following types of fuel by sellers receiving more than $10,000.00 annually for the sale of such fuels:

(1) ~~heating oil and kerosene not used to propel a motor vehicle~~ dyed diesel fuel used for heating;

(2) propane;

(3) natural gas;

(4) electricity;

(5) coal.

* * *

Sec. 9b. 10 V.S.A. § 583 is added to read:

§ 583. REPEAL OF STAGE II VAPOR RECOVERY REQUIREMENTS

(a) Effective January 1, 2013, all rules of the secretary pertaining to stage II vapor recovery controls at gasoline dispensing facilities are repealed. The secretary may not issue further rules requiring such controls. For purposes of this section, "stage II vapor recovery" means a system for gasoline vapor recovery of emissions from the fueling of motor vehicles as described in 42 U.S.C. § 7511a(b)(3).

(b) Prior to January 1, 2013, stage II vapor recovery rules shall not apply to:

(1) Any newly constructed gasoline dispensing facility that commences operation after May 1, 2009;

(2) Any existing gasoline dispensing facility that has an annual gasoline throughput of 400,000 gallons or more for the first time beginning with the 2009 calendar year;

(3) Any existing gasoline dispensing facility that, after May 1, 2009, commences excavation for the installation or repair of any below-ground component of the stage II vapor recovery system, including gasoline storage tanks, upon verification and approval by the secretary; or

(4) Any existing gasoline dispensing facility that, after May 1, 2009, replaces all of its existing gasoline dispensers with new gasoline dispensers that support triple data encryption standard (TDES) usage or replaces one or more of its gasoline dispensers pursuant to a plan to achieve full TDES compliance, upon verification and approval by the secretary.

(c) Within two years of January 1, 2013, or of the secretary's verification and approval that such stage II vapor recovery rules do not apply to a gasoline dispensing facility pursuant to subdivision (b)(3) or (4) of this section, whichever is earlier, each gasoline dispensing facility shall decommission its stage II vapor recovery systems, including below-ground components, pursuant to methods approved by the secretary.

Sec. 9c. 10 V.S.A. § 561(c) is amended to read:

(c) Any variance or renewal thereof shall be granted within the requirements of subsection (a) of this section and for time periods and under conditions consistent with the reasons therefore, and within the following limitations:

(1) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement, or control of

the air pollution involved, it shall be only until the necessary practicable means for prevention, abatement, or control become known and available, and subject to the taking of any substitute or alternate measures that the secretary may prescribe.

(2) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the secretary is requisite for the taking of the necessary measures. A variance granted on the ground specified herein shall contain a time schedule for the taking of action in an expeditious manner and shall be conditioned on adherence to the time schedule.

(3) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in subdivisions (1) and (2) of this subsection, it shall be for not more than one year, except that a variance granted from the rules of the secretary pertaining to stage II vapor recovery controls at gasoline dispensing facilities shall be for a period that extends until January 1, 2013.

MARK A. MACDONALD
RICHARD J. MCCORMACK
DIANE SNELLING

Committee on the part of the Senate

PETER J. FAGAN
DAVID SHARPE

Committee on the part of the House

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

Rules Suspended; Bills Messaged

On motion of Senator Shumlin, the rules were suspended, and the following bills were severally ordered messaged to the House forthwith:

H. 83, H. 136, H. 427, H. 436, H. 438, H. 441.

Adjournment

On motion of Senator Shumlin, the Senate adjourned until eleven o'clock in the morning.

FRIDAY, MAY 8, 2009

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Pages Honored

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

Brooke Angell of Randolph
Greg Asnis of Berlin
Rhea Costantino of Montpelier
Ashlynn Doyon of Hardwick
Renae M. Hall of Hardwick
Connor Herrick of South Hero
Louisa Jerome of Brandon
Benson May of Putney
Anna Pettee of Guildford
McKinley Pierce of Warren

House Requested to Return Bill to Custody of Senate

H. 438.

On motion of Senator Shumlin, the Senate requested the House to return to the custody of the Senate, House bill entitled:

An act relating to the state's transportation program.

Senate Resolution Adopted

S.R. 14.

Senate resolution entitled:

Senate resolution in opposition to the federal regulation or chartering of insurance companies

Having been placed on the Calendar for action, was taken up and adopted.

Joint Resolutions Adopted in Concurrence

Joint House resolutions entitled:

J.R.H. 10. Joint resolution recognizing the commitment to quality service of Vermont's locally owned banks.

J.R.H. 29. Joint resolution urging Congress to enact a new Homeowner and Bank Protection Act.

Having been placed on the Calendar for action, were taken up.

Thereupon, the resolutions were adopted collectively in concurrence.

Bill Committed

H. 442.

House bill entitled:

An act relating to miscellaneous tax provisions.

Was taken up.

Thereupon, pending the question, Shall the Senate adopt and accept the report of the Committee of Conference?, on motion of Senator Shumlin, the bill was committed to the Committee on Finance.

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

S. 89.

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

An act relating to stabilization of prices paid to Vermont dairy farmers.

Was taken up for immediate consideration.

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

To the Senate and House of Representatives:

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

S. 89. An act relating to stabilization of prices paid to Vermont dairy farmers.

Respectfully reports that it has met and considered the same and recommends that House recede from its proposal of amendment, and that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. VERMONT MILK COMMISSION; PRODUCER PRICE STABILIZATION

(a) The general assembly finds that the recent precipitous drop in producer prices is causing a tremendous burden on Vermont dairy producers and the industry at large and that this burden must be alleviated as quickly as possible.

(b) The general assembly followed the proceedings of the Vermont milk commission during the summer and fall of 2008 and finds that the commission has held public hearings and undertaken deliberations regarding the adoption of an over-order premium but did not reach a final disposition.

(c) Therefore, the milk commission shall resume deliberations on the commission's latest version of a "proposed order to establish a retail fluid milk premium" first issued on September 9, 2008.

Sec. 2. 6 V.S.A. § 2924 is amended to read:

§ 2924. POWERS AND DUTIES; PRICING AUTHORITY; PUBLIC HEARINGS

(a) Authority over milk prices. The commission may establish an equitable minimum or maximum price, or both, and the manner of payments, which shall be paid producers or associations of producers by handlers, and the prices charged consumers and others for milk used in dairy products by distributors or handlers. The cost of the contracts and employment pursuant to section 2923 of this title and of administering the collection and distribution of monies collected under this section shall not exceed $100,000.00 annually and may be collected independently from any assessment imposed under this section. The commission may impose an assessment to cover the initial costs of establishing a pricing order as authorized by this section.

(b) Equitable minimum producer prices. The commission may establish by order after notice and hearing an equitable minimum price to be paid to dairy producers for milk produced in Vermont on the basis of the use thereof in the various classes, grades, and forms. Prices so established which exceed federal order prices shall be collected by the commission from the handlers for distribution to dairy producers as a blend price. ~~The cost of the contracts and employment pursuant to section 2923 of this title and of administering the collection and distribution of these moneys shall be covered by such moneys, not to exceed $100,000.00.~~

(c) Public hearings. In order to be informed of the status of the state's dairy industry, the commission shall hold a public hearing~~:~~ at least annually, when directed by the general assembly, and whenever the chair deems it necessary.

~~(1) At least annually.~~

~~(2) Whenever the price paid to producers, including the federal market order price and any over-order premiums, on average, has been reduced by five percent or more over the last month or by 10 percent or more over the last three months.~~

~~(3) Whenever the retail price, on average, has increased by more than 10 percent per gallon within a three-month period or 15 percent per gallon within a 12-month period.~~

~~(4) Whenever the cost of production increases by 10 percent or more within a period of three to 12 months.~~

~~(5) Whenever a loss or substantial lessening of the supply of fluid dairy products of proper quality in a specified market has occurred or is likely to occur and that the public health is menaced, jeopardized, or likely to be impaired or deteriorated by the loss or substantial lessening of the supply of fluid dairy products of proper quality in a specified market.~~

* * *

Sec. 3. PREMIUM START-UP FUNDING

(a) The commission may impose an assessment to cover the administrative costs of its activities required by Sec. 1 of this act. An assessment under this section shall not exceed $35,000.00.

(b) The agency of agriculture, food and markets may borrow from its own general fund to cover these administrative expenses, and the milk commission shall reimburse the agency of agriculture, food and markets' general fund upon receipt of the proceeds of the assessment authorized by subsection (a) of this section.

Sec. 4. PRODUCER REFERENDUM

(a) If adopted pursuant to this act, a final order by the Vermont milk commission to establish a retail fluid milk premium shall be submitted by Vermont dairy producers to a producer referendum in accordance with part II, section 7 of the "Vermont Milk Commission Procedure, Development and Issuance of an Order to Establish a Retail Fluid Milk Premium, Or Amendment of Such Order." Notwithstanding the provisions of part III, section 8 of this commission procedure, however, the referendum shall not be conducted as a "qualified cooperative representative vote," but shall instead provide for individual ballot and vote by each Vermont producer.

(b) The referendum shall be carried out and certified not more than 30 days after the adoption of a final order.

(c) The commission shall file with the secretary of state and the legislative committee on administrative rules a letter explaining that a qualified cooperative representative vote pursuant to part III, section 8 of the "Vermont Milk Commission Procedure, Development and Issuance of an Order to Establish a Retail Fluid Milk Premium, Or Amendment of Such Order" will not apply to an order adopted under this act. The commission shall also submit a copy of this act to the secretary of state and the legislative committee on administrative rules.

Sec. 5. ANTI-TRUST INQUIRY; REPORTS BY THE ATTORNEY GENERAL AND MILK COMMISSION

(a) Findings. The general assembly is concerned that the highly concentrated market structure of the New England dairy industry, throughout all sectors, is operating to the disservice of Vermont dairy farmers and milk consumers alike. The raw milk sector of the industry is increasingly dominated by one large, nationally based dairy farm cooperative, and Vermont dairy farmers now have very few options for the initial marketing of their milk. The downstream processing sector is dominated by just two fluid milk processing concerns, which control both the procurement of raw milk from dairy farms and the sale of packaged milk to retail outlets. Finally, the dominant supermarket segment of the Vermont retail market is controlled by a few large firms, many of which are nationally based or multinational companies.

(b) Therefore, the attorney general shall undertake, in cooperation with attorneys general of other states when possible, a study of the Northeast fluid milk market and the Vermont segment of that market and further work with the United States Congress and the United States attorney general to investigate possible anticompetitive practices of dairy cooperatives, processors, and retail firms operating in the Vermont marketplace.

(c) The general assembly further finds that the Capper-Volstead Act of 1922 was enacted for the purpose of exempting agricultural producers, including dairy farmers, from anti-trust laws, thereby allowing farmers to organize into cooperative associations that could leverage higher farm-gate prices than can individual producers. The past decades have seen further conglomeration of dairy cooperatives, but this centralization of farm-gate dairy purchasing has done nothing to stabilize prices or create more value for producers.

(d) Therefore, the milk commission is directed to work with other entities such as the Vermont attorney general, attorneys general from other states, milk regulatory entities from other states, the United States attorney general, and the

Vermont congressional delegation to investigate why dairy cooperatives have not been able to use the Capper-Volstead Act to stabilize and raise dairy prices in the Northeast dairy market and to consider whether operation of the Capper-Volstead Act continues to serve its intended purpose and function in the public interest.

(e) By January 15, 2010, the attorney general and the milk commission shall report to the house and senate committees on agriculture with the findings and recommendations of the studies required by this section.

Sec. 6. 6 V.S.A. chapter 157 is amended to read:

CHAPTER 157. BONDS

§ 2881. CONDITIONS AND AMOUNT; FAILURE TO FILE

(a) Except as provided in section 2882 of this title, no handler shall purchase milk ~~or cream~~ from Vermont producers or milk cooperatives, and the secretary shall not issue a handler's license, unless the handler furnishes the secretary a good and sufficient surety bond, executed by a surety company duly authorized to transact business in this state in an amount ~~which, at the conclusion of five equal annual increases in bond coverage, is on January 1~~ equal to 50 percent for all species other than cattle, and 100 percent for cattle, of the maximum amount due all milk producers in the state who sell milk to the handler for a 41-day period during the previous 12 months. He or she may accept, in lieu of such bond, a guaranteed irrevocable letter of credit ~~in such sum as he or she deems sufficient~~. The bonds shall be taken for the ~~sole~~ benefit of milk producers ~~of such milk handlers~~ and milk cooperatives in this state. At any time in his or her discretion, the secretary may require such handlers to file detailed statements of the business transacted by them in this state, and at any time may require them to give such additional bonds as he or she deems necessary. If the handler refuses or neglects to file the detailed statements or to give bonds required by the secretary, the secretary may suspend the license of the handler until he or she complies with the secretary's orders. The secretary ~~shall~~ shall report to the attorney general the name of any handler doing business in this state without a license or after suspension of its license by the secretary and the attorney general shall forthwith bring injunction proceedings against the handler. Renewals of bonds specified in this section shall be furnished the secretary 60 days before the effective date of the bond. If the handler fails to file the bonds as required, the secretary shall forthwith publish the name of the handler in four newspapers of general circulation in the state for a period of three consecutive days and notify, by registered mail, producers supplying such handler.

(b) ~~A handler shall be exempt from providing the financial security required by this section for payments the handler makes to a producer who is a~~

~~member of a milk cooperative which guarantees its members' milk checks. To receive this exemption, a handler shall notify the secretary of each such producer and the secretary shall validate the cooperative membership of the producer.~~

§ 2882. EXEMPTIONS FROM FILING BOND

(a) A ~~handler who purchases or receives milk or cream from producers~~ milk cooperative or a nonprofit cooperative association organized under Vermont law or similar laws in other states shall not be required to furnish surety as provided in section 2881 of this title ~~if the handler is a nonprofit cooperative association organized under Vermont statutes or under similar laws in other states~~ for payments made to a milk cooperative or to a producer who is a member of a milk cooperative.

(b) A handler who does not purchase milk ~~or cream~~ from Vermont producers or milk cooperatives shall not be required to furnish surety as provided under section 2881 of this title.

(c) A handler who pays a milk cooperative for milk in advance or at the time of delivery shall not be required to furnish surety as provided under section 2881 of this title. Every milk cooperative selling milk to handlers who pay for milk in advance or at the time of delivery shall, on January 1 and July 1 of each year, notify the secretary in writing of the identity of each handler and shall promptly notify the secretary, in writing, of any changes to the most recent notification.

(d) A handler who purchases fewer than 150,000 pounds of milk per month from a milk cooperative shall not be required to furnish surety as provided under section 2881 of this title.

Sec. 7. 20 V.S.A. § 3541(9) is added to read:

(9) "Working farm dog" means a dog that is bred or trained to herd or protect livestock or poultry or to protect crops and that is used for those purposes and that is registered as a working farm dog pursuant to subsection 3581(a) of this title.

Sec. 8. 20 V.S.A. § 3549 is amended to read:

§ 3549. DOMESTIC PETS OR WOLF-HYBRIDS, REGULATION BY TOWNS

The legislative body of a city or town by ordinance may regulate the keeping, leashing, muzzling, restraint, impoundment, and destruction of domestic pets or wolf-hybrids and their running at large except that a legislative body of a city or town shall not prohibit or regulate the barking or

running at large of a working farm dog when it is on the property being farmed by the person who registered the working farm dog, pursuant to subsection 3581(a) of this title, in the following circumstances:

(1) If the working farm dog is barking in order to herd or protect livestock or poultry or to protect crops.

(2) If the working farm dog is running at large in order to herd or protect livestock or poultry or to protect crops.

Sec 9. 20 V.S.A. § 3581(a) is amended to read:

§ 3581. GENERAL REQUIREMENTS

(a) A person who is the owner of a dog or wolf-hybrid more than six months old shall annually on or before April 1 cause it to be registered, numbered, described, and licensed on a form approved by the secretary for one year from that day in the office of the clerk of the municipality wherein the dog or wolf-hybrid is kept. A person who owns a working farm dog and who intends to use that dog on a farm pursuant to the exemptions in section 3549 of this title shall cause the working farm dog to be registered as a working farm dog and shall, in addition to all other fees required by this section, pay $5.00 for a working farm dog license. The owner of a dog or wolf-hybrid shall cause it to wear a collar, and attach thereto a license tag issued by the municipal clerk. Dog or wolf-hybrid owners shall pay for the license $4.00 for each neutered dog or wolf-hybrid, and $8.00 for each unneutered dog or wolf-hybrid. If the license fee for any dog or wolf-hybrid is not paid by April 1, its owner or keeper may thereafter procure a license for that license year by paying a fee of fifty percent in excess of that otherwise required.

Sec. 10. 6 V.S.A. § 2728 is added to read:

§ 2728. MANUFACTURING GRADE GOAT MILK

(a) "Manufacturing grade goat milk" is goat milk other than Grade A goat milk produced and distributed according to the Grade A Pasteurized Milk Ordinance.

(b) The maximum somatic cell count for manufacturing grade goat milk shall not exceed 1,500,000 per milliliter.

Sec. 11. SUNSET

6 V.S.A. § 2728 (manufacturing grade goat milk) shall be repealed when a National Conference on Interstate Milk Shipments amendment to the Grade A Pasteurized Milk Ordinance that raises the limit on somatic cell counts for goat milk to be equal to or higher than 1,500,000 per milliliter becomes effective.

Sec. 12. EFFECTIVE DATE

This act shall take effect upon passage.

ROBERT A. STARR
HAROLD GIARD
SARA BRANON KITTELL

Committee on the part of the Senate

CHRISTOPHER A. BRAY
CAROLYN W. PARTRIDGE
NORMAN H. MCALLISTER

Committee on the part of the House

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

Rules Suspended; House Proposal of Amendment; Bill Committed

S. 136.

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

An act relating to reducing the drop-out rate in Vermont secondary schools to zero by the year 2020.

Was taken up for immediate consideration.

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:

* * * Policy * * *

Sec. 1. ONE HUNDRED PERCENT BY 2020 INITIATIVE; POLICY

It is a priority of the general assembly and the department of education to take all necessary measures to increase the Vermont secondary school completion rate to 100 percent by the year 2020.

* * * Early Identification of Students Who Require Additional Assistance to Successfully Complete Secondary School * * *

Sec. 2. 16 V.S.A. chapter 99 is amended to read:

CHAPTER 99. GENERAL POLICY

§ 2901. SUCCESS FOR ALL STUDENTS IN THE GENERAL EDUCATION ENVIRONMENT

(a) It is the policy of the state that each local school district develop and maintain, in consultation with parents, a comprehensive system of education that will result, to the extent appropriate, in all students succeeding in the general education environment. A comprehensive system of education includes a full range of services and accommodations ~~which~~ that are needed by students in the district. These services could include a separate alternative program if the district finds that some of its students could be better served in an environment outside the classroom, or if the district finds that separate placement is the best way to provide services to a student who is disrupting the class or having difficulty learning in a traditional school setting for educational, emotional, or personal reasons and thereby impairing the ability of the classroom teacher to provide quality services to that student or to ~~the~~ other ~~pupils~~ students. This chapter does not replace or expand entitlements created by federal law, nor is it the intent of this chapter to create a higher standard for maintaining a student in the general classroom than the standard created in the following federal laws: 20 U.S.C. § 1401 et seq., Individuals with Disabilities Act; 29 U.S.C. § 794, Section 504 of the Rehabilitation Act; and 42 U.S.C. § 12101 et seq., Americans with Disabilities Act.

(b) [Repealed.]

(c) No individual entitlement or private right of action is created by this section.

§ 2902. EDUCATIONAL SUPPORT SYSTEM AND EDUCATIONAL SUPPORT TEAM

(a) Within each school district's comprehensive system of educational services, each public school shall develop and maintain an educational support system for ~~children~~ students who require additional assistance in order to succeed or to be challenged in the general education environment. For each school it maintains, a school district board shall assign responsibility for developing and maintaining the educational support system either to the superintendent pursuant to a contract entered into under section 267 of this title~~,~~ or to the principal. The educational support system shall, at a minimum, include an educational support team and a range of support and remedial services, including instructional and behavioral interventions and accommodations.

(b) The educational support system shall:

(1) Be integrated to the extent appropriate with the general education curriculum.

(2) Be designed to increase the ability of the general education system to meet the needs of all students.

(3) Be designed to provide students the support needed regardless of eligibility for categorical programs.

(4) Provide clear procedures and methods for ~~handling a student who~~ addressing student behavior that is disruptive to the learning environment and ~~shall~~ include ~~provision of~~ educational options, support services, and consultation or training for staff where appropriate. Procedures may include ~~provision for~~ removal of ~~the~~ a student from the classroom or the school building for as long as appropriate, consistent with state and federal law and the school's policy on student discipline, ~~and~~ after reasonable effort has been made to support the student in the regular classroom environment.

(5) Ensure collaboration with families, community supports, and the system of health and human services.

(c) ~~Each educational support system shall include an~~ The educational support team ~~which~~ for each public school in the district shall be composed of staff from a variety of teaching and support positions and shall:

(1) ~~Provide a procedure for timely referral for evaluation for special education eligibility when warranted~~ Determine which enrolled students require additional assistance to be successful in school or to complete secondary school based on indicators set forth in guidelines developed by the commissioner, such as academic progress, attendance, behavior, or poverty. The educational support team shall pay particular attention to students during times of academic or personal transition.

(2) ~~Be composed of staff from a variety of teaching and support services positions~~ Identify the classroom accommodations, remedial services, and other supports that have been provided to the identified student.

(3) ~~Screen referrals to determine what classroom accommodations and, remedial services have been tried.~~

~~(4)~~ Assist teachers ~~in planning and providing~~ to plan for and provide services and accommodations to students in need of classroom supports or enrichment activities.

(4) Develop an individualized strategy, in collaboration with the student's parents or legal guardian whenever possible, to assist the identified student to succeed in school and to complete his or her secondary education.

(5) Maintain a written record of its actions.

(6) Report no less than annually to the commissioner, in a form the commissioner prescribes, on the ways in which the educational support system has addressed the needs of students who require additional assistance in order

to succeed in school or to complete secondary school and on the additional financial costs of complying with this subsection (c).

(d) No individual entitlement or private right of action is created by this section.

(e) The commissioner shall establish guidelines for teachers and administrators in following federal laws relating to provision of services for children with disabilities and the implementation of this section.

(f) It is the intent of the general assembly that a gifted and talented student shall be able to take advantage of services that an educational support team can provide. It is not the intent of the general assembly that funding under chapter 101 of this title shall be available for a gifted and talented student unless the student has been otherwise determined to be a student for whom funding under that chapter is available.

§ 2903. PREVENTING EARLY SCHOOL FAILURE; READING INSTRUCTION

(a) Statement of policy. The ability to read is critical to success in learning. Children who fail to read by the end of the first grade will likely fall further behind in school. The personal and economic costs of reading failure are enormous both while the student remains in school and long afterward. All students need to receive systematic reading instruction in the early grades from a teacher who is skilled in teaching reading through a variety of instructional strategies that take into account the different learning styles and language backgrounds of the students. Some students may require intensive supplemental instruction tailored to the unique difficulties encountered.

(b) Foundation for literacy. The state board of education, in collaboration with the agency of human services, higher education, literacy organizations, and others, shall develop a plan for establishing a comprehensive system of services for early education in the first three grades to ensure that all students learn to read by the end of the third grade. The plan shall be ~~submitted to the general assembly by January 15, 1998 and shall be~~ updated at least once every five years following its initial submission in 1998.

(c) Reading instruction. A public school ~~which~~ that offers instruction in grades one, two, or three shall provide highly effective, research-based reading instruction to all students. In addition, ~~for~~ a school shall provide:

(1) Supplemental reading instruction to any enrolled student in grade four whose reading ~~performance falls below the level expected in order to achieve~~ ~~third grade reading~~ proficiency falls below third grade reading expectations, as defined under subdivision 164(9) of this title~~, the school shall~~

~~work to improve the student's reading skills by providing additional research-based reading instruction to the student, and by providing support.~~

(2) Supplemental reading instruction to any enrolled student in grades 5–12 whose reading proficiency creates a barrier to the student's success in school.

(3) Support and information to parents and ~~other family members~~ legal guardians.

§ 2904. REPORTS

Annually, each superintendent shall report to the commissioner in a form prescribed by the commissioner, on the status of the educational support systems in each school in the supervisory union. The report shall describe the services and supports that are a part of the education support system, how they are funded, and how building the capacity of the educational support system has been addressed in the school action plans, and shall be in addition to the report required of the educational support team in subdivision 2902(c)(6) of this chapter. The superintendent's report shall include a description and justification of how funds received due to Medicaid reimbursement under section 2959a of this title were used.

* * * High School Completion Program * * *

Sec. 3. 16 V.S.A. § 1049a is amended to read:

§ 1049a. HIGH SCHOOL COMPLETION PROGRAM

(a) In this section:

(1) "Graduation education plan" means a written plan leading to a high school diploma for a person who is 16 to 22 years of age~~,~~ and has not received a high school diploma, ~~and is not~~ who may or may not be enrolled in a public or approved independent school. The plan shall define the scope and rigor of services necessary for the student to attain a high school diploma, and may describe educational services to be provided by a public high school, an approved independent high school, an approved provider, or a combination of these.

(2) "Approved provider" means an ~~agency~~ entity approved by the commissioner to provide educational services which may be counted for credit toward a high school diploma.

(3) "Contracting agency" means an agency that has entered into a contract with the department of education to provide adult education services in Vermont.

(b) ~~The commissioner shall assign~~ If a ~~student~~ person who wishes to work on a graduation education plan is not enrolled in a public or approved independent school, then the commissioner shall assign the prospective student to a high school district, which shall be the district of residence whenever possible. ~~Upon assignment, the~~ The school district in which a student is enrolled or to which an non-enrolled student is assigned shall work with ~~an agency which has entered into contract with the department of education to provide adult education services in Vermont~~ the contracting agency and the student to develop a graduation education plan. The school district shall award a high school diploma upon successful completion of the plan.

(c) The commissioner shall reimburse, and net cash payments where possible, a ~~town~~ school district~~, city school district, union school district, unified union school district, incorporated school district, or member school district of an interstate school district which~~ that has agreed to a graduation education plan in an amount:

(1) established by the commissioner for development of the graduation education plan and for other educational services typically provided by the assigned district or an approved independent school pursuant to the plan, such as counseling, health services, participation in ~~co-curricular~~ cocurricular activities, and participation in academic or other courses, provided this amount shall not be available to a district that provides services under this section to an enrolled student; and

(2) negotiated by the commissioner and the contracting agency ~~which has entered into contract with the department of education to provide adult education services in Vermont~~, with the approved provider, for services and outcomes purchased from the approved provider on behalf of the student pursuant to the graduation education plan.

(d) On or before January 30 of each year~~, beginning in 2008~~, the commissioner shall report to the senate and house committees on education on the number of students participating in a graduation education plan, the number completing a plan, and the amount paid. The commissioner shall present the information organized by school district, approved independent school, and approved provider.

Sec. 4. HIGH SCHOOL COMPLETION PROGRAM; GRADUATION EDUCATION PLAN; GUIDELINES

(a) The graduation education plan for each 16- and 17-year-old student shall include services relevant to the student's goals, such as:

(1) Career exploration.

(2) Workforce training.

(3) Workplace readiness training.

(4) Preparation for postsecondary training or education and transitioning assistance.

(b) The graduation education plan for each student who is 18 years of age or older should include services relevant to the student's goals, such as those listed in subsection (a) of this section.

(c) The commissioner shall develop and publish guidelines to assist in the implementation of this section.

* * * Commissioner of Education * * *

Sec. 5. MEASURING SECONDARY SCHOOL COMPLETION RATES

(a) On or before December 31, 2009, the commissioner of education shall develop an accurate, uniform, and reliable method for defining and measuring secondary school completion rates on a school-by-school basis, including appropriate cohort identification, and shall set benchmarks for assessing individual school performance relative to the goal of increasing the secondary school completion rate to 100 percent by the year 2020.

(b) On or before January 15 of each year through January 2020, the commissioner shall report to the senate and house committees on education regarding the state's progress in achieving the goal of a 100 percent secondary school completion rate. At the time of the report, the commissioner shall also recommend other initiatives, if any, to improve both graduation rates and secondary school success for all Vermont students.

(c) Annually through 2020, each school district operating one or more secondary schools shall report to the taxpayers at the time school budgets are presented for approval regarding the district's progress in achieving the goal of a 100 percent secondary school completion rate.

Sec. 6. FLEXIBLE PATHWAYS TO GRADUATION

On or before January 15, 2010,

(1) The commissioner of education shall evaluate the prevalence and efficacy of flexible practices and programs currently used by Vermont schools to identify and support students who require additional assistance or alternative methods to be successful in school or to complete secondary school and shall identify schools that need assistance to begin or enhance their practices.

(2) The commissioner of education shall develop and publish guidelines to assist school districts to identify and support elementary and secondary students who require additional assistance to succeed in school or who would

benefit from flexible pathways to graduation. Such guidelines may include strategies such as:

(A) Targeted assistance, including individual tutoring, evidence-based literacy instruction, alternative and extended scheduling, and opportunities to earn necessary credits necessary to obtain a high school diploma.

(B) Flexible programs designed to provide each student identified under 16 V.S.A. § 2902(c) in Sec. 2 of this act with the supports and accommodations necessary to succeed in school and to complete secondary school with the education and skills critical for success after graduation. Examples of flexible program components include:

(i) The assignment of one or more adults from within the school community to provide continuity to the student.

(ii) The development of a personalized education plan or strategy by the student, the assigned adult or adults or another representative of the district, and the student's parents or legal guardian.

(iii) The opportunity to acquire knowledge and skills through applied or work-based learning opportunities.

(iv) The opportunity to participate in dual enrollment courses with tutorial support provided as needed.

(v) Assessments that allow the student to demonstrate proficiency by applying his or her knowledge and skills to tasks that are of interest to that student.

(3) The commissioner of education shall report to the senate and house committees on education regarding implementation of this section and recommend additional legislation, if any, necessary to ensure effective implementation by all school districts in Vermont.

* * * Truancy * * *

Sec. 7. TRUANCY

(a) On or before September 30, 2009, and in consultation and coordination with the executive director of the department of state's attorneys and sheriffs, interested judges of the Vermont district courts, and school district personnel, the commissioner of education shall develop and publish on the department of education's website comprehensive model truancy protocols consistent with the provisions of 16 V.S.A. chapter 25, subchapter 3, that confront truancy on a statewide, countywide, and supervisory unionwide basis and include the

post-complaint involvement of both state's attorneys and the court system under 16 V.S.A. § 1127.

(b) On or before December 15, 2009, the commissioner shall propose to the house and senate committees on education any legislative amendments or additions necessary to implement the purposes of this section.

(c) The commissioner shall ensure that, on or before July 1, 2010, the supervisory unions in each county adopt truancy policies that are consistent with and carry forward the purposes of this section.

(d) On or before January 15, 2011, the commissioner shall report to the house and senate committees on education regarding implementation of this section.

Sec. 8. 16 V.S.A. § 261a is amended to read:

§ 261a. DUTIES OF SUPERVISORY UNION BOARD

The board of each supervisory union shall:

* * *

(11) on or before June 30 of each year, adopt a budget for the ensuing school year; and

(12) adopt supervisory unionwide truancy policies consistent with the model protocols developed by the commissioner.

* * * Teen Parent Education Programs * * *

Sec. 9. 16 V.S.A. § 11(a)(28)(C) is amended to read:

~~(C) a pregnant or postpartum pupil attending school at an approved education program in a residential facility or outside the school district of residence pursuant to subsection 1073(b) of this title.~~

Sec. 10. 16 V.S.A. § 11(a)(33), (34), and (35) are added to read:

(33)(A) "Pregnant or parenting pupil" means a legal pupil of any age who is not a high school graduate and who:

(i) is pregnant; or

(ii) has given birth, has placed a child for adoption, or has experienced a miscarriage, if any of these has occurred within one year before the public or approved independent school or the approved education program receives a request for enrollment or attendance; or

(iii) is the parent of a child.

(B) "Pregnant or parenting pupil" does not include a person whose parental rights have been terminated, except if the pupil has placed the child for adoption or has voluntarily relinquished parental rights, within one year before the public or approved independent school or the approved education program receives a request for enrollment or attendance.

(34) "Approved education program" means a program that is evaluated and approved by the state board pursuant to written standards, that is neither an approved independent school nor a public school, and that provides educational services to one or more pupils in collaboration with the pupil's or pupils' school district of residence. An "approved education program" includes an "approved teen parent education program."

(35) "Teen parent education program" means a program designed to provide educational and other services to pregnant pupils or parenting pupils or both.

Sec. 11. 16 V.S.A. § 828 is amended to read:

§ 828. TUITION TO APPROVED SCHOOLS, AGE, APPEAL

A school district shall not pay the tuition of a pupil except to a public ~~or~~ school, an approved independent school ~~or~~, an independent school meeting school quality standards, a tutorial program approved by the state board, an approved education program, or an independent school in another state or country approved under the laws of that state or country, nor shall payment of tuition on behalf of a person be denied on account of age. Unless otherwise provided, a person who is aggrieved by a decision of a school board relating to eligibility for tuition payments, the amount of tuition payable, or the school he or she may attend, may appeal to the state board and its decision shall be final.

Sec. 12. 16 V.S.A. § 1073(b) is amended to read:

(b) Access to school.

(1) Right to a public education. No legal pupil attending school at public expense, including a married, pregnant, or ~~postpartum~~ parenting pupil, shall be deprived of or denied the opportunity to participate in or complete ~~an elementary and secondary~~ a public school education.

(2) Right to enroll in a public or independent school. Notwithstanding the provisions of sections 822 and 1075 of this title, ~~for reasons related to the pregnancy or birth,~~ a pregnant or ~~postpartum~~ parenting pupil may ~~attend~~ enroll in any approved public school in Vermont or an adjacent state, any approved independent school in Vermont, or any other educational program approved by the state board in which any other legal pupil in Vermont may enroll.

(3) Teen parent education program.

(A) Residential teen parent education programs. The commissioner shall pay the educational costs for a pregnant or ~~postpartum~~ parenting pupil attending a state board approved ~~educational~~ teen parent education program in a 24-hour residential facility for up to eight months after the birth of the child. The commissioner may approve extension of payment of educational costs based on a plan for reintegration of the student into the community or for exceptional circumstances as determined by the commissioner. The district of residence of a pupil in a 24-hour residential facility shall remain responsible for coordination of the pupil's educational program and for planning and facilitating her subsequent educational program.

(B) Nonresidential teen parent education programs.

(i) The pregnant or parenting pupil's district of residence or the approved independent or public school to which that district pays tuition for its students ("the enrolling school") shall be responsible for planning, coordinating, and assessing the enrolled pupil's education plan while attending a teen parent education program and for planning, assessing, and facilitating the pupil's subsequent education plan, including the pupil's transition back to the public or approved independent school. As determined by the district of residence or the enrolling school, as appropriate, the pupil's educational plan while attending a teen parent education program shall include learning experiences that are the substantial equivalent of the learning experiences required by the district of residence or the enrolling school to obtain a high school diploma.

(ii) A pregnant or parenting pupil may attend a nonresidential teen parent education program for a length of time to be determined by agreement of the pupil's district of residence, the enrolling school, the teen parent education program, and the pupil.

(iii) In the event of a dispute regarding any aspect of this subdivision (B), the district of residence, the enrolling school, the teen parent education program, or the pupil or any combination of these may request a determination from the commissioner whose decision shall be final; any determination by the commissioner regarding "substantial equivalency" pursuant to subdivision (i) of this subdivision (b)(3)(B) shall be based on the commissioner's analysis of the course syllabus or the course description provided by the district of residence or enrolling school.

Sec. 13. 16 V.S.A. § 1121 is amended to read:

§ 1121. ATTENDANCE BY CHILDREN OF SCHOOL AGE REQUIRED

A person having the control of a child between the ages of six and 16 years shall cause the child to attend a public school, an approved or recognized

independent school, an approved education program, or a home study program for the full number of days for which that school is held, unless the child:

* * *

Sec. 14. CONFORMING LANGUAGE

To ensure consistency of No. 192 of the Acts of the 2007 Adj. Sess. (2008) with Secs. 9 through 13 of this act, the following amendments shall be made to Sec. 5.304.1 of that act:

(1) In subdivision (a)(2), by striking the word "coordinating" and inserting in lieu thereof the following: "planning, coordinating, and assessing".

(2) In subdivision (a)(2), after the word "planning" and before the words "and facilitating" by adding the following: ", assessing,".

(3) In subdivision (b)(3), by striking the final sentence.

Sec. 15. TRANSITIONAL PROVISION

It is the intent of the general assembly that until July 1, 2010, a teen parent education program that has been recognized by the department for children and families shall be considered "an approved education program" for the purposes of Secs. 9 through 13 of this act.

* * * Prekindergarten Education Programs * * *

Sec. 16. 16 V.S.A. § 829 is amended to read:

§ 829. PREKINDERGARTEN EDUCATION; RULES

(a) The commissioner of education and the commissioner for children and families shall jointly develop and agree to rules and present them to the state board of education for adoption under chapter 25 of Title 3 as follows:

* * *

(b) Each component of a prekindergarten education program, whether operated by a school district or by a licensed center through a school district, shall be supervised by an early education teacher licensed and endorsed pursuant to chapter 51 of this title; provided a superintendent of a school district that either has contracted with a licensed center to provide a prekindergarten education program or is in the process of entering into such a contract may request an emergency license or endorsement or both on behalf of the licensed center in accordance with rules 5360–5364 adopted by the Vermont standards board for professional educators.

Sec. 17. 16 V.S.A. § 4001(1)(C) is amended to read:

(C) The full-time equivalent enrollment for each prekindergarten child as follows: If a child is enrolled in 10 or more hours of prekindergarten education per week or receives 10 or more hours of essential early education services per week, the child shall be counted as one full-time equivalent pupil. If a child is enrolled in six or more but fewer than 10 hours of prekindergarten education per week or if a child receives fewer than 10 hours of essential early education services per week, the child shall be counted as a percentage of one full-time equivalent pupil, calculated as one multiplied by the number of hours per week divided by ten. A child enrolled in prekindergarten education for fewer than six hours per week shall not be included in the district's average daily membership. ~~Although there is no limit on the total number of children who may be enrolled in prekindergarten education or who receive essential early education services, the total number of prekindergarten children that a district may include within its average daily membership shall be limited as follows:~~

~~(i) All children receiving essential early education services may be included.~~

~~(ii) Of the children enrolled in prekindergarten education offered by or through a school district who are not receiving essential early education services, the greater of the following may be included:~~

~~(I) ten children; or~~

~~(II) the number resulting from: (aa) one plus the average annual percentage increase or decrease in the district's first grade average daily membership as counted in the census period of the previous five years; multiplied by (bb) the most immediately previous year's first grade average daily membership; or~~

~~(III) the total number of children residing in the district who are enrolled in the prekindergarten program or programs and who are eligible to enter kindergarten in the district in the following academic year; or~~

~~(IV) one-fifth of the total number of children in grades 1-5 who were included in the district's average daily membership for the previous year.~~

After passage, the title of the bill is to be amended to read:

AN ACT RELATING TO INCREASING THE GRADUATION RATE IN VERMONT SECONDARY SCHOOLS TO 100 PERCENT BY THE YEAR 2020.

Thereupon, pending the question Shall the Senate concur in the House proposal of amendment?, Senator Shumlin moved that the bill be committed to the Committee on Education,

Which was agreed to.

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

S. 47.

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

An act relating to salvage yards.

Was taken up for immediate consideration.

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

In Sec. 26 by striking out the following: "subsection (d) of this section, subdivision (h)(3)(A) or subdivision (h)(3)(B) of this section" where it appears and inserting in lieu thereof the following: subsection (d) or (i) of this section

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

Rules Suspended; Proposal of Amendment; Third Reading Ordered

H. 192.

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

An act relating to electronic benefit machines for farmers' markets.

Was taken up for immediate consideration.

Senator Kittell, for the Committee on Agriculture, to which the bill was referred, reported recommending that the Senate propose to the House to amend the bill by adding three new sections to be numbered Secs. 2, 3 and 4 read as follows:

Sec. 2. MILK AND MEAT PILOT PROGRAM

(a) The commissioner of education, the secretary of agriculture, food and markets, and the secretary of human services shall work with Vermont's congressional delegation to design the reauthorization of the federal Child

Nutrition Act to create a milk and meat pilot program in Vermont. The pilot program should be designed to:

(1) test the feasibility of and options for centralized statewide purchasing of local milk and meat for school meals; and

(2) offer technical assistance and training to school staff regarding sourcing, use, storage, and preparation of local foods.

(b) On or before January 15, 2010, the commissioner and secretaries shall report to the senate and house committees on agriculture on the success of their negotiations with the congressional delegation.

Sec. 3. FRESH FRUIT AND VEGETABLE GRANT PROGRAM; TECHNICAL ASSISTANCE

(a) The department of education has received funding through the federal fresh fruit and vegetable grant program to increase the consumption of fresh fruit and vegetables and promote the nutritional health of schoolchildren. However, some of the schools receiving these funds have been unable to maximize their use due to lack of storage equipment, staff to administer the programs, staff to process the foods, or knowledge about how to optimize consumption of the fresh foods by young children. Therefore, the general assembly hereby directs the department of education to examine ARRA funds it will receive in fiscal year 2010 to determine if any may be used to provide the resources or technical assistance to schools that will help them maximize the purchase and use of local fruits and vegetables under the fresh fruit and vegetable grant program.

(b) On or before January 15, 2010, the commissioner of education shall report to the senate and house committees on agriculture on the success of finding and using funds to help to implement the fresh fruit and vegetable grant program.

Sec. 4. 10 V.S.A. § 494 is amended to read:

§ 494. EXEMPT SIGNS

The following signs are exempt from the requirements of this chapter except as indicated in section 495 of this title:

* * *

(12) Directional signs, subject to regulations adopted by the Federal Highway Administration with a total surface area not to exceed ~~four~~ six square feet providing directions to places of business offering for sale agricultural products harvested or produced on the premises where the sale is taking place,

or to farmers' markets that are members of the Vermont Farmers Market Inc. selling Vermont agricultural products.

* * *

(15) Municipal informational and guidance signs. A municipality may provide alternative signs of a guidance or informational nature and creative design to assist persons in reaching destinations that are transportation centers, geographic districts, historic monuments and significant or unique educational, recreational or cultural landmarks, including farmers markets that are members of the Vermont Farmers Market Inc. selling Vermont agricultural products, provided that such destinations are not private, for-profit enterprises. A proposal to provide alternative signs shall contain color, shape and sign placement requirements that shall be of a uniform nature within the municipality. The surface area of alternative signs shall not exceed 12 square feet, and the height of such signs shall not exceed 12 feet in height. The proposal shall be approved by the municipal planning commission for submission to and adoption by the local legislative body. Alternative signs shall be responsive to the particular needs of the municipality and to the values expressed in this chapter. These proposals shall be subject to and consistent with any plan duly adopted pursuant to chapter 117 of Title 24, shall be enforced under the provisions of 24 V.S.A. §§ 4444 and 4445 and may emphasize each municipality's special characteristics. No fees shall be assessed against a municipality that provides signs under this section and, upon issuance of permits under section 1111 of Title 19, such signs may be placed in any public right-of-way other than interstates. This section shall take effect upon the travel information council securing permission for alternative municipal signs in accordance with section 1029 of Title 23.

* * *

(17) Within a downtown district designated under the provisions of 24 V.S.A. chapter 76A, municipal information and guidance signs. A municipality may erect alternative signs to provide guidance or information to assist persons in reaching destinations that are transportation centers, geographic districts, and significant or unique educational, recreational, historic or cultural landmarks, including farmers markets that are members of the Vermont Farmers Market Inc. selling Vermont agricultural products. A proposal to provide alternative signs shall contain color, shape and sign placement requirements that shall be uniform within the municipality. The surface area of alternative signs shall not exceed 12 square feet, and the highest point of such signs shall not exceed 12 feet above the ground, road surface or sidewalk. The proposal shall be approved by the municipal planning commission for submission to and adoption by the local legislative body. The

sign proposal then shall be submitted to the travel information council for final approval. Denial may be based only on safety considerations. Reasons for denial shall be stated in writing. Alternative signs shall be responsive to the particular needs of the municipality and to the values expressed in this chapter. These proposals shall be subject to and consistent with any municipal plan duly adopted pursuant to chapter 117 of Title 24, shall be enforced under the provisions of 24 V.S.A. §§ 4444 and 4445 and may emphasize each municipality's special characteristics. No fees shall be assessed against a municipality that provides signs under this section and upon issuance of permits under section 1111 of Title 19, such signs may be placed in any public right-of-way other than an interstate highway. Notwithstanding subdivision 495(a)(7) or any other provision of this title or of section 1029 of Title 23, alternative signs permitted under this subsection shall not be required to comply with any nationally recognized standard.

The Committee further recommends that after passage of the bill the title be amended to read as follows:

AN ACT RELATING TO ENCOURAGING USE OF LOCAL FOODS IN VERMONT'S FOOD SYSTEM.

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

Senator Snelling, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill be amended as recommended by the Committee on Agriculture with the following amendment thereto:

In Sec. 3, by striking out subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read as follows:

(a) The department of education has received funding through the federal fresh fruit and vegetable grant program to increase the consumption of fresh fruit and vegetables and promote the nutritional health of schoolchildren. However, some of the schools receiving these funds have been unable to maximize their use due to lack of storage equipment, staff to administer the programs, staff to process the foods, or knowledge about how to optimize consumption of the fresh foods by young children. Therefore, the general assembly hereby directs the department of education to work with school districts and supervisory unions to identify ARRA funds they or the department will receive in fiscal year 2010 to determine if any may be used to provide the resources or technical assistance to schools that will help them maximize the purchase and use of local fruits and vegetables under the fresh fruit and vegetable grant program.

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

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

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Agriculture, as amended?, Senator Kittell moved to amend the proposal of amendment as follows:

In Sec. 4, 10 V.S.A. §494(12), (15) and (17), after the words: "Vermont farmers' market" by striking out the word "Inc." and inserting in lieu thereof: the word association

Which was agreed to.

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

Thereupon, on motion of Senator Shumlin, the rules were suspended and the bill was placed on all remaining stages of its passage in concurrence with proposal of amendment.

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

Rules Suspended; Bill Messaged

On motion of Senator Shumlin, the rules were suspended, and the following bill was ordered messaged to the House forthwith:

H. 192.

Rules Suspended; Bills Delivered

On motion of Senator Shumlin, the rules were suspended, and the following bills were severally ordered delivered to the Governor forthwith:

S. 47, S. 89.

Recess

On motion of Senator Shumlin the Senate recessed until three o'clock and thirty minutes.

Called to Order

At three o'clock and forty-five minutes the Senate was called to order by the President.

Message from the House No. 84

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

Mr. President:

I am directed to inform the Senate that:

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

S. 121. An act relating to miscellaneous election laws.

And has passed the same in concurrence.

Pursuant to Senate request, the House returns custody of a bill originating in the House of the following title:

H. 438. An act relating to the state's transportation program.

Message from the House No. 85

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

Mr. President:

I am directed to inform the Senate that:

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

H. 83. An act relating to underground storage tanks and the petroleum cleanup fund.

And has adopted the same on its part.

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

H. 427. An act relating to making miscellaneous amendments to education law.

And has adopted the same on its part.

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

H. 445. An act relating to capital construction and state bonding.

And has adopted the same on its part.

Rules Suspended; Action Reconsidered; Rules Suspended; Report of Committee of Conference Accepted and Adopted on the Part of the Senate; Bill Messaged

H. 438.

On motion of Senator Shumlin the rules were suspended, and H. 438 was taken up for immediate consideration.

Thereupon, on motion of Senator Shumlin the rules were further suspended to permit the making of a motion to reconsider its vote of May 7, notwithstanding the provisions of Senate Rule 73.

Assuring the Chair that he voted with the majority whereby the Senate accepted and adopted the Report of the Committee of Conference, Senator Shumlin moved that the Senate reconsider its action on House bill entitled:

An act relating to the state's transportation program.

Which was agreed to.

Thereupon, the question, Shall the Senate reconsider its action in the adoption of the report of the Committee of Conference, was decided in the affirmative.

Thereupon, pending entry on the Calendar for notice, on motion of Senator Shumlin, the rules were suspended and the report of the Committee of Conference was taken up for immediate consideration.

Senator Kitchel moved that an amended report of the Committee of Conference be substituted for the original report.

Thereupon, the question, Shall the original report of the Committee of Conference considered by the Senate on May 7 be substituted for by the report of the Committee of Conference as submitted today (May 8)?, was decided in the affirmative.

Senator Mazza, for the Committee of Conference, submitted the following substitute report:

To the Senate and House of Representatives:

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

H. 438. An act relating to the state's transportation program..

Respectfully reports that it has met and considered the same and recommends that the Senate recede from its proposal of amendment and that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. TRANSPORTATION PROGRAM

(a) The state's proposed fiscal year 2010 transportation program appended to the agency of transportation's proposed fiscal year 2010 budget, as amended by this act, is adopted to the extent federal, state, and local funds are available.

(b) As used in this act, unless otherwise indicated:

(1) the term "agency" means the agency of transportation;

(2) the term "secretary" means the secretary of transportation;

(3) the table heading "As Proposed" means the transportation program referenced in subsection (a) of this section; the table heading "As Amended" means the amendments as made by this act; the table heading "Change" means the difference obtained by subtracting the "As Proposed" figure from the "As Amended" figure; and the term "change" or "changes" in the text refers to the project- and program-specific amendments, the aggregate sum of which equals the net "Change" in the applicable table heading;

(4) the term "bonding" refers to the net proceeds of transportation bonds which were included in the agency's proposed fiscal year 2010 transportation program;

(5) the term "ARRA funds" refers to federal funds allocated to the state by the American Recovery and Reinvestment Act of 2009;

(6) the term "TIB funds" refers to monies deposited in the transportation infrastructure bond fund in accordance with 19 V.S.A. § 11f.

* * * TIB Funds * * *

Sec. 2. TIB FUNDS

All spending of TIB funds authorized by this act with respect to an agency program and all appropriations of TIB funds shall be limited to eligible projects as defined in 19 V.S.A. § 11f(b) and shall further be limited in amounts to the monies deposited in the transportation infrastructure bond fund during the fiscal year in which the spending is authorized and the appropriation is made.

* * * ARRA Funds * * *

Sec. 3. FEDERAL ECONOMIC RECOVERY FUNDS

(a) Division A – Title XII of the American Recovery and Reinvestment Act (ARRA) of 2009 allocates federal funds to the state for transportation-related projects. The secretary of transportation is authorized to obligate and expend ARRA funds:

(1) to projects as indicated in the document titled "VT Agency of Transportation – Proposed ARRA Project Plan" dated May 6, 2009.

(2) Up to $5,000,000 to additional town highway paving projects that meet federal eligibility and readiness criteria. Individual projects shall not exceed $750,000 in federal funds, unless approved by the secretary of transportation. Any exceptions shall be reported to the joint transportation oversight committee.

(3) Up to $5,000,000 to additional town highway structures projects that meet federal eligibility and readiness criteria. Individual projects shall not exceed $750,000 in federal funds, unless approved by the secretary of transportation. Any exceptions shall be reported to the joint transportation oversight committee.

(b) Any proposed obligation and expenditure of ARRA funds other than as authorized under subsection (a) of this section shall be subject to the approval of the joint transportation oversight committee.

(c) The agency shall report on the obligation and expenditure of ARRA funds to the joint transportation oversight committee at the committee's regular and specially scheduled 2009 meetings.

(d) All reports from the agency to the joint transportation oversight committee (JTOC) required under this section when the legislature is not in session shall take place at meetings of the committee called by the chair.

* * * Paving * * *

Sec. 4. PROGRAM DEVELOPMENT – PAVING

(1) Spending authority in the paving statewide preventive maintenance program is amended to read:

FY10	As Proposed	As Amended	Change
PE	0	0	0
ROW	0	0	0
Construction	500,000	0	-500,000
Total	500,000	0	-500,000

Source of funds			
State	500,000	0	-500,000
Total	500,000	0	-500,000

(2) Under Sec. 3(a)(3) of this act, a new project is added to authorize the expenditure of up to $5,000,000 in ARRA funds on additional town highway paving projects that meet federal eligibility and readiness criteria for the use of ARRA funds.

(3) Including the changes in subsections (1) and (2) of this section, total spending authority in the paving program is amended to read:

FY10	As Proposed	As Amended	Change
PE	2,405,000	2,405,000	0
Row	0	0	0
Construction	66,229,802	116,019,718	49,789,916
Total	68,634,802	118,424,718	49,789,916
Source of funds			
State	13,018,034	3,912,806	-9,105,228
TIB funds	0	2,592,739	2,592,739
Federal	55,616,768	27,247,723	-28,369,045
ARRA funds	0	84,671,450	84,671,450
Total	68,634,802	118,424,718	49,789,916

* * * Roadway * * *

Sec. 5. PROGRAM DEVELOPMENT – ROADWAY

(1) Spending authority for the Cabot-Danville US 2 FEGC F 028-3(26)C/1 roadway project is amended to read:

FY10	As Proposed	As Amended	Change
PE	0	0	0
ROW	0	0	0
Construction	4,000,000	2,500,000	-1,500,000
Other	0	0	0
Total	4,000,000	2,500,000	-1,500,000
Source of funds			
State	200,000	0	-200,000
TIB funds	0	125,000	125,000
Federal	3,800,000	2,375,000	-1,425,000
Total	4,000,000	2,500,000	-1,500,000

(2) Spending authority for the Morristown VT 100 STP F 029-1(2) roadway project is amended to read:

FY10	As Proposed	As Amended	Change
PE	200,000	200,000	0
ROW	500,000	2,000,000	1,500,000
Construction	0	0	0
Other	200,000	200,000	0
Total	900,000	2,400,000	1,500,000
Source of funds			
State	182,440	0	-182,440
TIB funds	0	482,440	482,440
Federal	717,560	1,917,560	1,200,000
Total	900,000	2,400,000	1,500,000

(3) Spending authority for the Winooski NH 089-3(65) roadway project is amended to read:

FY10	As Proposed	As Amended	Change
PE	100,000	100,000	0
ROW	0	0	0
Construction	1,000,000	1,000,000	0
Other	0	0	0
Total	1,100,000	1,100,000	0
Source of funds			
State	110,000	0	-110,000
TIB funds	0	10,000	10,000
Federal	990,000	1,090,000	100,000
Total	1,100,000	1,100,000	0

(4) Spending authority for the Derby IM 091-3(45) roadway border crossing project is amended to read:

FY10	As Proposed	As Amended	Change
Other	287,500	0	-287,500
Total	287,500	0	-287,500
Source of funds			
State	287,500	0	-287,500
Federal	0	0	0
Total	287,500	0	-287,500

(5) Including the changes made in subsections (1) through (4) of this section, total spending authority in the roadway program is amended to read:

FY10	As Proposed	As Amended	Change
PE	5,446,892	5,446,892	0
Row	7,115,000	8,615,000	1,500,000
Construction	43,752,270	45,561,882	1,809,612
Other	1,087,500	800,000	-287,500

Total	57,401,662	60,423,774	3,022,112
Source of funds			
State	2,749,362	641,762	-2,107,600
Bonding	4,390,980	0	-4,390,980
TIB funds	0	6,477,842	6,477,842
Federal	48,710,890	50,353,740	1,642,850
ARRA funds	0	1,400,000	1,400,000
Local	1,550,430	1,550,430	0
Total	57,401,662	60,423,774	3,022,112

* * * Bridge Programs * * *

Sec. 6. PROGRAM DEVELOPMENT – STATE BRIDGE

Spending authority in the state bridge program is amended to read:

FY10	As Proposed	As Amended	Change
PE	3,550,576	3,550,576	0
Row	1,181,202	1,181,202	0
Construction	19,002,022	21,610,522	2,608,500
Other	0	0	0
Total	23,733,800	26,342,300	2,608,500
Source of funds			
State	500,000	3,529,579	3,029,579
Bonding	4,686,420	0	-4,686,420
TIB funds	0	1,385,241	1,385,241
Federal	18,547,380	17,460,980	-1,086,400
ARRA funds	0	3,966,500	3,966,500
Total	23,733,800	26,342,300	2,608,500

Sec. 7. PROGRAM DEVELOPMENT – INTERSTATE BRIDGE

(1) Spending authority in the Brattleboro I-91 IM 091-1(50) project is amended to read:

FY10	As Proposed	As Amended	Change
PE	50,000	50,000	0
Row	1,000	1,000	0
Construction	0	1,500,000	1,500,000
Other	0	0	0
Total	51,000	1,551,000	1,500,000
Source of funds			
State	5,100	5,100	0
Federal	45,900	45,900	0
ARRA funds	0	1,500,000	1,500,000
Total	51,000	1,551,000	1,500,000

(2) Including the change made in subsection (1) of this section, total spending authority in the interstate bridge program is amended to read:

FY10	As Proposed	As Amended	Change
PE	607,500	607,500	0
Row	26,000	26,000	0
Construction	5,315,000	6,815,000	1,500,000
Other	0	0	
Total	5,948,500	7,448,500	1,500,000
Source of funds			
State	100,000	594,850	494,850
Bonding	494,850	0	-494,850
TIB funds	0	0	0
Federal	5,353,650	5,353,650	0
ARRA funds	0	1,500,000	1,500,000
Total	5,948,500	7,448,500	1,500,000

Sec. 8. TOWN HIGHWAY BRIDGE

(1) Under Sec. 3(a)(3) of this act, a new project is added to authorize the expenditure of up to $5,000,000 in ARRA funds on additional town highway bridge and culvert projects that meet federal eligibility and readiness criteria for the use of ARRA funds.

(2) Including the change made in subsection (1) of this section, total spending authority in the town bridge program is amended to read:

FY10	As Proposed	As Amended	Change
PE	1,663,952	1,663,952	0
Row	588,278	588,278	0
Construction	18,418,870	23,817,186	5,398,316
Total	20,671,100	26,069,416	5,398,316
Source of funds			
State	1,540,899	500,000	-1,040,899
Bonding	1,500,000	0	-1,500,000
TIB funds	0	1,875,976	1,875,976
Federal	16,273,728	12,858,036	-3,415,692
ARRA funds	0	9,442,034	9,442,034
Local	1,356,473	1,393,370	36,897
Total	20,671,100	26,069,416	5,398,316

Sec. 9. BRIDGE MAINTENANCE

Spending authority in the bridge maintenance program is amended to read:

FY10	As Proposed	As Amended	Change
PE	410,000	410,000	0
Row	21,500	21,500	0
Construction	17,192,200	33,619,840	16,427,640
Total	17,623,700	34,051,340	16,427,640
Source of funds			
State	6,844,140	4,011,751	-2,832,389
TIB funds	0	234,020	234,020
Federal	10,779,560	23,561,522	12,781,962
ARRA funds	0	6,244,047	6,244,047
Total	17,623,700	34,051,340	16,427,640

* * * Safety and Traffic Operations * * *

Sec. 10. SAFETY AND TRAFFIC OPERATIONS

Spending authority in the safety and traffic operations program is amended to read:

FY10	As Proposed	As Amended	Change
Other	4,900,000	4,900,000	0
PE	1,170,316	1,170,316	0
ROW	563,750	563,750	0
Construction	9,833,278	17,201,278	7,368,000
Total	16,467,344	23,835,344	7,368,000
Source of funds			
State	407,343	407,343	0
Federal	16,010,001	23,378,001	7,368,000
Local	50,000	50,000	0
ARRA funds	0	0	0
Total	16,467,344	23,835,344	7,368,000

* * * Bike and Pedestrian Facilities * * *

Sec. 11. BIKE AND PEDESTRIAN FACILITIES

(1) A new project is added for the rehabilitation of rail trails STP NWRT() with the following spending authority:

FY10	As Proposed	As Amended	Change
Construction	0	694,194	694,194
Total	0	694,194	694,194
Source of funds			
ARRA	0	694,194	694,194
Total	0	694,194	694,194

(2) A new project is added for curb ramp modifications STP RAMP() with the following spending authority:

FY10	As Proposed	As Amended	Change
Construction	0	552,500	552,500
Total	0	552,500	552,500
Source of funds			
ARRA	0	552,500	552,500
Total	0	552,500	552,500

* * * Transportation Buildings * * *

Sec. 12. TRANSPORTATION BUILDINGS

(1) Spending authority for the transportation buildings Berlin project is amended to read:

FY10	As Proposed	As Amended	Change
PE	100,000	0	-100,000
ROW	200,000	0	-200,000
Construction	650,000	0	-650,000
Total	950,000	0	-950,000
Source of funds			
State	190,000	0	-190,000
Federal	760,000	0	-760,000
Total	950,000	0	-950,000

(2) The agency shall study alternatives for the siting of the materials testing lab and report to the house and senate committees on transportation by January 15, 2010.

* * * DMV * * *

Sec. 13. DEPARTMENT OF MOTOR VEHICLES

Spending authority for the department of motor vehicles is amended to read:

FY10	As Proposed	As Amended	Change
Personal Services	17,063,642	16,913,642	-150,000
Operating Expenses	8,176,673	8,116,673	-60,000
Grants	50,000	50,000	0
Total	25,290,315	25,080,315	-210,000
Source of funds			
State	23,807,821	23,597,821	-210,000
Federal	1,482,494	1,482,494	0
Total	25,290,315	25,080,315	-210,000

* * * Rail * * *

Sec. 14. RAIL

(a) Spending authority for passenger rail service (Amtrak contract) is amended to read:

FY10	As Proposed	As Amended	Change
Other	3,300,000	3,700,000	400,000
Total	3,300,000	3,700,000	400,000
Source of funds			
State	3,300,000	3,700,000	400,000
Total	3,300,000	3,700,000	400,000

(b) Spending authority for rail property lease and encroachment management is amended to read:

FY10	As Proposed	As Amended	Change
Other	300,000	212,761	-87,239
Total	300,000	212,761	-87,239
Source of funds			
State	300,000	212,761	-87,239
Federal	0	0	0
Total	300,000	212,761	-87,239

(c) In the event the July 2009 consensus forecast for fiscal year 2010 transportation fund revenue is increased by at least $800,000, $800,000 of transportation funds and $3,200,000 of western rail corridor federal earmark funds shall be used to purchase $4,000,000 of continuously welded rail for installation along the western corridor.

* * * Maintenance * * *

Sec. 15. MAINTENANCE

Total authorized spending in the maintenance program is amended as follows:

FY10	As Proposed	As Amended	Change
Personal Services	34,028,928	34,028,928	0
Operating Expenses	32,991,361	32,011,361	-980,000
Grants	278,020	278,020	0
Total	67,298,309	66,318,309	-980,000
Source of funds			
State	64,315,237	63,335,237	-980,000
Federal	2,883,072	2,883,072	0

Other	100,000	100,000	0
Total	67,298,309	66,318,309	-980,000

* * * Finance and Management * * *

Sec. 16. FINANCE AND MANAGEMENT

Spending authority for the finance and management division is amended to read:

FY10	As Proposed	As Amended	Change
Personal services	10,071,137	10,071,137	0
Operating expenses	2,538,262	2,438,262	-100,000
Total	12,609,399	12,509,399	-100,000
Source of funds			
State	12,109,399	12,009,399	-100,000
Federal	500,000	500,000	0
Total	12,609,399	12,509,399	-100,000

* * * Town Highway Class 2 * * *

Sec. 17. TOWN HIGHWAY CLASS 2 ROADWAY PROGRAM

Spending authority for the town highway class 2 roadway program is amended to read:

FY10	As Proposed	As Amended	Change
Grants	6,448,750	5,748,750	-700,000
Total	6,448,750	5,748,750	-700,000
Source of funds			
TFunds	6,448,750	5,748,750	-700,000
ARRA	0		0
Total	6,448,750	5,748,750	-700,000

* * * Enhancements * * *

Sec. 18. ENHANCEMENTS

Spending authority for the enhancement program is amended to read:

FY10	As Proposed	As Amended	Change
Other	0	800,000	800,000
PE	533,005	533,005	0
ROW	512,650	512,650	0
Construction	2,162,402	2,162,402	0
Total	3,208,057	4,008,057	800,000
Source of funds			
State	73,000	73,000	0
Federal	2,566,446	2,566,446	0

ARRA	0	800,000	800,000
Local	568,611	568,611	0
Total	3,208,057	4,008,057	800,000

* * * Public Transit * * *

Sec. 19. PUBLIC TRANSIT

Spending authority for the public transit capital assistance program is amended to read:

FY10	As Proposed	As Amended	Change
Other	4,565,331	8,492,254	3,926,923
Total	4,565,331	8,492,254	3,926,923
Source of funds			
TFunds	1,129,273	629,273	-500,000
Fed	3,436,058	3,936,058	500,000
ARRA	0	3,926,923	3,926,923
Total	4,565,331	8,492,254	3,926,923

* * * Aviation * * *

Sec. 20. AVIATION

Spending authority for the Berlin Phase I parallel taxiway-terminal apron project is amended to read:

FY10	As Proposed	As Amended	Change
PE	0	0	0
Construction	250,000	4,000,000	3,750,000
Total	250,000	4,000,000	3,750,000
Source of funds			
TFunds	25,000	0	-25,000
Fed	225,000	0	-225,000
ARRA	0	4,000,000	4,000,000
Total	250,000	4,000,000	3,750,000

* * * Applying for ARRA funds * * *

Sec. 21. APPLYING FOR AMERICAN RECOVERY AND REINVESTMENT ACT FUNDS

The agency shall apply for a grant of rail infrastructure discretionary ARRA funds to cover, in whole or in part, the cost of upgrading the state's western rail corridor for intercity passenger rail service to and from Burlington, Rutland, Bennington, Vermont and Albany, New York. In applying for a grant, the agency shall consider all possible sources of nonfederal match dollars which could be included in and would thereby strengthen the application. The grant

application shall state that priority will be given to the purchase and installation of continuously welded rail for the western corridor.

* * * Motor Fuel Transportation Infrastructure Assessments * * *

Sec. 22. 23 V.S.A. § 3003(a) is amended to read:

(a) A tax of ~~25 cents per gallon and~~ $0.25, a fee of ~~one cent per gallon is imposed on each gallon of fuel~~ $0.01 established pursuant to the provisions of 10 V.S.A. § 1942, and a $0.03 motor fuel transportation infrastructure assessment, which for purposes of the International Fuel Tax Agreement only shall be deemed to be a surcharge, are imposed on each gallon of fuel:

(1) sold or delivered by a distributor; or

(2) used by a user.

Sec. 23. 23 V.S.A. § 3003(d) is amended to read:

(d)(1) For users, the following uses shall be exempt from ~~taxation~~ the tax and motor fuel transportation infrastructure assessment imposed under this chapter and be entitled to a credit for any tax paid for such uses under section 3020 of this title:

Sec. 24. 23 V.S.A. § 3106(a) is amended to read:

(a) Except for sales of motor fuels between distributors licensed in this state, which sales shall be exempt from the tax and from the motor fuel transportation infrastructure assessment, in all cases not exempt from the tax under the laws of the United States at the time of filing the report required by section 3108 of this title, each distributor shall pay to the commissioner a tax of $0.19 ~~per~~ upon each gallon of motor fuel sold by the distributor, and a motor fuel transportation infrastructure assessment in the amount of two percent of the retail price exclusive of all federal and state taxes upon each gallon of motor fuel sold by the distributor. The retail price shall be based upon the average retail prices for regular gasoline determined and published by the department of public service. The retail price applicable for the January-March quarter shall be the average of the retail prices published by the department of public service the prior October, November, and December; and the retail price applicable in each succeeding calendar quarter shall be equal to the average of the retail prices published by the department of public service in the preceding quarter. The distributor shall also pay to the commissioner a tax and a motor fuel transportation infrastructure assessment in the same ~~amount~~ amounts upon each gallon of motor fuel used within the state by him or her.

Sec. 25. RETAIL PRICE FOR JUNE 2009

The retail price for purposes of the motor fuels transportation infrastructure assessment applicable for June 2009 shall be the average price for regular unleaded gasoline determined by the department of public service as of May 2009 of $2.03 per gallon.

Sec. 26. DEPARTMENT OF PUBLIC SERVICE

The Department of Public Service shall conduct a monthly survey of businesses selling retail regular gasoline designed to determine a average statewide retail price and publish the survey result no latter than the 20th day of each month starting in June 2009.

* * * Transportation Infrastructure Bonds * * *

Sec. 27. 19 V.S.A. § 11f is added to read:

§ 11f. TRANSPORTATION INFRASTRUCTURE BOND FUND

(a) There is created a special account within the transportation fund known as the transportation infrastructure bond fund to consist of funds raised from the motor fuel transportation infrastructure assessments levied pursuant to 23 V.S.A. §§ 3003(a) and 3106(a). Interest from the fund shall be credited annually to the fund, and the amount in the account shall carry forward from year to year.

(b)(1) Monies in the fund may be used:

(A) to pay principal, interest, and related costs on transportation infrastructure bonds issued pursuant to section 972 of Title 32; and

(B) to pay for:

(i) the rehabilitation, reconstruction, or replacement of state bridges, culverts, roads, railroads, airports, and necessary buildings which, after such work, have an estimated minimum remaining useful life of 10 years;

(ii) the rehabilitation, reconstruction, or replacement of municipal bridges, culverts, and highways which, after such work, have an estimated minimum remaining useful life of 10 years; and

(iii) up to $100,000.00 per year for operating costs associated with administering the capital expenditures.

(2) However, in any fiscal year, no payments shall be made under this subsection unless the amount needed to pay for the following items for that fiscal year, to the extent required by the terms of any trust agreement applicable to the transportation infrastructure bonds, is either in the fund and

available to pay for those items, or the items have been paid: debt service due on the bonds for that fiscal year; any associated reserve or sinking funds; and any associated costs of the bonds as defined in subsection 972(b) of Title 32.

(c) The assessments for motor fuel transportation infrastructure assessments paid pursuant to 23 V.S.A. §§ 3003(a) and 3106(a) shall not be reduced below the rates in effect at the time of issuance of any transportation infrastructure bond until the principal, interest, and all costs which must be paid in order to retire the bond have been paid.

* * * Transportation Infrastructure Bonds * * *

Sec. 28. 32 V.S.A. chapter 13, subchapter 4 is added to read:

Subchapter 4. Transportation Infrastructure Bonds

§ 972. TRANSPORTATION INFRASTRUCTURE BONDS

(a) The treasurer may issue bonds pursuant to this subchapter from time to time in amounts authorized by the general assembly in its annual transportation bill. Bonds issued under this section shall be referred to as "transportation infrastructure bonds."

(b) Principal and interest on the bonds and associated costs shall be paid from the transportation infrastructure bond fund established in 19 V.S.A. § 11f. Associated costs of bonds include sinking fund payments; reserves; redemption premiums; additional security, insurance, or other form of credit enhancement required or provided for in any trust agreement entered to secure bonds; and related costs of issuance.

(c) Funds raised from bonds issued under this section may be used to pay for:

(1) the rehabilitation, reconstruction, or replacement of state bridges and culverts; and

(2) the rehabilitation, reconstruction, or replacement of municipal bridges and culverts; and

(3) the rehabilitation, reconstruction, or replacement of state roads, railroads, airports, and necessary buildings which, after such work, have an estimated minimum remaining useful life of 30 years or more;

(d) Pursuant to section 953 of this title, interest and the investment return on the bonds shall be exempt from taxation in this state.

(e) Bonds issued under this section shall be legal investments for all persons without limit as to the amount held, regardless of whether they are acting for their own account or in a fiduciary capacity. The bonds shall

likewise be legal investments for all public officials authorized to invest in public funds.

§ 973. ISSUANCE OF BONDS

(a) Transportation infrastructure bonds may be issued at one time or in a series from time to time in any form permitted by law, in such manner and on such terms and conditions as the state treasurer may determine to be in the best interests of the state, except that the state treasurer shall determine the following with the approval of the governor:

(1) date of issuance;

(2) place of payment;

(3) rate of interest (which may be fixed or variable) or the manner of determining such rate of interest;

(4) original stated value;

(5) investment returns or manner of determining the investment returns;

(6) maturity value, time of maturity, and provisions with respect to redemption prior to maturity;

(7) whether to issue the bonds at par, premium, or discount;

(8) sinking fund and reserve requirements;

(9) amount and manner of issuance; and

(10) other particulars as to the form of such bonds within the limitations of this subchapter.

(b) The state treasurer shall determine the annual payment schedule for the bonds, including debt service and sinking fund payments, if any, as he or she may deem to be in the best interests of the state. However, any bond issued under this subchapter shall mature not later than 30 years after the date of issuance. Installments on the bonds need not be payable in substantially equal or diminishing amounts. The last bond payment shall be made not later than 30 years after the date of issuance.

(c) The state treasurer may determine at the time of issuance to apply all or a portion of any net premium to the costs of issuance, other related financing costs, or the payment of the principal or interest to come due. If net premium is applied to costs of issuance, the amount of the premium shall not be included in the net proceeds of the issue. Net premium not applied to costs of issuance shall be included in the net proceeds of the issue and may be used for any of the authorized purposes of the bond proceeds.

(d) The principal, interest, investment returns, and maturity value of transportation infrastructure bonds shall be payable in lawful money of the United States or of the country in which the bonds are sold.

(e) Transportation infrastructure bonds shall be registered pursuant to section 981 of this title.

§ 974. SECURITY DOCUMENTS

(a) The state treasurer is authorized to secure bonds authorized under this subchapter by a trust agreement which pledges or assigns monies in the transportation infrastructure bond fund; by additional security, insurance, or other forms of credit enhancement which may be secured with the bonds on a parity or subordinate basis or by both.

(b) Any trust agreement or credit enhancement agreement entered into pursuant to this section shall be valid and binding from the time of the agreement without any physical delivery or further act and without any filing or recording under the Uniform Commercial Code or otherwise, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise, irrespective of whether such parties have notice thereof.

(c) Any trust agreement or credit enhancement agreement may establish provisions defining defaults and establishing remedies and other matters relating to the rights and security of the holders of the bonds or other secured parties as determined by the state treasurer, including provisions relating to the establishment of reserves; the issuance of additional or refunding bonds, whether or not secured on a parity basis; the application of receipts, monies, or funds pledged pursuant to the agreement; and other matters deemed necessary or desirable by the state treasurer for the security of the bonds, and may also regulate the custody, investment, and application of monies.

(d) For payment of principal, interest, investment returns, and maturity value of transportation infrastructure bonds, the full faith and credit of the state is hereby pledged. However:

(1) if pledging of full faith and credit of the state is not necessary to market a transportation infrastructure bond in the best interest of the state, the treasurer shall enter into an agreement which establishes that the full faith and credit of the state is not pledged for payment of principal, interest, investment returns, and maturity value of the bond. In determining whether to pledge the full faith and credit of the state, the state treasurer shall consider the anticipated effect of such a pledge on the credit standing of the state, the marketability of the transportation infrastructure bond, and other factors he or she deems appropriate; and

(2) the treasurer shall only use other revenues to pay for debt service and associated costs as defined in section 972 of this title on transportation infrastructure bonds to which the full faith and credit of the state has been pledged in the event that monies in the transportation infrastructure bond fund are insufficient to pay for it.

§ 975. PROCEEDS

(a) Proceeds from the sale of bonds may be expended for the authorized purposes of the bonds; including the expenses of preparing, issuing, and marketing the bonds; any notes issued under section 976 of this title; and amounts for any reserves. However, no purchasers of the bonds shall be bound to see to the proper application of the proceeds thereof.

(b) The treasurer may pay for the interest on, principal of, investment return on, maturity value of, and associated costs as defined in subsection 972(b) of this title of bonds issued under this subchapter from the transportation infrastructure bond fund as they fall due without further order or authority.

(c) The general assembly shall appropriate the amount necessary to pay the maturing principal and interest of, investment return and maturity value of, and sinking fund installments on transportation infrastructure bonds then outstanding in the annual appropriations bill and the principal and interest on, investment return and maturity value of, and sinking fund installments on the transportation infrastructure bonds as may come due before appropriations for payment have been made shall be paid from the transportation infrastructure bond fund, or with respect to bonds to which the full faith and credit of the state has been pledged and in accordance with subdivision 974(d)(2) of this title, from the general fund or other applicable fund.

§ 976. ANTICIPATION OF PROCEEDS

(a) Pending the issue of transportation infrastructure bonds, the state treasurer with the approval of the governor may use any available cash in the transportation infrastructure bond fund for the purposes for which the bonds were authorized, and shall restore the borrowed funds from the proceeds of the bonds.

(b) The state treasurer, with the approval of the governor, may borrow upon notes of the state sums of money in anticipation of the proceeds of the bonds. Notes issued under this subsection shall be issued on such terms and at such times as the treasurer and governor may determine, and shall mature not more than three years from the date of issuance, provided that notes issued for a shorter period may be refunded from time to time by the issue of other such notes maturing within the required period of three years.

(c) The authority granted under this section is in addition to and not in limitation of any other authority.

§ 977. REFUNDING BONDS

The state treasurer with the approval of the governor is hereby authorized to issue transportation infrastructure bonds in order to refund all or any portion of outstanding transportation bonds at any time after the issuance of the bonds to be refunded pursuant to subsections 961(b), (c), and (d) of this title.

§ 978. PLEDGE

The general assembly hereby pledges and covenants with holders of the bonds issued under this subchapter that the state will fulfill the terms of any agreement made with the holders of transportation infrastructure bonds and will not in any way impair the rights or remedies of the holders of the bonds until the bonds, interest, and all costs associated with the bonds are fully paid.

§ 979. AUTHORITIES

In addition to the provisions of this subchapter, the following provisions of this title shall apply to transportation infrastructure bonds:

(1) sections 953, 956, 958, and 960;

(2) subsection 954(c), except that transfers shall be made only among projects to be funded with transportation infrastructure bonds; and

(3) section 957, except that consolidation may be only among transportation infrastructure bonds, and the bonds shall be the lawful obligation of the transportation infrastructure bond fund and not of the remaining revenues of the state unless the treasurer has agreed to pledge the full faith and credit of the state pursuant to subdivision 974(e)(2) of this title.

§ 980. AUTHORITY TO ISSUE TRANSPORTATION INFRASTRUCTURE BONDS

The state treasurer is authorized to issue transportation infrastructure bonds pursuant to section 972 of this title for the purpose of funding future appropriations only as approved by the general assembly.

Sec. 29. PLAN FOR USE OF BOND PROCEEDS IN FUTURE YEARS

On or before January 15, 2010, the agency of transportation shall submit to the joint transportation oversight committee a plan for use of bond proceeds for transportation purposes during state fiscal years 2011, 2012, and 2013, taking into consideration the likely availability of funds from other sources and the needs identified by the transportation project planning process. In no instance shall the total request for bonding authority exceed $100,000,000.

Sec. 30. FISCAL YEAR 2010 BONDING AUTHORITY

Notwithstanding 32 V.S.A. §980, the state treasurer is authorized to issue transportation infrastructure bonds for fiscal year 2010 in a total amount of no more than $10,000,000, provided that the agency requests and the joint transportation oversight committee approves of such issue.

Sec. 31. 32 V.S.A. § 1001(b) is amended to read:

(b)(1) Committee duties. The committee shall review annually the size and affordability of the net state tax-supported indebtedness~~,~~ and submit to the governor and to the general assembly an estimate of the maximum amount of new long-term net state tax-supported debt that prudently may be authorized for the next fiscal year. The estimate of the committee shall be advisory and in no way bind the governor or the general assembly.

(2) The committee shall conduct ongoing reviews of the amount and condition of bonds, notes, and other obligations of instrumentalities of the state for which the state has a contingent or limited liability or for which the state legislature is permitted to replenish reserve funds, and, when deemed appropriate, recommend limits on the occurrence of such additional obligations to the governor and to the general assembly.

(3) The committee shall conduct ongoing reviews of the amount and condition of the transportation infrastructure bond fund established in 19 V.S.A. § 11f and of bonds and notes issued against the fund for which the state has a contingent or limited liability.

Sec. 32. 32 V.S.A. § 1001a is amended to read:

§ 1001a. REPORTS

The capital debt affordability advisory committee shall prepare and submit~~,~~ consistent with 2 V.S.A. § 20(a)~~,~~ a report on:

(1) general obligation debt, pursuant to subsection 1001(c) of this title; and

(2) how many, if any, transportation infrastructure bonds have been issued and under what conditions.

* * * Town Local Match Requirements * * *

Sec. 33. 19 V.S.A. § 309b is amended to read:

§ 309b. LOCAL MATCH; CERTAIN TOWN HIGHWAY PROGRAMS

* * *

(c) Notwithstanding subsections 309a(a), (b), and (c) of this title, a municipality may use a grant awarded under the town highway structures program or the class 2 town highway roadway program to provide the nonfederal matching funds required to draw down a federal earmark or to match grants provided to towns under the American Recovery and Reinvestment Act of 2009. In all such cases, the grant shall be matched by local funds as provided in this section. The intended use of a town highway grant as matching funds for a federal earmark or for grants provided to towns under the American Recovery and Reinvestment Act of 2009 shall not entitle a municipal grant applicant to any priority for a grant award in any fiscal year. When grants awarded under the town highway structures program or the class 2 town highway roadway program are used to satisfy nonfederal matching requirements for federal earmarks or for grants provided to towns under the American Recovery and Reinvestment Act of 2009, the term "project costs" in subsections (a) and (b) of this section shall refer only to the nonfederal match for the federal earmark or for a grant provided to towns under the American Recovery and Reinvestment Act 2009.

* * * ARRA Funding of Town Projects * * *

Sec. 34. ARRA FUNDING OF TOWN PROJECTS

Any town transportation project which as a matter of state law requires a local match shall retain the local match requirement regardless of the state's use of ARRA funds to fund the project.

* * * Motor Vehicle Fees * * *

Sec. 35. 23 V.S.A. § 114(a)(14) is amended to read:

(a) The commissioner shall be paid the following fees for miscellaneous transactions:

* * *

(14) Certified copy three-year operating record ~~10.00~~ 11.00

Sec. 36. 23 V.S.A. § 115(a) is amended to read:

(a) Any Vermont resident may make application to the commissioner and be issued an identification card which is attested by the commissioner as to true name, correct age, and any other identifying data as the commissioner may require which shall include, in the case of minor applicants, the written consent of the applicant's parent, guardian or other person standing in loco parentis. Every application for an identification card shall be signed by the applicant and shall contain such evidence of age and identity as the commissioner may require. The commissioner shall require payment of a fee of ~~$15.00~~ $17.00 at the time application for an identification card is made.

Sec. 37. 23 V.S.A. § 304(b) is amended to read:

(b) The authority to issue special motor vehicle number plates or receive applications or petitions for special number plates for safety organizations and service organizations shall reside with the commissioner. Determination of compliance with the criteria contained in this subsection shall be within the discretion of the commissioner. Series of number plates for safety and service organizations which are authorized by the commissioner shall be issued in order of approval, subject to the operating considerations in the department as determined by the commissioner. The commissioner shall issue special number plates marked with initials, letters, or combination of numerals and letters, in the following manner:

(1) Except as otherwise provided, at the request of the registrant of any motor vehicle, upon application and upon payment of an annual fee of ~~$35.00~~ $38.00 in addition to the annual fee for registration. He or she may not issue two sets of special number plates bearing the same initials or letters unless the plates also contain a distinguishing number. Special number plates are subject to reassignment if not renewed within 60 days of expiration of the registration.

(2) For the purposes of this subdivision, "safety organizations" shall include groups which have at least 100 instate members in good standing and provide police and fire protection, rescue squads, national guard, together with those organizations required to respond to public emergencies. It shall include amateur radio operators licensed by the U.S. Federal Communications Commission. For purposes of this subdivision, "service organization" includes any group which (i) has as a primary purpose, service to the community through specific programs for the improvement of public health, education, or environmental awareness and conservation, and are not limited to social activities; (ii) has nonprofit status under Section 501(c)(3) or (10) of the United States Internal Revenue Code, as amended; (iii) is registered as a nonprofit corporation with the office of the secretary of state; and (iv) except for a military veterans group, has at least 100 instate members in good standing. "Service organization" also includes congressionally chartered and noncongressionally chartered United States military service veterans groups.

(A) At the request of the leader of a safety organization or service organization, upon application and payment of a fee of ~~$10.00~~ $15.00 for each set of plates in addition to the annual fee for registration, special plates indicating membership in one of the "safety organizations" or "service organizations" may be issued to registrants of vehicles registered at the pleasure car rate and of trucks registered for less than 26,001 pounds and excluding vehicles registered under the International Registration Plan, who are members of these organizations. The applicant must provide a written

statement from the appropriate official of the organization, authorizing the issuance of the plates.

(B) At the time that an organization requests the plates, it shall deposit ~~$1,000.00~~ $2,000.00 with the commissioner. Notwithstanding section 502 of Title 32, the commissioner may charge the actual costs of production of the plates against the fees collected and the balance shall be deposited in the transportation fund. For ~~each set~~ the first 100 sets of plates issued, ~~$10.00~~ $15.00 of this deposit shall be deemed to be the safety organization or service organization special plate fee for each authorized applicant. Of this deposit, $500.00 shall be retained by the department to recover costs of developing the organization plate. When the initial deposit of ~~$1,000.00~~ $1,500.00 is depleted, applicants shall be required to pay the ~~$10.00~~ $15.00 fee as provided for in subdivision (1) of this subsection. Notwithstanding section 502 of Title 32, the commissioner may charge the actual costs of production of the plates against the fees collected and shall remit the balance to the transportation fund. No organization shall charge its members any additional fee or premium charge for the authorization, right or privilege to display these special number plates. This provision shall not prevent any organization from recovering up to ~~$1,000.00~~ $1,500.00 from applicants for the special plates.

(C) After consulting with representatives of the safety or service organization, the commissioner shall determine the design of the special plates, on the basis that the primary purpose of motor vehicle number plates is vehicle identification. An organization applying for a special plate under this subsection shall present the commissioner with a name and emblem that is not obscene, offensive or confusing to the general public and does not promote, advertise or endorse a product, brand, or service provided for sale, or promote any specific religious belief or political party. The organization's name and emblem must not infringe or violate trademarks, trade names, service marks, copyrights, or other proprietary or property rights and the organization must have the right to use the name and emblem. The organization shall designate an officer or member to act as the principal contact and to submit a distinctive emblem for use on a special number plate, if authorized. An organization may have only one design, regardless of the number of individual organizational units within the state that may provide the same or substantially similar services. Nothing herein shall be construed as authorizing any individual squad, department, or unit to request a unique or specially designed plate different than the plate designed by the commissioner.

* * *

Sec. 38. 23 V.S.A. § 304b is amended to read:

§ 304b. CONSERVATION MOTOR VEHICLE REGISTRATION PLATES

(a) The commissioner shall, upon application, issue conservation registration plates for use only on vehicles registered at the pleasure car rate and on trucks registered for less than 26,001 pounds, on vehicles registered to state agencies under section 376 of this title and excluding vehicles registered under the International Registration Plan. Plates so acquired shall be mounted on the front and rear of the vehicle. The commissioner of motor vehicles and the commissioner of fish and wildlife shall determine the graphic design of the special plates in a manner which serves to enhance the public awareness of the state's interest in restoring and protecting its wildlife and major watershed areas. The commissioner of motor vehicles and the commissioner of fish and wildlife may alter the graphic design of these special plates provided that plates in use at the time of a design alteration shall remain valid subject to the operator's payment of the annual registration fee. Applicants shall apply on forms prescribed by the commissioner and shall pay an initial fee of ~~$20.00~~ $23.00 in addition to the annual fee for registration. In following years, in addition to the annual registration fee, the holder of a conservation plate shall pay a renewal fee of ~~$20.00~~ $23.00. The commissioner shall adopt rules under 3 V.S.A. chapter 25 to implement the provisions of this subsection. The commissioner of motor vehicles and the commissioner of fish and wildlife shall annually submit to the members of the house committees on transportation and fish, wildlife and water resources, and the members of the senate committees on transportation and natural resources and energy a report detailing, over a three-year period, the revenue generated, the number of new conservation plates sold and the number of renewals, and recommendations for program enhancements.

(b) Initial fees collected under subsection (a) of this section shall be allocated as follows:

(1) ~~$10.00~~ $11.00 to the transportation fund.

(2) ~~$5.00~~ $6.00 to the department of fish and wildlife for deposit into the nongame wildlife account created in 10 V.S.A. § 4048.

(3) ~~$5.00~~ $6.00 to the department of fish and wildlife for deposit into the watershed management account created in 10 V.S.A. § 4050.

(c) Renewal fees collected under subsection (a) of this section shall be allocated as follows:

(1) ~~$9.00~~ $10.00 to the department of fish and wildlife for deposit into the nongame wildlife account created in 10 V.S.A. § 4048.

(2) ~~$9.00~~ $10.00 to the department of fish and wildlife for deposit into the watershed management account created in 10 V.S.A. § 4050.

(3) ~~$2.00~~ $3.00 to the transportation fund.

Sec. 39. 23 V.S.A. § 307 is amended to read:

§ 307. CARRYING OF REGISTRATION CERTIFICATE

A person shall not operate a motor vehicle nor draw a trailer or semi-trailer unless the registration certificate thereof is carried in some easily accessible place in such motor vehicle. In case of the loss, mutilation or destruction of such certificate the owner of the vehicle described therein shall forthwith notify the commissioner and remit a fee of ~~$12.00~~ $13.00 whereupon the commissioner shall furnish such owner with a duplicate certificate. A corrected registration certificate shall be furnished by the commissioner upon request and receipt of a fee of ~~$12.00~~ $13.00.

Sec. 40. 23 V.S.A. § 323 is amended to read:

§ 323. TRANSFER FEES

A person who transfers the ownership of a registered motor vehicle to another, upon the filing of a new application, and upon the payment of a fee of ~~$20.00~~ $22.00 may have registered in his or her name another motor vehicle for the remainder of the registration period without payment of any additional registration fee, provided the proper registration fee of the motor vehicle sought to be registered is the same as the registration fee of the transferred motor vehicle. However, if the proper registration fee of the motor vehicle sought to be registered by such person is greater than the registration fee of the transferred motor vehicle, the applicant shall pay, in addition to such fee of ~~$20.00~~ $22.00, the difference between the registration fee of the motor vehicle previously registered and the proper fee for the registration of the motor vehicle sought to be registered.

Sec. 41. 23 V.S.A. § 361 is amended to read:

§ 361. PLEASURE CARS

The annual fee for registration of any motor vehicle of the pleasure car type, and all vehicles powered by electricity, shall be ~~$59.00~~ $64.00, and the biennial fee shall be ~~$108.00~~ $120.00.

Sec. 42. 23 V.S.A. § 364 is amended to read:

§ 364. MOTORCYCLES

The annual fee for registration of a motorcycle, with or without side car, shall be ~~$36.00~~ $40.00.

Sec. 43. 23 V.S.A. § 367(a)(1) is amended to read:

(a)(1) The annual fee for registration of tractors, truck-tractors, or motor trucks except truck cranes, truck shovels, road oilers, bituminous distributors, and farm trucks used as hereinafter specified shall be based on the total weight of the truck-tractor or motor truck including body and cab plus the heaviest load to be carried. In computing the fees for registration of tractors, truck-tractors or motor trucks with trailers or semi-trailers attached, except trailers or semi-trailers with a gross weight of less than 6,000 pounds, the fee shall be based upon the weight of the tractor, truck-tractor or motor truck, the weight of the trailer or semi-trailer, and the weight of the heaviest load to be carried by the combined vehicles. In addition to the fee set out in the following schedule, the fee for vehicles weighing between 10,000 and 25,999 pounds inclusive shall be an additional ~~$29.00~~ $31.47, the fee for vehicles weighing between 26,000 and 39,999 pounds inclusive shall be an additional ~~$58.00~~ $62.93, the fee for vehicles weighing between 40,000 and 59,999 pounds inclusive shall be an additional ~~$203.04~~ $220.30 and the fee for vehicles 60,000 pounds and over shall be an additional ~~$319.07~~ $346.19. The fee shall be computed at the following rates per thousand pounds of weight determined as above specified and rounded up to the nearest whole dollar, the minimum fee for registering a tractor, truck-tractor, or motor truck to 6,000 pounds shall be the same as for the pleasure car type:

~~$12.42~~ $13.48 when the weight exceeds 6,000 pounds but does not exceed 8,000 pounds.

~~$14.21~~ $15.42 when the weight exceeds 8,000 pounds but does not exceed 12,000 pounds.

~~$15.67~~ $17.00 when the weight exceeds 12,000 pounds but does not exceed 16,000 pounds.

~~$16.76~~ $18.18 when the weight exceeds 16,000 pounds but does not exceed 20,000 pounds.

~~$17.53~~ $19.02 when the weight exceeds 20,000 pounds but does not exceed 30,000 pounds.

~~$17.92~~ $19.44 when the weight exceeds 30,000 pounds but does not exceed 40,000 pounds.

~~$18.34~~ $19.90 when the weight exceeds 40,000 pounds but does not exceed 50,000 pounds.

~~$18.51~~ $20.08 when the weight exceeds 50,000 pounds but does not exceed 60,000 pounds.

~~$19.14~~ $20.77 when the weight exceeds 60,000 pounds but does not exceed 70,000 pounds.

~~$19.78~~ $21.46 when the weight exceeds 70,000 pounds but does not exceed 80,000 pounds.

~~$20.42~~ $22.16 when the weight exceeds 80,000 pounds but does not exceed 90,000 pounds.

Sec. 44. 23 V.S.A. § 371(a)(1) is amended to read:

(a)(1) The one-year and two-year fees for registration of a trailer or semi-trailer, except contractor's trailer or farm trailer, shall be as follows:

(A) ~~$20.00 and $40.00~~ $23.00 and $45.00, respectively, when such trailer or semi-trailer has a gross weight of trailer and load of less than 1,500 pounds;

(B) ~~$40.00 and $80.00~~ $46.00 and $90.00, respectively, when such trailer or semi-trailer has a gross weight of trailer and load of 1,500 pounds or more, and is drawn by a vehicle of the pleasure car type;

(C) ~~$40.00 and $80.00~~ $46.00 and $90.00, respectively, when such trailer or semi-trailer is drawn by a motor truck or tractor, when such trailer or semi-trailer has a gross weight of 1,500 pounds or more, but not in excess of 3,000 pounds;

(D) ~~$40.00 and $80.00~~ $46.00 and $90.00, respectively, when such trailer or semi-trailer is used in combination with a truck-tractor or motor truck registered at the fee provided for combined vehicles under section 367 of this title. Excepting for the fees, the provisions of this subdivision shall not apply to trailer coaches as defined in section 4 of this title nor to modular homes being transported by trailer or semi-trailer.

Sec. 45. 23 V.S.A. § 463 is amended to read:

§ 463. SALE OF VEHICLE TO GO OUT OF STATE

A registered motor vehicle dealer is authorized to issue an in-transit registration permit for the purpose of movement over the highways of certain motor vehicles otherwise required to be registered when these vehicles are sold in this state to be transported to and registered in another state or province. The commissioner of motor vehicles shall, upon request, provide registered motor vehicle dealers with such numbers of applications and special in-transit number plates for vehicles sold in this state to be transported to and registered in another state or province as shall be necessary. The commissioner is authorized to charge a fee of ~~$3.00~~ $5.00 for the processing of the plate application and the issuance of the plate. The dealer, upon the sale of a motor

vehicle to be transported to and registered in another state or province shall cause the application to be filled out and transmitted to the commissioner and shall attach to the vehicle the in-transit number plate corresponding to the application. No registered motor vehicle dealer shall sell, exchange, give, or transfer any application or in-transit plate to any person other than the person to whom the dealer sells or exchanges a motor vehicle to be registered in another state or province. The application shall be in a form prescribed and furnished by the commissioner. The special in-transit number plate to be attached to the vehicle will be issued in the form and design as prescribed by the commissioner and shall be valid for a period of 30 days from the date of issue.

Sec. 46. 23 V.S.A. § 608(a) amended to read:

(a) The four-year fee required to be paid the commissioner for licensing an operator of motor vehicles shall be ~~$40.00~~ $45.00. The two-year fee required to be paid the commissioner for licensing an operator shall be ~~$25.00~~ $28.00 and the two-year fee for licensing a junior operator shall be ~~$27.00~~ $28.00.

Sec. 47. 23 V.S.A. §§ 617(b) and (d) are amended to read:

(b) Notwithstanding the provisions of subsection (a) of this section, any licensed person may apply to the commissioner of motor vehicles for a learner's permit for the operation of a motorcycle in the form prescribed by the commissioner. The commissioner shall require payment of a fee of $17.00 at the time application is made. After the applicant has successfully passed all parts of the motorcycle endorsement examination, other than a skill test, the commissioner may issue to the applicant a learner's permit which entitles the applicant, subject to section 615(a) of this title, to operate a motorcycle upon the public highways for a period of 120 days from the date of issuance. A motorcycle learner's permit may be renewed only twice upon payment of a $17.00 fee. If during the original permit period and two renewals, the permittee has not successfully passed the skill test or the motorcycle rider training course, he or she may not obtain another motorcycle learner's permit for a period of 12 months from the expiration of the permit unless he or she has successfully completed the motorcycle rider training course. This section shall not affect section 602 of this title. The fee for the examination shall be $7.00.

(d) An applicant shall pay ~~$15.00~~ $17.00 to the commissioner for each learner's permit that is not a motorcycle learner's permit or a duplicate or renewal thereof.

Sec. 48. 23 V.S.A. § 634(a) is amended to read:

(a) The fee for an examination for a learner's permit shall be ~~$25.00~~ $28.00. The fee for an examination to obtain an operator's license when the

applicant is required to pass an examination pursuant to section 632 of this title shall be ~~$15.00~~ $17.00.

Sec. 49. 23 V.S.A § 675(a) is amended to read:

(a) Before a suspension or revocation issued by the commissioner of a person's operator's license or privilege of operating a motor vehicle may be terminated or before a person's operator's license or privilege of operating a motor vehicle may be reinstated, there shall be paid to the commissioner a fee of ~~$65.00~~ $71.00 in addition to any other fee required by statute. This section shall not apply to suspensions issued under the provisions of chapter 11 of this title nor suspensions issued for physical disabilities or failing to pass reexamination. The commissioner shall not reinstate the license of a driver whose license was suspended pursuant to section 1205 of this title until the commissioner receives certification from the court that the costs due the state have been paid.

Sec. 50. 23 V.S.A. § 1230 is amended to read:

For each inspection certificate issued by the department of motor vehicles, the commissioner shall be paid ~~$3.00~~ $4.00 provided that state and municipal inspection stations that inspect only state or municipally owned and registered vehicles shall not be required to pay a fee.

Sec. 51. 23 V.S.A. § 1392(17) is amended to read:

(17) Notwithstanding the gross vehicle weight provisions of subdivision (4) of this section, a truck trailer combination or truck tractor, semi-trailer combination with six or more load bearing axles and specially equipped for hauling unprocessed milk, unprocessed forest or unprocessed quarry products shall be allowed to bear a maximum of 99,000 pounds by special annual permit, which shall expire coincidentally with the vehicle's registration, except for vehicles not registered in Vermont in which case the permit shall become void on January 1 following the date of issue, for operating on designated routes on the state and town highways, subject to the following:

(A) The combination of vehicles must have as a minimum, a distance of 51 feet between extreme axles.

(B) The axle weight provisions of section 1391 of this title and subdivision 1392(6) of this section shall also apply to vehicles permitted under this subdivision.

(C) When determining the fine for a gross overweight violation of this subdivision, the fine for any portion of the first 10,000 pounds over the permitted weight shall be the same as provided in section 1391a of this title,

and for overweight violations 10,001 pounds or more over the permitted weight, the fine schedule provided in section 1391a shall be doubled.

(D) The weight permitted by this subdivision shall be allowed for foreign trucks which are registered or permitted for 99,000 pounds in a state or province which recognizes Vermont vehicles for weights consistent with this subdivision.

(E) The provisions of this subdivision shall not apply to operation on the interstate and defense highway system.

(F) The fee for the annual permit as provided in this subdivision shall be ~~$350.00~~ $500.00.

(G) For the purposes of this subdivision, the following definitions shall apply:

(i) unprocessed milk products as defined in 23 V.S.A. § 4(55);

(ii) unprocessed forest products as defined in 23 V.S.A. § 1392(13);

(iii) unprocessed quarry products shall be quarried rock in block or blocks as it would be removed from the quarry.

Sec. 52. 23 V.S.A. § 1402(a) and (b) are amended to read:

(a) Overweight, overwidth, indivisible overlength, and overheight permits. Overweight, overwidth, indivisible overlength and overheight permits shall be signed by the commissioner or by his or her agent and a copy shall be kept in the office of the commissioner or in a location approved by the commissioner. Except as provided in subsection (c) of this section, a copy shall also be available in the towing vehicle and must be available for inspection on demand of a law enforcement officer. Before operating a traction engine, tractor, trailer, motor truck or other motor vehicle, the person to whom a permit to operate in excess of the weight, width, indivisible overlength and height limits established by this title is granted shall pay a fee of ~~$20.00~~ $35.00 for each single trip permit or ~~$70.00~~ $100.00 for a blanket permit, except that the fee for a fleet blanket permit shall be ~~$70.00~~ $100.00 for the first unit and ~~$1.00~~ $5.00 for each unit thereafter. At the option of a carrier, an annual permit for the entire fleet, to operate over any approved route, may be obtained for ~~$70.00~~ $100.00 for the first tractor and ~~$1.00~~ $5.00 for each additional tractor, up to a maximum fee of $1,000.00. The fee for a fleet permit shall be based on the entire number of tractors owned by the applicant. An applicant for a fleet permit may apply for any number of specific routes, each of which shall be reviewed with regard to the characteristics of the route and the type of equipment operated by the applicant. When the weight or size of the

vehicle-load are considered sufficiently excessive for the routing requested, the agency of transportation shall, on request of the commissioner, conduct an engineering inspection of the vehicle-load and route, for which a fee of $300.00 will be added to the cost of the permit if the load is a manufactured home. For all other loads of any size or with gross weight limits less than 150,000 pounds, the fee shall be $800.00 for any engineering inspection that requires up to eight hours to conduct. If the inspection requires more than eight hours to conduct, the fee shall be $800.00 plus $60.00 per hour for each additional hour required. If the vehicle and load weigh 150,000 pounds or more but not more than 200,000 pounds, the engineering inspection fee shall be $2,000.00. If the vehicle and load weigh more than 200,000 pounds but not more than 250,000 pounds, the engineering inspection fee shall be $5,000.00. If the vehicle and load weigh more than 250,000 pounds, the engineering inspection fee shall be $10,000.00. The study must be completed prior to the permit being issued. Prior to the issuance of a permit, an applicant whose vehicle weighs 150,000 pounds or more, or is 15 or more feet in width or height, shall file with the commissioner a special certificate of insurance showing minimum coverage of $250,000.00 for death or injury to one person, $500,000.00 for death or injury to two or more persons and $250,000.00 for property damage, all arising out of any one accident.

(b) Overlength permits. Except as provided in ~~subsection 1432(f)~~ subsections 1432(c) and (e) of this title, it shall be necessary to obtain an overlength permit as follows:

~~(1) For vehicles with a trailer or semitrailer which are longer than 68 feet but not longer than 72 feet off the truck network established in subsection 1432(c) of this title and the distance between the steering axle and the rearmost tractor axle is 23 feet or less. In such cases, the vehicle may be operated with a single or multiple trip overlength permit issued by the department of motor vehicles at no cost or, for a fee, by an entity authorized under subsection 1400(d) of this title for routes approved by the agency of transportation.~~

~~(2) For vehicles with a trailer or semitrailer longer than 68 feet but not longer than 72 feet off the truck network established in subsection 1432(c) of this title and the distance between the steering axle and the rearmost tractor axle is more than 23 feet. In such cases, the vehicle may be operated with a single trip overlength permit issued by the department of motor vehicles at no cost for routes approved by the agency of transportation.~~

~~(3)~~ For vehicles with a trailer or semitrailer longer than ~~72~~ 75 feet anywhere in the state on highways approved by the agency of transportation. In such cases, the vehicle may be operated with a single trip overlength permit issued by the department of motor vehicles for a fee of ~~$10.00~~ $25.00. If the

vehicle is 100 feet or more in length, the permit applicant shall file with the commissioner of motor vehicles, a special certificate of insurance showing minimum coverage of $250,000.00 for death or injury to one person, $500,000.00 for death or injury to two or more persons and $250,000.00 for property damage, all arising out of any one accident.

(2) Notwithstanding the provisions of this section, the agency of transportation may erect signs at those locations where it would be unsafe to operate vehicles in excess of 68 feet in length.

Sec. 53. 23 V.S.A. § 2002(a) is amended to read:

(a) The commissioner shall be paid the following fees:

(1) For any certificate of title, including a salvage certificate of title, ~~$28.00~~ $31.00;

(2) For each security interest noted upon a certificate of title, including a salvage certificate of title, ~~$7.00~~ $9.00;

(3) For a certificate of title after a transfer, ~~$28.00~~ $31.00;

(4) For each assignment of a security interest noted upon a certificate of title, ~~$7.00~~ $9.00;

(5) For a duplicate certificate of title, including a salvage certificate of title, ~~$28.00~~ $31.00;

(6) For an ordinary certificate of title issued upon surrender of a distinctive certificate, ~~$28.00~~ $31.00;

(7) For filing a notice of security interest, ~~$7.00~~ $9.00;

(8) For a certificate of search of the records of the motor vehicle department, for each motor vehicle searched against, $20.00;

(9) For filing an assignment of a security interest, ~~$7.00~~ $9.00;

(10) For a certificate of title after a security interest has been released, ~~$28.00~~ $31.00;

(11) For a certificate of title for a motor vehicle granted a veteran by the veterans' administration and exempt from registration fees pursuant to section 378 of this title, no fee;

(12) For a corrected certificate of title, ~~$28.00~~ $31.00.

Sec. 54. 23 V.S.A. § 3802(a) is amended to read:

(a) The commissioner shall be paid the following fees:

(1) for filing an application for a first certificate of title, ~~$15.00~~ $19.00;

(2) for each security interest noted upon a certificate of title, ~~$7.00~~ $9.00;

(3) for a certificate of title after a transfer, ~~$15.00~~ $19.00;

(4) for each assignment of a security interest noted upon a certificate of title, ~~$7.00~~ $9.00;

(5) for a duplicate certificate of title, ~~$15.00~~ $19.00;

(6) for an ordinary certificate of title issued upon surrender of a distinctive certificate, ~~$15.00~~ $19.00;

(7) for filing a notice of security interest, ~~$7.00~~ $9.00;

(8) for a certificate of search of the records of the motor vehicle department for each vessel, snowmobile or all-terrain vehicle searched against, $20.00;

(9) for filing an assignment of a security interest, ~~$7.00~~ $9.00;

(10) for a certificate of clear title after the security interest or interests have been released, ~~$15.00~~ $19.00;

(11) for a corrected certificate of title, ~~$15.00~~ $19.00.

Sec. 55. 32 V.S.A. § 8903(a), (b), and (d) are amended to read:

(a)(1) There is hereby imposed upon the purchase in Vermont of a motor vehicle by a resident a tax at the time of such purchase, payable as hereinafter provided. The amount of the tax shall be six percent of the taxable cost of a:

pleasure car as defined in 23 V.S.A. § 4;

motorcycle as defined in 23 V.S.A. § 4;

motor home as defined in subdivision 8902(11) of this title; or

vehicle weighing up to 10,099 pounds, registered pursuant to 23 V.S.A. § 367, other than a farm truck.

(2) For any other motor vehicle it shall be six percent of the taxable cost of the motor vehicle or ~~$1,680.00~~ $1,850.00 for each motor vehicle, whichever is smaller, except that pleasure cars which are purchased, leased or otherwise acquired for use in short-term rentals shall be subject to taxation under subsection (d) of this section.

(b)(1) There is hereby imposed upon the use within this state a tax of six percent of the taxable cost of a:

pleasure car as defined in 23 V.S.A. § 4;
motorcycle as defined in 23 V.S.A. § 4;
motor home as defined in subdivision 8902(11) of this title; or
vehicle weighing up to 10,099 pounds, registered pursuant to 23 V.S.A. § 367, other than a farm truck.

(2) For any other motor vehicle it shall be six percent of the taxable cost of a motor vehicle, or ~~$1,680.00~~ $1,850.00 for each motor vehicle, whichever is smaller, by a person at the time of first registering or transferring a registration to such motor vehicle payable as hereinafter provided, except no use tax shall be payable hereunder if the tax imposed by subsection (a) of this section has been paid, or the vehicle is a pleasure car which was purchased, leased or otherwise acquired for use in short-term rentals, in which case the vehicle shall be subject to taxation under subsection (d) of this section.

(d) There is hereby imposed a use tax on the rental charge of each transaction, in which the renter takes possession of the vehicle in this state, during the life of a pleasure car purchased for use in short-term rentals, which tax is to be collected by the rental company from the renter and remitted to the commissioner. The amount of the tax shall be ~~seven~~ nine percent of the rental charge. Rental charge means the total rental charge for the use of the pleasure car, but does not include a separately stated charge for insurance, or recovery of refueling cost, or other separately stated charges which are not for the use of the pleasure car. In the event of resale of the vehicle in this state for use other than short-term rental, such transaction shall be subject to the tax imposed by subsection (a) of this section.

Sec. 56. 23 V.S.A. § 476 is added to read:

§ 476. MOTOR VEHICLE WARRANTY FEE

A motor vehicle warranty fee of $5.00 is imposed on the registration of each new motor vehicle in this state not including trailers, tractors, motorized highway building equipment, road-making appliances, snowmobiles, motorcycles, mopeds, or trucks with a gross vehicle weight over 12,000 pounds.

* * * Snowmobile and Motorboat Registration Fees * * *

Sec. 57. 23 V.S.A. § 3204 is amended to read:

§ 3204. REGISTRATION FEES AND DEALER PLATES

(a) Fees. Registration fees for snowmobiles other than as provided for in subsection (b) of this section are ~~$15.00~~ $25.00 for residents and ~~$22.00~~ $32.00 for nonresidents. Duplicate registration certificates may be obtained upon payment of ~~$2.00~~ $5.00.

(b)(1) Dealer; manufacturer and repair plates; fees. Unless exempted pursuant to subsection 3205(d) of this title, any person engaged in the manufacture or sale of snowmobiles shall obtain registration certificates and identifying number plates subject to such rules as may be adopted by the commissioner which shall be valid for the following purposes only: testing; adjusting; demonstrating; temporary use of customers for a period not to exceed 14 days; private business or pleasure use of such person or members of his or her immediate family; and use at fairs, shows or races when no charge is made for such use.

(2) Fees. Fees for dealer registration certificates shall be $40.00 for the first certificate issued to any person and $5.00 for any additional certificate issued to the same person within the current registration period. Fees for temporary number plates shall be $1.00 for each plate issued.

(c) Temporary registration pending issuance of permanent registration. The commissioner, by rules adopted pursuant to 3 V.S.A. chapter 25, shall provide for the issuance of temporary registrations of snowmobiles pending issuance of the permanent registration. VAST shall be an agent of the commissioner for the issuance of such temporary registrations. The fees for the temporary registrations shall be ~~$15.00~~ $25.00 for residents and ~~$22.00~~ $32.00 for nonresidents and shall also constitute payment of the registration fee required by subsection (a) of this section. Temporary registrations shall be kept with the snowmobile while being operated and shall authorize operation without the registration decal being affixed for a period not to exceed 60 days from the date of issue.

* * *

Sec. 58. 23 V.S.A. § 3214 is amended to read:

§ 3214. ALLOCATION OF FEES AND PENALTIES; LIABILITY

(a) The amount of $5.00 from the sale of every resident and nonresident snowmobile registration shall be allocated to the agency of transportation. The balance of fees and penalties collected under this subchapter, except interest, ~~are~~ is hereby allocated to the agency of natural resources for use by VAST for development and maintenance of the statewide snowmobile trail program (SSTP), for trails' liability insurance, and an amount equal to $5.00 from the sale of every resident and nonresident snowmobile registration shall be allocated to contract for law enforcement services with any constable, sheriff's department, municipal police department, the department of public safety, and the department of fish and wildlife for purposes of trail compliance pursuant to this chapter; the allocation for snowmobile law enforcement shall be included as a part of the annual expenditure plan required by section 3215 of this chapter. The departments of public safety and fish and wildlife are authorized

to contract with VAST to provide these law enforcement services. The agency of natural resources may retain for its use up to $11,500.00 during each fiscal year to be used for the oversight of the state snowmobile trail program.

* * *

Sec. 59. 23 V.S.A. § 3305(b) is amended to read:

(b) Annually, the owner of each motorboat required to be registered by this state shall file an application for a number with the commissioner of motor vehicles on forms approved by him or her. The application shall be signed by the owner of the motorboat and shall be accompanied by a fee of ~~$17.00~~ $22.00 and a surcharge of $5.00 for a motorboat in class A; by a fee of ~~$28.00~~ $33.00 and a surcharge of $10.00 for a motorboat in class 1; by a fee of ~~$55.00~~ $60.00 and a surcharge of $10.00 for a motorboat in class 2; by a fee of ~~$121.00~~ $126.00 and a surcharge of $10.00 for a motorboat in class 3. Upon receipt of the application in approved form, the commissioner shall enter the application upon the records of the department of motor vehicles and issue to the applicant a registration certificate stating the number awarded to the motorboat and the name and address of the owner. The owner shall paint on or attach to each side of the bow of the motorboat the identification number in such manner as may be prescribed by rules of the commissioner in order that it may be clearly visible. The registration shall be void one year from the first day of the month following the month of issue. A vessel of less than 10 horsepower used as a tender to a registered vessel shall be deemed registered, at no additional cost, and shall have painted or attached to both sides of the bow, the same registration number as the registered vessel with the number "1" after the number. The number shall be maintained in legible condition. The registration certificate shall be pocket size and shall be available at all times for inspection on the motorboat for which issued, whenever the motorboat is in operation. A duplicate registration may be obtained upon payment of a fee of $2.00 to the commissioner. Notwithstanding section 3319 of this chapter, $5.00 of each registration fee shall be allocated to the transportation fund. The remainder of the fee shall be allocated in accordance with section 3319 of this title.

Sec. 60. 23 V.S.A. § 3214 is amended to read:

§ 3214. ALLOCATION OF FEES AND PENALTIES; LIABILITY INSURANCE; AUTHORITY TO CONTRACT FOR LAW ENFORCEMENT SERVICES

(a) The amount of $5.00 from the sale of every resident and nonresident snowmobile registration shall be allocated to the agency of transportation. The balance of fees and penalties collected under this subchapter, except interest,

~~are~~ is hereby allocated to the agency of natural resources for use by VAST for development and maintenance of the statewide snowmobile trail program (SSTP), for trails' liability insurance, and an amount equal to $5.00 from the sale of every resident and nonresident snowmobile registration shall be allocated to contract for law enforcement services with any constable, sheriff's department, municipal police department, the department of public safety, and the department of fish and wildlife for purposes of trail compliance pursuant to this chapter; the allocation for snowmobile law enforcement shall be included as a part of the annual expenditure plan required by section 3215 of this chapter. The departments of public safety and fish and wildlife are authorized to contract with VAST to provide these law enforcement services. The agency of natural resources may retain for its use up to $11,500.00 during each fiscal year to be used for the oversight of the state snowmobile trail program.

* * *

Sec. 61. 10 V.S.A. § 501 is amended to read:

§ 501. FEES

Subject to the provisions of ~~section~~ subsection 486(c) of this title, an applicant for an official business directional sign or an information plaza plaque shall pay to the travel information council an initial license fee and an annual renewal fee as established by this section.

(1) Initial license fees shall be as follows:

(A) for full-sized or half-sized business directional signs, ~~$75.00~~ $175.00 per sign;

(B) for information plaza plaques, $25.00 per plaque; however, if more than one plaque is requested by a business at the same time, a ten percent discount shall be given on the second and subsequent plaques.

(2) Annual renewal fees ~~the amount, rounded to the next higher even whole dollar, determined by dividing the estimated cost of maintenance and administration of the official business directional sign and information plaza programs during the following fiscal year by the total number of licensed signs and plaques eligible for renewal during the following fiscal year; except that the renewal fees shall not exceed the following amounts~~ shall be as follows:

(A) for full and half-sized official business directional signs, ~~$60.00~~ $125.00 per sign;

* * *

* * * Passenger Rail Equipment * * *

Sec. 62. PASSENGER RAIL EQUIPMENT

In consultation with the joint fiscal office, the agency shall examine the alternatives and relative costs and benefits and service implications available to the state with respect to the purchase of passenger rail equipment to be used in place of the existing Amtrak equipment employed in the Vermonter and Ethan Allen services, including the purchase of refurbished equipment. The agency shall deliver a report of its analysis to the house and senate committees on transportation on or before January 15, 2010.

* * * State-Owned Railroad Property * * *

Sec. 63. Sec. 17(b)(2) of No. 175 of the Acts of the 2005 Adj. Sess. (2006), as amended by Sec. 31 of No. 164 of the Acts of the 2007 Adj. Sess. (2008), is further amended to read:

(2) town of Morristown; valuation section V50/51; approximately 3.7 acres adjacent to engine house and currently leased for batch plant, to be conveyed to lessee S. T. Griswold & Company, Inc. or assignee; however, if this conveyance is not consummated, the Lamoille Economic Development Corporation shall have the option to purchase; and

Sec. 64. Sec. 17(e) of No. 175 of the Acts of the 2005 Adj. Sess. (2006), as amended by Sec. 31 of No. 164 of the Acts of the 2007 Adj. Sess. (2008), is further amended to read:

(e) The authority granted by this section shall expire on ~~June 30~~ December 31, 2009.

* * * Cancellation of Projects * * *

Sec. 65. CANCELLATION OF PROJECTS

Pursuant to 19 V.S.A. § 10g(f) (legislative approval for cancellation of projects), the general assembly approves cancellation of the following projects:

(1) Town highway bridges:

(A) Albany BRO 1449(23) (BR 30 on TH 25/Poor Farm Road, over Black River) (town has requested termination);

(B) Chester BRO 1442(31) (BR 63 on TH 9/First Avenue, over Williams River) (town has requested termination);

(C) Richford TH3 0305 (BR 28 on TH 18/Noyes Street, over Loveland Brook) (town has requested termination); and

(D) Woodstock BRO 1444(33) (BR 37 on TH 66, over Kedron Brook) (town has requested termination).

(2) Bicycle and pedestrian facilities: Irasburg STP WALK(16) (installation of sidewalks and curbs along VT 58) (town has requested termination).

* * * Transportation Fund; Sales of Surplus Property * * *

Sec. 66. 19 V.S.A. § 11(8) is amended to read:

(8) other miscellaneous sources including the sale of maps, plans and reports, fees collected by the travel information council ~~and~~, leases for property at state-owned airports and railroads, proceeds from the sale of state surplus property under the provisions of 29 V.S.A. §§ 1556 and 1557, and proceeds from the sale of recycled materials.

Sec. 67. 29 V.S.A. § 1557(b) is amended to read:

(b) Transfer charges and credits shall be made against the appropriation of the respective department or agency. Funds credited shall be classified as special funds, and managed in accordance with subchapter 5 of chapter 7 of Title 32; provided, however, that any funds credited to the agency of transportation shall be transferred to the transportation fund.

* * * Relinquishment of State Highway Segments to Municipal Control * * *

Sec. 68. RELINQUISHMENT OF VERMONT ROUTE 15 IN THE VILLAGE OF ESSEX JUNCTION

(a) Under the authority of 19 V.S.A. § 15(2), approval is granted for the secretary of transportation to enter into an agreement with the village of Essex Junction to relinquish to the village's jurisdiction a segment of the state highway known as Vermont Route 15 (Pearl Street) in the village of Essex Junction starting at the Essex Junction village boundary, near the intersection with Susie Wilson Road (TH #4), and extending in an easterly direction for 1.004 miles, connecting to existing class 1 town highway TH #1 at a point 0.261 miles west of West Hillcrest Road (TH #551). The relinquishment shall include the Vermont Route 15 approaches to West Street Extension (TH #5). Upon relinquishment, the former state highway shall become a class 1 town highway.

(b) Control of the highway, not including ownership of the lands or easements within the highway right-of-way, shall be relinquished to the village of Essex Junction. The village of Essex Junction shall not sell or abandon any portion of the relinquishment areas or allow any encroachments within the

relinquishment areas without written permission of the agency of transportation.

* * * Town Highways * * *

Sec. 69. 19 V.S.A. § 305(g) is amended to read:

(g) The agency shall provide each town with a map of all of the highways in that town together with the mileage of each class 1, 2, ~~and~~ 3, and 4 highway, as well as each trail, and such other information as the agency deems appropriate.

Sec. 70. 19 V.S.A. § 305(i) is amended to read:

(i)(1) Prior to a vote to discontinue town highways provided in subsection (h) of this section, the legislative body shall hold a public informational hearing on the question by posting warnings at least 30 days prior to the hearing in at least two public places within the municipality and in the town clerk's office. The notice shall include the most recently available map of all town highways prepared by the agency of transportation pursuant to subsection (g) of this section. At least 30 days prior to the hearing, the legislative body shall also deliver the warning and map together with proof of receipt or mail by certified mail, return receipt requested, to each of the following:

(A) The chair of any municipal planning commission in the municipality;

(B) The chair of a conservation commission, established under chapter 118 of Title 24, in the municipality;

(C) The chair of the legislative body of each abutting municipality;

(D) The executive director of the regional planning commission of the area in which the municipality is located; ~~and~~

(E) The commissioner of forests, parks and recreation; and

(F) The secretary of transportation.

(2) The hearing shall be held within the 10 days preceding the meeting at which the legislative body will vote whether to discontinue all town highways as provided in subsection (h) of this section.

* * * Trucks and Buses; Use of Tire Chains * * *

Sec. 71. 23 V.S.A. § 1006c is added to read:

§ 1006c. TRUCKS AND BUSES; CHAINS AND TIRE REQUIREMENTS

(a) The traffic committee may require the use of tire chains or winter tires on specified portions of state highways during periods of winter weather for

motor coaches, truck-tractor-semitrailer combinations, and truck-tractor-trailer combinations.

(b) When tire chains or winter tires are required, advance notice shall be given to the traveling public through signage and, whenever possible, through public service announcements. In areas where tire chains or winter tires are required, there shall be an adequate area for vehicles to pull off the traveled way to affix any chains that might be required.

(c) Under chapter 25 of Title 3, the traffic committee may adopt such rules as are necessary to administer this section and may delegate this authority to the secretary.

Sec. 72. USE OF CHAINS; IMPLEMENTATION

The use of chains shall not be required until signage and designated areas are available for vehicles to affix tire chains before proceeding further. Advanced public notice of these requirements shall be given to interested parties in the most feasible manner possible.

* * * Public Transportation Planning * * *

Sec. 73. 24 V.S.A. § 5089 is amended to read:

§ 5089. PLANNING

(a) ~~By January 31, 1996, all public transit systems shall have completed a short-range public transit plan. In the meantime, the agency of transportation may continue to provide funding for capital, statewide operating and new services.~~

~~(b) The short-range public transit plans must be coordinated with the efforts of the regional planning commission under the transportation plan.~~

~~(c)~~ The agency of transportation's public transit plan for the state shall be ~~updated~~ amended no less frequently than every five years ~~so as to include, and incorporate the public transportation elements of regional plans that have not been disapproved under the provisions of chapter 117 of this title~~. The development of the state public transit plan shall include consultation with public transit providers, the metropolitan planning organization, and the regional planning commissions and their transportation advisory committees to ensure the integration of transit planning with the transportation planning initiative as well as conformance with chapter 117 of this title, (municipal and regional planning and development). Regional plans, together with the agency of transportation's public transit plan shall function to coordinate the provision of public, private nonprofit, and private for-profit regional public transit services, in order to ensure effective local, regional and statewide delivery of services.

(b) Recognizing that the growing demand for new regional and commuter services must be considered within the context of the continuing need for local transit services that meet basic mobility needs, the agency of transportation shall consult annually with the regional planning commissions and public transit providers in advance of the award of available planning funds. The agency shall maintain a working list of both short- and long-term planning needs, goals, and objectives that balances the needs for regional service with the need for local service. Available planning funds shall be awarded in accordance with state and federal law and as deemed necessary and appropriate by the agency following consultation with the regional planning commissions and the public transit providers. The agency shall report annually to the general assembly on planning needs, expenditures, and cooperative planning efforts.

Sec. 74. 23 V.S.A. § 372 is amended to read:

§ 372. MOTOR BUS

The annual fee for registration of a motor bus shall be based on the actual weight of such bus, plus passenger carrying capacity at 150 pounds per person, and shall be $1.40 per 100 pounds of such weight, except for motor buses registered under section 372a or 376 of this title. Fractions of a hundred-weight shall be disregarded. The minimum fee for the registration of any motor bus shall be $43.00.

* * * Public Transit * * *

Sec. 75. PUBLIC TRANSIT

From the funds allocated to the public transit general capital program, $100,000 in federal funds shall be held by the agency of transportation in reserve to cover shortfalls in the funding of the elders and persons with disabilities program (E&D) that occur as a result of unanticipated demand for non-Medicaid transportation services. Transit agencies that have grant agreements with the agency for the provision of E&D services shall be eligible to receive disbursements from the reserve. The agency shall develop a written policy to govern the evaluation and prioritization of applications for disbursements from the reserve to ensure access to the reserve funds is limited to transit agencies that have administered appropriately constrained E&D programs. The agency shall notify all transit agencies with grant agreements for the provision of E&D services of the policy no later than July 1, 2009, and all disbursements from the reserve shall be in accordance with the policy.

* * * Local Match for Public Transportation Service * * *

Sec. 76. 23 V.S.A. § 372a is amended to read:

§ 372a. LOCAL TRANSIT PUBLIC TRANSPORTATION SERVICE BUSES; FEE

(a) The annual registration fee for any motor bus used in local transit or public transportation service ~~entirely within any city or town, or not over 10 miles beyond the boundaries thereof,~~ shall be $45.00, except for those vehicles owned by a municipality for such service that are subject to the provisions of section 376 of this title. In the event a bus registered for local transit or public transportation service is thereafter registered for general use during the same registration year, such fee shall be applied towards the fee for general registration.

(b) For the purposes of this section, a public transportation service bus is a bus used by a nonprofit public transit system as defined in 24 V.S.A. § 5088(3), and a local transit bus is a motor bus used entirely within or not more than 10 miles beyond the boundaries of a city or town.

* * * Motor Buses; Diesel Tax * * *

Sec. 77. 23 V.S.A. § 3003(d)(1)(A) through (F) and (d)(2) are amended to read:

(A) uses, the taxation of which would be precluded by the laws and Constitution of the United States and this state;

(B) uses for agricultural purposes not conducted on the highways of the state;

(C) uses by any state, municipal, school district, fire district or other governmentally owned vehicles for official purposes;

(D) uses by any vehicle off the highways of the state; and

(E) ~~uses by motor buses registered in this state; and~~

~~(F)~~ uses by any vehicle registered as a farm truck under subsection 367(f) of this title.

(2) Provided, however, that no tax shall be due with respect to fuel for use in any state, municipal, school district, fire district, nonprofit public transit system as defined in 24 V.S.A. § 5088(3), or other ~~governmentally-owned~~ vehicle owned, leased, or contracted for other than single-trip use by a government entity, as long as the distributor takes from the purchaser at the time of sale an exemption certificate in the form prescribed by the commissioner; and provided, further, that no tax shall be due with respect to fuel delivered for farm use to a farm bulk fuel storage tank.

* * * Public Transit Report * * *

Sec. 78. PUBLIC TRANSIT REPORT

(a) Public transit report. Consistent with the goals, findings, and recommendations of the two most recent legislative reports prepared by VTrans regarding a review of potential changes to Vermont's public transit service delivery model (Sec. 35 and Sec. 45 reports), VTrans shall, in continued cooperation with the legislature's joint fiscal office, conduct such further analysis as is necessary to generate specific recommendations for improving the efficient and effective delivery of public transit services in Vermont.

(b) Goal of report. The goal of the report is to recommend a governance and funding structure for public transportation that creates the most efficient use of taxpayer funds while simultaneously creating the most efficient system of public transportation services consistent with the statutory policy goals in 24 V.S.A. § 5083. The report shall:

(1) Make use of the data and information currently available and assess the strengths and weaknesses of the public transit delivery system;

(2) Review the pros and cons of realistic alternative service delivery models;

(3) Present a recommendation for a systematic approach toward changing, evolving, or maintaining the existing service delivery model and propose a configuration under which the service delivery model maximizes state, federal, and local investments into the broad range of public transit services.

(c) The agency shall direct the report with the involvement of the agency of human services and of all public transit providers in the state who are direct grantees and subrecipients of state and federal funds.

(d) Consistent with federal United We Ride initiatives, the report shall consider all federal and state funding invested through or by state and federal agencies on public, human services, and related transportation programs and shall evaluate the potential for achieving greater efficiency through coordination of effort or consolidation of funding and effort.

(e) The report shall be delivered to the general assembly on or before February 15, 2010.

* * * VASA Trail Insurance * * *

Sec. 79. 23 V.S.A. § 3513 is amended to read:

§ 3513. LIABILITY INSURANCE; AUTHORITY TO CONTRACT FOR LAW ENFORCEMENT SERVICES

(a) The amount of 85 percent of the fees and penalties collected under this subchapter, except interest, is hereby allocated to the agency of natural resources for use by the Vermont ATV sportsman's association (VASA) for development and maintenance of a statewide ATV trail program ~~on private property~~, for trail liability insurance, and to contract for law enforcement services with any constable, sheriff's department, municipal police department, the department of public safety, and the department of fish and wildlife for purposes of trail compliance pursuant to this chapter. The departments of public safety and fish and wildlife are authorized to contract with VASA to provide these law enforcement services. The agency of natural resources may retain for its use up to $7,000.00 during each fiscal year to be used for administration of the state grant that supports this program.

* * *

* * * All-Terrain Vehicles * * *

Sec. 80. 23 V.S.A. § 3502 is amended to read:

§ 3502. REGISTRATION

(a) An all-terrain vehicle may not be operated unless registered pursuant to this chapter or any other section of this title~~,~~ by the state of Vermont and unless the all-terrain vehicle displays a valid Vermont ATV Sportsman's Association (VASA) Trail Access Decal (TAD) when operating on a VASA trail, except when operated:

* * *

Sec. 81. 23 V.S.A. § 3506 is amended to read:

§ 3506. OPERATION

* * *

(b) An all-terrain vehicle may not be operated:

* * *

(3) On any privately owned land or body of private water unless:

* * *

(B) the operator has, on his or her person, the written consent of the owner or lessee of the land to operate an all-terrain vehicle in the specific area

and during specific hours and/or days in which the operator is operating, ~~or proof that he or she is a member of a club or association to which consent has been given orally or in writing;~~ or the all-terrain vehicle displays a valid TAD decal as required by subsection 3502(a) of this title that serves as proof that the all-terrain vehicle and its operator, by virtue of the TAD, are members of a VASA-affiliated club to which such consent has been given orally or in writing to operate an all-terrain vehicle in the area in which the operator is operating;

* * *

* * * Two-Wheeled All-Terrain Vehicles * * *

Sec. 82. 23 V.S.A. § 3501(5) is amended to read:

(5) "All-terrain vehicle" or "ATV" means any nonhighway recreational vehicle, except snowmobiles, having no less than ~~three~~ two low pressure tires (10 pounds per square inch, or less), not wider than 60 inches with two-wheel ATVs having permanent, full-time power to both wheels, and having a dry weight of less than 1,700 pounds, when used for cross-country travel on trails or on any one of the following or a combination thereof: land, water, snow, ice, marsh, swampland, and natural terrain. An ATV on a public highway shall be considered a motor vehicle, as defined in section 4 of this title, only for the purposes of those offenses listed in subdivisions 2502(a)(1)(H), (N), (R), (U), (Y), (FF), (GG), (II), and (ZZ); (2)(A) and (B); (3)(A), (B), (C), and (D); (4)(A)~~,~~ and (B) and (5) of this title and as provided in section 1201 of this title. An ATV shall not include an electric personal assistive mobility device.

* * * One Registration Plate Sticker * * *
* * * Bright Futures Plate * * *

Sec. 83. 23 V.S.A. § 304c is amended to read:

§ 304c. MOTOR VEHICLE REGISTRATION PLATES: BUILDING BRIGHT SPACES FOR BRIGHT FUTURES FUND

(a) The commissioner shall, upon application, issue "building bright spaces for bright futures fund," hereinafter referred to as "the bright futures fund," registration plates for use only on vehicles registered at the pleasure car rate, ~~and~~ on trucks registered for less than 26,001 pounds, on vehicles registered to state agencies under section 376 of this title, and excluding vehicles registered under the International Registration Plan. Plates so acquired shall be mounted on the front and rear of the vehicle. The commissioner of motor vehicles shall utilize the graphic design recommended by the commissioner of social and rehabilitation services for the special plates to enhance the public awareness of the state's interest in supporting children's services. Applicants shall apply on forms prescribed by the commissioner of motor vehicles, and shall pay an

initial fee of $20.00 in addition to the annual fee for registration. In following years, in addition to the annual registration fee, the holder of a bright futures fund plate shall pay a renewal fee of $20.00. The commissioner shall adopt rules under 3 V.S.A. chapter 25 to implement the provisions of this subsection.

* * *

* * * Design-Build Contracts * * *

Sec. 84. 19 V.S.A. chapter 26 is added to read:

CHAPTER 26. DESIGN-BUILD CONTRACTS

§ 2601. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings:

(1) "Best value" means the highest overall value to the state, considering quality and cost.

(2) "Design-build contracting" means a method of project delivery whereby a single entity is contractually responsible to perform design, construction, and related services.

(3) "Major participant" means any entity that would have a major role in the design or construction of the project as specified by the agency in the request for proposals.

(4) "Project" means the highway, bridge, railroad, airport, trail, transportation, building, or other improvement being constructed or rehabilitated, including all professional services, labor, equipment, materials, tools, supplies, warranties, and incidentals needed for a complete and functioning product.

(5) "Proposal" means an offer by the proposer to design and construct the project in accordance with all request-for-proposals provisions for the price contained in the proposal.

(6) "Proposer" means an individual, firm, corporation, limited-liability company, partnership, joint venture, sole proprietorship, or other entity that submits a proposal. After contract execution, the successful proposer is the design-builder.

(7) "Quality" means those features that the agency determines are most important to the project. Quality criteria may include quality of design, constructability, long-term maintenance costs, aesthetics, local impacts, traveler and other user costs, service life, time to construct, and other factors that the agency considers to be in the best interest of the state.

§ 2602. AUTHORIZATION

(a) Notwithstanding section 10 of this title or any other provision of law, the agency may use design-build contracting to deliver projects. The agency may evaluate and select proposals on either a best-value or a low-bid basis. If the scope of work requires substantial engineering judgment, the quality of which may vary significantly as determined by the agency, then the basis of award shall be best-value.

(b) The agency shall identify those projects it believes are candidates for design-build contracting, including those involving extraordinary circumstances, such as emergency work, unscheduled projects, or loss of funding.

(c) The agency retains the authority to terminate the contracting process at any time, to reject any proposal, to waive technicalities, or to advertise for new proposals if the agency determines that it is in the best interest of the state.

§ 2603. PREQUALIFICATION

(a) The agency may require that entities be prequalified to submit proposals. If the agency requires prequalification, it shall give public notice requesting qualifications from interested entities electronically through the agency's publicly accessible website or through advertisements in newspapers. The agency shall issue a request-for-qualifications package to all entities requesting one in accordance with the notice.

(b) Interested entities shall supply for themselves and for all major participants all information required by the agency. The agency may investigate and verify all information received. All financial information, trade secrets, or other information customarily regarded as confidential business information submitted to the agency shall be confidential.

(c) The agency shall evaluate and rate all entities submitting a conforming statement of qualifications and select the most qualified entities to receive a request for proposals. The agency may select any number of entities, except that if the agency fails to prequalify at least two entities, the agency shall readvertise the project.

§ 2604. REQUEST FOR PROPOSALS

The agency may issue a request for proposals, which shall set forth the scope of work, design parameters, construction requirements, time constraints, and all other requirements that have a substantial impact on the cost or quality of the project and the project development process, as determined by the agency. The request for proposals shall include the criteria for acceptable proposals. For projects to be awarded on a best-value basis, the scoring

process and quality criteria must also be contained in the request for proposals. In the agency's discretion, the request for proposals may provide for a process, including the establishment of a team to review proposals, for the agency to review conceptual technical elements of each proposal before full proposal submittal for the purposes of identifying defects that would cause rejection of the proposal as nonresponsive. All such conceptual submittals and responses shall be confidential until award of the contract. The request for proposals may also provide for a stipend upon specified terms to unsuccessful proposers that submit proposals conforming to all request-for-proposals requirements.

§ 2605. LOW-BID AWARD

If the basis of the award of responsive proposals is low-bid, then each proposal, including the price or prices, shall be sealed by the proposer and submitted to the agency as one complete package. The agency shall award the design-build contract to the proposer that submits a responsive proposal with the lowest cost, if the proposal meets all request-for-proposals requirements.

§ 2606. BEST-VALUE AWARD

(a) If the basis of the award of responsive proposals is best-value, then each proposal shall be submitted by the proposer to the agency in two separate components: a sealed technical proposal and a sealed price proposal. These two components shall be submitted simultaneously. The agency shall first open, evaluate, and score each responsive technical proposal, based on the quality criteria contained in the request for proposals. The request for proposals may provide that the range between the highest and lowest quality scores of responsive technical proposals must be limited to an amount certain. During this evaluation process, the price proposals shall remain sealed, and all technical proposals shall be confidential.

(b) After completion of the evaluation of the technical proposals, the agency shall open and review each price proposal. The agency shall develop a system for assessing the cost and quality criteria. The agency shall award the contract to the proposer of the project representing the best value to the agency.

Sec. 85. DESIGN-BUILD CONTRACTS; LIMITATIONS ON USE

During fiscal year 2010 the agency of transportation shall limit its exercise of the authority granted by Sec. 78 of this act to not more than four projects.

Sec. 86. PROJECT SIGNAGE

For projects initiated in 2010 using design-build contracts, the agency shall erect signage at the project site for the duration of the project's construction identifying the project and its total cost, provided that the cost of acquiring and

installing the signs does not exceed $2,000.00 per project. The signs shall be designed in accordance with the agency's recommendations regarding size and lettering contained in the agency's 2009 report on the issue.

* * * Joint Transportation Oversight Committee Chairs * * *

Sec. 87. 19 V.S.A. § 12b(a) is amended to read:

(a) There is created a joint transportation oversight committee composed of the chairs of the house and senate committees on appropriations, the house and senate committees on transportation, the house committee on ways and means, and the senate committee on finance. The committee shall be chaired alternately by the chairs of the house and senate committees on transportation, and the two year term shall run concurrently with the biennial session of the legislature. The chair of the senate committee on transportation shall chair the committee during the 2009–2010 legislative session.

* * * State Highway Law; Definitions * * *

Sec. 88. 19 V.S.A. § 1 is amended to read:

§ 1. DEFINITIONS

For the purposes of this title:

(1) "Agency" means the agency of transportation.

(2) "Board" means the transportation board.

(3) "Branch" means a major component of a division of a department or major unit of a department with staff functions.

(4) "Chair" means the chair of the transportation board, unless otherwise specified.

(5) "Commissioner" means the commissioner of the department of motor vehicles responsible to the secretary for the administration of the department.

(6) "Department" means the department of motor vehicles.

(7) "Develop" means the partition or division of any tract of land of any size by a person through sale, lease, transfer or any other means by which any interest in or to the land or a portion of the land is conveyed to another person which will require the construction of permanent new or enlarged points of access to a state or town highway other than a limited access facility pursuant to subsection (a) of section 1702a of this title; excluding however, tracts of land located entirely within a city or incorporated village.

(8) "Director" means the head of a division.

(9) "District" means a geographic subdivision of the state primarily established for maintenance purposes.

(10) "District transportation administrator" means the person in charge of a district.

(11) "Division" means a major unit of the agency engaged in line functions other than the department of motor vehicles.

(12) "Highways" are only such as are laid out in the manner prescribed by statute; or roads which have been constructed for public travel over land which has been conveyed to and accepted by a municipal corporation or to the state by deed or a fee or easement interest; or roads which have been dedicated to the public use and accepted by the city or town in which such roads are located; or such as may be from time to time laid out by the agency or town. The term "highway" includes rights-of-way, bridges, drainage structures, signs, guardrails, areas to accommodate utilities authorized by law to locate within highway limits, areas used to mitigate the environmental impacts of highway construction, vegetation, scenic enhancements, and structures. The term "highway" does not include state forest highways, management roads, easements, or rights-of-way owned by or under the control of the agency of natural resources, the department of forests, parks and recreation, the department of fish and wildlife, or the department of environmental conservation.

(13) "Management road" means a road not designated as a "state forest highway" used for the long-term management of lands owned by or under the control of the department of forests, parks and recreation, the department of fish and wildlife, or the department of environmental conservation to meet the responsibilities and purposes set forth in chapter 83 of Title 10, part 4 of Title 10, and regulations promulgated under those statutes. The term "management road" includes associated easements and rights-of-way. A "management road" is not a "highway" or a "town highway" as defined in this title, is not a public road, and the public has no common law or statutory right of access or use of such a road. A "management road" may be open for temporary, seasonal uses by the public or may be closed temporarily or seasonally at the discretion of the agency of natural resources, the department of forests, parks and recreation, the department of fish and wildlife, or the department of environmental conservation. A "management road" may be closed permanently upon 30 days' notice to the governing body of the municipality in which the road is located and any affected user groups. Designation of a road as a "management road" shall not diminish any deeded rights of way or easements of private landowners on lands owned or controlled by the agency of natural resources,

the department of forests, parks and recreation, the department of fish and wildlife, or the department of environmental conservation.

~~(13)~~(14) "Person" includes a municipality or state agency.

~~(14)~~(15) "Scenic road" means any road designated pursuant to this title.

~~(15)~~(16) "Secretary" means the head of the agency who shall be a member of the governor's cabinet responsible directly to the governor for the administration of the agency.

~~(16)~~(17) "Section" means a major component of a division or department or major unit of the agency.

~~(17)~~(18) "Selectboard" includes village trustees and city councils.

(19) "State forest highway" means a road used for the long-term management of lands owned by or under the control of the department of forests, parks and recreation to meet the responsibilities and purposes set forth in 10 V.S.A. § 2601, et seq. and regulations promulgated under that statute. The term "state forest highway" includes easements and rights-of-way. A "state forest highway" is not a "highway" or a "town highway" as defined in this title, is not a public road, and the public has no common law or statutory right of access or use of such road. A "state forest highway" may be open for temporary, seasonal uses by the public or may be closed temporarily or seasonally for any reason at the discretion of the agency of natural resources or the department of forests, parks and recreation. A "state forest highway" may be closed permanently upon 30 days' notice to the governing body of the municipality in which the road is located and to any affected user groups. Designation of a road as a "state forest highway" shall not diminish any deeded rights of way or easements of private landowners on lands owned or controlled by the agency of natural resources or the department of forests, parks and recreation.

~~(18)~~(20) "State highways" are those highways maintained exclusively by the agency of transportation.

~~(19)~~(21) "Throughway" means a highway specially designated giving traffic traveling on the throughway the right-of-way at all intersections.

~~(20)~~(22) "Town" includes incorporated villages and cities.

~~(21)~~(23) "Town highways" are ~~those~~ class 1, 2, 3 and 4 highways:

(A) that the towns have authority to exclusively or cooperatively maintain; or

(B) that are maintained by the towns except for scheduled surface maintenance performed by the agency pursuant to section 306a of this title.

~~(22)~~(24) "Traffic committee" consists of the secretary of transportation or his or her designee, the commissioner of motor vehicles or his or her designee, and the commissioner of public safety or his or her designee and is responsible for establishing speed zones, parking and no parking areas, regulations for use of limited access highways, and other traffic control procedures.

~~(23)~~(25) "Limited access highway" means a highway where the right of owners or occupants of abutting land or other persons to access, light, air, or view in connection with the highway is fully or partially controlled by public authority, in accordance with chapter 17 of this title. The term "highway" does not include state forest highways, management roads, easements, or rights-of-way owned by or under the control of the agency of natural resources, the department of forests, parks and recreation, the department of fish and wildlife, or the department of environmental conservation.

Sec. 89. 19 V.S.A. § 301 is amended to read:

§ 301. DEFINITIONS

* * *

(7) "Town highways" are ~~those~~ class 1, 2, 3 and 4 highways:

(A) that the towns have authority to exclusively or cooperatively maintain; or

(B) that are maintained by the towns except for scheduled surface maintenance performed by the agency pursuant to section 306a of this title.

* * * Budget Surplus; Towns of Glastenbury and Somerset * * *

Sec. 90. FISCAL YEAR 2009 FUND TRANSFERS

Notwithstanding the provisions of 24 V.S.A. § 1406, in fiscal year 2009, the following amounts shall be transferred to the transportation fund from the funds indicated:

(1) 21345 Unorganized town—-Bennington (Glastenbury) $241,652.

(2) 21355 Unorganized towns—Windham (Somerset) $121,180.

Sec. 91. 32 V.S.A. § 4961 is amended to read:

§ 4961. ASSESSMENT OF TAX

(a) A state tax determined pursuant to this section is hereby annually assessed upon the grand list of the Gore in Chittenden County~~. A state tax of~~

~~$0.50 is hereby annually assessed on~~ and upon the grand list of the town of Glastenbury in the county of Bennington and of the unorganized town of Somerset in the county of Windham.

(b) Annually, on or before August 1, the supervisor of Buel's Gore shall call a meeting of the residents of the Gore for the purpose of presenting the proposed budget and tax rate for the Gore for the ensuing year and inviting discussion thereon. Notice of the meeting shall be sent by first class mail to all residents of the Gore at least 14 days before the meeting. The meeting shall be held at a place within the Gore or within a town that adjoins the Gore. Included with the notice shall be an itemized proposed budget which shall, in the judgment of the supervisor, cover the education, road maintenance and general government costs within the Gore. Also included with the notice shall be proposed tax rates consistent with the budget. Annually, on or before September 10, the supervisor shall adopt a budget and tax rate and notify the residents and appraisers for the Gore.

(c) Annually, on or before August 1, the supervisors of Glastenbury and Somerset shall each present the proposed budget and tax rate for the town for the ensuing year. Upon a finding by the commissioner of taxes before September 10 that the budget and tax rate are reasonable and show no obvious irregularities, the commissioner shall approve the budget and tax rate, and the supervisor shall then adopt the budget and tax rate and notify the residents of the town. If the commissioner does not approve the budget and tax rate by September 10, the budget and tax rate shall remain the same as the budget and tax rate for the prior year, and the supervisor shall so notify the residents of the town.

Sec. 92. 24 V.S.A. § 1406 is amended to read:

§ 1406. TAXES EXPENDED; HOW

Upon allowance of the accounts of supervisors and appraisers for unorganized towns and gores, the commissioner of finance and management shall certify forthwith the amount as allowed to the state treasurer and the balance, if any, of the moneys received from any supervisor, after deducting the amount of the county tax and regional planning costs, if any. The amount of such supervisors' and appraisers' accounts, so certified, shall be used for the laying out, construction and maintenance of highways and bridges in the unorganized towns and gores for which the supervisor is appointed, to be expended by and under the direction of the secretary of transportation, in the same manner as state transportation appropriations. The portion of the money which remains unexpended for more than one year may be ~~used~~ carried

forward in the supervisors' accounts for like purposes ~~and expended in a like manner in towns adjoining unorganized towns and gores~~.

* * * Sidewalks; Landowner Liability * * *

Sec. 93. Chapter 23 of Title 19 is redesignated to read:

CHAPTER 23. BICYCLE ROUTES AND SIDEWALKS

Sec. 94. 19 V.S.A. § 2301 is amended to read:

§ 2301. DEFINITIONS

* * *

(6) "Sidewalk" means the portion of a street or highway right-of-way designated for primary or exclusive pedestrian use.

Sec. 95. 19 V.S.A. § 2309 is amended to read:

§ 2309. LIABILITY OF LANDOWNER

No landowner shall be liable for any property damage or personal injury sustained by any person who is using, for any purpose permitted by state law or by a municipal ordinance, bicycle routes or sidewalks constructed on the landowner's property pursuant to this chapter, unless the landowner charges a fee for the use of the property. Landowner immunity from liability with regard to sidewalks under this section shall not extend to damage or injury to the extent that it arises from negligent, reckless, or willful acts of the landowner.

* * * Year of Manufacture Plates * * *

Sec. 96. 23 V.S.A. § 373 is amended to read:

§ 373. EXHIBITION VEHICLES; YEAR OF MANUFACTURE PLATES

(a) The annual fee for the registration of a motor vehicle which is maintained solely for use in exhibitions, club activities, parades, and other functions of public interest and which is not used for the transportation of passengers or property on any highway, except to attend such functions, shall be $15.00, in lieu of fees otherwise provided by law.

(b) Pursuant to the provisions of section 304 of this title, one registration plate shall be issued to those vehicles registered under subsection (a) of this section.

(c) The Vermont registration plates of any motor vehicle issued prior to 1939 may be displayed instead of the plates issued under this section, if the current plates are maintained within the vehicle and produced upon request of any enforcement officer as defined in subdivision 4(11) of this title.

* * * Aviation Maintenance Equipment * * *

Sec. 97. REPORT; AVIATION MAINTENANCE EQUIPMENT

The agency of transportation shall, by January 15, 2010, submit to the house and senate transportation committees a report regarding the agency's current inventory of aviation maintenance equipment. The report shall set forth equipment type, cost, funding source, and useful life. The report also shall contain a five-year plan for future equipment purchases.

* * * Transportation Buildings * * *

Sec. 98. TRANSPORTATION BUILDINGS

The following modifications are made to the transportation buildings program:

(1) Consistent with the recommendations of the January 15, 2009 legislative report (Sec. 8(2) of No. 164 of the Acts of the 2007 Adj. Sess. (2008)) titled "VTrans' Plans for Maintenance Facilities in Chittenden and Addison Counties," the agency of transportation shall proceed with Option A (Stay at "Fort) for the Colchester "Fort" Facility project and shall proceed with Option B (Truck Inspection/Motorcycle Training Facility only) for the North Ferrisburgh Facility project.

(2) As part of the Colchester "Fort" Facility renovation project, the agency shall sell the 25 +/- acre property located off VT Route 117 with the proceeds credited as provided in 19 V.S.A. § 26.

* * * Burlington Airport Pilot Project; Creative Financing * * *

Sec. 99. PILOT PROJECT FOR BURLINGTON INTERNATIONAL AIRPORT; CREATIVE FINANCING

A pilot project to examine the potential for a public-private initiatives program shall be pursued for the advancing of an interchange on Interstate 89 along Vermont Route 116 in South Burlington to explore improving future access to the Burlington International Airport and to relieve the overburdened interchanges at Interstate 89 exits 12 and 14. Implementation of the pilot study shall be carried out in cooperation, consultation, and with the support of the Vermont agency of transportation, the Chittenden County metropolitan planning organization (CCMPO), and other affected local jurisdictions and project partners. The CCMPO, with the cooperation of the agency of transportation, is directed to prepare a creative financing plan for the advancement of a project to construct an interchange at the above-mentioned location and deliver the plan to the legislature by November 1, 2009.

* * * State Speed Zones * * *

Sec. 100. 23 V.S.A. § 1003 is amended to read:

§ 1003. STATE SPEED ZONES

(a) When the traffic committee constituted under 19 V.S.A. § 1(22) determines, on the basis of an engineering and traffic investigation, that a maximum speed limit established by this chapter is greater or less than is reasonable or safe under conditions found to exist at any place or upon any part of a state highway, except the national system of interstate and defense highways, it may determine and declare a reasonable and safe limit which is effective when appropriate signs stating the limit are erected. This limit may be declared to be effective at all times or at times indicated upon the signs; and differing limits may be established for different times of day, different types of vehicles, varying weather conditions, or based on other factors, bearing on safe speeds which are effective when posted upon appropriate fixed or alterable signs.

(b) When establishing a maximum speed limit on a state highway contiguous to a school, the traffic committee shall consider, along with the engineering and traffic investigation, data collected for the purpose of promulgating a school travel plan under the Vermont Safe Routes to School program.

* * * Special DMV Examinations * * *

Sec. 101. 23 V.S.A. § 636(a) is amended to read:

(a) Whenever the commissioner has good cause to believe that any holder of an operator's license, or any applicant for renewal of an operator's license, is incompetent or otherwise not qualified to be licensed, he may require such person to submit to a special examination to determine his capabilities or mental or physical fitness, but no person shall be required to pay to the state a fee for such special examination. Such examination shall be given at such time and place as the commissioner may determine. If the commissioner determines that a special examination is warranted, then a driving examination shall be administered. If, under the commissioner's discretion, extenuating circumstances exist, the commissioner may also administer a written or oral examination.

* * * Truck Permits * * *

Sec. 102. 23 V.S.A. § 1432 is amended to read:

§ 1432. LENGTH OF VEHICLES; AUTHORIZED HIGHWAYS

(a) Operation of vehicles with or without a trailer or semitrailer. No motor vehicle without a trailer or semitrailer attached, which is longer than 46 feet overall, shall be operated upon any highway except under special permission from the commissioner of motor vehicles. A motor vehicle with a trailer or semitrailer shall be operated, with regard to the length of the vehicle, pursuant to this section. If there is a trailer or semitrailer, the distance between the kingpin of the semitrailer to the center of the rearmost axle group shall not exceed ~~43~~ 41 feet. An "axle group" is defined as two or more axles where the centers of all the axles are spaced at an equal distance apart.

(1) ~~Vehicles with a trailer or semitrailer not exceeding 72 feet on the truck network. If the overall length of a vehicle with a trailer or semitrailer does not exceed 72 feet, it may be operated without a permit on the truck network established in subsection (c) of this section.~~

~~(2)~~ Vehicles with a trailer or semitrailer not exceeding ~~68~~ 75 feet ~~off the truck network~~. If the overall length of a vehicle with a trailer or semitrailer does not exceed ~~68~~ 75 feet, it may be operated without a permit ~~off the truck network~~.

~~(3)~~(2) ~~Vehicles with a trailer or semitrailer longer than 68 feet but not longer than 72 feet off the truck network; tractor 23 feet or less. If the overall length of a vehicle with a trailer or semitrailer is longer than 68 feet but not longer than 72 feet, and if the distance between the steering axle to the rearmost tractor axle is 23 feet or less, a permit may be issued pursuant to subdivision 1402(b)(1) of this title.~~ A receiver or shipper of goods located in Vermont may request from the agency of transportation, access to a state highway~~, not on the truck network,~~ for a commercial motor vehicle where the overall length exceeds ~~68 feet but is not longer than 72~~ 75 feet. ~~The~~ If the total vehicle length is in excess of 75 feet or the distance from the steering axle to the rearmost tractor axle is longer than 25 feet, a permit may be requested from the commissioner. In that event, the agency of transportation shall review the route or routes requested, making its determination for approval based on safety and engineering considerations, after considering input from local government and regional planning commissions or the metropolitan planning organization. The agency shall maintain consistency in its application of acceptable highway geometry when approving other routes. The agency may authorize safety precautions on these highways, if warranted, which shall include, but not be limited to, precautionary signage, intelligent transportation system signage, special speed limits and use of flashing lights.

~~(4) Vehicles with a trailer or semitrailer longer than 68 feet but not longer than 72 feet off the truck network; tractor greater than 23 feet. If the overall length of a vehicle with a trailer or semitrailer is longer than 68 feet but~~

~~not longer than 72 feet, and if the distance between the steering axle to the rearmost tractor axle is greater than 23 feet in length, a permit may be issued pursuant to subdivision 1402(b)(2) of this title.~~

~~(5)~~(3) Vehicles with a trailer or semitrailer longer than ~~72~~ 75 feet. If the overall length of a vehicle with a trailer or semitrailer is longer than ~~72~~ 75 feet, a permit may be issued pursuant to subdivision ~~1402(b)(3)~~ 1402(b(1) of this title.

(b) Rear-end protective devices on trailers. A trailer or semitrailer not in excess of 53 feet may be operated provided the semitrailer is equipped with a rear-end protective device of substantial construction consisting of a continuous lateral beam extending to within four inches of the lateral extremities of the semitrailer and located not more than 22 inches from the surface as measured with the vehicle empty and on a level surface.

(c) ~~The truck network. The truck network shall consist of the following: U.S. Route 2 between the New Hampshire state line and the junction of U.S. Route 5; U.S. Route 2 from the junction of exit 21 on I-91 to exit 8 on Interstate 89; U.S. Route 2 between the New York state line and VT Route 78; VT Route 2A; U.S. Route 4 from the New York state line to the junction of VT Route 100 south; VT Route 279 from the New York state line to the junction of U.S. Route 7; U.S. Route 5 from the junction of U.S. Route 2 to the junction of exit 20 of I-91; U.S. Route 5 between I-91 at exit 22 to the south entrance of the St. Johnsbury-Lyndonville industrial park; U.S. Route 5 south from I-91 at exit 22 to the intersection of St. Johnsbury Railroad Street and Hastings Hill Street; U.S. Route 7; VT Route 9 from the New York state line to the junction of exit 2 on I-91; VT Route 9 from the junction of exit 3 on I-91 to the New Hampshire state line; VT Route 18 from U.S. Route 2 to the New Hampshire state line; VT Route 22A between U.S. Route 4 and U.S. Route 7; VT Route 78; VT Route 103; VT Route 105 from the junction of U.S. Route 7 to the junction of VT Route 100, then southerly on VT Route 100 to the junction of VT Route 100 and VT Route 14, then easterly on VT Route 14 to the junction of VT Route 14 and U.S. Route 5, then northerly on U.S. Route 5 to the junction of U.S. Route 5 and VT Route 105, then easterly on VT Route 105 from the junction of U.S. Route 5 to the New Hampshire border; VT Route 104 from VT Route 105 to I-89 at exit 19; VT Route 253 from the New Hampshire border to the Canadian border; VT Route 289; and U.S. Route 302. The commissioner is authorized to place special restrictions applying to motor vehicles on any route of the truck network when, in his or her opinion, the restrictions would provide for the safe operation of all vehicles on the route.~~

~~(d)~~ Operation on U.S. Route 4. ~~Vehicles~~ Notwithstanding any other law to the contrary, vehicles with a trailer or semitrailer which are longer than 68 feet

but not longer than 72 feet may be operated with a single or multiple trip overlength permit issued at no cost by the department of motor vehicles or, for a fee, by an entity authorized in subsection 1400(d) of this title on U.S. Route 4 from the New Hampshire state line to the junction of VT Route 100 south, provided the distance from the kingpin of the semitrailer to the center of the rearmost axle group is not greater than ~~43~~ 41 feet.

~~(e)~~(d) Operation of pole semitrailers. The provisions of this section shall not be construed to prevent the operation of so-called pole dinkeys or pole semitrailers when being used to support the ends of poles, timbers, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections, the overall length of which may exceed ~~60~~ 75 feet under special permission from the commissioner of motor vehicles.

~~(f)~~(e) Operation on Interstate highways. Notwithstanding subsection (a) of this section, on the National System of Interstate and Defense Highways and those classes of qualifying Federal-aid Primary System highways as designated by the Secretary, United States Department of Transportation, and on highways leading to or from the Dwight D. Eisenhower National System of Interstate and Defense Highways for a distance of one mile, unless the agency of transportation finds the use of a specific highway to be unsafe, no overall length limits for tractor-semitrailer or tractor semitrailer-trailer combination shall apply. On these highways, no semitrailer in a tractor-semitrailer combination longer than 53 feet and no trailer or semitrailer in a tractor-semitrailer-trailer combination longer than 28 feet shall be operated. However, the limits established by this section shall not be construed in such a manner as to prohibit the use of semitrailers in a tractor-semitrailer combination of such dimensions as were in actual and lawful use in this state on December 1, 1982.

~~(g)~~(f) List of approved highways. The commissioner shall prepare a list of each highway that has been approved for travel by vehicles referred to in subsection (a) of this section. The list shall be furnished, without charge, to each permitting service, electronic dispatching service, or other similar service authorized to do business in this state and, upon request, to any interested person.

* * * Transportation Enhancement Grants * * *

Sec. 103. ENHANCEMENT GRANTS; FISCAL YEAR 2010

(a) Notwithstanding 19 V.S.A. § 38, the transportation enhancement grant committee shall award grants up to fiscal year 2010 in the amount of federal funds made available to the state under the American Recovery and Reinvestment Act of 2009 (ARRA) which are exclusively reserved for

enhancement projects as defined in 23 U.S.C. § 101(a)(35), estimated to be $3,773,739. The transportation enhancement grant committee shall award grants authorized in this section in a separate grant round before June 30, 2009. The agency shall notify potential applicants of the separate grant round and fix a deadline for the filing of applications of May 15, 2009. All enhancement grant awards authorized in this section shall require a local match in accordance with the same rules that apply to annual enhancement grants.

(b) Any amounts authorized in subsection (a) of this section that are not awarded by the committee by June 30, 2009, up to $3,773,739 shall be included in the fiscal year 2010 enhancement grant program.

(c) To the extent that any grants awarded using ARRA enhancement funds cannot be fully obligated by November 30, 2009, and to the extent necessary to satisfy any deadlines for obligation of ARRA enhancement funds, the secretary of transportation is authorized to obligate ARRA federal funds made available to the state which are exclusively reserved for enhancement projects as defined in 23 U.S.C. § 101(a)(35) to eligible projects in the approved fiscal year 2010 transportation program. The following projects are added to program development – bike and pedestrian facilities – candidates list:

Statewide - STP RAMP (1) – Reconstruction of curb ramps on state highway system to comply with ADA requirements.

Statewide - STP NWRT (1) – Rehabilitate aggregate surfaces on rail trails.

Sec. 104. ENHANCEMENT GRANTS FISCAL YEAR 2010

Notwithstanding 19 V.S.A. § 38, the fiscal year 2010 enhancement grant program shall include a second grant round with respect to non-ARRA funds. For purposes of determining the amount of the grant program, the percentage applicable in 19 V.S.A. § 38(c)(1) shall be 5.0 percent. The provisions of 19 V.S.A. § 38 shall otherwise apply to such grants.

* * * Rest Area Commercialization * * *

Sec. 105. REST AREA COMMERCIALIZATION

By July 1, 2009, the secretary of the agency of transportation shall:

(1) request from the Federal Highway Administration a waiver from the provisions of Title 23, section 111 of the United States Code prohibiting commercial establishments from operating at rest areas along the interstate highway system; and

(2) seek the assistance of the state's federal congressional delegation for the purpose of securing the waiver.

* * * Rest Area Revitalization * * *

Sec. 106. LEGISLATIVE INTENT

It is the intent of the general assembly to require agencies to provide justification for reducing services to the public by:

(1) analyzing current service delivery methods;

(2) reexamining the assumptions that underlie the choice of the current delivery method;

(3) right-sizing when necessary; and

(4) exploring alternate delivery methods that could provide similar services at a lower cost to taxpayers.

Sec. 107. PERMANENT CLOSING OF REST AREA FACILITIES

(a) The commissioner of buildings and general services (BGS) is instructed to permanently close rest area facilities at Highgate on Interstate 89, at Sharon South on Interstate 89, at Hartford North on Interstate 91, and at Randolph North on Interstate 89. These four facilities and all operating and maintenance costs associated with them, including the costs of operating WiFi, are hereby transferred to the Vermont agency of transportation (VTrans) effective July 1, 2009.

(b) VTrans is hereby instructed to explore ways these buildings might be used for state purposes other than operating a rest area or those purposes that would meet with FHWA approval or, absent a public need, may have the structures removed. In the event VTrans decides to have the structures removed, it will notify the members of the Rest Area Advisory Committee established in 19 V.S.A. § 12c with 30 days' advance notice prior to removal.

(c) VTrans, at its discretion, may decide to close the sites to traffic or to have them remain open to either truck or pleasure car traffic or both. Responsibilities for maintaining the grounds will become the responsibility of VTrans. Erection of barriers to traffic or fencing as necessary to limit the public use of these facilities shall be the responsibility of VTrans.

Sec. 108. HOURS OF OPERATION

The commissioner of buildings and general services (BGS) is hereby authorized to adjust the hours of operation for all remaining rest areas. The commissioner shall make decisions on hours of operation based on budgetary considerations, numbers of visitors, and seasonal fluctuations.

Sec. 109. PILOT PROJECT FOR OPERATION OF INFORMATION CENTERS

(a) Pursuant to Sec. 19e(c) of No. 38 of the Acts of 1997, the commissioner of buildings and general services (BGS) is authorized to commence a three-year pilot project to operate facilities at Alburgh, Georgia North, and Georgia South.

(b) Pursuant to Sec. 39(3) of No. 18 of the Acts of 1999, the commissioner is authorized to explore the possibility of creating privately operated travel information centers at exits along the interstate and along the state highway system. The secretary of transportation is instructed to support this initiative by working with BGS and the FHWA to explore a signage strategy that clearly directs travelers to these service opportunities.

Sec. 110. FUTURE CONSTRUCTION

The commissioner of buildings and general services (BGS) is instructed to take steps to plan for and build the Bennington welcome center at an amount not to exceed the federal earmarks and state matching funds identified for this project. It is the expectation of the house and senate committees on transportation that the site will be operated by the Bennington area chamber of commerce under Sec. 19e(c) of No 38 of the Acts of 1997 and under an agreement approved by the Federal Highway Administration. Therefore, the commissioner of BGS and the chamber shall report back to the rest area advisory committee on or before January 15, 2010, as to the plan for operation and the proposed cost.

* * * Authority to Sell Salt Shed Property in Montpelier * * *

Sec. 111. AUTHORIZATION TO CONVEY "SALT SHED" PROPERTY IN MONTPELIER

(a) Upon receiving satisfactory evidence of release of any interest of the Washington County Railroad Company, the secretary of transportation, as agent for the state of Vermont, is authorized to convey to Connor Brothers Stonecutters, LLC (Connor) for fair market value a parcel of land in the city of Montpelier between Stone Cutters Way and the Winooski River. Conveyance of this parcel of land, sometimes known as 575 Stone Cutters Way or the "salt shed property," shall include the state's interest in a December 16, 1999 lease, as amended, between the state of Vermont, agency of transportation, joined by Washington County Railroad Company, and the Pyralisk Arts Center, Inc. The secretary, in his or her discretion, may adjust the boundaries of the land to be conveyed to Connor to accommodate the building plans of Connor. Connor shall be responsible for obtaining any necessary survey and subdivision approvals. In determining fair market value for this transfer, the secretary shall

consider the undertaking of Connor, either through itself or through others, to provide remediation of hazardous wastes and materials on the subject property pursuant to the so-called "Corrective Action Plan (Salt Shed)" dated April 13, 2005, prepared by The Johnson Company, Inc. for Central Vermont Regional Planning Commission, as amended with Connor's consent from time to time.

(b) The authority granted by this section shall expire on June 30, 2011.

* * * Validating Sticker on Registration Plate * * *

Sec. 112. 23 V.S.A. § 305 is amended to read:

§ 305. – WHEN ISSUED

* * *

(c) The commissioner may issue number plates to be used for a period of two or more years. ~~Validating stickers~~ One validating sticker shall be issued by the department of motor vehicles upon payment of the registration fee for the second and each succeeding year the plate is used. No plate is valid for the second and succeeding years unless the ~~stickers are~~ sticker is affixed to the rear plate in the manner prescribed by the commissioner.

* * * Passenger Rail Service * * *

Sec. 113. 2006 STATE RAIL & POLICY PLAN

Consistent with the 2006 State Rail & Policy Plan, the agency shall estimate the total cost of (1) upgrading the western corridor rail line for passenger rail service to and from Burlington, Rutland, Bennington and Albany, New York, (2) operating a passenger rail service from Burlington to Rutland connecting to White Hall, New York and (3) operating a passenger rail service from Burlington to Rutland to Bennington connecting to Albany, New York. The agency shall present its analysis to the House and Senate committees on transportation by January 15, 2010

* * * Central Garage * * *

Sec. 114. TRANSFER TO CENTRAL GARAGE FUND

Notwithstanding 19 V.S.A. § 13(c), the amount of $1,120,000 is transferred from the transportation fund to the central garage fund created in 19 V.S.A. § 13.

* * * Effective Dates * * *

Sec. 115. EFFECTIVE DATES

(a) The following sections of this act shall take effect from passage:

(1) Secs. 3, 21 (ARRA funds).

(2) Sec. 111 (sale of salt shed in Montpelier).

(3) Secs. 103, 104 (enhancement grants).

(4) Secs. 66, 67 (sale of surplus rail property).

(5) Sec. 101 (commissioner of DMV administering special exam).

(b) Secs. 24-28, 30-32 (motor fuels transportation infrastructure assessments and bond fund) shall take effect on June 1, 2009.

(c) Secs. 22 and 23 (motor fuels infrastructure assessments) shall take effect on October 1, 2009.

(d) Sec. 77 (exemption of motor buses from diesel tax) shall take effect on July 1, 2010.

(d) All other sections of this act not specifically enumerated in subsections (a), (b), and (c) of this section shall take effect on July 1, 2009.

RICHARD T. MAZZA
PHILIP B. SCOTT
M. JANE KITCHEL

Committee on the part of the Senate

RICHARD A. WESTMAN
DAVE POTTER
PATRICK M. BRENNAN

Committee on the part of the House

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

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

Senator Shumlin Assumes the Chair

Recess

On motion of Senator Mazza, the Senate recessed until seven o'clock and thirty minutes.

Called to Order

At seven o'clock and forty-five minutes the Senate was called to order. Pursuant to Rule 8 of the Senate Rules, in the absence of the President and the President *pro tempore*, the time for convening of the Senate having been set at 7:30 P.M., the Senate was called to order by David A. Gibson, Secretary of the Senate.

Presiding Officer Elected

Thereupon, pursuant to the provisions of Rule 8 of the Senate Rules, in the absence of the President and the President *pro tempore*, the Senate proceeded to the election of an acting President *pro tempore* to preside.

Nominations being in order, Senator Mazza of Grand Isle District nominated Senator John F. Campbell of Windsor District.

There being no further nominations, on motion of Senator Cummings, the nominations were closed, and the Assistant Secretary was instructed to cast one ballot for Senator John F. Campbell to serve as presiding officer until the return of the President or the President *pro tempore*.

Senator Campbell Assumes the Chair

Rules Suspended; Proposal of Amendment; Third Reading Ordered; Rules Suspended; Bill Passed in Concurrence with Proposal of Amendment

H. 145.

Pending entry on the Calendar for notice, on motion of Senator Mazza, the rules were suspended and House bill entitled:

An act relating to composting.

Was taken up for immediate consideration.

Senator Kittell, for the Committee on Agriculture, to which the bill was referred, reported recommending that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The general assembly finds that:

(1) Composting is a process by which organic material is mixed and tended to create a soil amendment that reduces runoff, increases plant fertility, and builds living soil;

(2) Composting is an agricultural practice that farmers traditionally have practiced in order to recycle nutrients and manage wastes on their farms;

(3) The benefits of composting include the recapture of nutrients and the rebuilding of soils, both of which also help to protect surface waters from nutrient runoff, improve soil productivity, mitigate the generation of greenhouse gases, and reduce the demands on the state's solid waste management system;

(4) Several state agencies have regulatory authority over composting activities or components of composting activities. It is important that the state clarify the scope of the jurisdiction and authority that state agencies possess over composting; and

(5) Clarifying the regulatory requirements over composting in the state will allow the development of composting activities and facilities that support Vermont's goals for waste recycling, nutrient redistribution, farm viability, and sustainable food systems.

Sec. 2. 10 V.S.A. § 6001 is amended to read:

§ 6001. DEFINITIONS

When used in this chapter:

* * *

(3)(A) "Development" means:

* * *

(D) The word "development" does not include:

* * *

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

(I) The compost is produced from no more than 100 cubic yards of material per year;

(II) The compost is principally produced on the farm;

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

(IV) The compost is made only from clean, high carbon bulking agents from any source and manure produced on the farm; or

(V) The compost is produced on a tract of land of fewer than 10 acres and the production of the compost utilizes no more than 40,000 cubic yards of combined organic material per year, including no more than 5,000 cubic yards of food residuals per year.

(E) When development is proposed to occur on a parcel or tract of land that is devoted to farming activity as defined in subdivision 6001(22) of this section, only those portions of the parcel or the tract that support the development shall be subject to regulation under this chapter. Permits issued under this chapter shall not impose conditions:

(i) on other portions of the parcel or tract of land which do not support the development ~~and~~ ;or

(ii) that restrict or conflict with accepted agricultural practices adopted by the secretary of agriculture, food and markets.

* * *

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

Sec. 3. 10 V.S.A. § 6605h is added to read:

§ 6605h. SOLID WASTE REGISTRATION

(a) Notwithstanding sections 6605, 6605f, and 6611 of this title, the secretary may, by rule, authorize a person engaged in the following activities to register with the secretary instead of obtaining a facility certification under section 6605 or 6605c of this title:

(1) construction, alteration, or operation of a facility managing certain solid waste categories; or

(2) construction, alteration, or operation of a facility producing or managing compost, as that term is defined in subdivision 6001(31) of this title.

(b) This section shall not apply to the storage, treatment, or disposal of:

(1) Municipal solid waste;

(2) Sludge;

(3) Septage; or

(4) Mineral processing waste. For purposes of this section, mineral processing waste means solid waste from an industrial or manufacturing facility that processes materials from a mining activity and where chemicals, as defined by the secretary by rule, are intentionally added as a part of that processing.

Sec. 4. 10 V.S.A. § 6605j is added 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 chapter 25 of Title 3, and shall implement and enforce accepted composting practices for the management of

composting in the state. These accepted composting practices may include standards for:

(1) 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;

(2) Siting of composting facilities, including siting and operation of compost storage areas, compost bagging areas, and roads and parking areas;

(3) The composting process, including rotation, management of compost piles, compost pile size, and monitoring of compost operations;

(4) 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.

(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.

(d) For purposes of this section, "small-scale composting facility" means a facility that:

(1) is located on a tract of land of no more than four acres in size; and

(2) uses no more than 5,000 cubic yards of total organics per year in the production of compost, including no more than 2,000 cubic yards per year of food residuals.

Sec. 5. AGENCY OF NATURAL RESOURCES REPORT ON RULES FOR ACCEPTED COMPOSTING PRACTICES

Prior to filing a final proposal of rules under section 841 of Title 3, the agency of natural resources shall submit to the house committee on fish, wildlife and water resources, the senate committee on natural resources and energy, and the house and senate committees on agriculture the proposed final rules required under 10 V.S.A. § 6605j for accepted composting practices. The house committee on fish, wildlife and water resources, the senate committee on natural resources and energy, and the house and senate committees on agriculture shall review the proposed final rules and shall recommend whether the proposed final rules should be amended or whether the proposed final rules should be filed with the secretary of state and the legislative committee on administrative rules under section 841 of Title 3. If the general assembly is not in session when the agency of natural resources is prepared to file a final proposal of rules addressing accepted composting practices, the agency may submit the proposed rules to the secretary of the senate, the clerk of the house, and the chairs of the house committee on fish, wildlife and water resources, the senate committee on natural resources and energy, and the house and senate committees on agriculture.

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

Senator MacDonald, for the Committee on Natural Resources and Energy, to which the bill was referred, reported recommending that the Senate propose to the House that the proposal of amendment of the Committee on Agriculture be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. § 6602(25) is added to read:

(25) "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.

Sec. 2. 10 V.S.A. § 6605h is added 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.

Sec. 3. 10 V.S.A. § 6605j is added 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 chapter 25 of Title 3, 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" and "medium-scale composting facility."

(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.

Sec. 4. AGENCY OF NATURAL RESOURCES REPORT ON RULES FOR ACCEPTED COMPOSTING PRACTICES

Prior to filing a final proposal of rules under section 841 of Title 3, the agency of natural resources shall, prior to February 15, 2010, submit to the house committee on fish, wildlife and water resources, the senate committee on natural resources and energy, and the house and senate committees on agriculture the proposed final rules required under 10 V.S.A. § 6605j for accepted composting practices. The house committee on fish, wildlife and water resources, the senate committee on natural resources and energy, and the house and senate committees on agriculture shall review the proposed final rules and shall recommend whether the proposed final rules should be amended or whether the proposed final rules should be filed with the secretary of state and the legislative committee on administrative rules under section 841 of Title 3. If the general assembly is not in session when the agency of natural resources is prepared to file a final proposal of rules addressing accepted composting practices, the agency may submit the proposed rules to the secretary of the senate, the clerk of the house, and the chairs of the house committee on fish, wildlife and water resources, the senate committee on natural resources and energy, and the house and senate committees on agriculture.

Sec. 5. COMPOSTING STUDY COMMITTEE

(a) On or before July 1, 2009, the agency of natural resources shall reconvene the composting study committee established by No. 130 of the Acts of the 2007 Adj. Sess. (2008) to review the application of Act 250, 10 V.S.A. chapter 151, to composting facilities in the state; to recommend whether certain composting facilities or categories of composting facilities should be exempt from Act 250; and to recommend areas of the state in which a composting facility using post-consumer food residuals or animal mortalities should be prohibited from locating regardless of the size of the facility or whether a facility is otherwise exempt from the requirements of 10 V.S.A. § chapter 151. The committee shall issue a final report of its findings to the house committee on fish, wildlife and water resources, the house and senate committees on natural resources and energy, and the house and senate committees on agriculture by January 15, 2010.

(b) For the purposes of this section, the composting study committee shall consist of the members appointed under the requirement of No. 130 of the Acts of the 2007 Adj. Sess. (2008) and:

(1) a member of the house committee on fish, wildlife and water resources, appointed by the speaker of the house;

(2) a member of the senate committee on natural resources and energy, appointed by the committee on committees; and

(3) a member of an environmental organization, appointed by the speaker of the house.

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

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the pending question, Shall the proposal of amendment of the Committee on Agriculture be amended as recommended by the Committee on Natural Resources and Energy?, was decided in the affirmative.

Thereupon, the pending question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Agriculture, as amended?, was agreed to.

Thereupon, third reading of the bill was ordered.

Thereupon, on motion of Senator Mazza, the rules were suspended and the bill was placed on all remaining stages of its passage in concurrence with proposal of amendment.

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

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

Message from the House No. 86

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

Mr. President:

I am directed to inform the Senate that:

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

H. 438. An act relating to the state's transportation program.

And has adopted the same on its part.

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

H. 125. An act relating to the sale of unpasteurized milk.

And has severally concurred therein..

Rules Suspended; House Proposal of Amendment Concurred in With an Amendment; Rules Suspended; Bill Messaged

S. 48.

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

An act relating to marketing of prescription drugs.

Was taken up for immediate consideration.

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

Sec. 1. 18 V.S.A. § 4631(b) is amended to read:

(b) As used in this section:

* * *

(3) "Health care professional" shall have the same meaning as health care provider in section 9402 of this title.

* * *

Sec. 2. LEGISLATIVE FINDINGS; INTENT

(a) The general assembly finds that the legislative findings in Sec. 1 of No. 80 of the Acts of 2007 provide a sound basis for instituting a ban of certain gifts to prescribers and disclosure of marketing activities as provided for in this act. Findings (1) through (8), (13), (15), (17), (19), and (21) shall be incorporated into this act by reference.

(b) The general assembly also finds:

(1) In 2007, Vermonters spent an estimated $572 million on prescription and over-the-counter drugs and nondurable medical supplies. In 2002, spending was about $377 million. Between 2002 and 2007, the average annual increase in spending was 8.7 percent, which is slightly higher than the average increase in overall health care spending during this same period.

(2) According to the U.S. District Court for the District of Vermont in IMS v. Sorrell, Docket No. 1:07-CV-188 (Apr. 23, 2009), the state of Vermont

has a substantial interest in cost containment and the protection of public health.

(3) The court in IMS v. Sorrell found that research shows that doctors are influenced by the marketing efforts of pharmaceutical companies, and that doctors who attend talks sponsored by a pharmaceutical company often prescribe that company's drug more than a competitor's drugs.

(4) The court in IMS v. Sorrell also found that drug detailing encourages doctors to prescribe newer, more expensive, and potentially more dangerous drugs instead of adhering to evidence-based treatment guidelines.

(5) According to a 2009 report from the Institute of Medicine of the National Academies, acceptance of meals and gifts and other relationships are common between physicians and pharmaceutical, medical device, and biotechnology companies. The report found that these relationships may influence physicians to prescribe a company's medicines even when evidence indicates another drug would be more beneficial to the patient.

(6) According to the April 2009 Report of Vermont Attorney General William H. Sorrell, in fiscal year 2008, pharmaceutical manufacturers reported spending $2,935,248.00 in Vermont on fees, travel expenses, and other direct payments to Vermont physicians, hospitals, universities, and others for the purpose of marketing their products. Of Vermont's 4,573 licensed health care professionals, 2,280 were recipients. Of the above amount, approximately $2.1 million in payments went to physicians. The top 100 individual recipients received nearly $1,770,000.00 in fiscal year 2008.

(7) Of the disclosures reported by pharmaceutical manufacturers, only 17 percent were available to the public due to the current trade secret exemption in state law.

(8) According to the attorney general, expenditures on food totaled $861,911.70, or 29.36 percent of all marketing expenditures. Of the 1,132 recipients of food in fiscal year 2008, 20.36 percent had $500.00 or more expended on them, including 11.31 percent who had $1,000.00 or more expended on them. 41.1 percent of the 1,132 recipients of food received food valued at $100.00 or less. The individual recipient with the greatest reported food expenditure received $15,793.78 in food for him- or herself and any colleagues who may not prescribe.

(9) The federal Office of Inspector General (OIG) has taken enforcement action against several medical device manufacturers in recent years for violations of fraud and abuse laws. Through its investigations, the OIG found medical device manufacturers providing kickbacks to physicians in the form of all-expense-paid trips, false consulting arrangements, meals, and

other gifts. The OIG recommends subjecting the financial relationships between medical device manufacturers and physicians to reporting requirements and greater transparency.

(10) There is little or no difference in the marketing of biological products and prescription drugs. It is logical and necessary to include biological products to the same extent as prescription drugs to ensure appropriate and consistent transparency and reduce real or perceived conflicts of interest.

(11) This act is necessary to increase transparency for consumers by requiring disclosure of allowable expenditures and gifts to health care providers and facilities providing health care. This act is also necessary to reduce real or perceived conflicts of interest which undermine patient confidence in health care providers and increase health care costs by influencing prescribing patterns. Limitations on gifts and increased transparency are expected to save money for consumers, businesses, and the state by reducing the promotion of expensive prescription drugs, biological products, and medical devices, and to protect public health by reducing sales-oriented information to prescribers.

Sec. 3. 18 V.S.A. § 4631a is added to read:

§ 4631a. GIFTS BY MANUFACTURERS OF PRESCRIBED PRODUCTS

(a) As used in this section:

(1) "Allowable expenditures" means:

(A) Payment to the sponsor of a significant educational, medical, scientific, or policy-making conference or seminar, provided:

(i) the payment is not made directly to a health care provider;

(ii) funding is used solely for bona fide educational purposes; and

(iii) all program content is objective, free from industry control, and does not promote specific products.

(B) Honoraria and payment of the expenses of a health care professional who serves on the faculty at a bona fide significant educational, medical, scientific, or policy-making conference or seminar, provided:

(i) there is an explicit contract with specific deliverables which are restricted to medical issues, not marketing activities; and

(ii) the content of the presentation, including slides and written materials, is determined by the health care professional.

(C) For a bona fide clinical trial:

(i) gross compensation for the Vermont location or locations involved;

(ii) direct salary support per principal investigator and other health care professionals per year; and

(iii) expenses paid on behalf of investigators or other health care professionals paid to review the clinical trial.

(D) For a research project that constitutes a systematic investigation, is designed to develop or contribute to general knowledge, and reasonably can be considered to be of significant interest or value to scientists or health care professionals working in the particular field of inquiry:

(i) gross compensation;

(ii) direct salary support per health care professional; and

(iii) expenses paid on behalf of each health care professional.

(E) Payment or reimbursement for the reasonable expenses, including travel and lodging-related expenses, necessary for technical training of individual health care professionals on the use of a medical device if the commitment to provide such expenses and the amounts or categories of reasonable expenses to be paid are described in a written agreement between the health care provider and the manufacturer.

(F) Royalties and licensing fees paid to health care providers in return for contractual rights to use or purchase a patented or otherwise legally recognized discovery for which the health care provider holds an ownership right.

(G) Other reasonable fees, payments, subsidies, or other economic benefits provided by a manufacturer of prescribed products at fair market value.

(2) "Bona fide clinical trial" means an FDA-reviewed clinical trial that constitutes "research" as that term is defined in 45 C.F.R. § 46.102 and reasonably can be considered to be of interest to scientists or health care professionals working in the particular field of inquiry.

(3) "Clinical trial" means any study assessing the safety or efficacy of prescribed products administered alone or in combination with other prescribed products or other therapies, or assessing the relative safety or efficacy of prescribed products in comparison with other prescribed products or other therapies.

(4) "Gift" means:

(A) Anything of value provided to a health care provider for free; or

(B) Any payment, food, entertainment, travel, subscription, advance, service, or anything else of value provided to a health care provider, unless:

(i) it is an allowable expenditure as defined in subdivision (a)(1) of this section; or

(ii) the health care provider reimburses the cost at fair market value.

(5)(A) "Health care professional" means:

(i) a person who is authorized to prescribe or to recommend prescribed products and who either is licensed by this state to provide or is otherwise lawfully providing health care in this state; or

(ii) a partnership or corporation made up of the persons described in subdivision (i) of this subdivision (5)(A); or

(iii) an officer, employee, agent, or contractor of a person described in subdivision (i) of this subdivision (5)(A) who is acting in the course and scope of employment, of an agency, or of a contract related to or supportive of the provision of health care to individuals.

(B) The term shall not include a person described in subdivision (A) of this subdivision (5) who is employed solely by a manufacturer.

(6) "Health care provider" means a health care professional, a hospital, nursing home, pharmacist, health benefit plan administrator, or any other person authorized to dispense or purchase for distribution prescribed products in this state.

(7) "Manufacturer" means a pharmaceutical, biological product, or medical device manufacturer or any other person who is engaged in the production, preparation, propagation, compounding, processing, packaging, repacking, distributing, or labeling of prescribed products. The term does not include a wholesale distributor of biological products or a pharmacist licensed under chapter 36 of Title 26.

(8) "Marketing" shall include promotion, detailing, or any activity that is intended to be used or is used to influence sales or market share or to evaluate the effectiveness of a professional sales force.

(9) "Pharmaceutical manufacturer" means any entity which is engaged in the production, preparation, propagation, compounding, conversion, or processing of prescription drugs, whether directly or indirectly by extraction from substances of natural origin, independently by means of chemical

synthesis, or by a combination of extraction and chemical synthesis, or any entity engaged in the packaging, repackaging, labeling, relabeling, or distribution of prescription drugs. The term does not include a wholesale distributor of prescription drugs or a pharmacist licensed under chapter 36 of Title 26.

(10) "Prescribed product" means a drug or device as defined in section 201 of the federal Food, Drug and Cosmetic Act, 21 U.S.C. § 321, or a biological product as defined in section 351 of the Public Health Service Act, 42 U.S.C. § 262.

(11) "Significant educational, scientific, or policy-making conference or seminar" means an educational, scientific, or policy-making conference or seminar that:

(A) is accredited by the Accreditation Council for Continuing Medical Education or a comparable organization; and

(B) offers continuing medical education credit, features multiple presenters on scientific research, or is authorized by the sponsoring association to recommend or make policy.

(b)(1) It is unlawful for any manufacturer of a prescribed product or any wholesale distributor of medical devices, or any agent thereof, to offer or give any gift to a health care provider.

(2) The prohibition set forth in subdivision (1) of this subsection shall not apply to any of the following:

(A) Samples of a prescribed product provided to a health care provider for free distribution to patients.

(B) The loan of a medical device for a short-term trial period, not to exceed 90 days, to permit evaluation of a medical device by a health care provider or patient.

(C) The provision of reasonable quantities of medical device demonstration or evaluation units to a health care provider to assess the appropriate use and function of the product and determine whether and when to use or recommend the product in the future.

(D) The provision, distribution, dissemination, or receipt of peer-reviewed academic, scientific, or clinical articles or journals and other items that serve a genuine educational function provided to a health care provider for the benefit of patients.

(E) Scholarship or other support for medical students, residents, and fellows to attend a significant educational, scientific, or policy-making

conference or seminar of a national, regional, or specialty medical or other professional association if the recipient of the scholarship or other support is selected by the association.

(F) Rebates and discounts for prescribed products provided in the normal course of business.

(G) Labels approved by the federal Food and Drug Administration for prescribed products.

(c) The attorney general may bring an action in Washington superior court for injunctive relief, costs, and attorney's fees and may impose on a manufacturer that violates this section a civil penalty of no more than $10,000.00 per violation. Each unlawful gift shall constitute a separate violation.

Sec. 4. 18 V.S.A. § 4632 is amended to read:

§ 4632. ~~PHARMACEUTICAL MARKETERS~~ DISCLOSURE OF ALLOWABLE EXPENDITURES AND GIFTS BY MANUFACTURERS OF PRESCRIBED PRODUCTS

(a)(1) Annually on or before ~~December~~ October 1 of each year, every ~~pharmaceutical manufacturing company~~ manufacturer of prescribed products shall disclose to the office of the attorney general for the fiscal year ending the previous June 30th the value, nature, ~~and~~ purpose, and recipient information of ~~any gift, fee, payment, subsidy, or other economic benefit provided in connection with detailing, promotional, or other marketing activities by the company, directly or through its pharmaceutical marketers, to any physician, hospital, nursing home, pharmacist, health benefit plan administrator, or any other person in Vermont authorized to prescribe, dispense, or purchase prescription drugs in this state. Disclosure shall include the name of the recipient. Disclosure shall be made on a form and in a manner prescribed by the office of the attorney general and shall require pharmaceutical manufacturing companies to report the value, nature, and purpose of all gift expenditures according to specific categories. The office of the attorney general shall report annually on the disclosures made under this section to the general assembly and the governor on or before April 1.~~:

(A) any allowable expenditure or gift permitted under subdivision 4631a(b)(2) of this title to any health care provider, except:

(i) royalties and licensing fees as described in subdivision 4631a(a)(1)(F) of this title;

(ii) rebates and discounts for prescribed products provided in the normal course of business as described in subdivision 4631a(b)(2)(F) of this title; and

(iii) payments for clinical trials as described in subdivision 4631a(a)(1)(C) of this title, which shall be disclosed after the earlier of the date of the approval or clearance of the prescribed product by the Food and Drug Administration or two calendar years after the date the payment was made. For a clinical trial for which disclosure is delayed under this subdivision (iii), the manufacturer shall identify to the attorney general the clinical trial, the start date, and the web link to the clinical trial registration on the national clinical trials registry.

(B) any allowable expenditure or gift permitted under subdivision 4631a(b)(2) of this title to an academic institution or to a professional, educational, or patient organization representing or serving health care providers or consumers, except:

(i) royalties and licensing fees as described in subdivision 4631a(a)(1)(F) of this title;

(ii) rebates and discounts for prescribed products provided in the normal course of business as described in subdivision 4631a(b)(2)(F) of this title; and

(iii) payments for clinical trials as described in subdivision 4631a(a)(1)(C) of this title, which shall be disclosed after the earlier of the date of the approval or clearance of the prescribed product by the Food and Drug Administration or two calendar years after the date the payment was made. For a clinical trial for which disclosure is delayed under this subdivision (iii), the manufacturer shall identify to the attorney general the clinical trial, the start date, and the web link to the clinical trial registration on the national clinical trials registry.

(2)(A) Notwithstanding the provisions of subdivision (1) of this subsection, annually on or before October 1 of each year, every manufacturer of prescribed products shall disclose to the office of the attorney general the receiving health care provider's information and the brand name, generic name, quantity, and dosage of samples of a prescribed product provided for free distribution to patients as described in subdivision 4631a(b)(2)(A) of this title.

(B) Information related to schedules II, III, and IV controlled substances, as defined in 21 C.F.R. Part 1308, as from time to time amended, shall not be publicly available or searchable pursuant to subdivision (a)(6) of this subsection.

~~(2)~~(3) Annually on ~~October~~ July 1, each ~~company subject to the provisions of this section~~ manufacturer of prescribed products also shall disclose to the office of the attorney general~~,~~ the name and address of the individual responsible for the ~~company's~~ manufacturer's compliance with the provisions of this section~~, or if this information has been previously reported, any changes to the name or address of the individual responsible for the company's compliance with the provisions of this section~~.

~~(3) The office of the attorney general shall keep confidential all trade secret information, as defined by subdivision 317(b)(9) of Title 1, except that the office may disclose the information to the department of health and the office of Vermont health access for the purpose of informing and prioritizing the activities of the evidence-based education program in subchapter 2 of chapter 91 of Title 18. The department of health and the office of Vermont health access shall keep the information confidential. The disclosure form shall permit the company to identify any information that it claims is a trade secret as defined in subdivision 317(c)(9) of Title 1. In the event that the attorney general receives a request for any information designated as a trade secret, the attorney general shall promptly notify the company of such request. Within 30 days after such notification, the company shall respond to the requester and the attorney general by either consenting to the release of the requested information or by certifying in writing the reasons for its claim that the information is a trade secret. Any requester aggrieved by the company's response may apply to the superior court of Washington County for a declaration that the company's claim of trade secret is invalid. The attorney general shall not be made a party to the superior court proceeding. Prior to and during the pendency of the superior court proceeding, the attorney general shall keep confidential the information that has been claimed as trade secret information, except that the attorney general may provide the requested information to the court under seal.~~

~~(4) The following shall be exempt from disclosure:~~

~~(A) free samples of prescription drugs intended to be distributed to patients;~~

~~(B) the payment of reasonable compensation and reimbursement of expenses in connection with bona fide clinical trials;~~

~~(C) any gift, fee, payment, subsidy or other economic benefit the value of which is less than $25.00;~~

~~(D) scholarship or other support for medical students, residents, and fellows to attend a significant educational, scientific, or policy-making conference of a national, regional, or specialty medical or other professional~~

~~association if the recipient of the scholarship or other support is selected by the association; and~~

~~(E) prescription drug rebates and discounts.~~

(4) Disclosure shall be made on a form and in a manner prescribed by the office of the attorney general and shall require manufacturers of prescribed products to report each allowable expenditure or gift permitted under subdivision 4631a(b)(2) of this title including:

(A) except as otherwise provided in subdivision (a)(2) of this section, the value, nature, and purpose of each allowable expenditure, and gift permitted under subdivision 4631a(b)(2) of this title according to specific categories identified by the office of the attorney general;

(B) the name of the recipient;

(C) the recipient's address;

(D) the recipient's institutional affiliation;

(E) prescribed product or products being marketed, if any; and

(F) the recipient's state board number.

(5) The office of the attorney general shall report annually on the disclosures made under this section to the general assembly and the governor on or before April 1. The report shall include:

(A) Information on allowable expenditures and gifts required to be disclosed under this section, which shall be presented in both aggregate form and by selected types of health care providers or individual health care providers, as prioritized each year by the office.

(B) Information on violations and enforcement actions brought pursuant to this section and section 4631a of this title.

(6) After issuance of the report required by subdivision (a)(5) of this section, the office of the attorney general shall make all disclosed data used for the report publicly available and searchable through an Internet website.

(7) The office of Vermont health access shall examine the data available from the office of the attorney general for relevant expenditures and determine whether and to what extent prescribing patterns by health care providers of prescribed products reimbursed by Medicaid, VHAP, Dr. Dynasaur, VermontRx, and VPharm may reflect manufacturer influence. The office may select the data most relevant to its analysis. The office shall report its analysis annually to the general assembly and the governor on or before October 1.

(b)(1) Annually on July 1, the office of the attorney general shall collect a $500.00 fee from each manufacturer of prescribed products filing annual disclosures of expenditures greater than zero described in subsection (a) of this section.

(2) Fees collected under this section shall fund collection and analysis of information on activities related to the marketing of prescribed products under sections 4631a and 4632 of Title 18. The fees shall be collected in a special fund assigned to the office.

(c) The attorney general may bring an action in Washington superior court for injunctive relief, costs, and ~~attorneys~~ attorney's fees, and to impose on a ~~pharmaceutical manufacturing company~~ manufacturer of prescribed products that fails to disclose as required by subsection (a) of this section a civil penalty of no more than $10,000.00 per violation. Each unlawful failure to disclose shall constitute a separate violation.

~~(c) As used in this section:~~

~~(1) "Approved clinical trial" means a clinical trial that has been approved by the U.S. Food and Drug Administration (FDA) or has been approved by a duly constituted Institutional Review Board (IRB) after reviewing and evaluating it in accordance with the human subject protection standards set forth at 21 C.F.R. Part 50, 45 C.F.R. Part 46, or an equivalent set of standards of another federal agency.~~

~~(2) "Bona fide clinical trial" means an approved clinical trial that constitutes "research" as that term is defined in 45 C.F.R. § 46.102 when the results of the research can be published freely by the investigator and reasonably can be considered to be of interest to scientists or medical practitioners working in the particular field of inquiry.~~

~~(3) "Clinical trial" means any study assessing the safety or efficacy of drugs administered alone or in combination with other drugs or other therapies, or assessing the relative safety or efficacy of drugs in comparison with other drugs or other therapies.~~

~~(4) "Pharmaceutical marketer" means a person who, while employed by or under contract to represent a pharmaceutical manufacturing company, engages in pharmaceutical detailing, promotional activities, or other marketing of prescription drugs in this state to any physician, hospital, nursing home, pharmacist, health benefit plan administrator, or any other person authorized to prescribe, dispense, or purchase prescription drugs. The term does not include a wholesale drug distributor or the distributor's representative who promotes or otherwise markets the services of the wholesale drug distributor in connection with a prescription drug.~~

~~(5) "Pharmaceutical manufacturing company" means any entity which is engaged in the production, preparation, propagation, compounding, conversion, or processing of prescription drugs, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, or any entity engaged in the packaging, repackaging, labeling, relabeling, or distribution of prescription drugs. The term does not include a wholesale drug distributor or pharmacist licensed under chapter 36 of Title 26.~~

~~(6) "Unrestricted grant" means any gift, payment, subsidy, or other economic benefit to an educational institution, professional association, health care facility, or governmental entity which does not impose any restrictions on the use of the grant, such as favorable treatment of a certain product or an ability of the marketer to control or influence the planning, content, or execution of the education activity.~~

(d) ~~Disclosures of unrestricted grants for continuing medical education programs shall be limited to the value, nature, and purpose of the grant and the name of the grantee. It shall not include disclosure of the individual participants in such a program~~ The terms used in this section shall have the same meanings as they do in section 4631a of this title.

Sec. 5. 1 V.S.A. § 317(c) is amended to read:

(c) The following public records are exempt from public inspection and copying:

* * *

(9) trade secrets, including~~, but not limited to,~~ any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern, and which gives its user or owner an opportunity to obtain business advantage over competitors who do not know it or use it, except that the disclosures required by section 4632 of Title 18 shall not be included in this subdivision;

Sec. 6. 18 V.S.A. § 4633(d) is amended to read:

(d) As used in this section:

(1) "Average wholesale price" or "AWP" means the wholesale price charged on a specific commodity that is assigned by the ~~drug manufacturer~~ pharmaceutical manufacturing company and listed in a nationally recognized drug pricing file.

(2) "Pharmaceutical manufacturing company" ~~is defined by subdivision 4632(c)(5) of this title~~ shall have the same meaning as "pharmaceutical manufacturer" in section 4631a of this title.

(3) "Pharmaceutical marketer" ~~is defined by subdivision 4632(c)(4) of this title~~ means a person who, while employed by or under contract to represent a pharmaceutical manufacturing company, engages in marketing, as that term is defined in section 4631a of this title.

* * * Therapeutic Substitution of Prescription Drugs * * *

Sec. 7. THERAPEUTIC EQUIVALENT DRUG WORK GROUP

(a) It is the intent of the general assembly to explore increasing the usage of generic drugs by allowing pharmacists to substitute a therapeutically equivalent generic drug from a specified list when a physician prescribes a more expensive brand-name drug in the same class. This section creates a work group to recommend a sample list and a process for substitution for consideration by the general assembly. A "therapeutically equivalent generic drug" means a generic drug which is in the same class as a brand-name drug but is not necessarily chemically equivalent.

(b) A work group is created to generate a proposed list by class of drugs to describe which generic drug or drugs could be substituted when a physician prescribes a more expensive brand name drug in the same class, with equivalent dosages for the substitution.

(c)(1) The work group shall consist of two physicians appointed by the Vermont Medical Society, two pharmacists appointed by the Vermont pharmacy association, and three representatives of the drug utilization review board.

(2) A representative of the drug utilization review board shall convene the first meeting of the work group. The work group shall organize itself with a chair or cochairs for the purposes of scheduling and conducting meetings.

(3) The work group shall consult with medical specialists and organizations representing patients when necessary to determine whether a substitution is advisable and safe for a particular condition or when the work group deems it necessary to have additional information of a specialized nature.

(d) The proposed list shall not include drugs used to treat severe and persistent mental illness.

(e) The work group shall transmit the list of therapeutically equivalent generic drugs to the board of medical practice established under chapter 23 of

Title 26 and the board of pharmacy established under subchapter 2 of chapter 36 of Title 26 for review and comment. The board of medical practice and the board of pharmacy shall review the list of therapeutically equivalent generic drugs jointly to determine whether the list appropriately provides for substitutions. The boards shall provide comments to the work group no later than 60 days after receiving the list.

(f) No later than January 15, 2010, the work group shall provide a report to the house committees on health care and on human services and the senate committees on finance and on health and welfare on the list generated, the comments provided by the boards of medical practice and of pharmacy, patient advocacy organizations, and any other information the work group deems relevant to the consideration of draft legislation.

Sec. 8. 2 V.S.A. chapter 26 is amended to read:

CHAPTER 26. ~~NORTHEAST~~ NATIONAL LEGISLATIVE ASSOCIATION ON PRESCRIPTION ~~DRUGS PRICING~~ DRUG PRICES

§ 951. ~~NORTHEAST~~ NATIONAL LEGISLATIVE ASSOCIATION ON PRESCRIPTION ~~DRUGS PRICING~~ DRUG PRICES

(a) The general assembly finds that the ~~Northeast~~ National Legislative Association on Prescription ~~Drugs Pricing~~ Drug Prices is a nonprofit organization of legislators formed for the purpose of making prescription drugs more affordable and accessible to citizens of the member states. The general assembly further finds that the activities of the Association provide a public benefit to the people of the state of Vermont.

(b) On or before January 15, upon the convening of each biennial session of the general assembly, three directors shall be appointed by the speaker, which may include the speaker, and three directors shall be appointed by the committee on committees, which may include a member of the committee on committees, to serve as the Vermont directors of the ~~Northeast~~ National Legislative Association on Prescription ~~Drugs Pricing~~ Drug Prices. Directors so appointed from each body shall not all be from the same party. Directors so appointed shall serve until new members are appointed.

(c) For meetings of the Association, directors who are legislators shall be entitled to per diem compensation and reimbursement of expenses in accordance with section 406 of Title 2. If the lieutenant governor is appointed as a director pursuant to subsection (b) of this section, his or her compensation and expenses shall be paid from the appropriation made to the office of the lieutenant governor.

(d) The Vermont directors of the Association shall report to the general assembly on or before January 1 of each year with a summary of the activities

of the Association, and any findings and recommendations for making prescription drugs more affordable and accessible to Vermonters.

Sec. 8a. HEALTH CARE COSTS IN CORRECTIONS WORK GROUP

(a) The director of health care reform, in consultation with the commissioner of corrections, shall convene a work group to:

(1) review the recommendations of the Heinz Family Philanthropies report entitled Making Connections: Utilizing the 340B Drug Pricing Program; and

(2) establish a mechanism for providing health services and prescriptions through a network of federally qualified health centers, disproportionate share hospitals, and other covered entities eligible under the Veterans Health Care Act of 1992, Public Law 102-585, codified at Section 340B of the Public Health Service Act.

(b) The work group shall include representatives from:

(1) Bi-State Primary Care Association;

(2) Fletcher Allen Health Care;

(3) Vermont Association of Hospitals and Health Systems;

(4) Behavioral Health Network;

(5) Heinz Family Philanthropies; and

(6) other interested stakeholders.

(c) No later than July 31, 2009, the work group shall provide a report to the commission on health care reform and the corrections oversight committee.

Sec. 9. 33 V.S.A. § 1998(c)(4)(A) is amended to read:

(4) The actions of the commissioners, the director, and the secretary shall include:

(A) active collaboration with the ~~Northeast~~ National Legislative Association on Prescription ~~Drugs in the Association's efforts to establish a Prescription Drug Fair Price Coalition~~ Drug Prices;

Sec. 10. APPROPRIATION

In fiscal year 2010, the sum of $40,000.00 is appropriated to the office of the attorney general from a special fund assigned to the office for the purposes of collecting and analyzing information on activities related to the marketing of prescribed products under sections 4631a, 4632, and 4633 of Title 18.

Sec. 11. EFFECTIVE DATE

This act shall take effect July 1, 2009, except:

(1) pharmaceutical manufacturers shall file by November 1, 2009 disclosures based on the law in effect on June 30, 2009 required by subdivision 4632 of Title 18 for the time period July 1, 2008 to June 30, 2009; and

(2) manufacturers of biological products and medical devices shall file by October 1, 2010 disclosures required by subdivisions 4632(a)(1) and (2) of Title 18 for the time period January 1, 2010 to June 30, 2010.

(3) Sec. 8a of this act, establishing a work group to examine health care costs in corrections, shall take effect upon passage.

and by amending the title to read "An act relating to the marketing of prescribed products"

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, Senator Carris moved that the Senate concur in the House proposal of amendment with an amendment, as follows;

First: In Sec. 4, subdivision 4632(a)(1)(A) of Title 18, by striking out the word "and" at the end of subdivision (ii), by striking out the period and inserting in lieu thereof the following ; and at the end of subdivision (iii) and by inserting a new subdivision (iv) to read as follows:

(iv) samples of a prescription drug provided to a health care professional for free distribution to patients.

Second: In Sec. 4, subdivision 4632(a)(1)(B) of Title 18, by striking out the word "and" at the end of subdivision (ii), by striking out the period and inserting in lieu thereof the following ; and at the end of subdivision (iii) and by inserting a new subdivision (iv) to read as follows:

(iv) samples of a prescription drug provided to a health care professional for free distribution to patients.

Third: In Sec. 4, by striking out subdivision (2) of 18 V.S.A. §4632(a) in its entirety and renumbering the remaining subdivisions accordingly

Fourth: by inserting a new Sec. 5a to read as follows:

Sec. 5a. STUDY OF DISCLOSURE OF DRUG SAMPLES

(a) The attorney general's office shall conduct a review, in consultation with the commission on health care reform, of the advisability of modifying section 4632 of Title 18 to require the disclosure of information about the provision of samples to health care providers by manufacturers of prescribed products.

(b) The attorney general's office shall provide a report of its findings to the house committee on health care and the senate committees on finance and on health and welfare no later than December 15, 2009.

Which was agreed to.

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

President Assumes the Chair

Adjournment

On motion of Senator Shumlin, the Senate adjourned until one o'clock and in the afternoon on Saturday, May 9, 2009.

SATURDAY, MAY 9, 2009

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Senate Concurrent Resolutions

The following joint concurrent resolutions, having been placed on the consent calendar on the preceding legislative day, and no Senator having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, are hereby adopted on the part of the Senate:

By Senators Brock and Kittell,

By Representative Keenan and others,

S.C.R. 27.

Senate concurrent resolution honoring Lawrence Handy of St. Albans for his civic and entrepreneurial leadership.

By All Members of the Senate,

By Representative Koch and others,

S.C.R. 28.

Senate concurrent resolution congratulating the Thunder Road International Speedbowl on its 50th anniversary season.

By Senators Kitchel and Choate,

By Representative Crawford and others,

S.C.R. 29.

Senate concurrent resolution congratulating A. Richard Boera on being named Northeast Kingdom Chamber of Commerce's 2009 Citizen of the Year.

By Senators Choate and Kitchel,

By Representative Larocque and others,

S.C.R. 30.

Senate concurrent resolution congratulating the Caledonia Essex Ambulance Service on its 25th anniversary.

By Senators Doyle, Cummings and Scott,

S.C.R. 31.

Senate concurrent resolution congratulating O.U.R. House of Central Vermont, Inc. on its 20th anniversary.

House Concurrent Resolutions

The following joint concurrent resolutions having been placed on the consent calendar on the preceding legislative day, and no Senator having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, are hereby adopted in concurrence:

By Representative Haas,

H.C.R. 155.

House concurrent resolution in memory of former Representative Joseph T. Steventon of Rochester.

By Representative Head and others,

H.C.R. 156.

House concurrent resolution welcoming to the state house the participants in the Vermont National Guard state partnership with Macedonia and Senegal.

By All Members of the House,

By All Members of the Senate,

H.C.R. 157.

House concurrent resolution in memory of Joseph J. Flory.

By Representative Minter and others,

By Senators Doyle, Cummings and Scott,

H.C.R. 158.

House concurrent resolution congratulating Vincent's Drug & Variety Store on its receipt of the 2009 Jeffrey Butland Family-Owned Business of the Year Award.

By Representative Turner and others,

H.C.R. 159.

House concurrent resolution honoring the history of baseball and softball at the University of Vermont .

By Representative Webb and others,

By Senators Lyons, Racine and Snelling,

H.C.R. 160.

House concurrent resolution in memory of Allen S. Myers.

By Representative Milkey and others,

H.C.R. 161.

House concurrent resolution honoring the Vermont Sledcats sled hockey team.

By Representative Davis and others,

H.C.R. 162.

House concurrent resolution in memory of Gloria Miller of Corinth.

By Representative Davis and others,

H.C.R. 163.

House concurrent resolution in memory of former Corinth moderator John A. Pierson Jr.

By Representative Milkey and others,

H.C.R. 164.

House concurrent resolution commemorating the opening of the newly rebuilt Harris Hill Ski Jump in Brattleboro.

By Representative Moran,

H.C.R. 165.

House concurrent resolution congratulating the Wardsboro 4th of July parade and street fair on its 60th anniversary.

By Representative Waite-Simpson and others,

H.C.R. 166.

House concurrent resolution congratulating the 2009 Essex High School Fed Challenge team on its outstanding performance.

By Representative Condon and others,

H.C.R. 167.

House concurrent resolution in memory of former Vermont National Guard Assistant Adjutant General Alan Howard Noyes.

By Representatives Obuchowski and Partridge,

H.C.R. 168.

House concurrent resolution congratulating Chroma Technology Corporation of Bellows Falls on being named one of the world's most democratic companies.

By Representative Branagan and others,

H.C.R. 169.

House concurrent resolution congratulating the new International House of Pancakes Restaurant in South Burlington for serving pure Vermont maple syrup.

By Representatives Obuchowski and Partridge,

H.C.R. 170.

House concurrent resolution congratulating The Grafton FAST Squad on being named the 2009 First Responder Service of the Year.

By Representative Sweaney,

By Senators Campbell, McCormack and Nitka,

H.C.R. 171.

House concurrent resolution congratulating Seldon Technologies, Inc. on its third place ranking in the Artemis Project's top 50 water companies survey.

By Representatives Lanpher and Clark,

By Senators Ayer and Giard,

H.C.R. 172.

House concurrent resolution congratulating John Charles Dugan on being named the Vergennes Boys & Girls Club's 2009 Youth of the Year.

By Representative Howard and others,

H.C.R. 173.

House concurrent resolution honoring the golden anniversary of Ted's Pizza Shop in Rutland City.

By Representative Clarkson,

By Senators Campbell, McCormack and Nitka,

H.C.R. 174.

House concurrent resolution congratulating and extending best wishes to the Woodstock Union Middle School Science Bowl team.

By Representative Hube and others,

By All Members of the Senate,

H.C.R. 175.

House concurrent resolution congratulating Castleton State College President David Wolk on his receipt on the New England Board of Higher Education's Eleanor M. McMahon Award for Lifetime Achievement.

By Representative Morrissey and others,

By Senators Hartwell and Sears,

H.C.R. 176.

House concurrent resolution congratulating the Vermont Veterans' Home as it commemorates its 125th anniversary.

By Representative Morrissey and others,

By Senators Hartwell and Sears,

H.C.R. 177.

House concurrent resolution congratulating Bennington Project Independence on its 30th anniversary and the opening of its new Dr. Richard A. Sleeman Center.

By Representative Masland and others,

H.C.R. 178.

House concurrent resolution congratulating Vermont State Representative Margaret Cheney and U.S. Representative Peter Welch on their recent marriage.

By Representatives Ram and Morrissey,

H.C.R. 179.

House concurrent resolution honoring the American Cancer Society's 2009 Relay for Life events in Vermont.

By Representative Martin,

By Senator Bartlett,

H.C.R. 180.

House concurrent resolution honoring Gary Anderson for his exemplary record of public and community service in Hyde Park.

Message from the House No. 87

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

Mr. President:

I am directed to inform the Senate that:

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

H. 405. An act relating to K-12 and higher education partnerships.

H. 453. An act relating to receivership of long-term care facilities.

And has severally concurred therein.

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

H. 145. An act relating to composting.

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

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

H. 15. An act relating to aquatic nuisance control.

And has adopted the same on its part.

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

H. 91. An act relating to technical corrections to the juvenile judicial proceedings act of 2008 .

And has adopted the same on its part.

The House has adopted joint resolutions of the following titles:

J.R.H. 30. Joint resolution in support of the continued operation of the Shriners Hospital for Children in Springfield, Massachusetts.

J.R.H. 31. Joint resolution supporting the effort of women ski jumpers for athletic equity at the 2010 Winter Olympics in British Columbia.

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

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

J.R.S. 34. Joint resolution designating October 2009 as health care career awareness month.

And has adopted the same in concurrence.

The House has adopted House concurrent resolutions of the following titles:

H.C.R. 155. House concurrent resolution in memory of former Representative Joseph T. Steventon of Rochester.

H.C.R. 156. House concurrent resolution welcoming to the state house the participants in the Vermont National Guard state partnership with Macedonia and Senegal.

H.C.R. 157. House concurrent resolution in memory of Joseph J. Flory.

H.C.R. 158. House concurrent resolution congratulating Vincent's Drug & Variety Store on its receipt of the 2009 Jeffrey Butland Family-Owned Business of the Year Award.

H.C.R. 159. House concurrent resolution honoring the history of baseball and softball at the University of Vermont.

H.C.R. 160. House concurrent resolution in memory of Allen S. Myers.

H.C.R. 161. House concurrent resolution honoring the Vermont Sledcats sled hockey team.

H.C.R. 162. House concurrent resolution in memory of Gloria Miller of Corinth.

H.C.R. 163. House concurrent resolution in memory of former Corinth moderator John A. Pierson Jr.

H.C.R. 164. House concurrent resolution commemorating the opening of the newly rebuilt Harris Hill Ski Jump in Brattleboro.

H.C.R. 165. House concurrent resolution congratulating the Wardsboro 4th of July parade and street fair on its 60th anniversary.

H.C.R. 166. House concurrent resolution congratulating the 2009 Essex High School Fed Challenge team on its outstanding performance.

H.C.R. 167. House concurrent resolution in memory of former Vermont National Guard Assistant Adjutant General Alan Howard Noyes.

H.C.R. 168. House concurrent resolution congratulating Chroma Technology Corporation of Bellows Falls on being named one of the world's most democratic companies.

H.C.R. 169. House concurrent resolution congratulating the new International House of Pancakes Restaurant in South Burlington for serving pure Vermont maple syrup.

H.C.R. 170. House concurrent resolution congratulating The Grafton FAST Squad on being named the 2009 First Responder Service of the Year.

H.C.R. 171. House concurrent resolution congratulating Seldon Technologies, Inc. on its third place ranking in the Artemis Project's top 50 water companies survey.

H.C.R. 172. House concurrent resolution congratulating John Charles Dugan on being named the Vergennes Boys & Girls Club's 2009 Youth of the Year.

H.C.R. 173. House concurrent resolution honoring the golden anniversary of Ted's Pizza Shop in Rutland City.

H.C.R. 174. House concurrent resolution congratulating and extending best wishes to the Woodstock Union Middle School Science Bowl team.

H.C.R. 175. House concurrent resolution congratulating Castleton State College President David Wolk on his receipt on the New England Board of Higher Education's Eleanor M. McMahon Award for Lifetime Achievement.

H.C.R. 176. House concurrent resolution congratulating the Vermont Veterans' Home as it commemorates its 125th anniversary.

H.C.R. 177. House concurrent resolution congratulating Bennington Project Independence on its 30th anniversary and the opening of its new Dr. Richard A. Sleeman Center.

H.C.R. 178. House concurrent resolution congratulating Vermont State Representative Margaret Cheney and U.S. Representative Peter Welch on their recent marriage.

H.C.R. 179. House concurrent resolution honoring the American Cancer Society's 2009 Relay for Life events in Vermont.

H.C.R. 180. House concurrent resolution honoring Gary Anderson for his exemplary record of public and community service in Hyde Park.

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

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

S.C.R. 27. Senate concurrent resolution honoring Lawrence Handy of St. Albans for his civic and entrepreneurial leadership.

S.C.R. 28. Senate concurrent resolution congratulating the Thunder Road International Speedbowl on its 50th anniversary season.

S.C.R. 29. Senate concurrent resolution congratulating A. Richard Boera on being named Northeast Kingdom Chamber of Commerce's 2009 Citizen of the Year.

S.C.R. 30. Senate concurrent resolution congratulating the Caledonia Essex Ambulance Service on its 25th anniversary.

S.C.R. 31. Senate concurrent resolution congratulating O.U.R. House of Central Vermont, Inc. on its 20th anniversary.

And has adopted the same in concurrence.

The Governor has informed the House that on May 8, 2009, he approved and signed bills originating in the House of the following titles:

H. 69. An act relating to approval of amendments to the charter of the city of Rutland.

H. 205. An act relating to reporting to the Vermont criminal justice training council.

H. 430. An act relating to approval of an amendment to the charter of the town of St. Johnsbury.

H. 433. An act relating to approval of amendments to the charter of the town of Berlin.

Message from the House No. 88

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

Mr. President:

I am directed to inform the Senate that:

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

S. 125. An act relating to expanding the sex offender registry.

And has adopted the same on its part.

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

S. 125.

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

An act relating to expanding the sex offender registry.

Was taken up for immediate consideration.

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

To the Senate and House of Representatives:

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

S. 125. An act relating to expanding the sex offender registry.

Respectfully reports that it has met and considered the same and recommends that the House recede from its proposals of amendment, and that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. COMPLIANCE WITH THE ADAM WALSH CHILD PROTECTION AND SAFETY ACT OF 2006

(a) The Act. The Adam Walsh Child Protection and Safety Act of 2006 was signed by President George W. Bush in 2006. While well-intended, it contains a broad span of provisions that would significantly change state practice related to the registration and management of sex offenders in Vermont in a manner that is inconsistent with widely accepted evidence-based

best practices at a substantial financial cost to the state. In comments directed to the U.S. Department of Justice regarding proposed guidelines to interpret and implement the Act, the National Conference of State Legislatures called the guidelines a "burdensome," "preemptive," "unfunded mandate" for the states, requiring every legislature to undertake an extensive review of its laws as compared to the Act and necessitating changes to state policy traditionally within the purview of the states.

(b) No state is in compliance. Due to the complexity and costs associated with the Act, as of February 1, 2009, no state has been certified to be in substantial compliance with the Act. States are required to comply with the Act by July 27, 2009 or lose 10 percent of the state's federal Byrne/JAG funds, although Vermont has recently received a one-year extension from the Office of Justice Programs' SMART office, which is responsible for regulations and compliance under the Act.

(c) Constitutional challenges. The Act is currently being challenged on a number of constitutional grounds in both federal and state courts at a substantial cost to many states. In addition, registry requirements and the consequences for failure to comply with them have expanded so significantly in recent years that imposition of such requirements on offenders may now violate the constitutional ban on retroactive punishment.

(d) Risk assessments. Vermont has adopted a practice of assigning offender risk levels through the use of actuarial risk assessment instruments. These instruments use a predetermined range of variables that have high correlation to sexual recidivism such as criminal history, victim profile, and age at time of offense to determine an offender's potential risk of recidivism. The Adam Walsh Act mandates an entirely different offense tier structure and demands that risk determination be based solely on an offender's crime of conviction, not on an actuarial risk assessment score. According to the most recent research, using crime of conviction as the primary method of determining offender risk is a far less reliable predictor of reoffense than is the use of actuarial tools.

(e) Retroactive application and juveniles. Regulations issued by former U.S. Attorney General Alberto Gonzales require states to apply the requirements of the Act retroactively, requiring Vermont to retier all sexual offenders, some of whom are currently beyond their duty to register. The retroactive application also applies to juveniles adjudicated delinquent for certain sexual offenses, even though they are currently not required to be registered under state law. Even though such juveniles were afforded the protections of the juvenile system at the time of their plea, they would now be

subject to a registration term as long as 25 years with no opportunity to petition for relief and be subject to inclusion on the Internet sex offender registry.

Sec. 2. 13 V.S.A. § 2635a is added to read:

§ 2635A. SEX TRAFFICKING OF CHILDREN; SEX TRAFFICKING OF ANY PERSON BY FORCE, FRAUD, OR COERCION

(a) As used in this section:

(1) "Coercion" means:

(A) threats of serious harm to or physical restraint against any person;

(B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious bodily harm to or physical restraint against any person; or

(C) the abuse or threatened abuse of law or the legal process.

(2) "Commercial sex act" means any sex act on account of which anything of value is promised to, given to, or received by any person.

(3) "Venture" means any group of two or more individuals associated in fact, whether or not a legal entity.

(b) No person shall knowingly:

(1) recruit, entice, harbor, transport, provide, or obtain by any means a person under the age of 18 for the purpose of having the person engage in a commercial sex act;

(2) compel a person through force, fraud, or coercion to engage in a commercial sex act; or

(3) benefit financially or by receiving anything of value from participation in a venture, knowing that force, fraud, or coercion was or will be used to compel any person to engage in a commercial sex act as part of the venture.

(c) A person who violates subsection (b) of this section shall be imprisoned for a term up to and including life or fined not more than $25,000.00 or both.

(d)(1) A person who is a victim of sex trafficking as defined in this section shall not be found in violation of chapter 59 (lewdness and prostitution) or 63 (obscenity) of this title for any conduct committed as a direct result of the sex trafficking or which benefits a sex trafficker.

(2) If a person who is a victim of sex trafficking as defined in this section is prosecuted for any offense, other than a violation of chapter 59

(lewdness and prostitution) or 63 (obscenity) of this title, which arises out of the sex trafficking or benefits a sex trafficker, the person may raise as an affirmative defense that he or she committed the offense as a result of force, fraud, or coercion by a sex trafficker.

Sec. 3. 13 V.S.A. § 5301(7) is amended to read:

(7) For the purpose of this chapter, "listed crime" means any of the following offenses:

* * *

(AA) the attempt to commit any of the offenses listed in this section; ~~and~~

(BB) abuse (section 1376 of this title), abuse by restraint (section 1377 of this title), neglect (section 1378 of this title), sexual abuse (section 1379 of this title), financial exploitation (section 1380 of this title), and exploitation of services (section 1381 of this title); and

(CC) sex trafficking of children or sex trafficking by force, fraud, or coercion as defined in section 2635a of this title.

* * * Minor Disseminating Indecent Material ("Sexting") * * *

Sec. 4. 13 V.S.A. § 2802b is added to read:

§ 2802b. MINOR ELECTRONICALLY DISSEMINATING INDECENT MATERIAL TO ANOTHER PERSON

(a)(1) No minor shall knowingly and voluntarily and without threat or coercion use a computer or electronic communication device to transmit an indecent visual depiction of himself or herself to another person.

(2) No person shall possess a visual depiction transmitted to the person in violation of subdivision (1) of this subsection. It shall not be a violation of this subdivision if the person took reasonable steps, whether successful or not, to destroy or eliminate the visual depiction.

(b) Penalties; minors.

(1) Except as provided in subdivision (3) of this subsection, a minor who violates subsection (a) of this section shall be adjudicated delinquent. An action brought under this subdivision (1) shall be filed in family court and treated as a juvenile proceeding pursuant to chapter 52 of Title 33, and may be referred to the juvenile diversion program of the district in which the action is filed.

(2) A minor who violates subsection (a) of this section and who has not

previously been adjudicated in violation of that section shall not be prosecuted under chapter 64 of this title (sexual exploitation of children), and shall not be subject to the requirements of subchapter 3 of chapter 167 of this title (sex offender registration).

(3) A minor who violates subsection (a) of this section who has previously been adjudicated in violation of that section may be adjudicated in family court as under subdivision (b)(1) of this section or prosecuted in district court under chapter 64 of this title (sexual exploitation of children), but shall not be subject to the requirements of subchapter 3 of chapter 167 of this title (sex offender registration).

(4) Notwithstanding any other provision of law, the records of a minor who is adjudicated delinquent under this section shall be expunged when the minor reaches 18 years of age.

(c) Penalties; adults. A person 18 years of age or older who violates subdivision (a)(2) of this section shall be fined not more than $300.00 or imprisoned for not more than six months or both.

(d) This section shall not be construed to prohibit a prosecution under section 1027 (disturbing the peace by use of telephone or electronic communication), 2601 (lewd and lascivious conduct), 2605 (voyeurism), or 2632 (prohibited acts) of this title, or any other applicable provision of law.

Sec. 5. Sec. 4 of No. 192 of the Acts of the 2005 Adj. Sess. (2006) is amended to read:

Sec. 4. SEXUAL VIOLENCE PREVENTION TASK FORCE

(a) The general assembly acknowledges that many diverse organizations in Vermont currently provide sexual violence prevention education in Vermont schools with minimal financial support from the state. In order to further the goal of comprehensive, collaborative statewide sexual violence prevention efforts, the antiviolence partnership at the University of Vermont shall convene a task force to identify opportunities for sexual violence prevention education in Vermont schools. The task force shall conduct an inventory of sexual violence prevention activities currently offered by Vermont schools and by nonprofit and other nongovernmental organizations, and shall, as funding allows, provide information to them concerning the changes to law made by this act and concerning the consequences of sexual activity among minors, including the risks of using computers and electronic communication devices to transmit indecent and inappropriate images. As funding allows, the task force shall include the information collected under this subsection in education

and outreach programs for minors, parents, teachers, court diversion programs, restorative justice programs, and the community.

* * *

* * * Sex Offender Registry * * *

Sec. 6. 13 V.S.A. § 5401(10) is amended to read;

(10) "Sex offender" means:

(A) A person who is convicted in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court of any of the following offenses:

(i) sexual assault as defined in 13 V.S.A. § 3252~~;~~.

(ii) aggravated sexual assault as defined in 13 V.S.A. § 3253~~;~~.

(iii) lewd and lascivious conduct as defined in 13 V.S.A. § 2601~~;~~.

(iv) sexual abuse of a vulnerable adult as defined in 13 V.S.A. § 1379~~;~~.

(v) second or subsequent conviction for voyeurism as defined in 13 V.S.A. § 2605(b) or (c)~~;~~.

(vi) kidnapping with intent to commit sexual assault as defined in 13 V.S.A. § 2405(a)(1)(D)~~; and~~.

(vii) a federal conviction in federal court for any of the following offenses:

(I) Sex trafficking of children as defined in 18 U.S.C. § 1591.

(II) Aggravated sexual abuse as defined in 18 U.S.C. § 2241.

(III) Sexual abuse as defined in 18 U.S.C. § 2242.

(IV) Sexual abuse of a minor or ward as defined in 18 U.S.C. § 2243.

(V) Abusive sexual contact as defined in 18 U.S.C. § 2244.

(VI) Offenses resulting in death as defined in 18 U.S.C. § 2245.

(VII) Sexual exploitation of children as defined in 18 U.S.C. § 2251.

(VIII) Selling or buying of children as defined in 18 U.S.C. § 2251A.

(IX) Material involving the sexual exploitation of minors as

defined in 18 U.S.C. § 2252.

(X) Material containing child pornography as defined in 18 U.S.C. § 2252A.

(XI) Production of sexually explicit depictions of a minor for import into the United States as defined in 18 U.S.C. § 2260.

(XII) Transportation of a minor for illegal sexual activity as defined in 18 U.S.C. § 2421.

(XIII) Coercion and enticement of a minor for illegal sexual activity as defined in 18 U.S.C. § 2422.

(XIV) Transportation of minors for illegal sexual activity, travel with the intent to engage in illicit sexual conduct with a minor, and engaging in illicit sexual conduct in foreign places as defined in 18 U.S.C. § 2423.

(XV) Transmitting information about a minor to further criminal sexual conduct as defined in 18 U.S.C. § 2425.

~~(vii)~~(ix) an attempt to commit any offense listed in this subdivision (A).

(B) A person who is convicted of any of the following offenses against a victim who is a minor, except that, for purposes of this subdivision, conduct which is criminal only because of the age of the victim shall not be considered an offense for purposes of the registry if the perpetrator is under the age of 18 and the victim is at least 12 years old:

(i) any offense listed in subdivision (A) of this subdivision (10)~~;~~.

(ii) kidnapping as defined in 13 V.S.A. § 2405(a)(1)(D)~~;~~.

(iii) lewd and lascivious conduct with a child as defined in 13 V.S.A. § 2602~~;~~.

(iv) ~~white~~ slave traffic as defined in 13 V.S.A. § 2635~~;~~.

(v) sexual exploitation of children as defined in 13 V.S.A. chapter 64~~;~~.

(vi) ~~or~~ procurement or solicitation as defined in 13 V.S.A. § 2632(a)(6)~~;~~.

(vii) aggravated sexual assault of a child as defined in 13 V.S.A. § 3253a.

(viii) sex trafficking of children or sex trafficking by force, fraud, or coercion as defined in 13 V.S.A. § 2635a.

(ix) sexual exploitation of a minor as defined in 13 V.S.A. § 3258(b).

(x) an attempt to commit any offense listed in this subdivision (B).

(C) A person who takes up residence within this state, other than within a correctional facility, and who has been convicted in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court, for a sex crime the elements of which would constitute a crime under subdivision ~~(10)~~(A) or (B) of this ~~section~~ subdivision (10) if committed in this state.

(D) A person 18 years of age or older who resides in this state, other than in a correctional facility, and who is currently or, prior to taking up residence within this state, was required to register as a sex offender in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court; except that, for purposes of this subdivision, conduct which is criminal only because of the age of the victim shall not be considered an offense for purposes of the registry if the perpetrator is under the age of 18 and the victim is at least 12 years old.

~~(D)~~(E) A nonresident sex offender who crosses into Vermont and who is employed, carries on a vocation, or is a student.

Sec. 7. 13 V.S.A. § 5407 is amended to read:

§ 5407. SEX OFFENDER'S RESPONSIBILITY TO REPORT

* * *

(g) The department shall adopt forms and procedures for the purpose of verifying the addresses of persons required to register under this subchapter in accordance with the requirements set forth in section (b)(3) of the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act. Every 90 days for sexually violent predators and annually for other registrants, the department shall verify addresses of registrants by sending a nonforwardable address verification form to each registrant at the address last reported by the registrant. The registrant shall be required to sign and return the form to the department within 10 days of receipt. If the registrant's name appears on the list of address verification forms automatically generated by the registry, it shall be deemed that the sex offender has received that form.

* * *

Sec. 8. 13 V.S.A. § 5409 is amended to read:

§ 5409. PENALTIES

(a) Except as provided in subsection (b) of this section, a sex offender who knowingly fails to comply with any provision of this subchapter shall:

(1) Be imprisoned for not more than two years or fined not more than $1,000.00, or both. A sentence imposed under this subdivision shall run consecutively to any sentence being served by the sex offender at the time of sentencing.

(2) For the second or subsequent offense, be imprisoned not more than three years or fined not more than $5,000.00, or both. A sentence imposed under this subdivision shall run consecutively to any sentence being served by the sex offender at the time of sentencing.

(b) A sex offender who knowingly fails to comply with any provision of this subchapter for a period of more than five consecutive days shall be imprisoned not more than five years or fined not more than $5,000.00, or both. A sentence imposed under this subsection shall run consecutively to any sentence being served by the sex offender at the time of sentencing.

(c) It shall be presumed that every sex offender knows and understands his or her obligations under this subchapter.

(d)(1) An affidavit by the administrator of the sex offender registry which describes the failure to comply with the provisions of this subchapter shall be prima facie evidence of a violation of this subchapter.

(2) Certified records of the sex offender registry shall be admissible into evidence as business records.

* * * Internet Sex Offender Registry * * *

Sec. 9. 13 V.S.A. § 5411a is amended to read:

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

(a) Notwithstanding sections 2056a-2056e of Title 20, the department shall electronically post information on the Internet in accordance with subsection (b) of this section regarding the following sex offenders, upon their release from confinement:

(1) Sex offenders who have been convicted of ~~a violation of section 3253 of this title (aggravated sexual assault), section 2602 of this title (lewd or lascivious conduct with child) if the offender has been designated as high risk by the department of corrections pursuant to section 5411b of this title, or subdivision 2405(a)(1)(D) of this title if a registrable offense (kidnapping and sexual assault of a child)~~:

(A) Aggravated sexual assault of a child (13 V.S.A. § 3253a).

(B) Aggravated sexual assault (13 V.S.A. § 3253).

(C) Sexual assault (13 V.S.A. § 3252).

(D) Kidnapping with intent to commit sexual assault (13 V.S.A. § 2405(a)(1)(D)).

(E) Lewd or lascivious conduct with child (13 V.S.A. § 2602).

(F) A second or subsequent conviction for voyeurism (13 V.S.A. § 2605(b) or (c)).

(G) Slave traffic if a registrable offense under subdivision 5401 (10)(B)(iv) of this title (13 V.S.A. § 2635).

(H) Sex trafficking of children or sex trafficking by force, fraud, or coercion (13 V.S.A. § 2635a).

(I) Sexual exploitation of a minor (13 V.S.A. § 3258(b)).

(J) Any offense regarding the sexual exploitation of children (chapter 64 of this title).

(K) Sexual abuse of a vulnerable adult (13 V.S.A. § 1379).

(L) A federal conviction in federal court for any of the following offenses:

(i) Sex trafficking of children as defined in 18 U.S.C. § 1591.

(ii) Aggravated sexual abuse as defined in 18 U.S.C. § 2241.

(iii) Sexual abuse as defined in 18 U.S.C. § 2242.

(iv) Sexual abuse of a minor or ward as defined in 18 U.S.C. § 2243.

(v) Abusive sexual contact as defined in 18 U.S.C. § 2244.

(vi) Offenses resulting in death as defined in 18 U.S.C. § 2245.

(vii) Sexual exploitation of children as defined in 18 U.S.C. § 2251.

(viii) Selling or buying of children as defined in 18 U.S.C. § 2251A.

(ix) Material involving the sexual exploitation of minors as defined in 18 U.S.C. § 2252.

(x) Material containing child pornography as defined in 18 U.S.C. § 2252A.

(xi) Production of sexually explicit depictions of a minor for import into the United States as defined in 18 U.S.C. § 2260.

(xii) Transportation of a minor for illegal sexual activity as defined in 18 U.S.C. § 2421.

(xiii) Coercion and enticement of a minor for illegal sexual activity as defined in 18 U.S.C. § 2422.

(xiv) Transportation of minors for illegal sexual activity, travel with the intent to engage in illicit sexual conduct with a minor, and engaging in illicit sexual conduct in foreign places as defined in 18 U.S.C. § 2423.

(xv) Transmitting information about a minor to further criminal sexual conduct as defined in 18 U.S.C. § 2425.

(2) Sex offenders who have at least one prior conviction for an offense described in subdivision 5401(10) of this subchapter.

(3) Sex offenders who have failed to comply with sex offender registration requirements and for whose arrest there is an outstanding warrant for such noncompliance. Information on offenders shall remain on the Internet only while the warrant is outstanding.

(4) Sex offenders who have been designated as sexual predators pursuant to section 5405 of this title.

(5)(A) Sex offenders who have not complied with sex offender treatment recommended by the department of corrections or who are ineligible for sex offender treatment. The department of corrections shall establish rules for the administration of this subdivision and shall specify what circumstances constitute noncompliance with treatment and criteria for ineligibility to participate in treatment. Offenders subject to this provision shall have the right to appeal the department of corrections' determination in superior court in accordance with Rule 75 of the Vermont Rules of Civil Procedure. This subdivision shall apply prospectively and shall not apply to those sex offenders who did not comply with treatment or were ineligible for treatment prior to March 1, 2005.

(B) The department of corrections shall notify the department if a sex offender who is compliant with sex offender treatment completes his or her sentence but has not completed sex offender treatment. As long as the offender complies with treatment, the offender shall not be considered noncompliant under this subdivision and shall not be placed on the Internet registry in accordance with this subdivision alone. However, the offender shall

submit to the department proof of continuing treatment compliance every three months. Proof of compliance shall be a form provided by the department that the offender's treatment provider shall sign, attesting to the offender's continuing compliance with recommended treatment. Failure to submit such proof as required under this subdivision (B) shall result in the offender's placement on the Internet registry in accordance with subdivision (A) of this subdivision (5).

(6) Sex offenders who have been designated by the department of corrections, pursuant to section 5411b of this title, as high-risk.

(7) A person 18 years of age or older who resides in this state, other than in a correctional facility, and who is currently or, prior to taking up residence within this state was required to register as a sex offender in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court; except that, for purposes of this subdivision:

(A) conduct which is criminal only because of the age of the victim shall not be considered an offense for purposes of the registry if the perpetrator is under the age of 18 and the victim is at least 12 years old; and

(B) information shall only be posted electronically if the offense for which the person was required to register in the other jurisdiction was:

(i) a felony; or

(ii) a misdemeanor punishable by six months or more of imprisonment.

(b) The department shall electronically post the following information on sex offenders designated in subsection (a) of this section:

(1) the offender's name and any known aliases;

(2) the offender's date of birth;

(3) a general physical description of the offender;

(4) a digital photograph of the offender;

(5) the offender's town of residence;

(6) the date and nature of the offender's conviction;

(7) if the offender is under the supervision of the department of corrections, the name and telephone number of the local department of corrections office in charge of monitoring the sex offender;

(8) whether the offender complied with treatment recommended by the department of corrections;

(9) a statement that there is an outstanding warrant for the offender's arrest, if applicable; ~~and~~

(10) the reason for which the offender information is accessible under this section;

(11) whether the offender has been designated high-risk by the department of corrections pursuant to section 5411b of this title; and

(12) if the offender has not been subject to a risk assessment, a statement that the offender has not been so assessed and that such a person is presumed to be high risk, provided that the department shall permit a person subject to this subdivision to obtain a risk assessment at the person's own expense.

(c) The department shall have the authority to take necessary steps to obtain digital photographs of offenders whose information is required to be posted on the Internet and to update photographs as necessary. An offender ~~who is requested by the department to~~ shall annually report to the department or a local law enforcement agency for the purpose of being photographed for the Internet ~~shall comply with the request within 30 days~~.

(d) An offender's street address shall not be posted electronically. The identity of a victim of an offense that requires registration shall not be released.

(e) Information regarding a sex offender shall not be posted electronically if the conduct that is the basis for the offense is criminal only because of the age of the victim and the perpetrator is within 38 months of age of the victim.

(f) Information regarding a sex offender shall not be posted electronically prior to the offender reaching the age of 18, but such information shall be otherwise available pursuant to section 5411 of this title.

(g) Information on sex offenders shall be posted on the Internet for the duration of time for which they are subject to notification requirements under section 5401 et seq. of this title.

(h) Posting of the information shall include the following language: "This information is made available for the purpose of complying with 13 V.S.A. § 5401 et seq., which requires the Department of Public Safety to establish and maintain a registry of persons who are required to register as sex offenders and to post electronically information on sex offenders. The registry is based on the legislature's decision to facilitate access to publicly available information about persons convicted of sexual offenses. EXCEPT FOR OFFENDERS SPECIFICALLY DESIGNATED ON THIS SITE AS HIGH-RISK, THE

DEPARTMENT OF PUBLIC SAFETY HAS NOT CONSIDERED OR ASSESSED THE SPECIFIC RISK OF REOFFENSE WITH REGARD TO ANY INDIVIDUAL PRIOR TO HIS OR HER INCLUSION WITHIN THIS REGISTRY AND HAS MADE NO DETERMINATION THAT ANY INDIVIDUAL INCLUDED IN THE REGISTRY IS CURRENTLY DANGEROUS. THE MAIN PURPOSE OF PROVIDING THIS DATA ON THE INTERNET IS TO MAKE INFORMATION MORE EASILY AVAILABLE AND ACCESSIBLE, NOT TO WARN ABOUT ANY SPECIFIC INDIVIDUAL. IF YOU HAVE QUESTIONS OR CONCERNS ABOUT A PERSON WHO IS NOT LISTED ON THIS SITE OR YOU HAVE QUESTIONS ABOUT SEX OFFENDER INFORMATION LISTED ON THIS SITE, PLEASE CONTACT THE DEPARTMENT OF PUBLIC SAFETY OR YOUR LOCAL LAW ENFORCEMENT AGENCY. PLEASE BE AWARE THAT MANY NONOFFENDERS SHARE A NAME WITH A REGISTERED SEX OFFENDER. Any person who uses information in this registry to injure, harass, or commit a criminal offense against any person included in the registry or any other person is subject to criminal prosecution."

(i) The department shall post electronically general information about the sex offender registry and how the public may access registry information. Electronically posted information regarding sex offenders listed in subsection (a) of this section shall be organized and available to search by the sex offender's name and the sex offender's county, city, or town of residence.

(j) The department shall adopt rules for the administration of this section and shall expedite the process for the adoption of such rules. The department shall not implement this section prior to the adoption of such rules.

(k) If a sex offender's information is required to be posted electronically pursuant to subdivision (a)(2) of this section, the department shall list the offender's convictions for any crime listed in subdivision 5401(10) of this title, regardless of the date of the conviction or whether the offender was required to register as a sex offender based upon that conviction.

Sec. 10. 13 V.S.A. § 5411b is amended to read:

§ 5411b. DESIGNATION OF HIGH-RISK SEX OFFENDER

(a) The department of corrections ~~may~~ shall evaluate a sex offender for the purpose of determining whether the offender is "high-risk" as defined in section 5401 of this title. The designation of high-risk under this section is for the purpose of identifying an offender as one who should be subject to increased public access to his or her status as a sex offender and related information, including ~~internet~~ Internet access.

(b) After notice and an opportunity to be heard, a sex offender who is designated as high-risk shall have the right to appeal de novo to the superior court in accordance with Rule 75 of the Vermont Rules of Civil Procedure.

(c) The department of corrections shall adopt rules for the administration of this section. The department of corrections shall not implement this section prior to the adoption of such rules.

(d) The department of corrections shall identify those sex offenders under the supervision of the department as of the date of passage of this act who are high-risk and shall designate them as such no later than ~~September 1, 2005~~ September 1, 2009.

Sec. 11. APPLICABILITY

Secs. 6, 9, and 14 of this act (sex offender registry and Internet sex offender registry) shall apply only to the following persons:

(1) A person convicted prior to the effective date of this act who is under the supervision of the department of corrections except as provided in subdivision (3)(A) of this section.

(2) A person convicted on or after the effective date of this act.

(3)(A) A person convicted prior to the effective date of this act of a crime committed in this state who is not under the supervision of the department of corrections and is subject to sex offender registry requirements under subchapter 3 of chapter 167 of Title 13, or a person convicted prior to the effective date of this act of lewd or lascivious conduct with a child in violation of 13 V.S.A. § 2602 or a second or subsequent conviction for voyeurism in violation of 13 V.S.A. § 2605(b) or (c) who is under the supervision of the department of corrections, unless the sex offender review committee determines pursuant to the requirements of this subdivision (3), taking into account whether the person has been charged or convicted of a criminal offense or a probation or parole violation since being placed on the registry, that the person has successfully reintegrated into the community.

(B)(i) No person's name shall be posted electronically pursuant to subdivision (3)(A) of this section before October 1, 2009.

(ii) On or before July 1, 2009, the department of public safety shall provide notice of the right to petition under this subdivision (3)(B) to all persons convicted prior to the effective date of this act who are not under the supervision of the department of corrections and are subject to sex offender registry requirements under subchapter 3 of chapter 167 of Title 13.

(iii) A person seeking a determination from the sex offender review committee that he or she is not subject to subdivision (3)(A) of this

section shall file a petition with the committee before October 1, 2009. If a petition is filed before October 1, 2009, the petitioner's name shall not be posted electronically pursuant to subdivision (3)(A) of this section until after the sex offender review committee has ruled on the petition.

(C) All decisions made by the sex offender review committee under subdivision (3)(A) of this section shall be reviewed and approved by the commissioner of the department of corrections. The agency of human services shall adopt emergency rules which establish criteria for the commissioner's decision.

* * * Sex Offender Name Changes * * *

Sec. 12. 15 V.S.A. § 817 is added to read:

§ 817. CONSULTATION OF SEX OFFENDER REGISTRY WHEN FORM FILED

Upon receipt of a change-of-name form submitted pursuant to section 811 of this title, the probate court shall request the department of public safety to determine whether the person's name appears on the sex offender registry established by section 5402 of Title 13. If the person's name appears on the registry, the probate court shall not permit the person to change his or her name unless it finds, after permitting the department of public safety to appear, that there is a compelling purpose for doing so.

Sec. 13. 13 V.S.A. § 5402 is amended to read:

§ 5402. SEX OFFENDER REGISTRY

(a) The department of public safety shall establish and maintain a sex offender registry, which shall consist of the information required to be filed under this subchapter.

(b) All information contained in the registry may be disclosed for any purpose permitted under the law of this state, including use by:

(1) local, state, and federal law enforcement agencies exclusively for lawful law enforcement activities;

(2) state and federal governmental agencies for the exclusive purpose of conducting confidential background checks;

(3) any employer, including a school district, who is authorized by law to request records and information from the Vermont criminal information center, where such disclosure is necessary to protect the public concerning persons required to register under this subchapter. The identity of a victim of an offense that requires registration shall not be released; ~~and~~

(4) a person identified as a sex offender in the registry for the purpose of reviewing the accuracy of any record relating to him or her. The identity of a victim of an offense that requires registration shall not be released; and

(5) probate courts for purposes of conducting checks on persons applying for changes of name under section 811 of Title 15.

(c) The departments of corrections and public safety shall adopt rules, forms and procedures under chapter 25 of Title 3 to implement the provisions of this subchapter.

* * * Sex Offender Addresses on Internet * * *

Sec. 14. 13 V.S.A. § 5411a is amended to read:

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

* * *

(b) The department shall electronically post the following information on sex offenders designated in subsection (a) of this section:

(1) the offender's name and any known aliases;

(2) the offender's date of birth;

(3) a general physical description of the offender;

(4) a digital photograph of the offender;

(5) the offender's town of residence;

(6) the offender's address or, if the offender does not have a fixed address, other information about where the offender habitually lives, if:

(A) the offender has been designated as high-risk by the department of corrections pursuant to section 5411b of this title;

(B) the offender has not complied with sex offender treatment;

(C) there is an outstanding warrant for the offender's arrest;

(D) the offender is subject to the registry for a conviction of a sex offense against a child under 13 years of age; or

(E) the offender's name has been electronically posted for an offense committed in another jurisdiction which required the person's address to be electronically posted in that jurisdiction;

~~(6)~~(7) the date and nature of the offender's conviction;

~~(7)~~(8) if the offender is under the supervision of the department of corrections, the name and telephone number of the local department of corrections office in charge of monitoring the sex offender;

~~(8)~~(9) whether the offender complied with treatment recommended by the department of corrections;

~~(9)~~(10) a statement that there is an outstanding warrant for the offender's arrest, if applicable; and

~~(10)~~(11) the reason for which the offender information is accessible under this section.

* * *

(d) ~~An offender's street address shall not be posted electronically.~~ The identity of a victim of an offense that requires registration shall not be released.

* * *

* * * Statutes of Limitations in Child Sex Abuse Cases * * *

Sec. 15. 13 V.S.A. § 4501 is amended to read:

§ 4501. LIMITATION OF PROSECUTIONS FOR CERTAIN FELONIES

(a) Prosecutions for aggravated sexual assault, aggravated sexual assault of a child, murder, arson causing death, and kidnapping may be commenced at any time after the commission of the offense.

(b) Prosecutions for manslaughter, sexual assault, lewd and lascivious conduct, sexual exploitation of children, grand larceny, robbery, burglary, embezzlement, forgery, bribery offenses, false claims, fraud under subsection 141(d) of Title 33, and felony tax offenses shall be commenced within six years after the commission of the offense, and not after.

(c) Prosecutions for sexual assault, lewd and lascivious conduct, sexual exploitation of a minor as defined in subsection 3258(b) of this title, and lewd or lascivious conduct with a child, alleged to have been committed against a child ~~16~~ under 18 years of age or under, shall be commenced within the earlier of the date the victim attains the age of 24 or ~~six~~ ten years from the date the offense is reported, and not after. For purposes of this subsection, an offense is reported when a report of the conduct constituting the offense is made to a law enforcement officer by the victim.

* * *

* * * Sentence Calculation * * *

Sec. 16. 13 V.S.A. § 7044 is amended to read:

§ 7044. SENTENCE CALCULATION; NOTICE TO DEFENDANT

(a) Within 30 days after sentencing in all cases where the court imposes a sentence which includes a period of incarceration to be served, the

commissioner of corrections shall provide to the court and the office of the defender general a calculation of the potential shortest and longest lengths of time the defendant may be incarcerated taking into account the provisions for reductions of term pursuant to 28 V.S.A. § 811 based on the sentence or sentences the defendant is serving, and the effect of any credit for time served as ordered by the court pursuant to 13 V.S.A. § 7031. The commissioner's calculation shall be a public record.

(b) In all cases where the court imposes a sentence which includes a period of incarceration to be served, the department of corrections shall provide the defendant with a copy and explanation of the sentence calculation made pursuant to subsection (a) of this section.

Sec. 17. STUDY; CALCULATION OF SENTENCES

(a) The chief justice of the Vermont supreme court or designee, the commissioner of the department of corrections or designee, the defender general or designee, and the executive director of the department of the state's attorneys and sheriffs or designee shall collaborate to examine sentence computation issues, including alternative methods to address computation that would:

(1) reduce calculation and computation errors; and

(2) provide clarity to the offender at the time of sentencing regarding the offender's earliest and latest possible release dates.

(b) The study group shall report its findings and a proposal for addressing the issues identified in subsection (a) of this section to the house committees on judiciary and on corrections and institutions and the senate committee on judiciary no later than December 15, 2009. The proposal shall include a plan for implementation and any statutory changes necessary to implement the plan.

* * * Miscellaneous Provisions * * *

Sec. 18. 20 V.S.A. § 2061 is amended to read:

§ 2061. FINGERPRINTING

* * *

(m) The Vermont crime information center may electronically transmit fingerprints and photographs of accused persons to the Federal Bureau of Investigation (FBI) at any time after arrest, summons, or citation ~~for the sole purpose of identifying an individual. However, the Vermont crime information center shall not forward fingerprints and photographs to the FBI for the purpose of inclusion in the National Crime Information Center Database until after arraignment~~. If the Vermont crime information center

forwards fingerprints and photographs to the FBI ~~after arraignment~~ and the defendant is acquitted, the Vermont crime information center shall request the FBI to destroy the fingerprints and photographs. If the Vermont crime information center forwards fingerprints and photographs to the FBI ~~after arraignment~~ and all charges against the defendant are dismissed, the Vermont crime information center shall request the FBI to destroy the fingerprints and photographs, unless the attorney for the state can show good cause why the fingerprints and photographs should not be destroyed.

* * *

Sec. 19. 28 V.S.A. § 204 is amended to read:

§ 204. –SUBMISSION OF WRITTEN REPORT; PROTECTION OF RECORDS

* * *

(d) Any presentence report, pre-parole report, or supervision history prepared by any employee of the department in the discharge of the employee's official duty, except as provided in subdivision 204a(b)(5) and section 205 of this title, is privileged and shall not be disclosed to anyone outside the department other than the judge or the parole board, except that the court or board may in its discretion permit the inspection of the report or parts thereof by the state's attorney, the defendant or inmate or his or her attorney, or other persons having a proper interest therein, whenever the best interest or welfare of the defendant or inmate makes that action desirable or helpful.

* * *

(f) Except as otherwise provided by law, reports and records subject to this section may be inspected, pursuant to a court order issued ex parte, by a state or federal prosecutor as part of a criminal investigation if the court finds that the records may be relevant to the investigation. The information in the files may be used for any lawful purpose but shall not otherwise be made public.

Sec. 20. 28 V.S.A. § 601 is amended to read:

§ 601. POWERS AND RESPONSIBILITIES OF THE SUPERVISING OFFICER OF EACH CORRECTIONAL FACILITY

The supervising officer of each facility shall be responsible for the efficient and humane maintenance and operation and for the security of the facility, subject to the supervisory authority conferred by law upon the commissioner. Each supervising officer is charged with the following powers and responsibilities:

* * *

(10) To establish and maintain, in accordance with such rules and regulations as are established by the commissioner, a central file at the facility containing an individual file for each inmate. Except as otherwise may be indicated by the rules and regulations of the department, the content of the file of an inmate shall be confidential and shall not be subject to public inspection except by court order for good cause shown and shall not be accessible to inmates at the facility. Except as otherwise provided by law, the contents of an inmate's file may be inspected, pursuant to a court order issued ex parte, by a state or federal prosecutor as part of a criminal investigation if the court finds that the records may be relevant to the investigation. The information in the files may be used for any lawful purpose but shall not otherwise be made public.

Sec. 21. 28 V.S.A. § 856 is added to read:

§ 856. SPECIAL MANAGEMENT MEALS

(a) When an inmate misuses bodily waste or fluids, food, or eating utensils, the supervising officer of the facility or his or her designee may order that the inmate be served special management meals in lieu of regular inmate meals pursuant to this section.

(b)(1) When it appears to the supervising officer that an inmate may be subject to an order to receive special management meals, the officer shall notify the inmate in writing of the reason for the determination and the facility's evidence for it.

(2)(A) Before being served special management meals, the inmate shall be provided an opportunity to meet with a member of the facility's staff not involved in the incident. The purpose of the meeting shall be to serve as an initial check against mistaken decisions and to determine whether there are reasonable grounds to believe that the inmate misused bodily waste or fluids, food, or eating utensils.

(B) At a meeting between an inmate and a staff member held pursuant to this subdivision (2), the inmate may identify any disagreement he or she has with the facility's version of the facts, identify witnesses who support his or her defense, identify any mitigating circumstances which should be considered, and offer any other arguments that may be appropriate. The inmate shall not have the right to cross-examine witnesses or to call witnesses to testify on his or her behalf.

(c) If the officer determines that there are reasonable grounds to believe that the inmate misused bodily waste or fluids, food, or eating utensils, the officer may order that the inmate be served special management meals in lieu of regular inmate meals for a maximum of seven consecutive days.

(d) When the supervising officer orders that an inmate be served special management meals, a hearing officer designated by the officer shall conduct a fact-finding hearing within 48 hours pursuant to the following procedure:

(1) Notice of the charge and of the hearing shall be given to the inmate.

(2) The inmate shall have an opportunity, subject to reasonable rules, to confront the person bringing the charge.

(3) The inmate shall have the right to be present and heard at the hearing subject to reasonable rules of conduct.

(4) The hearing officer shall summon to testify any available witness or other persons with relevant knowledge of the incident, subject to reasonable rules. The inmate charged may be permitted to question any person who testifies pursuant to this subdivision.

(5) If the inmate so requests, he or she may be assisted in the preparation and presentation of his or her case by an assigned employee of the facility if the supervising officer determines in his or her discretion that the requested employee is reasonably available.

(e) If the hearing officer determines that a preponderance of the evidence does not establish that the inmate misused bodily waste or fluids, food, or eating utensils, the supervising officer shall discontinue service of special management meals to the inmate.

(f) The service of special management meals shall not be construed as punishment and shall not be subject to the requirements of sections 851–853 of this title.

Sec. 22. Rule 804a of the Vermont Rules of Evidence is amended to read:

Rule 804a. HEARSAY EXCEPTION; PUTATIVE VICTIM AGE 12 OR UNDER; PERSON ~~IN NEED OF GUARDIANSHIP~~ WITH A MENTAL ILLNESS OR DEVELOPMENTAL DISABILITY

(a) Statements by a person who is a child 12 years of age or under or who is a person ~~in need of guardianship as defined in 14 V.S.A. § 3061~~ with a mental illness as defined in 18 V.S.A. § 7101(14) or developmental disability as defined in 18 V.S.A. § 8722(2) at the time the statements were made are not excluded by the hearsay rule if the court specifically finds at the time they are offered that:

(1) the statements are offered in a civil, criminal, or administrative proceeding in which the child or person ~~in need of guardianship~~ with a mental illness or developmental disability is a putative victim of sexual assault under 13 V.S.A. § 3252, aggravated sexual assault under 13 V.S.A. § 3253,

aggravated sexual assault of a child under 13 V.S.A. § 3253a, lewd or lascivious conduct under 13 V.S.A. § 2601, lewd or lascivious conduct with a child under 13 V.S.A. § 2602, incest under 13 V.S.A. § 205, abuse, neglect, or exploitation under 33 V.S.A. § 6913, sexual abuse of a vulnerable adult under 13 V.S.A. § 1379, or wrongful sexual activity and the statements concern the alleged crime or the wrongful sexual activity; or the statements are offered in a juvenile proceeding under chapter 52 of Title 33 involving a delinquent act alleged to have been committed against a child 13 years of age or under or a person ~~in need of guardianship~~ with a mental illness or developmental disability if the delinquent act would be an offense listed herein if committed by an adult and the statements concern the alleged delinquent act; or the child is the subject of a petition alleging that the child is in need of care or supervision under chapter 53 of Title 33, and the statement relates to the sexual abuse of the child;

(2) the statements were not taken in preparation for a legal proceeding and, if a criminal or delinquency proceeding has been initiated, the statements were made prior to the defendant's initial appearance before a judicial officer under Rule 5 of the Vermont Rules of Criminal Procedure;

(3) the child or person ~~in need of guardianship~~ with a mental illness or developmental disability is available to testify in court or under Rule 807; and

(4) the time, content, and circumstances of the statements provide substantial indicia of trustworthiness.

(b) Upon motion of either party in a criminal or delinquency proceeding, the court shall require the child or person ~~in need of guardianship~~ with a mental illness or developmental disability to testify for the state.

Sec. 23. REPORT

The department of public safety shall report to the senate and house committees on judiciary no later than December 15, 2009 regarding the management, staffing, funding, and operation of the sex offender registry. The report shall address actions taken by the department to communicate with other agencies and departments regarding information placed on the sex offender Internet registry and the department's readiness and plan for implementing Sec. 14 of this act in 2010.

Sec. 24. 24 V.S.A. § 363 is amended to read:

§ 363. DEPUTY STATE'S ATTORNEYS

A state's attorney may appoint as many deputy state's attorneys as necessary for the proper and efficient performance of his or her office, and with the approval of the governor, fix their pay not to exceed that of the state's

attorney making the appointment, and may remove them at pleasure. Deputy state's attorneys shall be compensated only for periods of actual performance of the duties of such office. Deputy state's attorneys shall be reimbursed for their necessary expenses incurred in connection with their official duties when approved by the state's attorneys and the commissioner of finance. Deputy state's attorneys shall exercise all the powers and duties of the state's attorneys except the power to designate someone to act in the event of their own disqualification. Deputy state's attorneys may not enter upon the duties of the office until they have taken the oath or affirmation of allegiance to the state and the oath of office required by the constitution, and until such oath together with their appointment is filed for record with the county clerk. If appointed and under oath, a deputy state's attorney may prosecute cases in another county if the state's attorney in the other county files the deputy's appointment in the other county clerk's office. In case of a vacancy in the office of state's attorney, the appointment of the deputy shall expire upon the appointment of a new state's attorney.

Sec. 25. JOINT COMMITTEE ON CORRECTIONS OVERSIGHT

(a) The joint committee on corrections oversight shall consider:

(1) how to employ strategies that facilitate community reintegration that do not unduly burden the services and budgets of communities with a large number of supervisees; and

(2) issues related to the operation of the sex offender Internet registry, including the accuracy of the information it contains.

(b) The committee shall include recommendations on the issues described in subsection (a) of this section in its annual report to the general assembly.

Sec. 26. 13 V.S.A. § 7041(g) is amended to read:

(g) Upon discharge of the respondent from probation for a violation of ~~section 2602 (lewd and lascivious conduct with a child), 3252(c), (d), or (e) (sexual assault of a child), or 3253(a)(8) (aggravated sexual assault involving a child under 13) of this title~~ any felony sex offense which requires registration pursuant to subchapter 3 of chapter 167 of this title, the court shall issue an order to expunge any record of the adjudication of guilt related to the deferred sentence. An entity subject to the expungement order shall be permitted to retain its own records and files related to the arrest, citation, investigation, and charge which led to the deferred sentence, and may share such records and files with other investigating agencies in accordance with state and federal law. Copies of the order shall be sent to each agency, department, or official named therein. The court, law enforcement officers, agencies, and departments shall

reply to any request for information that no record of conviction exists with respect to such person upon inquiry in the matter.

Sec. 27. AMENDMENT TO NO. 1 OF THE ACTS OF 2009

Subsection (g) of 13 V.S.A. § 7041 in Sec. 33b of No. 1 of the Acts of 2009 shall be stricken in its entirety and the following shall be inserted in lieu thereof:

(g) Upon discharge of the respondent from probation for a violation of any felony sex offense which requires registration pursuant to subchapter 3 of chapter 167 of this title, the court shall issue an order to expunge any record of the adjudication of guilt related to the deferred sentence. An entity subject to the expungement order shall be permitted to retain its own records and files related to the arrest, citation, investigation, and charge which led to the deferred sentence, and may share such records and files with other investigating agencies in accordance with state and federal law. Copies of the order shall be sent to each agency, department, or official named therein. The court, law enforcement officers, agencies, and departments shall reply to any request for information that no record of conviction exists with respect to such person upon inquiry in the matter.

Sec. 28. EFFECTIVE DATE

This act shall take effect on July 1, 2009, except as follows:

(1) Secs. 22 and 26 of this act shall take effect on July 2, 2009.

(2) Sec. 14 of this act shall take effect July 1, 2010, provided that Sec. 14 shall not take effect until the state auditor, in consultation with the department of public safety and the department of information and innovation technology, has provided a favorable performance audit regarding the Internet sex offender registry to the senate and house committees on judiciary, the house committee on corrections and institutions, and the joint committee on corrections oversight.

RICHARD W. SEARS, JR.
JOHN F. CAMPBELL
KEVIN J. MULLIN

Committee on the part of the Senate

WILLIAM J. LIPPERT
MARGARET FLORY
WILLEM JEWETT

Committee on the part of the House

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

Rules Suspended; Proposal of Amendment; Third Reading Ordered; Rules Suspended; Bill Passed in Concurrence with Proposal of Amendment

H. 12.

Pending entry on the Calendar for notice, on motion of Senator Shumlin, the rules were suspended and House bill entitled:

An act relating to education property tax rates.

Was taken up for immediate consideration.

Senator Cummings, for the Committee on Finance, to which the bill was referred, reported recommending that the Senate propose to the House that the bill be amended by striking out Sec. 2 in its entirety and inserting in lieu thereof four new sections to be numbered Secs. 2, 3, 4 and 5 to read as follows:

Sec. 2. FISCAL YEAR 2010 AND 2011 BASE EDUCATION PAYMENT AMOUNT

Notwithstanding subsection 4011(b) of Title 16 or any other provision of law, the base education payment for fiscal years 2010 and 2011 shall be $8,544.00.

Sec. 3. AMENDMENT

Each occurrence of the amount "$239,303,944" in Secs. B.513 and E.513(a) in H.441 of 2009 shall instead be "$240,803,944".

Sec. 4. REPEAL

Secs. E.109 and E.109.1 of H.441 of 2009 (per acre valuation and study) are repealed as of the date of passage of this act.

Sec. 5. APPLICATION AND EFFECTIVE DATE

Secs. 1 (tax rates) and 2 (base education payment) of this act shall supersede and take precedence over any provisions of H. 441 of 2009 as enacted, and this act shall take effect upon final enactment of, and delivery to the secretary of state of, a state budget act for fiscal year 2010.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the proposal of amendment was agreed to, on a roll call, Yeas 23, Nays 0.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Bartlett, Brock, Campbell, Carris, Cummings, Doyle, Flanagan, Giard, Hartwell, Illuzzi, Kitchel, Kittell, MacDonald, Mazza, McCormack, Miller, Nitka, Scott, Sears, Shumlin, Snelling, White.

Those Senators who voted in the negative were: None.

Those Senators absent and not voting were: Ayer, Choate, Lyons, Maynard, Mullin, Racine, Starr.

Thereupon, third reading of the bill was ordered.

Thereupon, on motion of Senator Shumlin, the rules were suspended and the bill was placed on all remaining stages of its passage in concurrence with proposal of amendment.

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

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

H. 145.

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

An act relating to composting.

Was taken up for immediate consideration.

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

In Sec. 3, 10 V.S.A. § 6605j, by striking out subdivision (a)(7) in its entirety and inserting in lieu thereof the following:

(7) Definitions of "small-scale composting facility," "medium-scale composting facility," and "de minimis composting exempt from regulation."

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

Joint Resolutions Adopted in Concurrence

J.R.H. 30.

Joint resolution originating in the House of the following title was read and adopted in concurrence and is as follows:

Joint resolution in support of the continued operation of the Shriners Hospital for Children in Springfield, Massachusetts.

Whereas, the Shriners Hospitals for Children consist of a network of 22 specialized medical centers that offer orthopedic pediatric care, including inpatient, outpatient, and surgical services, and physical therapy and prosthetics as a child grows, and

Whereas, since 1922, Shriners Hospitals have been providing these medical and rehabilitative services to children, from birth until age 18, who have congenital deformities, problems resulting from orthopedic injuries, and diseases of the musculoskeletal system, and

Whereas, these hospitals are intended for all children, regardless of their families' financial status and health insurance coverage, and

Whereas, the Shriners Hospital serving all New England is located in Springfield, Massachusetts and, in 2008, it treated 97 Vermont patients whose registered visits to the hospital totaled 298, and

Whereas, the Springfield Shriners Hospital's staff and consultants consist of board-certified pediatric orthopedic surgeons, a pediatric rheumatologist, plastic surgeons, more than 90 consulting physicians and surgeons, rehabilitation specialists, child life specialists, and certified orthotists and prosthetists, and

Whereas, financial support for Shriners Hospitals is derived from the Shriners' organization and public donations, and

Whereas, as a network, the 22 hospitals have been losing one million dollars a day since 2001, and their financial health is now so precarious that in late March, Ralph Semb, the chair of the Shriners Hospitals' board of directors, announced that unfortunately six of the hospitals may close or reduce their services, including the Springfield, Massachusetts facility, and

Whereas, the closure of the Springfield hospital would force the Vermont patients to travel to Philadelphia for equivalent medical assistance, and outpatient services would become impractical, and

Whereas, the board is scheduled to meet in July to determine if this drastic course of action must proceed forward, and

Whereas, a rally was recently held in Springfield to support the hospital, the closure of which would not only mean the loss of specialized pediatric health care and surgical services, but the elimination of several hundred jobs, and

Whereas, the continuation of the Springfield, Massachusetts Shriners Hospital is vitally important for Vermont's children with orthopedic-related medical requirements, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly expresses its strong support for the outstanding work of the Shriners Hospital in Springfield, Massachusetts and recognizes its important and continuing role as a health care provider for the citizens of Vermont, and be it further

Resolved: That the General Assembly urges the board of directors of the Shriners Hospitals to seek every possible alternative to the closure or significant reduction of medical and surgical services at its facility in Springfield, Massachusetts, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Shriners Hospital in Springfield, Massachusetts and to Ralph Semb, chair of the Shriners Hospitals' board of directors.

J.R.H. 31.

Joint resolution originating in the House of the following title was read and adopted in concurrence and is as follows:

Joint resolution supporting the effort of women ski jumpers for athletic equity at the 2010 Winter Olympics in British Columbia.

Whereas, ski jumping has a long and proud history in Vermont, the home of the recently reopened Harris Ski Jump in Brattleboro, and

Whereas, among the leading women ski jumpers in the United States is Tara Geraghty-Moats, a 15-year-old resident of West Fairlee, and

Whereas, despite the growing number of elite women ski jumpers, counted at 83 in 2006 and now believed to be higher, and the recent first women's ski jumping championship held in Liberec, Czech Republic, the International Olympic Committee is refusing to sanction women's ski jumping competition at the 2010 Winter Olympics in British Columbia, and

Whereas, ski jumping is one of the original eight Winter Olympic sports, but the International Olympic Committee has yet to apply gender equality to ski jumping, claiming there is an insufficient number of elite women ski jumpers, and

Whereas, the women ski jumpers have gained support from the sport's enthusiasts, including over 10,000 individuals who have signed an online petition, and perhaps most significantly from the International Ski Federation, which represents a major breakthrough, and

Whereas, in a bold move, a group of women ski jumpers has taken its cause to the Supreme Court of British Columbia, arguing that the Vancouver Olympic Committee, which outside the courtroom expressed sympathy for the women, will be in violation of the Canadian Charter of Rights and Freedoms if women's ski jumping is not a 2010 sanctioned sport in Whistler, and

Whereas, the women now await the court's decision, and

Whereas, as citizens of a state that has been home to women's ski jumping competition and home-grown ski jumpers, Vermonters can readily identify with the injustice that is being done by the denial of women ski jumpers' entry into the 2010 Winter Olympics, and

Whereas, the days of gender inequality in Olympic competition should have long passed, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly supports the effort of women ski jumpers for athletic equity at the 2010 Winter Olympics in British Columbia, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to Women's Ski Jumping U.S.A. in Park City, Utah, and to Tara Geraghty-Moats in West Fairlee.

Rules Suspended; Bills Messaged

On motion of Senator Shumlin, the rules were suspended, and the following bills were severally ordered messaged to the House forthwith:

H. 12, H. 145.

Rules Suspended; Bill Delivered

On motion of Senator Shumlin, the rules were suspended, and the following bill was ordered delivered to the Governor forthwith:

S. 125.

Recess

On motion of Senator Shumlin the Senate recessed until four o'clock and thirty minutes.

Called to Order

At five o'clock and six minutes the Senate was called to order by the President *pro tempore*.

Appointments Confirmed

Under suspension of the rules (and particularly, Senate Rule 93), as moved by Senator Mazza, the following Gubernatorial appointments were confirmed together as a group by the Senate, without reports given by the Committees to which they were referred and without debate:

Plausteiner, Susan D. of Brownsville – Member, Vermont Economic Development Authority – July 1, 2008, to June 20, 2014.

Schumacher, Rachel of North Bennington – Member, Vermont Economic Development Authority – July 1, 2008, to June 30, 2014.

Pelletier, Thomas of Montpelier – Member, Vermont Housing Finance Agency – May 1, 2008, to January 31, 2011.

Bourgeois, Steven J. of Swanton – Member, Vermont Economic Development Authority – July 1, 2008, to June 30, 2014.

Coates, David R. of Colchester – Member, Vermont Municipal Bond Bank – February 2, 2009, to January 31, 2011.

Welch, Michael A. of St. Johnsbury – Member, Vlauation Appeals Board – February 1, 2009, to January 31, 2012.

Alexander, Sonia D. of Wilmington – Member, Valuation Appeals Board – February 1, 2009, to January 31, 2012.

Boardman, Kathryn T. of Shelburne – Member, Vermont Municipal Bond Bank – February 2, 2009, to January 31, 2011.

Burke, John D. of Castleton – Member, Public Service Board – March 1, 2009, to February 28, 2015.

Linsley, Kenneth of Danville – Member, Vermont Educational and Health Buildings Financing Agency – February 24, 2009, to January 31, 2014.

Collins, Donald of Swanton – Member, State Board of Education – March 1, 2009, to February 28, 2015.

Young, Mark of Orwell – Member, University of Vermont and State Agricultural College Board of Trustees – March 1, 2009, to February 28, 2015.

Milne, Linda R. of Montpelier – Member, Vermont State Colleges Board of Trustees – March 2, 2009, to February 28, 2015.

Moore, Gary of Bradford – Member, Vermont State Colleges Board of Trustees – March 2, 2009, to February 28, 2015.

Fairbrother, Michelle of Rutland – Member, Vermont State Colleges Board of Trustees – March 2, 2009, to February 28, 2015.

Livingston, Judith of Manchester – Member, State Board of Education – March 1, 2009, to February 28, 2015.

Hall, John of West Danville – Member, State Board of Education – March 1, 2009, to February 28, 2015.

Bokan, Carol of Shelburne – Member, Community High School of Vermont Board – March 6, 2009, to February 29, 2012.

O'Brien, Benjamin R. of South Burlington – Member, Occupational Safety and Health Review Board – March 12, 2009, to February 28, 2015.

O'Brien, Benjamin R. of South Burlington – Member, Occupational Safety and Health Review Board – June 27, 2008, to February 28, 2009.

O'Brien, Stephanie of South Burlington – Member, Liquor Control Board – February 2, 2009, to January 31, 2015.

Marvin, David of Hyde Park – Member, Sustainable Jobs Fund Board of Directors – September 18, 2008, to August 31, 2009.

Shields, Bruce of Wolcott – Member, Sustainable Jobs Fund Board of Directors – November 27, 2008, to August 31, 2010.

Weaver, Thomas G. of Essex Junction – Member, Vermont Housing and Conservation Board – February 2, 2009, to January 31, 2012.

Goldstein, Joan of South Royalton – Member, Sustainable Jobs Fund Board of Directors – March 20, 2009, to August 31, 2013.

Crowley, Thomas M. of South Burlington – Member, State Police Advisory Commission – July 1, 2008, to June 30, 2012.

Sartorelli, Ugo of Barre – Member, State Police Advisory Commission – July 1, 2008, to June 30, 2012.

Melville, Alexander Sears of Woodstock – Member, State Board of Education – July 7, 2008, to June 30, 3010.

Sheahan, Nancy Goss of South Burlington – Member, State Police Advisory Commission – December 15, 2008, to February 28, 2010.

Larkin, Jeffrey of Duxbury – Member, Travel Information Council – March 12, 2009, to February 28, 2011.

LaBarge, John of South Hero – Member, Travel Information Council – March 12, 2009, to February 28, 2011.

Frisbie, Bartlett H. of Colchester – Member, Vermont Housing Finance Agency – April 22, 2009, to January 31, 2013.

Germain, Maurice of Colchester – Member, Transportation Board – April 9, 2009, to February 28, 2011.

Hutchins, Russ of St. Johnsbury – Member, Human Services Board – October 28, 2008, to February 28, 2009.

Hutchins, Russ of St. Johnsbury – Member, Human Services Board – March 5, 2009, to February 28, 2015.

Jenkins, David A. of Burlington – Member, Board of Medical Practice – January 1, 2009, to December 31, 2013.

Martin, Margaret F. of Middlebury – Member, Board of Medical Practice – January 1, 2009, to December 31, 2011.

Murray, John J., M.D. of Colchester – Member, Board of Medical Practice – January 1, 2009, to December 31, 2013.

Reich, Harvey S., M.D. of Mendon – Member, Board of Medical Practice – February 10, 2009, to December 31, 2013.

Rinaldi, Robert R., D.P.M. of Chelsea – Member, Board of Medical Practice – January 1, 2009, to December 31, 2013.

Ryan, Janice E. of South Burlington – Member, Board of Medical Practice – January 1, 2009, to December 31, 2013.

Sadkin, Toby, M.D. of St. Albans – Member, Board of Medical Practice – January 1, 2009, to December 31, 2013.

Stouch, William H., M.D. of Burlington – Member, Board of Medical Practice – January 1, 2009, to December 31, 2013.

Thomashow, Peter, M.D. of Strafford – Member, Board of Medical Practice – January 1, 2009, to December 31, 2013.

Young, Florence of Montpelier – Member, Board of Medical Practice – January 1, 2009, to December 31, 2013.

Clark, Sue Y. of Vergennes – Member, Children and Family Council for Prevention Programs – March 2, 2009, to February 29, 2012.

Coulman, Stephen P. of Waltham – Member, Children and Family Council for Prevention Programs – March 2, 2009, to February 29, 2012.

Grant, Crystal of Bristol – Member, Children and Family Council for Prevention Programs – March 2, 2009, to February 29, 2012.

Pinkham, Kreig of Northfield – Member, Children and Family Council for Prevention Programs – March 2, 2009, to February 29, 2012.

Poehlmann, Jennifer of Richmond – Member, Children and Family Council for Prevention Programs – March 2, 2009, to February 29, 2012.

Schatz, Kenneth of South Burlington – Member, Children and Family Council for Prevention Programs – March 2, 2009, to February 29, 2012.

Smith, Daniel P. of Burlington – Member, Children and Family Council for Prevention Programs – March 2, 2009, to February 29, 2012.

Dailey, William E. of South Burlington – Member, Public Oversight Commission – March 12, 2009, to February 29, 2012.

Gillies, Paul of Berlin – Member, Board of Health – March 5, 2009, to February 28, 2015.

Hill, H. Charles, II, D.D.S. of South Hero – Member, Board of Health – March 5, 2009, to February 28, 2015.

Molloy, Maureen K., M.D., J.D. of Shelburne – Member, Board of Health – March 5, 2009, to February 28, 2015.

Dier, Hilton, H., Jr. of Middlebury – Member, Human Services Board – March 24, 2009, to February 28, 2015.

Wasik, Mary Jean of Pittsford – Member, Human Services Board – March 5, 2009, to February 28, 2015.

Bressor, Julie P. of Montpelier – Member, Capitol Complex Commission – March 2, 2009, to February 28, 2012.

Hafner, Alice of Danville - Member, Parole Board - March 12, 2009, to February 29, 2012.

Billings, Jireh of Bridgewater – Member, Capitol Complex Commission – March 2, 2009, to February 28, 2012.

Lunderville, Neale F. of Burlington – Secretary, Agency of Administration – August 23, 2008, to February 28, 2009.

Lunderville, Neale F. of Burlington – Secretary, Agency of Administration – March 1, 2009, to February 28, 2011

Thabault, Paultette of South Burlington – Commissioner, Department of Banking, Insurance, Securities and Health Care Administration – March 1, 2009, to February 28, 2011

Hoyt, Christine A., Esq. of Tunbridge – Magistrate, Vermont Family Court – October 1, 2008, to September 30, 2014.

Harlow, Mary Gleason, Esq. of Clarendon – Magistrate, Vermont Family Court – October 1, 2008, to September 30, 2014.

Gartner, Shelley J., Esq. of Rutland – Magistrate, Vermont Family Court – October 1, 2008, to September 30, 2014.

Benning, Joseph C., Esq. of Lyndonville – Chair, Human Rights Commission – March 5, 2009, to February 28, 2014.

Valerio, Matthew F. of Proctor – Defender General – March 1, 2009, to February 28, 2013.

Herlihy, David of Waitsfield – Commissioner, Department of Human Resources – March 1, 2009, to February 28, 2011.

Murray, Thomas of Middlesex – Commissioner, Department of Information and Innovation – March 1, 2009, to February 28, 2011.

Reardon, James of Essex Junction – Commissioner, Department of Finance and Management – March 1, 2009, to February 28, 2011.

Allbee, Roger N. of Townshend – Secretary, Agency of Agriculture, Food and Markets – March 1, 2009, to February 28, 2011.

Dill, David of Lyndonville – Secretary, Agency of Transportation – March 1, 2009, to February 28, 2011.

Rutledge, Bonnie of Waterbury – Commissioner, Department of Motor Vehicles – March 1, 2009, to February 28, 2011.

Dale, Stephen R. of Montpelier – Commissioner, Department for Children and Families – March 1, 2009, to February 28, 2011.

Davis, Wendy, M.D. of Burlington – Commissioner, Department of Health – March 1, 2009, to February 28, 2011.

Davis, Wendy, M.D. of Burlington – Commissioner, Department of Health – August 18, 2008, to February 28, 2009.

Hartman, Michael A. of Montpelier – Commissioner, Department of Mental Health – March 1, 2009, to February 28, 2011.

Hofmann, Robert D. of Waterbury – Secretary, Agency of Human Services – November 23, 2008, to February 28, 2009.

Hofmann, Robert D. of Waterbury – Secretary, Agency of Human Services – March 1, 2009, to February 28, 2011.

Senecal, Joan K. of Montpelier – Commissioner, Department of Disabilities, Aging and Independent Living – March 1, 2009, to February 28, 2011.

Myers, Gerald D. of Winooski – Commissioner, Department of Buildings – March 1, 2009, to February 28, 2011.

Pallito, Andrew A. of Jericho – Commissioner, Department of Corrections – December 31, 2008, to February 28, 2009.

Pallito, Andrew A. of Jericho – Commissioner, Department of Corrections – March 1, 2009, to February 28, 2011..

Senate Resolution Adopted

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

By Senators Campbell, Ashe, Ayer, Bartlett, Brock, Carris, Choate, Cummings, Doyle, Flanagan, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Maynard, Mazza, McCormack, Miller, Mullin, Nitka, Racine, Scott, Sears, Shumlin, Snelling, Starr and White,

S.R. 15. Senate resolution relating to support of the continued operation of the Shriners Hospital for Children in Springfield, Massachusetts.

Whereas, the Shriners Hospitals for Children consist of a network of 22 specialized medical centers that offer orthopedic pediatric care, including inpatient, outpatient and surgical services, and physical therapy and prosthetics as a child grows, and

Whereas, since 1922, Shriners Hospitals have been providing these medical and rehabilitative services to children, from birth until age 18, who have congenital deformities, problems resulting from orthopedic injuries, and diseases of the musculoskeletal system, and

Whereas, these hospitals are intended for all children, regardless of their families' financial status and health insurance coverage, and

Whereas, the Shriners Hospital serving all New England is located in Springfield, Massachusetts, and, in 2008, it treated 97 Vermont patients whose registered visits to the hospital totaled 298, and

Whereas, the Springfield Shriners Hospital's staff and consultants consist of board-certified pediatric orthopedic surgeons, a pediatric rheumatologist, plastic surgeons, more than 90 consulting physicians and surgeons,

rehabilitation specialists, child life specialists, and certified orthotists and prosthetists, and

Whereas, financial support for Shriners Hospitals is derived from the Shriners' organization and public donations, and

Whereas, as a network, the 22 hospitals have been losing one million dollars a day since 2001, and their financial health is now so precarious that in late March, Ralph Semb, the chair of the Shriners Hospitals' board of directors, announced that unfortunately six of the hospitals may close or reduce their services, including the Springfield, Massachusetts, facility, and

Whereas, the closure of the Springfield hospital would force the Vermont patients to travel to Philadelphia for equivalent medical assistance, and outpatient services would become impractical, and

Whereas, the board is scheduled to meet in July to determine if this drastic course of action must proceed forward, and

Whereas, a rally was recently held in Springfield to support the hospital, the closure of which would not only mean the loss of specialized pediatric health care and surgical services, but the elimination of several hundred jobs, and

Whereas, the continuation of the Springfield, Massachusetts, Shriners Hospital is vitally important for Vermont's children with orthopedic-related medical requirements, *now therefore be it*

***Resolved by the Senate*:**

That the Senate of the State of Vermont expresses its strong support for the outstanding work of the Shriners Hospital in Springfield, Massachusetts, and recognizes its important and continuing role as a health care provider for the citizens of Vermont, *and be it further*

***Resolved*:** That the Senate of the State of Vermont urges the board of directors of the Shriners Hospitals to seek every possible alternative to the closure or significant reduction of medical and surgical services at its facility in Springfield, Massachusetts, and be it further

***Resolved*:** That the Secretary of the Senate be directed to send a copy of this resolution to the Shriners Hospital in Springfield, Massachusetts, and to Ralph Semb, chair of the Shriners Hospitals' board of directors.

Appointment of Senate Members to the Legislative Advisory Committee on the State House

Pursuant to the provisions of 2 V.S.A. §651, the President, on behalf of the Committee on Committees, announced the appointment of the following

Senators to serve on the Legislative Advisory Committee on the State House for terms of two years:

Senator Cummings
Senator Scott
Senator Mazza

Appointment of Senate Members to Legislative Information Technology Committee

Pursuant to the provisions of 2 V.S.A. §751, the President, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Legislative Oversight Committee on Information Technology for the current biennium:

Senator Choate
Senator Kittell
Senator Carris
Senator Brock

Appointment of Senate Member to Public Transit Advisory Council

Pursuant to the provisions of 24 V.S.A. §5084, the President, on behalf of the Committee on Committees, announced the appointment of the following Senator to serve on the Public Transit Advisory Council during this biennium:

Senator McCormack

Appointment of Senate Members to the Transportation Enhancement Grant Committee

Pursuant to the provisions of Sec. 41v of No. 18 of Acts of 1999, the President, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Transportation Enhancement Grant Committee during this biennium:

Senator Mazza
Senator Scott

Appointment of Senate Members to the Joint Energy Committee

Pursuant to the provisions of 2 V.S.A. §601, the President *pro tempore*, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Joint Energy Committee for terms of two years ending on February 1, 2009:

Senator Ayer
Senator Illuzzi
Senator MacDonald
Senator Lyons

Change in Appointment of Senate Members to the Mental Health Oversight Committee

Pursuant to the provisions of Sec. 141c of No. 122 of the Acts of 2004, the President, on behalf of the Committee on Committees, announced a change in the appointment of the Senators to serve on the Mental Health Oversight Committee. The following Senators shall serve on the committee for terms of two years:

Senator Choate
Senator Racine
Senator Ayer
Senator Mullin

Vermont Child Poverty Council

Pursuant to the provisions No. 68 §1(b) of the Acts of 2007, the President, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Vermont Child Poverty Council during this biennium:

Senator Racine, *ex officio*
Senator Giard
Senator Kitchel

Appointment of Senate Member to the Vermont Tobacco Evaluation and Review Board

Pursuant to the provisions of 18 V.S.A. §9505, the President, on behalf of the Committee on Committees, announced the appointment of the following Senator to serve on the Vermont Tobacco Evaluation and Review Board for a term of two years:

Senator Choate

Appointment of Senate Member to Vermont State Infrastructure Bank Board

Pursuant to the provisions of 10 V.S.A. §280e(b)(2), the President, on behalf of the Committee on Committees, announced the appointment of the following Senator to serve on the Vermont State Infrastructure Bank Board for a term of two years:

Senator Cummings

Appointment of Senate Member to Governor's Children and Youth Cabinet

Pursuant to the provisions of Executive Order No. 03-41, issued on February 5, 2002, the President, on behalf of the Committee on Committees, announced the appointment of the following Senator to serve on the Governor's Children and Youth Cabinet during this biennium:

Senator Racine

Appointment of Senate Members to Commission on Higher Education Funding

Pursuant to the provisions of 16 V.S.A. §2886(a)(8), the President, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Commission on Higher Education Funding for terms of two years:

Senator Miller
Senator McCormack

Appointment of Senate Member to Advisory Council on Special Education

Pursuant to the provisions of 16 V.S.A. §2945, the President, on behalf of the Committee on Committees, announced the appointment of the following Senator to serve on the Advisory Council on Special Education for a term of three years:

Senator Giard

Appointment of Senate Member to Vermont Interactive Television Coordinating Council

Pursuant to the provisions of Executive Order #10-94, issued under date of October 14, 1994, the President, on behalf of the Committee on Committees, announced the appointment of the following Senator to serve on the Vermont Interactive Television Coordinating Council during this biennium:

Senator Mazza

Appointment of Senate Members to Legislative Committee on Judicial Rules

Pursuant to the provisions of 12 V.S.A. §3, the President, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Legislative Committee on Judicial Rules for terms of two (2) years ending February 1, 2011:

Senator Sears, *ex officio*
Senator Campbell
Senator Illuzzi
Senator Carris

Appointment of Senate Member to Vermont Council on Domestic Violence

Pursuant to the provisions of Executive Order No. 15-8, issued on June 29, 2006, the President, on behalf of the Committee on Committees, announced the appointment of the following Senator to serve on the Council on Domestic Violence during this biennium:

Senator Ayer

Appointment of Senate Member to Governor's Snowmobile Council

Pursuant to the provisions of 23 V.S.A. §3216, the President, on behalf of the Committee on Committees, announced the appointment of the following Senator to serve on the Governor's Snowmobile Council for a term of two years:

Senator Starr

Appointment of Senate Members to Committee on Lake Champlain's Future

Pursuant to the provisions of 10 V.S.A. §1960, the President, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Committee on Lake Champlain's Future for the current biennium:

Senator Ayer
Senator Lyons

Appointment of Senate Member to the Vermont Veterans' Memorial Cemetery Advisory Board

Pursuant to the provisions of 20 V.S.A. §1581(a)(2), the President, on behalf of the Committee on Committees, announced the appointment of the following Senator to serve on the Vermont Veterans' Memorial Cemetery Advisory Board for a term of two (2) years:

Senator MacDonald

Appointment of Senate Member to Commission on Alzheimer's Disease and Related Disorders

Pursuant to the provisions of 3 V.S.A. §3085b, the President, on behalf of the Committee on Committees, announced the appointment of the following

Senator to serve on the Commission on Alzheimer's Disease and Related Disorders for the current biennium:

Senator Brock

Appointment of Senate Member to Lake Champlain Quadricentennial Commission

Pursuant to the provisions of Executive Order No. 22-5, issued on October 16, 2003, the President, on behalf of the Committee on Committees, announced the appointment of the following Senator to serve on the Lake Champlain Quadricentennial Commission during this biennium:

Senator Lyons

Appointment of Senate Member to Vermont Milk Commission

Pursuant to the provisions of 6 V.S.A. §2922(5), the President, on behalf of the Committee on Committees, announced the appointment of the following Senator to serve on the Vermont Milk Commission for the current biennium:

Senator Starr

Recess

On motion of Senator Mazza the Senate recessed until the fall of the gavel.

Called to Order

At five o'clock and thirty-three minutes the Senate was called to order by the President *pro tempore*.

Recess

On motion of Senator Mazza the Senate recessed until six o'clock and thirty minutes.

Called to Order

At seven o'clock and twenty-five minutes the Senate was called to order by the President.

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

H. 313.

Pending entry on the Calendar for notice, on motion of Senator Shumlin, the rules were suspended and the report of the Committee of Conference on House bill entitled:

An act relating to near-term and long-term economic development.

Was taken up for immediate consideration.

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

To the Senate and House of Representatives:

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

H. 313. An act relating to near-term and long-term economic development.

Respectfully reports that it has met and considered the same and recommends that the Senate recede from its proposals of amendment and that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The general assembly finds that:

(1) Vermont has lost nearly 15,000 jobs since the cyclical peak in November of 2007, reaching an unemployment rate of 7.2 percent as of April 2009. Broader measures of underemployment, which include workers forced from full time to part time work and marginally attached workers, now exceed nine percent in Vermont. Revised macro-economic projections anticipate that the Vermont rate of unemployment will reach nine percent for the first time in more than 30 years.

(2) Initial claims for unemployment insurance have continued to rise, spiking in Vermont in recent months at record levels, with the weekly average of claims in January of 2009 reaching approximately 1,550.

(3) At the national level, the unemployment rate has reached 8.5 percent and consumer spending, which accounts for more than two-thirds of all economic activity, has experienced its steepest reversal since the Great Depression, with inflation-adjusted spending dropping by more than 10 percent in four of the last five months. Consumption taxes in Vermont are expected to recede accordingly, with sales and use revenues expected to be down five percent in fiscal year 2009 and meals and rooms receipts down three percent, with further declines expected in fiscal year 2010, which would comprise the first ever consecutive annual declines for these important revenue sources.

(4) Residential construction in Vermont has come to a virtual halt in Vermont, declining by nearly 70 percent. With weakness in Vermont second home markets mounting in the face of regional job losses, housing price declines are likely in the next four-to-seven quarters, with very low property price appreciation for an extended period of at least four-to-five years. This stagnation in property prices will ultimately have a significant impact on grand list growth and the tax base for the largest component of the education fund.

(5) Federal tax changes resulting from the American Recovery and Reinvestment Act of 2009 (ARRA), Pub.L. No. 111-5, while stimulating to the national economy, will result in reduced state tax revenues in approximately $9.1 million in fiscal year 2010.

(6) Despite the many difficulties in the national and Vermont economies at this time, there are several factors leaning against the prevailing winds that offer hope for an emergent recovery. For one, United States and global fiscal and monetary policies are as stimulative as they have ever been, with even additional capacity and willingness if further measures are required to right the economy.

(7) For the first time in 55 years, the Consumer Price Index is expected to post an annual decline in 2009, while inflation and related energy prices have been subdued, lowering consumer gas and heating bills, providing additional disposable income.

(8) Business inventories have been dramatically reduced, setting the stage for rapid gains in output and hiring, once demand resumes.

(9) With the passage of ARRA, Vermont is positioned to receive nearly one billion dollars in resources, which will be allocated to state and local government, to Vermont businesses, and to individuals. In addition, federal tax cuts will result in approximately $500 million in savings to Vermont businesses and individuals.

(10) Although state government is limited in its ability in the near-term to initiate new programs and expenditures due to revenue constraints, it can provide targeted support to programs best suited to capitalize on state and federal funding to leverage growth. The state can also improve existing programs, permitting processes, funding mechanisms, and other areas that affect economic development, in order to provide a more efficient and effective role for government to aid Vermont's businesses and individuals and lead the state in its economic recovery.

(11) In the long-term, once the current economic crisis inevitably subsides, Vermont will be prepared to move forward with a focused economic development strategy based on four principal, interrelated goals generated by the commission on the future of economic development:

(A) Vermont's businesses, educators, nongovernmental organizations, and government form a collaborative partnership that results in a highly skilled multigenerational workforce to support and enhance business vitality and individual prosperity.

(B) Vermont invests in its digital, physical, and human infrastructure as the foundation for all economic development.

(C) Vermont state government takes advantage of its small scale to create nimble, efficient, and effective policies and regulations that support business growth and the economic prosperity of all Vermonters.

(D) Vermont leverages its brand and scale to encourage a diverse economy that reflects and capitalizes on our rural character, entrepreneurial people, and reputation for environmental quality.

(12) The four principal goals emerged from two and one-half years of the commission's study of Vermont's economy and the public policies that advance and impede economic development. The goals are interdependent and interconnected, and they must all be addressed if Vermont is to reach its economic development promise.

(13) The implementation of the goals is the joint task of the legislature, the administration, our local, regional, and state agencies, our nongovernmental organizations, and our citizens. State economists have concluded that the goals cannot be adequately evaluated with a small set of simplistic benchmarks, but rather, must be evaluated through a wide range of indicators using statistical benchmarks accompanied by a narrative that is a contextual interpretation of the data by professionals. Ultimately, consistent monitoring of credible benchmarks will provide information on both the efficacy and cost-effectiveness of our public policies and strategies so that necessary adjustments can be made to continually improve Vermont's economic prosperity.

(14) Despite its small scale and accessible government, Vermont lacks a shared statewide vision of its economic future. Economic vitality in Vermont is hampered by the lack of coordination among and between state agencies, between regional economic development corporations and regional planning commissions, and between these regional entities and state agencies. As a result of these disconnects, Vermont lacks a single, holistic, integrated state plan for economic development. Additionally, coordinated regional input is imperative for an effective, nimble, and integrated statewide economic development plan. Strong regional development organizations and regional planning commissions are critical partners and resources. Our citizens and business and civic leaders consistently recognize Vermont's small scale and easy access to our government as a potential strength, but observe that we have often failed to take advantage of the opportunities that our smallness offers us.

(15) Vermonters are struggling to secure basic needs such as health care, child care, affordable housing, and quality education. These basic needs are prerequisites to, rather than the product of, economic development. Employers

recognize that the health and well-being of our workforce are critical to business success. Worker recruitment, retention, and productivity depend on worker quality of life as measured by wages, health care, child care, housing, connected communities, and a healthy environment.

(16) In addition to providing for these basic needs, an essential role of government is investing in our digital, physical, and human infrastructure as the foundation for all successful economic development. Funding, building, and maintaining our state's infrastructure is one of the highest priorities for the investment of state resources.

(17) The lack of adequate and reliable broadband and cellular infrastructure and access across the state not only impedes the growth of existing and new business in Vermont, but may induce existing businesses to relocate to other states that have better access to broadband and cellular service. Digital infrastructure benefits include government cost savings, increased productivity, and improved quality of life for Vermonters.

(18) The availability of mobile telecommunications and broadband services is essential for promoting the economic development of the state, the education of its young people and life-long learning, the delivery of cost-effective health care, the public safety, and the ability of citizens to participate fully in society and civic life.

(19) The Vermont telecommunications authority has made significant progress toward, and should continue going forward as the primary vehicle for, achieving the goal of realizing universal availability of adequate mobile telecommunications and broadband services, with a focus on unserved and underserved areas in the state.

(20) Vermonters' ingenuity, work ethic, and entrepreneurship have long been viewed as competitive assets. Our rapidly evolving economy requires a collaborative partnership of business people, educators, representatives from nongovernmental organizations, and government leaders to provide a skilled workforce to traditional and emerging Vermont businesses, and to enhance career opportunities to all Vermonters.

(21) The strength of our state economy is dependent upon a diversity of business sectors. Despite difficult economic conditions, the state should exercise leadership and creativity in continuing its support of traditional economic drivers such as tourism, agriculture, forestry, construction, and manufacturing, among others.

(22) Tourism has a stabilizing effect on Vermont's economy by insulating the state's residents from the inevitable ups and downs of national and global business cycles, while providing individuals and their families with a diverse

set of earning possibilities and challenging occupations that fit into their lifestyle and family situation. Vermont should continue to support this critical component of its economy.

(23) State government should lead by example in supporting local- and state-based economic strategies that are not protectionist, but rather, build on the proud Vermont tradition of self-reliance. Initiatives such as Local First, the department of agriculture, food and markets' Buy Local program, and state and local government procurement policies for food, goods, and services that give priority to Vermont businesses when possible, each enhance the Vermont economy through the demonstrated multiplier effects of buying local.

(24) Vermont is home to a vibrant manufacturing sector, which consists of many businesses producing specialized and innovative products. Nationwide, manufacturing accounts for the majority of product and service innovation, and businesses whose competitive advantage flows from innovative and unique products and services, rather than low-cost or high volume, enjoy significantly increased profitability and generate more job opportunities and tax revenue. State government's role should be to support this dynamic manufacturing base, and to provide the necessary training, education, and resources to cultivate a culture of innovation.

(25) In addition to traditional economic drivers, there are new, unique, and innovative Vermont businesses that are successfully competing in the global marketplace that need to be nurtured. There is broad consensus that Vermont can further leverage its brand, including its green reputation, into economic gain. Our entrepreneurial people, healthy environment, and connected communities – our quality of life – are genuine economic assets.

(26) Vermont's reputation for environmental stewardship can be turned to our advantage. Vermont businesses, government, and environmental organizations must be partners and leaders in supporting and creating a green economic sector and the use of green business practices throughout our diverse economy.

(27) Microenterprise also plays an important role in our state's economy and within the working lives of low to moderate income families. Microenterprises develop new industries, increase community assets, are important providers of goods and services in local communities, find unique solutions to local problems, and keep profits circulating locally. Microenterprise provides economic opportunity for low income households and is a proven wealth creation strategy for struggling communities.

(28) Microenterprises often require access to training, services, financing, and support that are different from what small businesses require in order to grow and prosper. Microenterprise financing options and business training and

technical assistance are equally important and work together to support microenterprise development.

(29) The legislature, administration, and myriad economic and community partners must now work together with unerring discipline to focus policies, regulations, programs, and incentives on the critical interconnection between Vermont's assets, our collective values, our capabilities, and the opportunities which will increase state revenues and the prosperity of all Vermonters.

Sec. 2. PURPOSE; POLICY STATEMENTS FOR FEDERAL STIMULUS COLLABORATION AND FUTURE UTILIZATION OF ECONOMIC DEVELOPMENT RESOURCES

(a) The purpose of this act is to promote the economic development of the state and the prosperity of its businesses and citizens. In the near-term, this act is intended to address the immediate economic crisis facing Vermont. The purposes of this act include the following:

(1) To preserve and create jobs and promote economic recovery.

(2) To assist those most impacted by the recession.

(3) To provide opportunities for investments needed to increase economic efficiency, entrepreneurship, and business growth in traditional and emerging sectors.

(4) To provide oversight and guidance for the expenditure of ARRA funds to ensure that the benefits of the federal stimulus extend to the broadest geographic and demographic range of Vermont businesses and individuals.

(b) The American Reinvestment and Recovery Act of 2009 ("ARRA") provides economic development resources that are available to the state, its subdivisions, and the private sector. In order to realize the full potential of these funds, and in order to most effectively increase the opportunities for Vermonters to benefit from the ARRA, the director of Vermont's office of economic stimulus and recovery ("VOESR") shall, to the extent possible: coordinate efforts to obtain funds under the ARRA; oversee the use of those funds received by or through the state; and collect information on the use of funds awarded to Vermont recipients.

(c) State agencies that are recipients of ARRA formula fund allocations and applicants for ARRA competitive grants shall collaborate to the extent possible to present unified proposals for funding. The VOESR shall provide support to applicants and recipients of ARRA funds to develop unified proposals, and priority shall be given to those programs that achieve multiple economic development goals simultaneously and demonstrate broad geographic benefits. Where applicable, potential beneficiaries shall use best efforts to structure

programs so as to maximize eligibility for ARRA funds, and the VOESR shall give priority to those programs that are structured to maximize ARRA eligibility.

(d) The ARRA offers competitive grants to stimulate economic development in the areas of agriculture and rural development, broadband and telecommunications, energy efficiency and renewable energy, employment and training, educational technical assistance, redevelopment of abandoned and foreclosed homes, homelessness prevention and housing, and energy-saving and green retrofit investments in elderly, low income, and disability housing. In order to help Vermonters secure competitive grant funding, the VOESR, in coordination with the appropriate agencies of the state, shall be responsible for identifying competitive grant programs relating to the department's or agency's jurisdiction. Each agency shall provide technical and logistical information and support to the VOESR as necessary, and shall connect grant applicants with grant-writing and additional resources and services available from both the VOESR and related public and private resources as appropriate.

(e) In the long term, this act seeks to build a foundation for economic development through targeted investments, modifications, and improved efficiencies in economic development initiatives, environmental and energy permitting, and other state investment and regulatory programs that will provide long-term economic benefits. It is the intent of the general assembly to ultimately channel these economic development efforts through the principal goals and benchmarks identified by the commission on the future of economic development, using both new and existing resources from the state and federal levels to increase prosperity for all Vermonters.

Sec. 3. ARRA FUNDS; ECONOMIC SECURITY FOR WOMEN

(a) While all Vermonters are suffering from the current economic downturn, research indicates that women and female-headed households are likely to bear a disproportionate share of the hardship. As a result of longstanding discrimination and economic disadvantage, they often have fewer personal assets to sustain them through periods of unemployment, and they tend to feel cutbacks in traditional, public safety-net programs more acutely than men do, particularly in times of economic crisis. The general assembly, therefore, encourages that the recession's disparate impact on women and children be taken into consideration in the awarding of federal funds under the ARRA to the extent allowable by law.

(b) The VOESR shall report the number of jobs created and retained by industry as required by federal law for the purpose of determining the number of jobs that are likely to benefit women.

* * * Commission on the Future of Economic Development * * *

Sec. 4. 10 V.S.A. chapter 1 is amended to read:

CHAPTER 1. ~~VERMONT DEVELOPMENT BOARD~~ THE FUTURE OF ECONOMIC DEVELOPMENT

* * *

§ 3. ECONOMIC DEVELOPMENT; LONG-TERM GOALS; REVIEW AND ASSESSMENT

(a) For purposes of the Vermont Statutes Annotated and state economic development programs and assistance, "economic development" means the process of generating economic wealth and vitality, security, and opportunity for all Vermonters.

(b) There are established the following four principal, interrelated goals for future economic development in Vermont:

(1) Vermont's businesses, educators, nongovernmental organizations, and government form a collaborative partnership that results in a highly skilled multigenerational workforce to support and enhance business vitality and individual prosperity.

(2) Vermont invests in its digital, physical, and human infrastructure as the foundation for all economic development.

(3) Vermont state government takes advantage of its small scale to create nimble, efficient, and effective policies and regulations that support business growth and the economic prosperity of all Vermonters.

(4) Vermont leverages its brand and scale to encourage a diverse economy that reflects and capitalizes on our rural character, entrepreneurial people, and reputation for environmental quality.

(c) The four principal goals shall be used to guide the design and implementation of each economic development program, policy, or initiative that is sponsored or financially supported by the state, its subdivisions, agencies, authorities, or private partners.

(d)(1) The commission on the future of economic development, or a working group thereof designated by the general assembly, shall work with the state economists and the joint fiscal office to adopt benchmarks for the four principal goals.

(2) The commission or workgroup thereof shall on or before January 15, 2010 report to the house committee on commerce and economic development, the senate committee on finance, and the senate committee on economic

development, housing and general affairs concerning its review of the goals, benchmarks, and agency progress pursuant to this subsection.

(3) On or before January 15, 2010, the commission shall recommend to the senate committee on economic development, housing and general affairs, the senate committee on finance, the house committee on commerce and economic development, the house committee on ways and means, and the governor on whether it would promote the best interests of Vermont for the commission to continue its review of the goals and benchmarks, or if a successor to that responsibility should be designated. Notwithstanding any recommendation, the commission shall continue to perform the review unless and until a successor is designated by legislation approved by the legislature and the governor.

Sec. 5. Commission on the Future of Economic Development WORKGROUP

(a) Pursuant to 10 V.S.A. § 3(d), for FY 2010, the chair of CFED shall convene and chair a workgroup composed of the current CFED chair, the commissioner of economic development, the current legislative members, and such other current members of CFED that the chair shall appoint at his or her discretion.

(b) The workgroup shall receive reasonable administrative, fiscal, and legal support from the joint fiscal office and the legislative council.

(c) Legislative members of the committee shall be entitled to per diem compensation and reimbursement of necessary expenses as provided in 2 V.S.A. § 406; other members shall be entitled to per diem compensation and reimbursement of necessary expenses as provided in 32 V.S.A. § 1010.

(d) The FY 2010 workgroup shall:

(1) Collaborate with the state economists to finalize the statistical benchmarking system proposed in FY 2009.

(2) Establish baseline values for each benchmark and subsequently perform an economic development analysis against the baseline values at a suitable interval.

(3) Determine the best model for an entity responsible for developing and overseeing economic planning in Vermont. The entity's responsibilities would include: establishing a statewide, comprehensive economic development plan; making policy recommendations to the general assembly and governor; analyzing existing programs and policies in terms of the benchmarks and the four principal goals established by CFED; amending and updating the plan, benchmarks, and goals as necessary; and reporting annually

to the general assembly and governor on the status of economic development in Vermont.

(4) Study models of economic development used in other states, such as the private-public-nonprofit coordinating board used in Arizona (Arizona Economic Resource Organization) and the North Carolina economic development board.

(5) Propose ways of improving the value and usefulness of the unified economic development budget required under 10 V.S.A. § 2.

(e) The workgroup shall report its findings and recommendations to the senate committee on economic development, housing and general affairs, the house committee on commerce and economic development, and the governor not later than January 15, 2010.

(f) This shall supersede any conflicting provision adopted by act of the general assembly in the 2009 legislative session.

* * * Workforce Development * * *

Sec. 6. FINDINGS AND ARRA WORKFORCE DEVELOPMENT PRIORITIES

(a) The general assembly recognizes numerous hurdles that inhibit workforce opportunities for working families in need of adequate child care, for low income persons, for the disabled, and for the elderly. The department of labor, and other agencies where applicable, shall use ARRA funds allocated to workforce development, including funds for child care services, to expand employment opportunities to the unemployed, to dislocated workers, to working families, and to low income, disabled, and elderly Vermonters.

(b) The general assembly recognizes the opportunities available to the next generation of Vermonters to secure well-paying and secure jobs in emerging sectors such as energy efficiency and health care, including health care information technology. The department of education, the department of labor, and other agencies where applicable, shall use ARRA funds allocated to education and workforce development to promote education and job opportunities in these emerging sectors.

(c) Current economic conditions may present an opportunity for unemployed or dislocated workers to innovate and develop new businesses or products. Where appropriate, the departments of labor and of education should use ARRA funds for training and education to aid unemployed or dislocated workers in pursuing product innovations and new business pursuits.

(d) Prior to expending ARRA funds for workforce development or for expenditures that will require additional workforce capacity, the government authority seeking funding shall collaborate with the department of labor to determine that the workforce capacity currently exists, or alternatively, how much capacity will be necessary to implement a program or project. To the extent allowable under the ARRA, the relevant agency shall prioritize expenditures first for training that is necessary to maintain current employment, second for hiring or training unemployed and dislocated workers, and third for promoting new hiring. Priority for workforce training funds shall be given to programs or training that will result in increased worker remuneration or job promotion to the extent allowable.

(e) When pursuing competitive grant funds for workforce development under Title VIII of the ARRA, the VOESR shall coordinate with appropriate government agencies, nonprofit organizations, private businesses, and individuals to secure the maximum amount of resources available to promote workforce development and opportunity for Vermonters.

Sec. 7. Sec. 7(a)(3) of No. 46 of the Acts of 2007 (career and alternative workforce education) is amended to read:

(3) Career And Alternative Workforce Education. The amount of $900,000 is appropriated to the department of labor. Of this appropriation, $450,000 is from the fiscal year 2007 monies transferred to the next generation initiative fund, and $450,000 is from the fiscal year 2008 monies transferred to the next generation initiative fund. This appropriation shall be to support out-of-school youth, youth at risk, and youth at risk of remaining unemployed with outcomes that lead to employment or continued education ~~as follows:~~

~~(A) Forty-five percent (45%).~~ At least 25 percent of this appropriation shall be for grants to regional technical centers, comprehensive high schools, and other programs for career exploration programs for students entering grades 7 through 12~~.~~, and at least 25 percent

~~(B) Fifty-five percent (55%)~~ shall be for grants to regional technical centers, comprehensive high schools, the community high school of Vermont, and non-profit organizations, designated by the workforce development council, for alternative and intensive vocational/academic programs for secondary students in order to earn necessary credits toward graduation.

Sec. 8. Sec. 6 of No. 46 of the Acts of 2007 is amended to read:

Sec. 6. WORKFORCE DEVELOPMENT LEADER~~; LEADERSHIP COMMITTEE; CREATED~~

(a) The commissioner of labor shall be the leader of workforce development strategy and accountability. The commissioner of labor shall

consult with ~~and chair a subcommittee of the workforce development council consisting of the secretary of human services, the commissioner of economic development, the commissioner of education, four business members appointed by the governor, and a higher education member appointed by the governor. Membership on the subcommittee shall be coincident with the members' terms on the workforce development council~~ the workforce development council executive committee in developing the strategy, goals, and accountability measures. The workforce development council shall provide administrative support. The ~~subcommittee~~ executive committee shall assist the leader. The duties of the leader include all the following:

(1) developing a limited number of overarching goals and challenging measurable criteria for the workforce development system that supports the creation of good jobs to build and retain a strong, appropriate, and sustainable economic environment in Vermont;

(2) reviewing reports submitted by each entity that receives funding from the Next Generation fund. The reports shall be submitted on a schedule determined by the executive committee and shall include all the following information:

(A) a description of the mission and programs relating to preparing individuals for employment and meeting the needs of employers for skilled workers;

(B) the measurable accomplishments that have contributed to achieving the overarching goals;

(C) identification of any innovations made to improve delivery of services;

(D) future plans that will contribute to the achievement of the goals;

(E) the successes of programs to establish working partnerships and collaborations with other organizations that reduce duplication or enhance the delivery of services, or both; and

(F) any other information that the committee may deem necessary and relevant.

(3) reviewing information pursuant to subdivision (2) of this section that is voluntarily provided by education and training organizations that are not required to report this information but want recognition for their contributions;

(4) issuing an annual report to the governor and the general assembly on or before December 1, which shall include a systematic evaluation of the

accomplishments of the system and the participating agencies and institutions and all the following:

(A) a compilation of the systemwide accomplishments made toward achieving the overarching goals, specific notable accomplishments, innovations, collaborations, grants received, or new funding sources developed by participating agencies, institutions, and other education and training organizations;

(B) ~~an evaluation~~ identification of each provider's contributions toward achieving the overarching goals;

(C) identification of areas needing improvement, including time frames, expected annual participation, and contributions, and the overarching goals; and

(D) recommendations for the allocating of next generation funds and other public resources.

(5) developing an integrated workforce strategy that incorporates economic development, workforce development, and education to provide all Vermonters with the best education and training available in order to create a strong, appropriate, and sustainable economic environment that supports a healthy state economy; and

(6) developing strategies for both the following:

(A) coordination of public and private workforce programs to assure that information is easily accessible to students, employees, and employers, and that all information and necessary counseling is available through one contact; and

(B) more effective communications between the business community and educational institutions, both public and private.

(b) Entities receiving grants through the workforce education and training fund (WETF) and the Vermont training program (VTP) shall provide the Social Security number of each individual who has successfully completed a training program funded through the WETF and the VTP within 30 days. This requirement shall not apply to training seminars lasting no more than two days. On or before July 1 of each year, the department of labor and the department of economic development shall process the information received within the most recent 12 months and prepare the report required in subdivision (a)(4) of this section. The report shall include a table that sets forth quarterly wage information received pursuant to 21 V.S.A. § 1314a at least 18 months following the date on which the individuals completed the program of study. The table shall include the number of individuals completing the program, the

number of those individuals who are employed in Vermont, and the median quarterly income of those individuals.

(c) Other entities, including public and private institutions of higher education, postsecondary and secondary programs, and other training providers who wish to receive grants under the WETF and the VTP may do so by making a request in writing to the commissioner of labor and the commissioner of economic development who shall make a decision regarding inclusion of such programs and the process for the collection of the necessary data.

(d) Confidentiality. Notwithstanding any other provision of law, the departments of labor and of economic development shall collect the Social Security numbers of students for the purposes of this section. The departments shall retain Social Security numbers collected from the entities listed in subsection (b) of this section for no more than five years from the date of receipt by the departments. Access to the Social Security numbers provided to the department of labor and department of economic development shall be limited to those department individuals creating the table required in subsection (b) of this section and shall be confidential. The departments shall prepare the tables in a way that ensures the confidentiality of all trainee and employer information. A department employee who intentionally communicates or otherwise makes available to the general public a Social Security number collected pursuant to this section or who otherwise disseminates the number for purposes other than those specified in this section shall be subject to the penalties of the Social Security Number Protection Act, subchapter 3 of chapter 62 of Title 9.

Sec. 9. REPEAL

The following are repealed:

(1) Sec. 7(d) of No. 46 of the Acts of 2007 (reporting);

(2) 10 V.S.A. § 543(g) (reporting); and

(3) Section 5.801.1 of No. 192 of the Acts of the 2007 Adj. Sess. (2008).

Sec. 10. WORK-BASED LEARNING REPORT

(a) On or before January 1, 2010, the career and technical education coordinator within the department of education, the commissioner of economic development or his or her designee, and the commissioner of labor or his or her designee, shall submit a report to the senate committee on economic development, housing and general affairs, the house committee on commerce and economic development, and the governor regarding work-based learning programs in Vermont.

(b) The report shall include an inventory of existing career and technical education (CTE) work-based learning programs and other non-CTE work-based learning opportunities, such as registered apprenticeships, high school internships, and postsecondary internships, as well as community-based learning programs. The report also shall include the amount and source of funding for each program; the number of personnel hired to administer each program; participation in each program; categorization of learning opportunities offered; and other relevant standards and outcomes. Finally, the report shall include recommendations relative to statewide and regional coordination; creation of timely skill standards based on emerging or growing industry sectors; credentials that articulate postsecondary training and education; and the expansion, restructuring, or elimination of existing programs.

Sec. 11. GREEN WORKFORCE COLLABORATIVE; STIMULUS MONIES

(a) The workforce development council and the commissioner of labor shall convene a green workforce collaborative as a committee of the council. The purpose of the collaborative is to develop and promote a vocational curriculum, career training, and employment opportunities for Vermonters in green industry sectors; maximize the state's use of federal funds under the American Recovery and Reinvestment Act of 2009 (ARRA), Pub.L. No. 111-5; enhance the economic and environmental vitality of the state; and give priority to programs that provide education, training, and other services to target populations of eligible individuals.

(b) Members of the collaborative shall include the career and technical education coordinator within the department of education, as well as representatives of the various workforce training programs within the departments of economic development and of labor, as appropriate, the Vermont Energy Investment Corporation, representatives from Vermont Technical College and other Vermont educational institutions, and representatives of any other programs or entities pursuing green workforce development in Vermont, as deemed appropriate by the commissioner of labor.

(c) For purposes of this section:

(1) "Green industry sectors" shall include:

(A) The energy-efficient building, construction, and retrofit industries.

(B) The renewable electric power industry.

(C) The energy-efficient and advanced drive train vehicle industry, including performance and low-emission vehicle technology, automotive

computer systems, mass transit fleet conversion, and the servicing and maintenance of those technologies.

(D) The biofuels industry.

(E) The deconstruction and materials use and re-use industries.

(F) The energy-efficiency assessment industry serving the residential, commercial, or industrial sectors.

(G) Manufacturers that produce sustainable products using environmentally sustainable processes and materials.

(H) Pollution prevention and hazardous and solid waste reduction.

(I) Soil or water conservation, or forestation strategies to mitigate climate change impacts.

(J) Any other sector deemed appropriate by the green workforce collaborative.

(2) "Target populations" shall include:

(A) Workers impacted by national energy and environmental policy.

(B) Individuals in need of updated training related to the energy efficiency and renewable energy industries.

(C) Veterans, or past and present members of reserve components of the Armed Forces.

(D) Unemployed individuals.

(E) Individuals, including at-risk youth, seeking employment pathways out of poverty and into economic self-sufficiency.

(F) Formerly incarcerated, adjudicated, nonviolent offenders.

(G) Any other populations specifically referenced in Title VIII of ARRA as enacted or as amended subsequent to passage of this act.

(d) In promoting education and training in green industry sectors, the collaborative shall seek to capitalize on existing infrastructure wherever appropriate, including the Center for Sustainable Practices at Vermont Technical College, the Vermont State Colleges, the University of Vermont, the regional technical centers, and the comprehensive high schools, including adult technical education programs.

(e) Funding of programs designed to promote a green workforce in Vermont is a legislative priority with respect to appropriations of

unencumbered federal monies available through the state fiscal stabilization fund under § 14002(a) of Title XIV of Division A of ARRA.

(f) The commissioner of labor shall collaborate with the director of the office of economic stimulus and recovery to secure competitive grants available under Titles IV and VIII of ARRA, and shall further pursue other state or federal workforce training funds available through the Vermont departments of education and of labor, and through the Vermont Energy Investment Corporation.

(g) On or before January 15, 2010, the commissioner of labor shall provide the house committee on commerce and economic development, the senate committee on economic development, housing and general affairs, and the senate and house committees on natural resources and energy a report detailing a status and needs assessment of green workforce development in Vermont pursuant to this section.

* * * Misc. Technical VEGI Amendments * * *

Sec. 12. 32 V.S.A. § 5930b(b)(2) is amended to read:

(2) The council shall review each application in accordance with section 5930a of this title, except that the council may provide for ~~a preliminary~~ an initial approval pursuant to the conditions set forth in subsection 5930a(c), followed by a final approval at a later date, before December 31 of the calendar year in which the economic activity commences.

Sec. 13. RETROACTIVE APPLICATION

Sec. 12 of this act shall apply retroactively to all applications received on or after January 1, 2007.

Sec. 14. 32 V.S.A. § 5930a is amended to read:

§ 5930a. VERMONT ECONOMIC PROGRESS COUNCIL

* * *

(b)(1) The Vermont economic progress council, within 60 days of receipt of a complete application, shall approve or deny the following economic incentives:

~~(1)~~(A) tax stabilization agreements and exemptions under subdivision 5404a(a)(2) of this title;

~~(2) applications for allocation to municipalities of a portion of education grand list value and municipal liability from new economic development under subsection 5404a(e) of this title;~~ and

~~(3)~~(B) Vermont employment growth incentives (VEGI) under section 5930b of this title.

(2) All incentives are subject to application of the incentive ratio as determined under subdivision 5930b(b)(3) of this title and no tax stabilization agreement~~,~~ or exemption ~~or allocation~~ shall be approved except in conjunction with the approval of an incentive under subdivision ~~(3)~~(1)(B) of this subsection.

* * *

(d) The council shall apply the cost-benefit model in reviewing applications under subdivisions (b)(1)~~, (2), and (3)~~ (A) and (B) of this section to determine the net fiscal benefit to the state. The cost-benefit model shall be a uniform and comprehensive methodology for assessing and measuring the projected net fiscal benefit or cost to the state of proposed economic development activities. Any modification of the cost-benefit model shall be subject to the approval of the joint fiscal committee. The cost-benefit analysis shall include consideration of the effect of the passage of time and inflation on the value of multi-year fiscal benefits and costs.

(1) In determining the projected net fiscal benefit or cost of the incentives considered under ~~subdivisions~~ subdivision (b)(1) ~~and (2)~~(A) of this section, the council shall calculate the net present value of the enhanced or forgone statewide education tax revenues, reflecting both direct and indirect economic activity. If the council approves an incentive pursuant to this section, the net fiscal costs, if any, to the state shall be counted as if all those costs occurred in the year in which the council first approved the incentive and that cost shall reduce the amount of the annual authorization for such approvals established by the legislature for the applicable calendar year.

(2) In determining the projected net fiscal benefit or cost of the incentives considered under subdivision ~~(b)(3)~~ (b)(1)(B) of this section, the council shall calculate the net present value of the enhanced or forgone state tax revenues attributable to the incentives, reflecting both direct and indirect economic activity over the five-year award period. If the council approves an incentive, the net fiscal costs, if any, to the state shall be counted as if all of those costs occurred in the year in which the council first approved the incentive and that cost shall reduce the amount of the council's annual authorization for approval of economic incentives as established by the legislature for the applicable calendar year.

(e) Only a business may apply for approval under subdivision ~~(b)(3)~~ (b)(1)(B) of this section. A municipality and a business must apply jointly for

approval of a tax stabilization agreement pursuant to ~~subdivisions~~ subdivision (b)(1) ~~and (2)~~(A) of this section.

* * *

Sec. 15. 32 V.S.A. § 5930b(f) is amended to read:

(f) The property of a business whose authority to earn, apply or retain incentives under this section has been revoked is ineligible for property tax stabilization under subdivision 5404a(a)(2) of this title ~~or allocation of property tax value under subsection 5404a(e) of this title for any education property tax grand list~~ after the date of revocation.

* * * Capitalization on Federal Stimulus Funding for Smart Grid, Additional State Energy Grants, and Rural Electrification Grants * * *

Sec. 16. FEDERAL FUNDING FOR SMART GRID AND ENERGY GRANTS; STATE COLLABORATION

It is the intent of the legislature that the department of public service, Vermont utilities, and other interested parties work collaboratively to ensure that Vermont capitalizes on all available funding allocated for research, workforce development, and projects relating to energy efficiency and electric generation, transmission, and distribution under Titles I and IV of Division A of the American Recovery and Reinvestment Act of 2009. Accordingly, to ensure that Vermont accesses and utilizes federal resources under the ARRA to the fullest extent possible:

(1) The department of public service shall investigate and pursue the opportunities for funding of electricity delivery and energy reliability research and projects to implement smart grid technologies, activities, and workforce training made available under Title IV of the ARRA.

(2) The department of public service shall generate a list of projects that are eligible for federal loan and grant funding available from the United States Departments of Agriculture and of Energy under the ARRA, identify the source of the grant funding, and identify the necessary steps for securing grant funds. The department shall work collaboratively with private utilities, additional government entities as necessary and appropriate, and other interested persons to design and submit grant applications that best position the state to capitalize on available funds.

(3) The governor, the department of public service, the public service board, and relevant state and local governmental entities shall take any and all steps necessary to implement the measures required under section 410 of the American Recovery and Reinvestment Act of 2009 to ensure that Vermont will receive the maximum amount of additional state energy grants available from

the United States Department of Energy under part D of Title III of the Energy Policy and Conservation Act.

* * * Legislative Priorities: ARRA Funds * * *

Sec. 17. LEGISLATIVE PRIORITIES FOR ARRA FUNDS

(a) With respect to federal monies potentially available to the state of Vermont as competitive funds under the ARRA, the general assembly establishes the following priorities as outlined in this section.

(b) Burlington International Airport (BTV). The general assembly recognizes the importance of maintaining and upgrading the programs and facilities at BTV, Vermont's primary commercial airport. BTV has an estimated economic impact of over one-half billion dollars annually. The general assembly finds that the development of the following list of planned airport projects is a legislative priority:

(1) A new aviation technical center facility.

(2) A new customs border protection office.

(3) The following three south-end taxiway projects:

(A) Completion of taxiway K connection from the new general aviation apron to the end of runway 33;

(B) Rehabilitation of portions of taxiways C and G and construction of a new intersection; and

(C) Completion of a parallel taxiway G from existing taxiway C to runway 1-19.

(4) The building of a green roof on the parking structure.

(c) Agriculture. Agriculture is one of the major drivers of the state's economy. For that reason, the general assembly recognizes the crucial role of agriculture in the state of Vermont and expresses the following priorities for federal funding that may become available through ARRA:

(1) The agency of agriculture, food and markets, Vermont agricultural credit corporation, and the Vermont housing and conservation board's farm viability program shall cooperate in seeking ARRA funding from the USDA Farm Service Agency, the USDA Rural Development Program, and other appropriate federal programs and shall prioritize applications for federal stimulus funding based on the goals established in this act. The agency shall further work to educate relevant entities about funding opportunities, provide technical application assistance to priority applicants, and develop a single, common application to be used by applicants for agency funding.

(2) The following are specific agriculture priorities and include the state entities to which funding for these priorities should be directed:

(A) Stabilization of spring planting with loans through the Vermont agricultural credit corporation and the Vermont economic development authority.

(B) Support for in-state slaughter and processing facilities through grants and technical assistance from the agency of agriculture, food and markets.

(C) Funding for regional food hubs and dairy transition through the Vermont housing and conservation board farm viability program and support for the Vermont farm-to-plate investment program, established by Sec. 35 of this act, through the Vermont sustainable jobs fund.

(D) Environmental protection and energy conservation, including power modernization and methane digesters through grants and technical assistance from the agency of agriculture, food and markets.

(d) Municipal communications services. Since passage of an act relating to establishing the Vermont telecommunications authority and to advancing broadband and wireless communications infrastructure throughout the state of Vermont, No. 79 of the Acts of 2007, many Vermont towns and cities have affiliated themselves to promote, sponsor, develop, and provide a range of communications services to their respective inhabitants, governments, schools, and businesses. Through local volunteer initiatives, resources have been collected and directed toward the design, construction, operation, and management of publicly owned communications plants, with minimal dependency on the resources, finances, and credit of the state of Vermont. Access to various forms of public and private credit enhancement will assist towns and cities in further developing and constructing communications plant improvements through lower capital interest and financing costs. Under the ARRA, financial resources may be made available to the state that are suitable for application in assisting unserved municipalities in their communications goals. With respect to these local efforts and the federal stimulus monies, the general assembly establishes the following priorities:

(1)(A) The North-link project launched by Northern Enterprises, Inc. in 2007.

(B) The broadband initiative of East Central Vermont Community Fiber.

(C) Replacement of the Burke Mountain power line owned and operated by Vermont Public Television.

(2) To the extent possible, allocation of ARRA initiatives available to Vermont shall include direct and indirect credit enhancement assistance to unserved municipalities seeking capital to fund communications plant improvements.

(3) The development, promotion, construction, and operation of public communications plants in unserved areas is declared to be in the best interest of Vermont and an infrastructure priority among capital improvements eligible to receive benefits under the ARRA.

Sec. 18. SBA LOAN PROGRAMS; STIMULUS PROGRAMS

(a) Significant changes have been made to the Small Business Association (SBA) loan programs pursuant to the American Recovery and Reinvestment Act of 2009 (ARRA), Pub.L. No. 111-5. These changes create an opportune time for Vermont entrepreneurs seeking to start, expand, or acquire a small business. Time is of the essence, however, because the new opportunities created by ARRA will sunset at the end of 2009.

(b) The commissioner of economic development, in cooperation with the director of the Vermont district office of the United States SBA, shall work with small business lending companies such as the Vermont economic development authority, the Vermont small business development center, the Vermont bankers association, and the association of Vermont credit unions, to promote favorable SBA-loan program changes among potential borrowers.

(c) Some of the SBA-loan program changes under ARRA include a one-time opportunity at very low risk to lenders (90 percent guaranty) and very low cost for small businesses (no guarantee fee, prime at a low of 3.25 percent) to access lines of credit, contract financing (such as government contracts with the agency of transportation), export financing, and long-term fixed-asset financing of real estate and equipment.

Sec. 19. VIRTUALIZED INFORMATION TECHNOLOGY INFRASTRUCTURE; STUDY

(a) The legislative director of information technology and the commissioner of the department of information and innovation shall issue a request for proposals no later than July 1, 2009 to evaluate the viability of cloud computing and other virtualized infrastructure options for the state's information technology infrastructure as it pertains to the use of e-mail, spreadsheets, word processing, and calendars in the legislative, executive, and judicial branches of government. Evaluations shall consider the following:

(1) Current service level and scalability to future service needs;

(2) Physical and virtual data security and recovery;

(3) Potential for savings in software licensing and hardware investment in both the near and long term;

(4) Opportunities for improved systems performance and capacity;

(5) Specific vendors and relevant vendor policies; and

(6) Potential for legal and regulatory obstacles.

(b) The legislative director of information technology and the commissioner of the department of information and innovation shall submit the proposals to the legislative information technology committee established under chapter 22 of Title 2 on or before January 15, 2010. The director and the commissioner are respectively authorized to implement virtualized information technology.

(c) This section supersedes any similar cloud-computing proposal in H.441 (2009).

Sec. 20. INITIATIVE TO BUILD A MEDIA AND FILM INDUSTRY IN VERMONT

(a)(1) Given its unique blend of creative, cultural, and educational resources, Vermont currently has an opportunity to become a destination for a new media and film industry.

(2) Vermont is home to authors, filmmakers, producers, and young people concentrating their educational and professional development in the emerging fields of communications, multi-media and film production, graphic and digital design, and performing arts.

(3) Vermont's natural and seasonal beauty and the charm and character of its towns and regions equals or surpasses other potential destinations for the media and film industry, and these strengths position Vermont as an ideal location for filming and producing movies, television, commercials, and other media.

(4) Vermont is home to at least seven institutions of higher education that provide one or more degrees or certificate programs in media or film sectors, including Burlington College's cinema studies and film production program; Champlain College's communications and creative media division; the University of Vermont's film and television studies program; Marlboro College's undergraduate programs in media, visual, and performing arts; Bennington College's Visual Arts program; Johnson State's Fine and Performing Arts programs; and Castleton State College's concentrations in communications, mass media, and digital media.

(b) Considering these substantial resources, it is the intent of the general assembly to encourage and promote the development of a strong and dynamic media and film sector within Vermont's creative economy.

(c) The Vermont film corporation, in collaboration with the Vermont film and media coalition and, to the extent possible, the faculty and students of Burlington College, Champlain College, the University of Vermont, Marlboro College, Bennington College, Johnson State, and Castleton State College, shall propose a program to develop a media and film sector within Vermont's economy. The corporation should consider the most beneficial role the state can play in supporting the media and film sector, and should consider grants, public-private partnerships, and other appropriate financing mechanisms in order to promote this sector of the creative economy and to retain young Vermonters currently supported by the communications, film, and media programs at Vermont colleges and universities.

(d) On or before January 30, 2010, the corporation is invited to deliver a presentation of its program proposal to the senate committee on economic development, housing and general affairs and the house committee on commerce and economic development.

* * * ARRA: Schools: Tax Credit Bond Financing * * *

Sec. 21. 16 V.S.A. chapter 125, subchapter 5 is added to read:

Subchapter 5. Tax-Credit Bond Financing

§ 3597. TAX-CREDIT BOND FINANCING; QUALIFIED SCHOOL ACADEMY ZONES; QUALIFIED SCHOOL CONSTRUCTION BONDS

The American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, expanded existing and created new tax-credit bond programs available to public schools. Accordingly, school districts are authorized to issue bonds to finance public school building construction and rehabilitation, the purchase of equipment, the development of course materials, and teacher and personnel training, consistent with sections 1397E and 54F of the Internal Revenue Code, pertaining to qualified school academy zones and qualified school construction bonds.

* * * School Construction: ARRA Funds * * *

Sec. 22. Sec. 45(b) of No. 200 of the Acts of the 2007 Adj. Sess. (2008) is amended to read:

(b)(1) Notwithstanding subsection (a) of Sec. 36 of No. 52 of the Acts of 2007, if a school district declares its intent to pay for the cost of a school construction project without state aid provided pursuant to chapter 123 of

Title 16 and has received voter approval for the project on or after March 7, 2007, then the commissioner of education shall review the project as a preliminary application upon the district's request. In this case, the commissioner shall use the standards and processes of chapter 123 for determining preliminary approval, and shall deduct the portion of education spending that is approved from the calculation of excess spending under 32 V.S.A. § 5401(12). Preliminary approval received pursuant to this subsection is to be used solely for purposes of:

(A) calculating whether the district has exceeded the excess spending threshold ~~and neither~~; or

(B) enabling the district to proceed with a project using funds other than those provided under chapter 123 of Title 16, or both.

(2) Neither preliminary approval nor the provision of technical assistance indicates that the district will receive state aid for school construction or preliminary approval for that aid when school construction aid is again available. Notwithstanding subsection (a) of Sec. 36 of No. 52 of the Acts of 2007, upon the request of the district, the department shall provide technical assistance regarding the planning and implementation of school renovation and construction.

* * * Microbusiness and Entrepreneurship * * *

Sec. 23. MICROBUSINESS; ARRA FUNDS

It is the intent of the general assembly to enhance the individual development account program and the microbusiness development program currently administered by the office of economic opportunity using funds available through federal allocations and competitive grants available under Title VIII of the ARRA.

Sec. 24. ECONOMIC OPPORTUNITY STUDIES AND COLLABORATION

The office of economic opportunity and a designee of the community action agency directors' association shall conduct a joint study of possible tools to promote the success of individual development accounts and the microbusiness development program. The study shall evaluate:

(1) Innovative microenterprise development funding models to identify ways to fill existing gaps in start-up capital.

(2) A guarantee program or interest buy-down program that encourages private banks to make longer-term, lower-interest fixed rate loans to Community Development Financial Institutions (CDFIs).

(3) A tax credit to businesses and individuals that donate funds to microenterprise development programs or IDA matched savings and financial education programs, under which the department of economic development would administer tax credits totaling 75 percent of the value of each donation to recognized qualified organizations with an annual statewide maximum for tax credits of $500,000.00 for contributions.

(4) A policy for collaboration with the Vermont treasurer's office to utilize financial education funding for credit counseling and education.

(5) The feasibility of a first-year tax credit to microenterprises, and a credit or grant to self-employed persons for first-time employee hiring to ease the workers' compensation burden.

(6) The most effective strategy to link the department of education with other public and private efforts to develop and support microbusiness.

(7) The most effective means for reporting to the house committee on commerce and economic development, the house committee on human services, and other committees as appropriate, to ensure sufficient oversight by the legislature over whether funding is serving low income Vermonters and meeting stated economic development and human service goals.

* * * Entrepreneurs' Seed Capital Fund * * *

Sec. 25. 10 V.S.A. chapter 14A is amended to read:

CHAPTER 14A. THE ~~VERMONT~~ ENTREPRENEURS' SEED CAPITAL FUND

§ 290. DEFINITIONS

For purposes of this chapter:

(1) "Follow-on investment" means any investment in a Vermont firm following the initial investment.

(2) "Fund manager" means the investment management firm responsible for creating the fund, securing capital commitments, and implementing the fund's investment strategy, consistent with the requirements of this section. The fund manager shall be paid a fee which reflects a percentage of the fund's capital under management and a performance-fee share based on the fund's economic performance, as determined by the authority.

(3) "Seed capital" means first, nonfamily, nonfounder investment in the form of equity or convertible securities issued by a firm which had, in the 12 months preceding the date of the funding commitment, annual gross sales of less than $3,000,000.00.

§ 291. ~~VERMONT~~ ENTREPRENEURS' SEED CAPITAL FUND; AUTHORIZATION; LIMITATIONS

(a) The Vermont economic development authority shall cause to be formed a private investment equity fund to be named "the ~~Vermont~~ entrepreneurs' seed capital fund" or "the fund" ~~is authorized~~ for the purpose of increasing the amount of investment capital provided to new Vermont firms or to existing Vermont firms for the purpose of expansion. The authority may contract with one or more persons for the operation of the fund as fund manager. Such contract shall contain the terms and conditions pursuant to which the fund shall be managed to meet the fund's objective of providing seed capital to Vermont firms. The terms of the contract shall require that, if the fund manager does not meet the investment criteria specified in the contract, the fund manager may not be awarded the performance fee ~~established under subdivision (c)(2) of this section~~.

(b) The ~~Vermont seed capital~~ fund shall be formed as ~~either a business corporation or~~ a limited partnership pursuant to Title 11 and shall be subject to all the following:

(1) The ~~Vermont seed capital~~ fund shall not invest in any firm in which ~~a total of more than a 25 percent~~ any interest in that firm is held by an investor of the ~~Vermont seed capital~~ fund ~~combined with any interest held in the firm~~ or by the spouse ~~or dependent,~~ children, or other relative of the investor.

(2) The fund shall invest at least 40 percent of its total capital in initial investment in firms which had in the 12 months preceding the date of the funding commitment annual gross sales of less than $1,000,000.00 and may reserve the remainder of its capital for follow-on investments in these businesses, as appropriate.

(3) Before the fund makes any investments, the fund shall~~:~~

~~(A) If organized as a corporation, have and thereafter maintain a board of nine directors to be elected by the shareholders.~~

~~(B) If organized as a partnership,~~ have and maintain a board of ~~three~~ five advisors who shall be appointed ~~by the authority~~ as follows: two shall be appointed by the authority, two shall be appointed by the fund manager, and one shall be appointed jointly by the authority and the fund manager. The board of advisors shall represent solely the economic interest of the state with respect to the management of the fund and shall have no civil liability for the financial performance of the fund. The board of advisors shall be advised of investments made by the fund and shall have access to all information held by the fund with respect to investments made by the fund.

~~(3)~~(4) The ~~Vermont seed capital~~ fund, within 120 days after the close of each fiscal year of its operations, shall issue a report that includes an audited financial statement certified by an independent certified public accountant. The report also shall include a compilation of the firm data required by subsection (d) of this section. These data shall be reported in a manner that does not disclose competitive or proprietary information, as determined by the authority. This report shall be distributed to the governor and the ~~legislative council~~ senate committee on economic development, housing and general affairs and the house committee on commerce and economic development and made available to the public. The report shall include a discussion of the fund's impact on the Vermont economy and employment.

~~(4)~~(5) The ~~Vermont seed capital~~ fund shall not make distributions of more than 75 percent of its net profit to its investors during its first five years of operation.

~~(5)~~(6) No person shall be allocated more than ~~10~~ 20 percent of the available tax credits. For the purposes of determining allocation, the attribution rules of Section 318 of the Internal Revenue Code in effect as of the effective date of this chapter shall apply.

~~(6)~~(7) The capitalization of the fund is not limited under this section; however, only the first ~~$5~~ $7,150,000.00 ~~of capitalization of the Vermont seed capital fund~~ raised from Vermont taxpayers on or before January 1, ~~2014~~ 2020, shall be eligible for partial tax credits as specified in 32 V.S.A. § 5830b.

~~(7)~~(8) All investments and related business dealings using funds that qualify for partial tax credits under 32 V.S.A. § 5830b shall be subject to the following restrictions:

(A) The investments shall be restricted to Vermont firms, which for the purposes of this chapter means that their Vermont apportionment equals or exceeds 50 percent, using the apportionment rules under 32 V.S.A. § 5833, and they maintain headquarters and a principal facility in Vermont. Any funds invested in Vermont firms shall be used for the purpose of enhancing their Vermont ~~investments~~ operations. Investment shall be restricted to firms that export the majority of their products and services outside the state or add substantial value to products and materials within the state. In its investments, the fund shall give priority to new firms and existing firms that are developing new products, and shall take into consideration any impact on in-state competition and also whether the investment will encourage economic activity that would not occur but for the fund investment.

(B) Each ~~Vermont seed capital~~ fund investment in any one firm, in any 12-month period shall be limited to a maximum of ten percent of the

~~Vermont seed capital~~ fund's capitalization and, for the life of the fund, to a maximum of 20 percent of the fund's total capitalization.

(C) At least two-thirds of the monies invested by the ~~Vermont seed capital~~ fund and qualifying for a tax credit under 32 V.S.A. § 5830b shall at all times be invested in the form of equity or convertible securities~~. This provision shall not prohibit~~ unless the fund manager determines it is reasonable and necessary to pursue temporarily the generally accepted business practice of earning interest on working funds deposited in relatively secure accounts such as savings and money market funds.

(c) Any firm receiving monies from the fund must report to the fund manager the following information regarding its activities in the state over the calendar year in which the investment occurred:

(1) The total amount of private investment received.

(2) The total number of persons employed as of December 31.

(3) The total number of jobs created and retained, which also shall indicate for each job the corresponding job classification, hourly wage and benefits, and whether it is part-time or full-time.

(4) Total annual payroll.

(5) Total sales revenue.

(d) The authority, in consultation with the fund manager, shall establish reasonable standards and procedures for evaluating potential recipients of fund monies. The authority shall make available to the general public a report of all firms that receive fund investments and also indicate the date of the investment, the amount of the investment, and a description of the firm's intended use of the investment. This report shall be updated at least quarterly.

(e) Information and materials submitted by a business receiving monies from the fund shall be available to the auditor of accounts in connection with the performance of duties under 32 V.S.A. § 163; provided, however, that the auditor of accounts shall not disclose, directly or indirectly, to any person any proprietary business information.

Sec. 26. REPEAL

10 V.S.A. § 292 (providing for the initial organization of the Vermont seed capital fund) is repealed.

Sec. 27. 32 V.S.A. § 5830b is amended to read:

§ 5830b. TAX CREDITS; ~~VERMONT~~ ENTREPRENEURS' SEED CAPITAL FUND

(a) The initial capitalization of the ~~Vermont~~ entrepreneurs' seed capital fund ~~comprising a maximum $5 million~~, as established in 10 V.S.A. § 291, up to $7,150,000.00 raised from Vermont taxpayers on or before January 1, ~~2014~~ 2020, shall entitle those taxpayers to a credit against the tax imposed by sections 5822, 5832, 5836, or 8551 of this title and by 8 V.S.A. § 6014. The credit may be claimed for the taxable year in which a contribution is made and each of the four succeeding taxable years. The amount of the credit for each year shall be the lesser of four percent of the taxpayer's contribution or 50 percent of the taxpayer's tax liability for that taxable year prior to the allowance of this credit; provided, however, that in no event shall the aggregate credit allowable under this section for all taxable years exceed 20 percent of the taxpayer's contribution to the initial ~~$5 million~~ $7,150,000.00 capitalization of the ~~Vermont seed capital~~ fund. The credit shall be nontransferable except as provided in subsection (b) of this section.

(b) If the taxpayer disposes of an interest in the ~~Vermont seed capital~~ fund within four years after the date on which the taxpayer acquired that interest, any unused credit attributable to the disposed-of interest is disallowed. This disallowance does not apply in the event of an involuntary transfer of the interest, including a transfer at death to any heir, devisee, legatee, or trustee, or in the event of a transfer without consideration to or in trust for the benefit of the taxpayer or one or more persons related to the taxpayer as spouse, descendant, parent, grandparent, or child.

* * * Technology Loan Program * * *

Sec. 28. 10 V.S.A. chapter 12, subchapter 12 is added to read:

Subchapter 12. Technology Loan Program

§ 280aa. FINDINGS AND PURPOSE

(a) Technology-based companies are a vital source of innovation, employment, and economic growth in Vermont. The continued development and success of this increasingly important sector of Vermont's economy is dependent upon the availability of flexible, risk-based capital. Because the primary assets of technology-based companies sometimes consist almost entirely of intellectual property, such companies frequently do not have access to conventional means of raising capital, such as asset-based bank financing.

(b) To support the growth of technology-based companies and the resultant creation of high-wage employment in Vermont, a technology loan program is established under this subchapter.

§ 280bb. TECHNOLOGY LOAN PROGRAM

There is created a technology (TECH) loan program to be administered by the Vermont economic development authority. The program shall seek to meet the working capital and capital-asset financing needs of technology-based companies. The Vermont economic development authority shall establish such policies and procedures for the program as are necessary to carry out the purposes of this subchapter. The authority's lending criteria shall include consideration of in-state competition and whether a company has made reasonable efforts to secure capital in the private sector.

* * * Downtown and Village Center Tax Credits * * *

Sec. 29. 32 V.S.A. § 5930ee is amended as follows:

§ 5930ee. LIMITATIONS

Beginning in fiscal year ~~2008~~ 2010 and thereafter, the state board may award tax credits to all qualified applicants under this subchapter, provided that:

(1) The total amount of tax credits awarded annually, together with sales tax reallocated under section 9819 of this title, does not exceed ~~$1,600,000.00~~ $1,700,000.00.

* * *

* * * Licensed Lender Study * * *

Sec. 30. STUDY ON THE APPLICATION OF VERMONT'S LICENSED-LENDER REQUIREMENTS TO CERTAIN COMMERCIAL LENDING PRACTICES

(a) The commissioner of banking, insurance, securities, and health care administration shall convene a work group to recommend amendments to Vermont's licensed-lender laws, chapter 73 of Title 8, for the purpose of facilitating limited instances of high-risk, secured commercial lending by specialized persons such as venture capital firms, individuals, and partnerships. The work group shall consider proposals such as a limited exemption or an expedited registration process that permits capital investments in and secure commercial loans to technology firms, in a responsible manner.

(b) Members of the work group shall include representatives from the Vermont Bankers Association, the Vermont Bar Association, the department of

economic development, the Vermont economic development authority, and the entrepreneurial industry sector of Vermont.

(c) The commissioner shall report the work group's recommendations to the senate committees on economic development, housing and general affairs and on finance and the house committee on commerce and economic development no later than January 1, 2010.

* * * Minimum Wage * * *

Sec. 31. 21 V.S.A. § 384 is amended to read:

§ 384. ~~PROHIBITION OF~~ EMPLOYMENT; WAGES

(a) An employer shall not employ an employee at a rate of less than $7.25, and, beginning January 1, 2007, and on each subsequent January 1, the minimum wage rate shall be increased by five percent or the percentage increase of the Consumer Price Index, CPI-U, U.S. city average, not seasonally adjusted, or successor index, as calculated by the U.S. Department of Labor or successor agency for the 12 months preceding the previous September 1, whichever is smaller, but in no event shall the minimum wage be decreased. The minimum wage shall be rounded off to the nearest $0.01. An employer in the hotel, motel, tourist place, and restaurant industry shall not employ a service or tipped employee at a basic wage rate less than $3.65 an hour, and beginning January 1, 2008, and on each January 1 thereafter, this basic tip wage rate shall be increased at the same percentage rate as the minimum wage rate. For the purposes of this subsection, "a service or tipped employee" means an employee of a hotel, motel, tourist place, or restaurant who customarily and regularly receives more than $120.00 per month in tips for direct and personal customer service. If the minimum wage rate established by the United States government is greater than the rate established for Vermont for any year, the minimum wage rate for that year shall be the rate established by the United States government.

(b) Notwithstanding subsection (a) of this section, an employer shall not pay an employee less than one and one-half times the regular wage rate for any work done by the employee in excess of 40 hours during a workweek. However, this subsection shall not apply to:

(1) Employees of any retail or service establishment. A "retail or service establishment" means an establishment 75 percent of whose annual volume of sales of goods or services, or of both, is not for resale and is recognized as retail sales or services in the particular industry.

(2) Employees of an establishment which is an amusement or recreational establishment, if:

(A) it does not operate for more than seven months in any calendar year, or

(B) during the preceding calendar year its average receipts for any six months of that year were not more than one-third of its average receipts for the other six months of the year.

(3) Employees of an establishment which is a hotel, motel, or restaurant.

(4) Employees of hospitals, public health centers, nursing homes, maternity homes, therapeutic community residences, and residential care homes as those terms are defined in Title 18, provided:

(A) the employer pays the employee on a biweekly basis; and

(B) the employer files an election to be governed by this section with the commissioner; and

(C) the employee receives not less than one and one-half times the regular wage rate for any work done by the employee:

(i) in excess of eight hours for any workday; or

(ii) in excess of 80 hours for any biweekly period.

(5) Those employees of a business engaged in the transportation of persons or property to whom the overtime provisions of the Federal Fair Labor Standards Act do not apply, but shall apply to all other employees of such businesses.

(6) Those employees of a political subdivision of this state.

(7) State employees~~,~~ who ~~shall be~~ are covered by the U.S. Federal Fair Labor Standards Act.

(c) However, an employer may deduct from the rates required in subsections (a) and (b) of this section the amounts for board, lodging, apparel, rent, or utilities paid or furnished or other items or services or such other conditions or circumstances as may be usual in a particular employer-employee relationship, including gratuities as determined by the wage order made under this subchapter.

* * * State Contracts: Compliance with State and Federal Laws * * *

Sec. 32. WORKERS' COMPENSATION; STATE CONTRACTS; COMPLIANCE WITH DAVIS-BACON

(a) The agencies of administration and transportation shall establish procedures to assure that state contracting procedures and contracts are designed to minimize the incidents of miscoding of employees in NCCI job codes and misclassification of the status of workers as independent contractors

rather than employees by state contractors on projects with a total project cost of more than $250,000.00 by requiring those contractors to provide, at a minimum, all the following:

(1) Detailed information including information relating to past violations, convictions, suspensions, and any other information related to past performance and likely compliance with proper coding and classification of employees requested by the applicable agency. This information shall be included with the project bid.

(2) A list of subcontractors on the job along with lists of the subcontractor's subcontractors and by whom those subcontractors are insured for workers' compensation purposes. For purposes of this subsection and subdivision (3) of this subsection, subcontractors do not include entities that provide supplies only and no labor to the overall contract or project.

(3) For construction and transportation projects over $250,000.00, a payroll process by which during every pay period the contractor collects from the subcontractors or independent contractors a list of all workers who were on the jobsite during the pay period, the work performed by those workers on the jobsite, and a daily census of the jobsite. This information and similar information for the subcontractors regarding their subcontractors shall also be provided to the department of labor and to the department of banking, insurance, securities, and health care administration, upon request.

(4) For all other state contracts not otherwise covered under subdivision (3) of this subsection, the information required under subdivision (3) shall only be required upon request of the agencies or departments.

(5) Any contract provisions or procedures designed to minimize instances of misclassification through enhanced reporting and greater transparency may be flexibly designed to account for the size of the contract, contractor, and subcontractor.

(b) The agencies shall require by rule or by procedure that any contractor that violates classification requirements shall be prohibited or restricted from bidding on future state contracts for a period of time that corresponds to the seriousness of the classification violation. The rules or procedures shall also provide for an appeal process from any such prohibition or restriction consistent with existing law.

(c) The agencies shall assure that any state contract funded in whole or in part with American Recovery and Reinvestment Act of 2009 (ARRA) monies shall comply with the payment of Davis-Bacon wages when required by ARRA. However, in the event the applicable Davis-Bacon wages in any county have not been updated in the previous three years, the minimum state

required wage for a state contract subject to Davis-Bacon wages under ARRA shall be that of the Vermont county that has most recently updated its applicable Davis-Bacon wages, provided this provision does not result in the loss of ARRA funds and is not otherwise contrary to federal law.

Sec. 33. ARRA AND UNEMPLOYMENT INSURANCE

(a) The American Recovery and Reinvestment Act of 2009 (ARRA), Pub.L. No. 111-5, authorizes the federal government to transfer up to $13,918,000.00 into Vermont's unemployment insurance (UI) trust fund for UI modernization incentive payments.

(b) Vermont already qualifies for one-third of its allotted incentive payments because the state allows for the use of an alternative base period in determining UI eligibility. In order to qualify for the remaining two-thirds of its allotted incentive payments, Vermont's UI program must meet two of four expanded-coverage requirements.

(c) The state already meets one expanded-coverage requirement: namely, coverage of part-time workers. It is the intent of the general assembly to adopt one additional expanded-coverage requirement, namely the training program specified in Sec. 34 of this act, and to apply to the secretary of the United States Department of Labor for certification of UI modernization so that the state may receive its remaining allotment of incentive payments.

Sec. 34. 21 V.S.A. § 1423b is added to read:

§ 1423b. EXTENDED BENEFITS; APPROVED TRAINING PROGRAMS

(a) An individual who is otherwise eligible for benefits under this chapter, but who has exhausted his or her maximum benefit amount under section 1340 of this chapter shall be entitled to an additional 26 weeks of benefits in the same amount as the weekly benefit amount established in the individual's most recent benefit year if the individual is enrolled in and making satisfactory progress in a state-approved training program as defined in subsection (b) of this section.

(b) A state-approved training program is any training program or job training program that meets all of the following criteria:

(1) It is authorized by the Workforce Investment Act of 1998, Pub. L. No. 105-220.

(2) It is designed to assist individuals who have been separated from a declining occupation or who have been involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the individual's place of employment.

(3) It is designed to train the individual for entry into a high-demand occupation.

Sec. 35. 10 V.S.A. § 330 is added to read:

§ 330. THE FARM-TO-PLATE INVESTMENT PROGRAM; CREATION; GOALS; TASKS; METHODS

(a) Creation.

(1) The sustainable jobs fund program in consultation with the Vermont sustainable agriculture council shall establish the Vermont farm-to-plate investment program to fulfill the goals and carry out the tasks described in this section.

(2) If at least $100,000.00 in funding is not made available for the purpose of this section, the sustainable jobs fund program is encouraged but no longer required to fulfill the provisions of this section.

(b) Goals. The goals of the farm-to-plate investment program are to:

(1) Increase economic development in Vermont's food and farm sector.

(2) Create jobs in the food and farm economy.

(3) Improve access to healthy local foods.

(c) Tasks.

(1) By June 30, 2010, the Vermont farm-to-plate investment program shall create a strategic plan for agricultural economic development, which may be periodically reviewed and updated, based upon the following:

(A) Inventory Vermont's food system infrastructure by gathering existing data, studies, and analysis about the components of Vermont's food system, including:

(i) The types of foods produced in Vermont, the number of producers of each type of food, the amount of each type of food produced, and the financial viability of each food-producing sector.

(ii) The types of food processors in Vermont, how much food produced in Vermont is purchased by Vermont processors, and the financial viability of the food processing sector in Vermont.

(iii) The current and potential markets in which Vermont food producers and processors can sell their products.

(iv) The extent of existing agricultural lands that could be expanded and the resources available to expand Vermont's food production.

(v) The potential for new farmers and food processors to enter the local food economy, the methods for new farmers to acquire land and other farm infrastructure, and the availability and barriers to farm and processing labor.

(vi) The potential for entirely new local products and the barriers to farmers and processors entering new markets.

(B) Identify gaps in the infrastructure and distribution systems and identify ways to address these gaps.

(2) The Vermont farm-to-plate investment program shall seek grant funding to support farm-to-table direct marketing, including farmers' markets and community-supported agriculture operations and to support regional community food hubs.

(3) As an ongoing task, the farm-to-plate investment program shall use the information gathered for the strategic plan to identify methods and the funding necessary to strengthen the links among producers, processors, and markets, including:

(A) Support of the work of existing farm-to-school programs to increase the purchase of local foods by Vermont schools, with a particular emphasis on procurement of nutrient-dense animal foods.

(B) Collaborating with the agency of agriculture, food and markets and the department of buildings and general services to increase procurement of local foods in accordance with 6 V.S.A. § 4601.

(C) Collaborating with the agency of agriculture, food and markets and the sustainable agriculture council to increase procurement of local foods by businesses and institutions.

(D) Supporting initiatives that improve direct marketing of foods from the farm to the consumer.

(E) Informing agricultural lenders of the information collected under subdivision (c)(1) of this subsection in order to facilitate availability of agricultural financing.

(d) Methods. To accomplish the goals and carry out the ongoing tasks stated in this section, the Vermont farm-to-plate investment program may:

(1) Create an advisory panel with representatives from the agricultural and business communities.

(2) Hire or assign staff.

(3) Seek and accept funds from private and public entities.

(4) Utilize technical assistance, loans, grants, or other means approved by the board.

(e) In fiscal year 2010, the amount of $100,000.00 shall be appropriated from the state fiscal stabilization funds available under the American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5, to the Vermont sustainable jobs fund program established in 10 V.S.A. § 328 to be used solely for the farm-to-plate investment program established under this section.

Sec. 36. 10 V.S.A. § 329 is amended to read:

§ 329. ANNUAL REPORT

Prior to January 31 of each year, the corporation formed under section 328 of this title shall submit a report concerning its activities to the governor and the legislative committees on commerce, general affairs, natural resources, ways and means, finance, institutions, and appropriations. The report shall include the following information:

* * *

(5) A summary of work completed in the farm-to-plate investment program, including progress toward meeting the program goals, information regarding any advisory panel meetings, an accounting of all revenues and expenses related to the program, and recommendations regarding future program activity. The report shall also include information regarding the status of state government procurement of local foods.

* * * Municipal Full Faith and Credit for Bonds * * *

Sec. 37. 24 V.S.A. § 1898(b) is amended to read:

(b) A municipality shall have power to issue from time to time general obligation ~~and~~ bonds, revenue bonds ~~from time to time~~, or revenue bonds also backed by the municipality's full faith and credit in its discretion to finance the undertaking of any improvements wholly or partly within such district. If revenue bonds are issued, such bonds shall be made payable, as to both principal and interest, solely from the income proceeds, revenues, tax increments and funds of the municipality derived from, or held in connection with its undertaking and carrying out of improvements under this chapter. So long as any such bonds of a municipality are outstanding the local governing body may deduct, in any one or more years from any net increase in the aggregate taxable valuation of land and improvements in all areas covered by their district the amount necessary to produce tax revenues equal to the current debt service on such bonds, assuming the previous year's total tax rate and full collection. Only the balance, if any, of such net increase shall be taken into account in computing the sums which may be appropriated for other purposes

under applicable tax rate limits. But all the taxable property in all areas covered by the district, including the whole of such net increase, shall be subject to the same total tax rate as other taxable property, except as may be otherwise provided by law. Such net increase shall be computed each year by subtracting, from the current aggregate valuation of the land and improvements in all areas covered by the district, the sum of the aggregate valuations of land and improvements in each such area on the date the district was approved under this section. An area shall be deemed to be covered as a district until the date all the indebtedness incurred by the municipality to finance the applicable improvements have been paid. Notwithstanding any provisions in this chapter to the contrary, any provision of a municipal charter of any municipality which specifies a different debt limit, or which requires a greater vote to authorize bonds, or which prescribes a different computation of appropriations under tax rate limits, or which is otherwise inconsistent with this subsection, shall apply.

Sec. 38. SMALL-SCALE HYDROELECTRIC; FINDINGS

The general assembly finds and declares that:

(1) The generation of renewable power within Vermont is critical to the economic development, energy independence, and financial security of the state.

(2) Section 401 of the federal Clean Water Act, 33 U.S.C. § 1341, requires any applicant for a federal permit that may involve a discharge to navigable waters to obtain certification from the state that the permitted activity does not violate the state's water quality standards.

(3) As set forth in 10 V.S.A. § 1004, the secretary of natural resources is the agent that the U.S. Environmental Protection Agency delegated to conduct Clean Water Act § 401 certifications in the state of Vermont.

(4) The secretary of natural resources should be required to adopt procedures establishing an application process for certification of hydroelectric projects in a timely manner that allows for the predictable and affordable development of small-scale hydroelectric power projects.

Sec. 39. 10 V.S.A. § 1006 is added to read:

§ 1006. CERTIFICATION OF HYDROELECTRIC PROJECTS; APPLICATION PROCESS

(a) As used in this section:

(1) "Bypass reach" means that area in a waterway between the initial point where water has been diverted through turbines or other mechanical means for the purpose of water-powered generation of electricity and the point

at which water is released into the waterway below the turbines or other mechanical means of electricity generation.

(2) "Conduit" means any tunnel, canal, pipeline, aqueduct, flume, ditch, or similar constructed water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.

(3) "Hydroelectric project" means a facility, site, or conduit planned or operated for the generation of water-powered electricity that has a generation capacity of no more than 1 megawatt and does not create a new impoundment.

(4) "Impoundment" means "riverine impoundment" as defined in the Vermont water quality standards adopted pursuant to chapter 47 and section 6025(d)(3) of this title.

(b) On or before December 15, 2009, the agency of natural resources, after opportunity for public review and comment, shall adopt by procedure an application process for the certification of hydroelectric projects in Vermont under Section 401 of the federal Clean Water Act.

(c) The application process adopted by the agency of natural resources under subsection (b) of this section may include an application form for a federal Clean Water Act Section 401 certification for a hydroelectric project that meets the requirements of the Vermont water pollution control permit rules. The application form may require information addressing:

(1) a description of the proposed hydroelectric project and the impact of the project on the watershed;

(2) the preliminary terms and conditions that an applicant shall be subject to if a federal Clean Water Act Section 401 certification is issued for a proposed hydroelectric project; and

(3) time frames for the agency of natural resources review of and response to an application for a federal Clean Water Act Section 401 certification of a hydroelectric project.

(d) In adopting the Clean Water Act Section 401 certification application process required by subsection (b) of this section, the agency may, consistent with its authority to waive certifications under 33 U.S.C. § 1341(a)(1), adopt an expedited certification process for:

(1) hydroelectric projects when data provided by an applicant provide reasonable assurance that the project will comply with the state water quality standards;

(2) hydroelectric projects utilizing conduits; hydroelectric projects without a bypass reach; and hydroelectric projects with a de minimis bypass reach, as defined by the agency of natural resources; and

(3) previously certified hydroelectric projects operating in compliance with the terms of a Clean Water Act Section 401 certification as demonstrated by existing administrative, monitoring, reporting, or enforcement data.

Sec. 40. AGENCY OF NATURAL RESOURCES REPORT ON APPLICATION PROCESS FOR CERTIFICATIONS OF HYDROELECTRIC PROJECTS

On or before January 15, 2010, the agency of natural resources shall submit to the senate committee on economic development, housing and general affairs, the house committee on commerce and economic development, the house committee on fish, wildlife and water resources, and the house and senate committees on natural resources and energy a copy of the application process required under 10 V.S.A. § 1006 for the certification of hydroelectric projects.

Sec. 41. STORMWATER; IMPAIRED WATERS; EXTENSION OF SUNSET

Sec. 10 of No. 140 of the Acts of the 2003 Adj. Sess. (2004), as amended by Sec. 8 of No. 154 of the Acts of the 2005 Adj. Sess. (2006), as amended by Sec. 3 of No. 43 of the Acts of 2007, is further amended to read:

Sec. 10. SUNSET

(a) Sec. 2 of this act (interim permitting authority for regulated stormwater runoff), except for subsection 1264a(e) of Title 10, shall be repealed on January 15, ~~2010~~ 2012.

(b) Sec. 4 of this act (local communities implementation fund) shall be repealed on September 30, 2012.

(c) Sec. 6 of this act (stormwater discharge permits during transition period) shall be repealed on January 15, ~~2010~~ 2012.

Sec. 42. [Omitted]

Sec. 43. ALTERNATIVE GUIDANCE FOR STORMWATER PERMITTING; WIND FACILITIES

To facilitate responsible development of renewable energy projects in high-elevation settings, the Vermont department of environmental conservation shall consult with project developers and interested stakeholders and, by January 15, 2010 or in the process currently under way to update the Vermont stormwater management manual, whichever occurs first, amend its

rules or the stormwater management manual, pursuant to chapter 25 of Title 3, to include alternative guidance for operational-phase stormwater permitting of renewable energy projects located in high-elevation settings. Such alternative guidance shall include consideration of measures that minimize the extent and footprint of stormwater-treatment practices so as to preserve vegetation and trees and limit disturbances; that reflect the fragile ecosystems, shallow soils, and sensitive streams found in high-elevation settings; and that reflect the temporary nature and infrequent use of construction and access roads to such projects.

* * * Telecommunications Permitting * * *

Sec. 44. 30 V.S.A. § 248a is amended to read:

§ 248a. CERTIFICATE OF PUBLIC GOOD FOR ~~MULTIPLE~~ COMMUNICATIONS FACILITIES

(a) Notwithstanding any other provision of law, if the applicant ~~in a single application~~ seeks approval for the construction or installation ~~within three years~~ of ~~three or more~~ telecommunications facilities ~~as part of an interconnected network~~ that are to be interconnected with other telecommunications facilities proposed or already in existence, the applicant may obtain a certificate of public good issued by the public service board under this section, which the board may grant if it finds that the facilities will promote the general good of the state consistent with subsection 202c(b) of this title. A single application may seek approval of one or more telecommunications facilities.

(b) For the purposes of this section:

(1) "Telecommunications facility" means ~~any~~ a communications facility that transmits and receives signals to and from a local, state, national, or international network used primarily for two-way communications for commercial, industrial, municipal, county, or state purposes and any associated support structure ~~extending more than 50 feet above the ground~~ that is proposed for construction or installation which is primarily for communications purposes ~~and which supports facilities that transmit and receive communications signals for commercial, industrial, municipal, county, or state purposes~~, and any ancillary improvements that are proposed for construction or installation and are primarily intended to serve the communications facilities or support structure.

(2) ~~Telecommunications facilities are "part of an interconnected network" if those facilities would allow one or more communications services to be provided throughout a contiguous area of coverage created by means of the proposed facilities or by means of the proposed facilities in combination~~

~~with other facilities already in existence~~ An applicant may seek approval of construction or installation of a telecommunications facility whether or not the telecommunications facility is attached to an existing structure.

(c) Before the public service board issues a certificate of public good under this section, it shall find that~~, in the aggregate~~:

(1) ~~the~~ The proposed ~~facilities~~ facility will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, and the public health and safety, with due consideration having been given to the relevant criteria specified in subsection 1424a(d) and subdivisions 6086(a)(1) through (8) and (9)(K) of Title 10~~; and~~.

(2) ~~unless~~ Unless there is good cause to find otherwise, substantial deference has been given to the land conservation measures in the plans of the affected municipalities and the recommendations of the municipal legislative bodies and the municipal and regional planning commissions regarding the municipal and regional plans, respectively. Nothing in this section or other provision of law shall prevent a municipal body from basing its recommendations on an ordinance adopted under 24 V.S.A. § 2291(19) or bylaw adopted under 24 V.S.A. chapter 117 by the municipality in which the facility is located.

(d) When issuing a certificate of public good under this section, the board shall give due consideration to all conditions in an existing state or local permit and shall harmonize the conditions in the certificate of public good with the existing permit conditions to the extent feasible.

(e) No less than 45 days prior to filing a petition for a certificate of public good under this section, the applicant shall serve written notice of an application to be filed with the board pursuant to this section to the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities; the secretary of the agency of natural resources; the commissioner of the department of public service and its director for public advocacy; and the landowners of record of property adjoining the project sites. In addition, at least one copy of each application shall be filed with each of these municipal and regional planning commissions. Upon motion or otherwise, the public service board shall direct that further public or personal notice be provided if the board finds that such further notice will not unduly delay consideration of the merits and that additional notice is necessary for fair consideration of the application.

(f) Unless the public service board identifies that an application raises a ~~substantial~~ significant issue, the board shall issue a final determination on an application filed pursuant to this section within 90 days of its filing or, if the original filing did not substantially comply with the public service board's

rules, within 90 days of the date on which the clerk of the board notifies the applicant that the filing is complete. If the board rules that an application raises a ~~substantial~~ significant issue, it shall issue a final determination on an application filed pursuant to this section within 180 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 180 days of the date on which the clerk of the board notifies the applicant that the filing is complete.

(g) Nothing in this section shall be construed to prohibit an applicant from executing a letter of intent or entering into a contract before the issuance of a certificate of public good under this section, provided that the obligations under that letter of intent or contract are made subject to compliance with the requirements of this section.

(h) An applicant using the procedures provided in this section shall not be required to obtain a ~~local zoning~~ permit or ~~a~~ permit amendment or other approval under the provisions of chapter 117 of Title 24 or chapter 151 of Title 10 for the facilities subject to the application or to a certificate of public good issued pursuant to this section. Ordinances adopted pursuant to subdivision 2291(19) of Title 24 or a municipal charter that would otherwise apply to the construction or installation of facilities subject to this section are preempted. Disputes over jurisdiction under this section shall be resolved by the public service board, subject to appeal as provided by section 12 of this title. An applicant that has obtained or been denied a permit or permit amendment under the provisions of Title 24 or chapter 151 of Title 10 for the construction of a telecommunications facility may not apply for approval from the board for the same or substantially the same facility, except that an applicant may seek approval for a modification to such a facility.

(i) Effective July 1, ~~2010~~ 2011, no new applications for certificates of public good under this section may be considered by the board.

(j)(1) Minor applications. The board may, subject to such conditions as it may otherwise lawfully impose, issue a certificate of public good in accordance with the provisions of this subsection and without the notice and hearings required by any provision other than subdivision (2) of this subsection if the board finds that such facilities will be of limited size and scope, and the petition does not raise a significant issue with respect to the substantive criteria of this section. If an applicant requests approval of multiple telecommunications facilities in a single application under this section, the board may issue a certificate of public good in accordance with the provisions of this subsection for all or some of the telecommunications facilities described in the petition.

(2)(A) Any party seeking to proceed under the procedures authorized by this subsection shall file a proposed certificate of public good and proposed findings of fact with its petition, and provide notice and a copy of the petition, proposed certificate of public good, and proposed findings of fact to the commissioner of the department of public service and its director for public advocacy, the secretary of the agency of natural resources, and each of the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities. The applicant shall give written notice of the proposed certificate to the landowners of record of property adjoining the project site or sites unless the board has previously determined on request of the applicant that good cause exists to waive or modify the notice requirement with respect to such landowners. Such notice shall request comment to the board within 21 days of the notice on the question of whether the petition raises a significant issue with respect to the substantive criteria of this section. If the board finds that a petition raises a significant issue with respect to the substantive criteria of this section, the board shall hear evidence on any such issue.

(B) Any waiver or modification of notice to adjoining landowners under this subsection shall be based on a determination that the landowners subject to the waiver or modification could not reasonably be affected by one or more of the proposed facilities, and that notice to such landowners would constitute a significant administrative burden without corresponding public benefit.

(C) If the board accepts a request to consider an application under the procedures of this subsection, then unless the public service board subsequently determines that an application raises a significant issue, the board shall issue a final determination on an application filed pursuant to this subsection within 45 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 45 days of the date on which the clerk of the board notifies the applicant that the filing is complete. If, subsequent to acceptance of an application under this subsection, the board rules that an application raises a significant issue, it shall issue a final determination on an application filed pursuant to this subsection within 90 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 90 days of the date on which the clerk of the board notifies the applicant that the filing is complete.

(D) If the board denies a request to consider an application under the procedures of this subsection, a filing made under this subsection that the board has found to be complete shall be deemed to satisfy notice requirements of subsection (e) of this section, and the periods stated under subsection (f) of this section shall run from the date of the board's denial of such request.

(k) The public service board may issue rules or orders implementing and interpreting this section. In developing such rules and orders, the board shall seek to simplify the application and review process as appropriate and may by rule or order waive the requirements of this section that the board determines are not applicable to telecommunications facilities of limited size or scope. Determination by the board that a petition raises a substantial issue with regard to one or more substantive criteria of this section shall not prevent the board from waiving other substantive criteria that it has determined are not applicable to such a telecommunications facility.

Sec. 45. 24 V.S.A. § 4412(8)(C) is amended to read:

(C) The regulation ~~of antennae that are part~~ of a telecommunications facility, as defined in 30 V.S.A. § 248a, shall be exempt from municipal ~~bylaw review~~ approval under this chapter when and to the extent jurisdiction is assumed by the public service board according to the provisions of that section.

Sec. 46. 10 V.S.A. § 6027 is amended to read:

§ 6027. POWERS

* * *

(l) A district commission may reject an application under this chapter that misrepresents any material fact and may after notice and opportunity for hearing award reasonable attorney's fees and costs to any party or person who may have become a party but for the false or misleading information or who has incurred attorney's fees or costs in connection with the application.

Sec. 47. 24 V.S.A. § 4455 is added to read:

§ 4455. REVOCATION

On petition by the municipality and after notice and opportunity for hearing, the environmental court may revoke a municipal land use permit issued under this chapter, including a permit for a telecommunications facility, on a determination that the permittee violated the terms of the permit or obtained the permit based on misrepresentation of material fact.

Sec. 48. 24 V.S.A. § 4470a is added to read:

§ 4470a. MISREPRESENTATION; MATERIAL FACT

An administrative officer or appropriate municipal panel may reject an application under this chapter, including an application for a telecommunications facility, that misrepresents any material fact. After notice and opportunity for hearing in compliance with section 809 of Title 3, an appropriate municipal panel may award reasonable attorney's fees and costs to

any party or person who may have become a party but for the false or misleading information or who has incurred attorney's fees or costs in connection with the application.

Sec. 49. 30 V.S.A. § 202c is amended to read:

§ 202c. STATE TELECOMMUNICATIONS; POLICY AND PLANNING

(a) The general assembly finds that advances in telecommunications technology and changes in federal regulatory policy are rapidly reshaping telecommunications services, thereby promising the people and businesses of the state improved communication and access to information, while creating new challenges for maintaining a robust, modern telecommunications network in Vermont.

(b) Therefore, to direct the benefits of improved telecommunications technology to all Vermonters, it is the purpose of this section and section 202d of this title to:

(1) Strengthen the state's role in telecommunications planning.

(2) Support the universal availability of appropriate infrastructure and affordable services for transmitting voice and high-speed data.

(3) Support the availability of modern mobile wireless telecommunications services along the state's travel corridors and in the state's communities.

(4) Provide for high-quality, reliable telecommunications services for Vermont businesses and residents.

(5) Provide the benefits of future advances in telecommunications technologies to Vermont residents and businesses.

(6) Support competitive choice for consumers among telecommunications service providers.

(7) Support the application of telecommunications technology to maintain and improve governmental and public services, public safety, and the economic development of the state.

(8) Support, to the extent practical and cost-effective, deployment of broadband infrastructure that:

(A) Uses the best commercially available technology.

(B) Does not negatively affect the ability of Vermont to take advantage of future improvements in broadband technology or result in widespread installation of technology that becomes outmoded within a short period after installation.

Sec. 50. 30 V.S.A. § 8060 is amended to read:

§ 8060. LEGISLATIVE FINDINGS AND PURPOSE

(a) The general assembly finds that:

(1) The availability of mobile telecommunications and broadband services is essential for promoting the economic development of the state, the education of its young people and life-long learning, the delivery of cost-effective health care, the public safety, and the ability of citizens to participate fully in society and civic life.

(2) Private entities have brought mobile telecommunications and broadband services to many households, businesses and locations in the state, but significant gaps remain.

(3) A new level of creative and innovative strategies (including partnerships and collaborations among and between state entities, nonprofit organizations, municipalities, the federal government, and the private sector) is necessary to extend and complete broadband coverage in the state, and to ensure that Vermont maintains a telecommunications infrastructure that allows residents and businesses to compete fairly in the national and global economy.

(4) When such partnerships and collaborations fail to achieve the goal of providing high-quality broadband access and service to all areas and households, or when some areas of the state fall behind significantly in the variety and quality of services readily available in the state, it is necessary for an authority of the state to support and facilitate the construction of infrastructure and access to broadband service through financial and other incentives.

(5) Small broadband enterprises now offering broadband service in Vermont have limited access to financial capital necessary for expansion of broadband service to unserved areas of the state. The general assembly recognizes these locally based broadband providers for their contributions to date in providing broadband service to unserved areas despite the limitations on their financial resources.

(6) The universal availability of adequate mobile telecommunications and broadband services promotes the general good of the state.

(7) Vermonters should be served by broadband infrastructure that, to the extent practical and cost-effective, uses the best commercially available technology and does not involve widespread installation of technology that becomes outmoded within a short period after installation.

(b) Therefore, it is the goal of the general assembly to ensure:

(1) that all residences and business in all regions of the state have access to affordable broadband services not later than the end of the year 2010~~;~~, and that this goal be achieved in a manner that, to the extent practical and cost-effective, does not negatively affect the future installation of the best commercially available broadband technology or result in widespread installation of technology that becomes outmoded within a short period after installation.

(2) the ubiquitous availability of mobile telecommunication services including voice and high-speed data throughout the state by the end of the year 2010.

(3) the investment in telecommunications infrastructure in the state which will support the best available and economically feasible service capabilities.

(4) that telecommunications and broadband infrastructure in all areas of the state is continuously upgraded to reflect the rapid evolution in the capabilities of available mobile telecommunications and broadband technologies, and in the capabilities of mobile telecommunications and broadband services needed by persons, businesses, and institutions in the state.

(5) the most efficient use of both public and private resources through state policies by encouraging the development of open access telecommunications infrastructure that can be shared by multiple service providers.

Sec. 51. 30 V.S.A. § 8077 is amended to read:

§ 8077. ESTABLISHMENT OF MINIMUM TECHNICAL SERVICE CHARACTERISTIC OBJECTIVES

(a) The department of public service~~,~~ shall, as part of the state telecommunications plan prepared pursuant to section 202d of this title, identify minimum technical service characteristics which ought to be available as part of broadband services commonly sold to residential and small business users throughout the state. For the purposes of this chapter, "broadband" means high speed Internet access. The department shall consider the performance characteristics of broadband services needed to support current and emerging applications of broadband services. The department shall review and update the minimum characteristics established under this section no less than every three years starting in 2009. In the event such review is conducted separately from an update of the state telecommunications plan pursuant to subsection 202d(f) of this title, the department shall issue revised minimum characteristics as an amendment to the plan.

(b) The authority shall give priority in its activities toward projects which expand the availability of broadband services that meet the minimum technical services characteristics established by the state telecommunications plan.

(c) Until the department of public service adopts ~~a revision to the state telecommunications plan~~ minimum service characteristics under subsection (a) of this section, the authority shall give priority to the expansion of broadband services which deploy equipment capable of a data transmission rate of not less than three megabits per second and offer a service plan with a data transmission rate of not less than 1.5 megabits per second in at least one direction to unserved areas.

* * * Act 250 * * *

Sec. 52. 10 V.S.A. § 6001(3)(D) is amended to read:

(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.

(ii) The construction of improvements for an electric generation or transmission facility that requires a certificate of public good under ~~section~~ 30 V.S.A. § 248 ~~or~~, a natural gas facility as defined in ~~subdivision~~ 30 V.S.A. § 248(a)(3), or a telecommunications facility issued a certificate of public good under 30 V.S.A. § 248a.

(iii) [Repealed.]

(iv) The construction of improvements for agricultural fairs that are open to the public for 60 days per year, or fewer, provided that any improvements constructed do not include one or more buildings.

(v) The construction of improvements for the exhibition or showing of equines at events that are open to the public for 60 days per year, or fewer, provided that any improvements constructed do not include one or more buildings.

(vi) The construction of improvements for any one of the actions or abatements authorized in subdivision (I) of this subdivision (vi):

(I) (aa) A remedial or removal action for which the secretary of natural resources has authorized disbursement under section 1283 of this title.

(bb) Abating a release or threatened release, as directed by the secretary of natural resources under section 6615 of this title.

(cc) A remedial or removal action directed by the secretary of natural resources under section 6615 of this title.

(dd) A corrective action authorized in a corrective action plan approved by the secretary of natural resources under section 6615b of this title.

(ee) A corrective action authorized in a corrective action plan approved by the secretary of natural resources under subchapter 3 of chapter 159 of this title.

(II) The exemption provided by this subdivision shall not apply to subsequent development.

Sec. 53. 10 V.S.A. § 6081(d) is amended to read:

(d) For purposes of this section, the following construction of improvements to preexisting municipal, county, or state projects shall not be considered to be substantial changes~~, regardless of the acreage involved,~~ and shall not require a permit as provided under subsection (a) of this section:

(1) ~~essential~~ municipal, county, or state wastewater treatment facility enhancements that do not expand the capacity of the facility by more than ~~10~~ 25 percent, excluding the extension of a wastewater collection system or an expansion of the service-area boundaries of a wastewater treatment facility.

(2) ~~essential~~ municipal ~~waterworks~~, county, or state water supply enhancements that do not expand the capacity of the facility by more than ~~10~~ 25 percent.

(3) ~~essential~~ public school reconstruction or expansion that does not expand the student capacity of the school by more than ~~10~~ 25 percent.

(4) ~~essential~~ municipal, county, or state building renovations or reconstruction ~~or expansion~~ that does not expand the floor space of the building by more than ~~10~~ 25 percent.

(5) construction of improvements to preexisting municipal, county, or state roads and bridges, provided such construction receives funding through the federal American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5.

Sec. 54. SUNSET

Effective July 1, 2011, each occurrence of "25" in 10 V.S.A. § 6081(d) ~~and (e)~~ is amended to "10". Also effective July 1, 2011, 10 V.S.A. § 6081(d)(5) (exemption for ARRA-funded road and bridge improvements) shall cease to be effective. However, the construction of improvements commenced prior to

July 1, 2011 shall not require a permit by operation of this section if such construction was exempt under Sec. 53 of this act.

* * * Utility Relocations: ARRA * * *

Sec. 55. 19 V.S.A. § 1607 is added to read:

§ 1607. FEDERAL REIMBURSEMENT FOR CERTAIN UTILITY RELOCATIONS

(a) As a result of appropriations for infrastructure enhancement and development contained in the American Recovery and Reinvestment Act (ARRA) of 2009, Pub.L. No. 111-5, and other federal transportation-aid programs, significant highway construction projects are expected to be constructed in the near future.

(b) To ensure that projects are not delayed or canceled because of the inability of utilities and municipalities to pay for utility relocation costs and to ensure that available federal funds are utilized on shovel-worthy projects, it is the intent of the general assembly to reimburse utilities with infrastructure, including municipally owned drinking water facilities and municipally owned wastewater infrastructure, up to 80 percent of the approved relocation costs, if the relocation is necessitated by a highway construction project funded by ARRA or other federal transportation-aid programs.

(c) Eligible relocation costs under subsection (b) of this section shall be reimbursed by the state agency or other entity primarily responsible for managing or directing the construction project on the condition that federal stimulus funds or other federal funds are available and eligible to pay for the relocation costs.

(d) The state and municipalities shall not be obligated to pay to utilities the state or local share of a federally funded project.

(e) The state shall not be obligated to pay the state or local share to a municipality for the relocation of municipal drinking water and municipal wastewater infrastructure.

* * * Indirect Source Permits * * *

Sec. 56. 10 V.S.A. § 556(i) is added to read:

(i) Notwithstanding any provisions of this section, section 5-503 of the air pollution control regulations, as adopted through April 27, 2007 (indirect source permits) is hereby repealed.

Sec. 57. 10 V.S.A. § 8019 is added to read:

§ 8019. ENVIRONMENTAL TICKETING

(a) The secretary and the board each shall have the authority to adopt rules for the issuance of civil complaints for violations of their respective enabling statutes or rules adopted under those statutes that are enforceable in the judicial bureau pursuant to the provisions of chapter 29 of Title 4. Any proposed rule under this section shall include both the full and waiver penalty amounts for each violation. The maximum civil penalty for any violation brought under this section shall not exceed $3,000.00 exclusive of court fees.

(b) A civil complaint issued under this section shall preclude the issuing entity from seeking an additional monetary penalty for the violation specified in the complaint when any one of the following occurs: the waiver penalty is paid, judgment is entered after trial or appeal, or a default judgment is entered. Notwithstanding this preclusion, the agency and the board may issue additional complaints or initiate an action under chapter 201 of this title, including a monetary penalty when a violation is continuing or is repeated, and may also bring an enforcement action to obtain injunctive relief or remediation and, in such additional action, may recover the costs of bringing the additional action and the amount of any economic benefit the respondent obtained as a result of the underlying violation in accordance with subdivisions 8010(b)(7) and (c)(1) of this title.

(c) The secretary or board chair and his or her duly authorized representative shall have the authority to amend or dismiss a complaint by so marking the complaint and returning it to the judicial bureau or by notifying the hearing officer at the hearing.

(d) Subsequent to the issuance of a civil complaint under this section and the conclusion of any hearing and appeal regarding that complaint, the following shall be considered part of the respondent's record of compliance calculating a penalty under section 8010 of this title:

(1) The respondent's payment of the full or waiver penalty stated in the complaint.

(2) The respondent's commission of a violation after the hearing before the judicial bureau on the complaint.

(3) The respondent's failure to appear or answer the complaint resulting in the entry of a default judgment.

(4) A finding, after appeal, that the respondent committed a violation.

Sec. 58. 4 V.S.A. § 1102 is amended to read:

§ 1102. JUDICIAL BUREAU; JURISDICTION

* * *

(b) The judicial bureau shall have jurisdiction of the following matters:

* * *

(17) Violations of the statutes listed in 10 V.S.A. § 8003, any rules or permits issued under those statutes, and any assurances of discontinuance or orders issued under chapter 201 of Title 10, provided that a rule has been adopted and a civil complaint issued concerning such a violation under 10 V.S.A. § 8019.

* * *

(d) Three hearing officers appointed by the court administrator shall determine waiver penalties to be imposed for violations within the judicial bureau's jurisdiction, except ~~that~~:

(1) ~~m~~Municipalities shall adopt full and waiver penalties for civil ordinance violations pursuant to section 1979 of Title 24. For purposes of municipal violations, the issuing law enforcement officer shall indicate the appropriate full and waiver penalty on the complaint.

(2) The agency of natural resources and the natural resources board shall include full and waiver penalties in each rule that is adopted under 10 V.S.A. § 8019. For purposes of environmental violations, the issuing entity shall indicate the appropriate full and waiver penalties on the complaint.

Sec. 59. 4 V.S.A. § 1106 is amended to read:

§ 1106. HEARING

* * *

(b) The hearing shall be held before a hearing officer and conducted in an impartial manner. The hearing officer may, by subpoena, compel the attendance and testimony of witnesses and the production of books and records. All witnesses shall be sworn. The burden of proof shall be on the state or municipality to prove the allegations by clear and convincing evidence. As used in this section, "clear and convincing evidence" means evidence which establishes that the truth of the facts asserted is highly probable. Certified copies of records supplied by the department of motor vehicles, the agency of natural resources, or the natural resources board and presented by the issuing officer or other person shall be admissible without testimony by a

representative of the department of motor vehicles, the agency of natural resources, or the natural resources board.

* * *

(e) A state's attorney may dismiss or amend a complaint, except that dismissal or amendment of a complaint subject to subdivision 1102(b)(17) of this title shall be governed by 10 V.S.A. § 8019(c).

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

Sec. 60. 4 V.S.A. § 1107 is amended to read:

§ 1107. APPEALS

(a) A decision of the hearing officer may be appealed to the district court, except for a decision in a proceeding under subdivision 1102(b)(17) of this title. The proceeding before the district court shall be on the record, or at the option of the defendant, de novo. The defendant shall have the right to trial by jury. An appeal shall stay payment of a penalty and the imposition of points.

(b) ~~If a decision is appealed, the state's attorney of the county in which the violation occurred shall represent the state and the state's attorney, grand juror or municipal attorney shall represent the municipality~~ A decision of the hearing officer in a proceeding under subdivision 1102(b)(17) of this title may be appealed to the environmental court created under chapter 27 of this title. The proceedings before the environmental court shall be on the record. The defendant shall not have a right to a jury trial. An appeal shall stay the payment of a penalty.

(c) If a decision is appealed, the state's attorney of the county in which the violation occurred shall represent the state, and the state's attorney, grand juror, or municipal attorney shall represent the municipality. In an appeal to the environmental court from a decision under subdivision 1102(b)(17) of this title, an attorney from the agency of natural resources or the natural resources board shall represent the state.

(d) No appeal as of right exists to the supreme court. On motion made to the supreme court by a party, the supreme court may allow an appeal to be taken to it from the district court or environmental court.

Sec. 61. 20 V.S.A. § 2063 is amended to read:

§ 2063. CRIMINAL HISTORY RECORD FEES; CRIMINAL HISTORY RECORD CHECK FUND

* * *

(b) Requests made by criminal justice agencies for criminal justice purposes or other purposes authorized by state or federal law shall be exempt from all record check fees. The following types of requests shall be exempt from the Vermont criminal record check fee:

* * *

(5) Requests made by environmental enforcement officers employed by the agency of natural resources.

* * *

Sec. 62. PERMIT EXPEDITING; FEDERAL STIMULUS

(a) Notwithstanding any other provision of law, the following shall apply to an application for a permit, certificate, or other approval to the agency of natural resources, the agency of transportation, an appropriate municipal panel under 24 V.S.A. chapter 117, or a district environmental commission under 10 V.S.A. chapter 151 with respect to a project for municipal, county, or state purposes that will receive any of its funding through the federal American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5:

(1) The application shall be given priority over any other pending application.

(2) An appropriate municipal panel shall adjourn the hearing promptly after all parties have submitted evidence and argument and issue a decision within 45 days after the adjournment of the hearing, and failure of the panel to issue a decision within this period shall be deemed approval and shall be effective on the 46th day.

(3) A district commission shall adjourn the hearing promptly after all parties have submitted evidence and argument and issue a decision within 90 days after the adjournment of the hearing, and failure of the commission to issue a decision within this period shall be deemed approval and shall be effective on the 91st day.

(b) This section shall be repealed on July 1, 2012.

Sec. 63. EXPIRED PERMITS; FEDERAL STIMULUS

A permit, certificate, or approval that, by operation of law or other means, has lapsed or expired because the project subject to the permit, certificate, or approval has not been constructed shall be deemed effective if all of the following apply:

(1) The project subject to the permit, certificate, or other approval will receive any of its funding through the federal American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5.

(2) The permit, certificate, or other approval was issued within the five-year period preceding the date this section is enacted by the agency of natural resources, the agency of transportation, a municipality or appropriate municipal panel under 24 V.S.A. chapter 117, a district commission under 10 V.S.A. chapter 151, or an appellate court or other tribunal on appeal from such an agency, municipality, panel, or commission.

(3) No change is proposed to the project as approved by the permit, certificate, or other approval.

Sec. 64. 32 V.S.A. § 5930a(a) is amended as follows:

(a) There is created ~~an economic incentive review board~~ a Vermont economic progress council which shall be attached to the department of economic development for administrative support, including an executive director who shall be appointed by the governor with the advice and consent of the senate, who shall be knowledgeable in subject areas of the ~~board's~~ council's jurisdiction, and hold the status of an exempt state employee, and administrative staff employed in the state classified service. The ~~board~~ council shall consist of 11 members, nine of whom shall be residents of the state appointed by the governor with the advice and consent of the senate. The governor shall appoint residents to the ~~board~~ council who are knowledgeable and experienced in the subjects of community development and planning, education funding requirements, economic development, state fiscal affairs, property taxation, or entrepreneurial ventures, and shall make appointments to the ~~board~~ council insofar as possible as to provide representation to the various geographical areas of the state and municipalities of various sizes. Members of the ~~board~~ council appointed by the governor shall serve initial staggered terms with five members serving four-year terms, and four members serving two-year terms. All ~~board~~ council members' terms shall be four-year terms upon the expiration of their initial terms and ~~board~~ council members may be reappointed to serve successive terms. All terms shall commence on April 1 of each odd-numbered year. The governor shall select a chair from among the ~~board's~~ council's members. In addition the ~~board~~ council shall include one member selected by the speaker of the house, who shall be a member of the house; and one member selected by the committee on committees of the senate, who shall be a member of the senate. Legislative members shall be voting members. There shall also be two regional members from each region of the state; one shall be designated by the regional development corporation of the region and one shall be designated by the regional planning commission

of the region. Regional members shall be nonvoting members and shall serve during consideration by the ~~board~~ council of applications from their respective regions. For attendance at meetings and for other official duties, appointed members shall be entitled to compensation for services and reimbursement of expenses as provided in section 1010 of this title, except that members who are members of the legislature shall be entitled to compensation for services and reimbursement for expenses as provided in section 406 of Title 2. A regional member who does not otherwise receive compensation and reimbursement for expenses from his or her regional development or planning organization shall also be entitled to compensation and reimbursement of expenses for attendance at meetings and for other official duties as provided in section 1010 of this title.

Sec. 65. ~~REPEAL AND~~ TRANSITION

(a) Sec. 64 of this act shall take effect upon passage, at which time the economic incentive review board shall be renamed the Vermont economic progress council. The council shall have the responsibilities and authority of the economic incentive review board with respect to administering and monitoring the Vermont employment growth incentives (VEGI) program and the tax increment financing program and property tax allocations under Secs. 2a through 2h of No. 184 of the Acts of the 2005 Adj. Sess.(2006). The legislative council is directed to make necessary revisions to the Vermont Statutes Annotated to reflect the changes made in Secs. 64 and 65 of this act.

Sec. 66. FINDINGS AND PURPOSE; VERMONT VILLAGE GREEN RENEWABLE PILOT PROGRAM

The general assembly finds all of the following:

(1) The use of fossil fuels for heat and power contributes to emissions of greenhouse gases and climate change.

(2) Fossil fuel prices in recent years have been highly volatile, and significant potential exists for those prices to reach rates that are equal to or greater than the exceptionally high prices seen within the last few years.

(3) Payments for fossil fuels by Vermonters involve the movement of significant sums of money outside the state and the country to pay for heating fuel, draining Vermont's economy.

(4) The state of Vermont seeks to ensure that Vermonters obtain a greater measure of control over the environmental impacts of energy use and energy costs.

(5) The state of Vermont seeks to increase its efforts to limit its emissions of greenhouse gases.

(6) Community energy infrastructure that uses renewable fuels can reduce the environmental impacts of energy use and provide a community with the opportunity to obtain heat and potentially power at stable prices that reduce the economic risks associated with fossil fuels. Local energy purchases recirculate money in the Vermont economy and can provide businesses with competitive energy rates.

(7) The state of Vermont seeks to establish incentives for communities to host energy generation that is renewable and efficiently utilized and that provides heat and potentially power to groups of commercial, industrial, or residential uses, or combinations of such uses, within the community.

Sec. 67. 30 V.S.A. chapter 93 is added to read:

CHAPTER 93. VERMONT VILLAGE GREEN RENEWABLE PILOT PROGRAM

§ 8100. DEFINITIONS

In this chapter:

(1) "Board" means the public service board created under section 3 of this title.

(2) "Certification" or "certified," except when part of the phrase "third party certified," refers to certification of a Vermont village green renewable project by the department under subsection 8101(b) of this title.

(3) "Combined heat and power " or "CHP" shall have the meaning stated in 10 V.S.A. § 6523(b), except that:

(A) CHP excludes facilities using fossil fuel.

(B) CHP using woody biomass as a fuel must achieve, for that fuel, no less than a 50-percent net annual efficiency of energy utilized and, during the heating season, a minimum energy conversion efficiency of 70 percent considering all energy inputs and outputs at normal load.

(4) "Department" means the department of public service created under section 1 of this title.

(5) "District heating" means a system for distributing heat generated in a centralized location within a host community to multiple residential, commercial, or industrial uses within that community or a combination of such uses. The source of heat may be a dedicated heat-only facility using renewable energy as a fuel or waste heat from electrical generation that uses renewable energy as a fuel to form a CHP system.

(6) "District power" means a system for distributing electricity generated in a centralized location within a host community to multiple

residential, commercial, or industrial uses in that community or a combination of such uses. The electricity must be produced using renewable energy as a fuel source and may include CHP.

(7) "Host community" means the municipality in which a Vermont village green renewable project is to be located.

(8) "Renewable energy" shall have the meaning stated in 10 V.S.A. § 6523(b)(4), except that renewable energy using woody biomass as a fuel must achieve, for that fuel, no less than a 50-percent net annual efficiency of energy utilized and, during the heating season, a minimum energy conversion efficiency of 70 percent considering all energy inputs and outputs at normal load.

(9) "Vermont village green renewable project" means district heating, either with or without district power, to serve a downtown development district designated as such pursuant to 24 V.S.A. § 2793 or a growth center designated as such pursuant to 24 V.S.A. § 2793c. As long as the end uses served by the project are within such a district or center, the generation of heat and power may be outside the district or center.

§ 8101. PILOT PROGRAM; CERTIFICATION

(a) The Vermont village green renewable pilot program is created to consist of no more than two Vermont village green renewable projects, one each in the city of Montpelier and in the town of Randolph. Another municipality may seek certification under this chapter in the event either the city of Montpelier or the town of Randolph or both decline to seek or are denied certification.

(b) On application of a host community, the department may certify a Vermont village green renewable project under this chapter on finding each of the following:

(1) The host community proposes a Vermont village green renewable project.

(2) The host community has submitted an application to the board that includes each of the following:

(A) A description and map of the proposed Vermont village green renewable project, showing its location within the host community.

(B) A complete description of the existing industrial, commercial, or residential uses to be served by the Vermont village green renewable project, of how the project will serve those uses, and of the billing, payment, and customer service arrangements.

(C) A letter submitted by the host community in support of the application and, if the host community has a town plan, the letter shall confirm that the proposed project is consistent with that plan.

(D) A letter issued by the appropriate regional planning commission indicating that the regional impacts of the proposed project and selected site have been considered and that the project conforms with the applicable regional plan.

(E) A letter from the Vermont downtown development board, as described under 24 V.S.A. § 2792(f), that the development board has been notified of the Vermont village green renewable project.

(3) The Vermont village green renewable project is consistent with the purposes of the clean energy development fund as established in 10 V.S.A. § 6523.

(4) The host community will invest in the Vermont village green renewable project the incentive created under section 8102 of this title and has provided a plan that demonstrates that such investment will be made.

(5) The Vermont village green renewable project, if it uses woody biomass as a fuel, will use procurement standards, management practices, and a supply chain that are third party certified using a performance-based audit.

(6) The Vermont village green renewable project will comply with all applicable national ambient air quality standards and air pollution control regulations of the agency of natural resources. If, during 2009, the U.S. Environmental Protection Agency proposes updated emissions standards applicable to wood-fueled boilers to be used in connection with the project, the project shall comply with such proposed standards.

(7) The Vermont village green renewable project meets all applicable requirements of this chapter.

(c) Notwithstanding any other provision of law, certification under this section shall not be subject to the provisions of 3 V.S.A. chapter 25 and shall not be subject to appeal.

(d) A host community does not need to obtain certification unless it seeks its Vermont village green renewable project to be eligible for incentives under section 8102 of this title or rates for electricity as provided under subsection 8104(b) of this title. Certification shall not be required to qualify for net metering under section 219a of this title.

§ 8102. INCENTIVES; CUSTOMER CONNECTIONS

Notwithstanding any other provision of law, the clean energy development fund created under 10 V.S.A. § 6523 shall provide at least $100,000.00 in incentives to customers who will connect to a certified Vermont village green renewable project. Any such incentive shall be applied by the customer to the cost of constructing the customer's connection to the project.

§ 8103. HEAT AVAILABILITY

All of the heat generated by a Vermont village green renewable project shall be made available to the commercial, industrial, and residential users identified in the host community's application to the board under subsection 8101(b) of this title.

§ 8104. RATES FOR ELECTRICITY

(a) All or a portion of the electricity generated by a Vermont village green renewable project, if it includes district power, shall be made available to the commercial, industrial, and residential users identified in the host community's application to the board under subsection 8101(b) of this title.

(b) If a Vermont village green renewable project includes district power and does not qualify or opt for treatment as a net metering system under section 219a of this title:

(1) On petition of the host community, the board after notice and opportunity for hearing shall create a rate class for the commercial, industrial, and residential uses served by the project, the rates for which class at a minimum shall be consistent with the following principle: An end user shall pay the same share of the distribution utility's fixed costs as a similar end user not served by the project.

(2) Excess electricity may be sold to the distribution utility at the market rate or by contract.

§ 8105. REPORTING

(a) A host community for which a Vermont village green renewable project has been certified under this chapter shall file a report to the board and the commissioner of public service by December 31 of each year following certification. The report shall contain such information as is required by the board and the commissioner. The report shall include at a minimum sufficient information for the commissioner of public service to submit the report required by subsection (b) of this section.

(b) Beginning March 1, 2010, and annually thereafter, the commissioner of public service shall submit a report to the senate committees on economic

development, housing and general affairs, on finance, and on natural resources and energy, the house committees on ways and means, on commerce and economic development, and on natural resources and energy, and the governor which shall include an update on progress made in the development of the Vermont village green renewable projects authorized under this chapter. The report also shall include an analysis of the costs and benefits of the projects as well as any recommendations consistent with the purposes of this chapter.

Sec. 68. LETTER OF INTENT; VERMONT VILLAGE GREEN RENEWABLE PILOT PROGRAM

No later than July 1, 2010, the City of Montpelier and the Town of Randolph shall each issue a letter of intent to the department of public service stating whether or not the city or the town, respectively, intends to seek certification under 30 V.S.A. § 8101.

* * * VOSHA Service of Process * * *

Sec. 69. 21 V.S.A. § 225(a) is amended to read:

(a) If, upon inspection or investigation the commissioner or the director, or the agent of either of them, finds that an employer has violated a requirement of the VOSHA Code, the commissioner shall with reasonable promptness issue a citation to the employer and serve it on the employer by certified mail or in the same manner as a summons to the superior court. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provisions of the statute, standard, rule or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation. By rule the commissioner shall prescribe procedures for issuance of a notice in lieu of a citation with respect to de minimus violations which have no direct or immediate relationship to safety or health, and for hearing interested parties before a civil penalty is assessed.

* * * Workers' Comp. Info. Sharing * * *

Sec. 69a. 21 V.S.A. § 1314(e)(1) is amended to read:

(e)(1) Subject to such restrictions as the board may by regulation prescribe, information from unemployment insurance records may be made available to any public officer or public agency of this or any other state or the federal government dealing with the administration or regulation of relief, public assistance, unemployment compensation, a system of public employment offices, wages and hours of employment, workers' compensation, occupational safety and health, or a public works program for purposes appropriate to the necessary operation of those offices or agencies. The commissioner may also make information available to colleges, universities, and public agencies of the state for use in connection with research projects of a public service nature,

and to the Vermont economic progress council with regard to the administration of subchapter 11E of chapter 151 of Title 32; but no person associated with those institutions or agencies may disclose that information in any manner which would reveal the identity of any individual or employing unit from or concerning whom the information was obtained by the commissioner.

* * *

Sec. 70. STUDY; SPECIAL COMMITTEE ON MOBILE HOME RENT-TO-OWN AGREEMENTS

(a) There is created a special committee on mobile home rent-to-own agreements, the organization of which shall be as follows:

(1) The committee shall hold its first meeting no later than June 30, 2009 at a place and time agreed to by a majority of the members. The commissioner of the department of housing and community affairs, or his or her designee, shall chair the first meeting, at which the committee shall elect a chair and vice chair and shall establish a schedule for accomplishing its duties under this act.

(2) Following its first meeting, the committee shall provide bi-monthly progress reports to the chairs of the house committee on general, housing and military affairs and the senate committee on economic development, housing and general affairs, and shall submit its final report to those committees on or before January 15, 2010.

(3) The staff of the legislative council shall provide technical and clerical support to the committee. Legislative member shall be entitled to a per diem and expenses as provided in 2 V.S.A. § 406.

(b) The committee shall consist of the following individuals:

(1) The commissioner of the department of housing and community affairs or designee.

(2) The commissioner of the department of banking, insurance, securities, and health care administration or designee.

(3) A representative of the banking industry with experience in real estate transactions recommended by the Vermont Bankers Association, Inc.

(4) A member representing the interests of Vermont town clerks who shall be appointed collaboratively by the Vermont League of Cities and Towns, Inc. and the Vermont Municipal Clerks' & Treasurers' Association.

(5) Two members representing the interests of mobile home tenants, one of whom shall be appointed by Vermont Legal Aid, and one of whom shall be appointed by the Champlain valley office of economic opportunity.

(6) A member representing the interests of mobile home park owners who shall be appointed by the Vermont Apartment Owners Association, LLC.

(7) The chair of the house committee on general, housing and military affairs, or designee, and the senate committee on economic development, housing and general affairs, or designee.

(c) The committee shall take such testimony and review such reports or other information to examine and develop proposals to address the following issues, and any additional issues it deems necessary, to accomplish its duties under this act:

(1) The historical and current practice of mobile home purchases on a "rent-to-own" basis, including:

(A) The prevalence of purchases on a rent-to-own basis.

(B) Whether rent-to-own purchases occur pursuant to written agreement, the form and content of those agreements, whether those agreements comply with current law, and whether a standard agreement unique to rent-to-own purchases of mobile homes should be adopted.

(C) The extent to which rent-to-own sellers and purchasers are aware of, and follow, notice and documentation requirements, including bills of sale, UCC filings, tax filings, and related recording requirements, and whether these requirements are sufficient to create an adequate public record of ownership.

(D) The extent to which rent-to-own purchasers utilize counsel or other resources when entering into agreements to purchase a mobile home.

(2) The current framework regulating foreclosure of interests in mobile homes and whether and how that framework sufficiently addresses rent-to-own purchases.

(3) The treatment of mobile homes as personal property, with emphasis on whether such treatment causes legal, financial, or other uncertainty with respect to ownership, and any potential resolution of these issues.

* * * Necessity Proceedings * * *

Sec. 71. 19 V.S.A. § 507 is amended to read:

§ 507. HEARING AND ORDER OF NECESSITY

~~(a)~~ At the time and place appointed for the hearing, the ~~court, consisting of the superior judge signing the order or the other superior judge as may be~~

~~assigned and, if available within the meaning of 4 V.S.A. § 112, the assistant judges of the county in which the hearing is held~~ board shall hear all persons interested and wishing to be heard. If any person owning or having an interest in the land to be taken or affected appears and objects to the necessity of taking the land included within the survey or any part of the survey, then the ~~court~~ board shall require the agency of transportation to proceed with the introduction of evidence of the necessity of the taking. The burden of proof of the necessity of the taking shall be upon the agency of transportation and shall be established by a fair preponderance of the evidence, and the exercise of reasonable discretion upon the part of the agency shall not be presumed. The ~~court~~ board may cite in additional parties including other property owners whose interest may be concerned or affected and shall cause to be notified, the legislative body of all adjoining cities, towns, villages, or other municipal corporations affected by any taking of land or interest in land based on any ultimate order of the ~~court~~ board. The ~~court~~ board shall make findings of fact and ~~file them and any party in interest may appeal under the rules of appellate procedure adopted by the supreme court~~ conclusions of law. The ~~court~~ board shall, by its order, determine whether the necessity of the state requires the ~~taking~~ acquisition of the land and rights as set forth in the petition and may find from the evidence that another route or routes are preferable in which case the agency shall proceed in accordance with section 502 of this title and this section and may modify or alter the proposed ~~taking~~ acquisitions in such respects as to the ~~court~~ board may seem proper.

~~(b) By its order, the court may also direct the agency of transportation to install passes under the highway as specified in this chapter for the benefit of the large modern farm properties, the fee title of which is owned by any party to the proceedings, where a reasonable need is shown by the owner. The court may consider evidence relative to present and anticipated future highway traffic volume, future land development in the area, and the amount and type of acreage separated by the highway in determining the need for an underpass of larger dimensions than a standard cattle-pass of reinforced concrete, metal or other suitable material which provides usable dimensions five feet wide by six feet three inches high. Where a herd of greater than fifty milking cows is consistently maintained on the property, the court may direct that the dimensions of the larger underpass shall be eight feet in width and six feet three inches in height to be constructed of reinforced concrete, and the owner of the farm property shall pay one-fourth of the difference in overall cost between the standard cattle-pass and the larger underpass. Where the owner of the farm property desires an underpass of dimensions greater than eight feet in width and six feet three inches in height, the underpass may be constructed if feasible and in accordance with acceptable design standards, and the total~~

~~additional costs over the dimensions specified shall be paid by the owner. The provisions of this section shall not be interpreted to prohibit the agency of transportation and the property owner from determining the specifications of a cattle pass or underpass by mutual agreement at any time, either prior or subsequent to the date of the court's order. The owner of a fee title shall be interpreted to include lessees of so-called lease land.~~

Sec. 72. 19 V.S.A. § 508 is amended to read:

§ 508. STIPULATION OF NECESSITY

(a) A person or municipality owning or having an interest in lands or rights to be taken or affected, a municipality in which the land is to be taken or affected, and other interested persons may stipulate as to the necessity of the taking.

(b)(1) The stipulation shall be an affidavit sworn to before a person authorized to take acknowledgments, and, in the case of a municipality, shall be executed by a majority of its legislative body. The stipulation shall be in a form approved by the attorney general and shall include but not be limited to the following:

~~(1)~~(A) a recital that the person or persons executing the stipulation have examined the applicable plan and survey of the lands or rights to be taken;

~~(2)~~(B) an explanation of the legal and property rights affected; and

~~(3)~~(C) that the right of the person to adequate compensation is not affected by executing the stipulation.

(2) The stipulation shall be invalid unless within two years of the date of the stipulation an order of necessity is granted.

Sec. 73. 19 V.S.A. § 509 is amended to read:

§ 509. PROCEDURE

(a) The stipulation shall be filed with the ~~appropriate superior court~~ board, together with the petition for an order of necessity. Notice of the hearing on the petition shall be published in accordance with section 506 of this title. Other interested persons who have not stipulated to necessity shall be notified and served in accordance with section 506 of this title. The ~~court~~ board may also cite in additional parties in accordance with section 507 of this title.

(b) If a person claiming to be affected or concerned files a notice of objection to a proposed finding of necessity prior to the date of the hearing, the ~~court~~ board shall at the hearing determine if the person has an interest in lands or rights to be ~~taken~~ acquired such as to be entitled to object to the proposed finding of necessity, and, if ~~he~~ the person is so affected or concerned, whether

there is necessity for the ~~taking~~ proposed acquisitions, in accordance with section 507 of this title. Nothing in this section shall prohibit an interested person from consenting to necessity. The ~~court~~ board may continue the hearing to allow proper preparation by the agency of transportation and interested parties.

(c) If all interested persons and municipalities stipulate as to the necessity of the taking, the ~~court~~ board may immediately issue an order of necessity.

(d) Interested persons or municipalities who do not consent to necessity are entitled to a necessity hearing in accordance with the provisions of this chapter.

(e) A copy of the order finding necessity shall be mailed by the agency to each person and municipality who consented by stipulation to necessity, by certified mail, return receipt requested.

(f) The stipulation of necessity shall not affect the rights of the person with regard to fixing the amount of compensation to be paid in accordance with sections 511-514 of this title. However, the agency of transportation ~~board~~ may enter into an agreement for purchase of lands or rights affected, provided the agreement is conditioned upon the issuance of an order of necessity.

Sec. 74. 19 V.S.A. § 510 is amended to read:

§ 510. ~~APPEAL FROM ORDER OF NECESSITY~~ JUDICIAL REVIEW

(a) If the state, municipal corporation or any owner affected by the order of the ~~court~~ board is aggrieved by the order, an appeal may be taken to the ~~supreme~~ superior court pursuant to subsection 5(c) of this title. In the event an appeal is taken according to these provisions from an order of necessity, its effect may be stayed by the superior court or the supreme court where the person requesting the stay establishes:

(1) that he or she has a likelihood of success on the merits;

(2) that he or she will suffer irreparable harm in the absence of the requested stay;

(3) that other interested parties will not be substantially harmed if a stay is granted; and

(4) that the public interest supports a grant of the proposed stay.

(b) If no stay is granted or, if a stay is granted, upon final disposition of the appeal, a copy of the order of the court shall be recorded within 30 days in the office of the clerk of each town in which the land affected lies.

(c) Thereafter for a period of one year, the agency of transportation may request the transportation board to institute proceedings for the condemnation

of the land included in the survey as finally approved by the ~~court~~ board without further hearing or consideration of any question of the necessity of the taking. ~~In no event shall title to or possession of the appealing landowner's property pass to the state until there is a final adjudication of the issue of the necessity and propriety of the proposed taking.~~

~~(b)~~(d) If the agency of transportation is delayed in requesting the transportation board to institute condemnation proceedings within the one-year period by court actions or federal procedural actions, the time lost pending final determination shall not be counted as part of the one-year necessity period.

Sec. 75. 19 V.S.A. § 520 is added to read:

§ 520. MUNICIPALITIES; USE OF CHAPTER 5 PROCEDURES

When the construction, reconstruction, alteration, or repair of a town highway involves the acquisition of private lands or rights in private land, the legislative body of the municipality may elect to follow the procedures outlined in chapter 5 of this title to acquire private lands or rights in land for state highways. In such event, the legislative body of the municipality shall carry out the functions of the agency and the board.

* * * Miscellaneous Tax Amendments * * *

Sec. 76. INCREASING THE NUMBER OF COMPLIANCE PERSONNEL IN THE DEPARTMENT OF TAXES

(a) In addition to any other funds appropriated to the department of taxes in fiscal year 2010, there is appropriated from the general fund to the department $535,000.00 in fiscal year 2010 for the purpose of hiring nine full-time limited service employees to augment the department's compliance division. The department shall use the funds so appropriated to hire four tax field examiners, two desk audit examiners, one collector, one desk audit supervisor, and either one attorney or a second collector.

(b) In addition to any other funds appropriated to the department of taxes in fiscal year 2011, there is appropriated from the general fund to the department $935,000.00 in fiscal year 2011 for the purpose of retaining the nine full-time limited service employees hired pursuant to subsection (a) of this section and hiring six additional full-time limited service employees to further augment the department's compliance division. The department shall use the additional funds so appropriated to hire four tax field examiners and two desk audit examiners.

(c) It is the intent of the legislature to further augment the department's compliance efforts in fiscal year 2012 by appropriating additional funds for

fiscal year 2012 for the purpose of retaining the 15 full-time limited service employees hired pursuant to subsections (a) and (b) of this section and hiring five additional limited service employees.

(d) The positions created pursuant to subsections (a) and (b) of this section shall not be new state employee positions but instead shall be transferred and converted from the vacant position pool as and only when such positions in the vacant position pool become available.

(e) Notwithstanding any other provision of law, the positions created by this section shall be created as limited service positions and shall not be funded for a period in excess of three years.

Sec. 77. 20 V.S.A. § 3815(c) is added to read:

§ 3815. DOG, CAT, AND WOLF-HYBRID SPAYING AND NEUTERING PROGRAM

(c) The agency of agriculture, food and markets is authorized to promulgate an emergency administrative rule by August 1, 2009, the purpose of which shall be that only a dog, cat, or wolf-hybrid acquired for no compensation shall be eligible for funding from the animal spaying and neutering program established under this section. The rule shall provide consideration for the financial ability of the funding applicant to pay for the requested service. For the purposes of this subsection, a nominal fee or donation required for adoption of a dog, cat, or wolf-hybrid shall not constitute compensation paid for the animal.

* * * Increased Penalties for Misclassification * * *

Sec. 78. 8 V.S.A. § 3661(c) is added to read:

(c) An employer who makes a false statement or representation that results in a lower workers' compensation premium, after notice and opportunity for hearing before the commissioner, may be assessed an administrative penalty of not more than $20,000.00 in addition to any other appropriate penalty.

Sec. 79. 21 V.S.A. § 708(b) is amended to read:

(b) ~~Action by the commissioner of banking, insurance, securities, and health care administration. An employer who willfully makes a false statement or representation for the purpose of obtaining a lower workers' compensation premium, after notice and opportunity for hearing before the commissioner of banking, insurance, securities, and health care administration may be assessed an administrative penalty of not more than $5,000.00 in addition to any other appropriate penalty. In addition to any other remedy provided by law, the commissioner of banking, insurance, securities, and health care administration~~

~~may pursue the collection of the administrative penalty imposed by this section in Washington superior court.~~ When the department of labor has sufficient reason to believe that an employer has made a false statement or representation for the purpose of obtaining a lower workers' compensation premium, the department shall refer the alleged violation to the commissioner of banking, insurance, securities, and health care administration for enforcement pursuant to 8 V.S.A. § 3661(c).

* * * Compliance Statements * * *

Sec. 80. 21 V.S.A. § 690 is amended to read:

§ 690. CERTIFICATE, FORM; COPY OF POLICY

(a) An employer subject to the provisions of this chapter who has workers' compensation insurance coverage pursuant to section 687 or 689 of this title shall file with the commissioner a certificate of the insurance in a form prescribed by the commissioner. The certificate shall include the policy number, effective date, date of expiration, operations covered and such other information the commissioner requests. The certificate shall be signed by a duly authorized representative of the insurance or guarantee company that issued the insurance coverage. Upon request, the insurance or guarantee company shall file with the commissioner a copy of the contract or policy of insurance issued.

(b)(1) In addition to any other authority provided to the commissioner pursuant to this chapter, the commissioner may issue a written request to ~~a contractor engaged in the business of nonresidential building or construction~~ an employer subject to the provisions of this chapter to provide a workers' compensation compliance statement on a form provided by the commissioner. For the purposes of this subsection, ~~a contractor~~ an employer includes subcontractors and independent contractors. The form shall require all the following information sorted by job site:

(A) The number of employees employed during the entire current workers' compensation policy term or the previous year if no policy was in effect or partially in effect prior to the request and the effective dates of the term of any policies in effect.

(B) The total number of hours for which compensation was paid.

(C) ~~Designation of the hours that were the basis of the appropriate National Council on Compensation Insurance (NCCI) classification code~~ A list of all subcontractors and 1099 workers and their function on the job site for the period in question.

(D) The name of the workers' compensation insurance carrier, the policy number, and the agent, if any.

(E) As an attachment, the insurance policy declaration pages, including how much payroll the policy is covering and a designation of the hours that provide the basis of the appropriate National Council on Compensation Insurance classification code.

(2) Any ~~contractor~~ employer who fails to comply with this subsection or falsifies information on the compliance statement may be assessed an administrative penalty of not more than $5,000.00 for each week during which the noncompliance or falsification occurred and any costs and attorney fees required to enforce this subsection. The commissioner may also seek injunctive relief in Washington superior court.

(3) A compliance statement shall be a public record, and the commissioner shall provide a copy of a compliance statement to any person on request. An insurance company provided with a compliance statement may investigate the information in the statement. Based on evidence that ~~a contractor~~ an employer is not in compliance with this chapter, the commissioner shall request a compliance statement or an amended compliance statement from the ~~contractor~~ employer, investigate further, and take appropriate enforcement action. ~~No contractor shall be required to provide more than one workers' compensation compliance statement per year, unless the commissioner explains the need for each additional statement.~~

(4) In the event the commissioner receives a request for an employer to provide a compliance statement but finds no evidence of noncompliance with this chapter, the commissioner shall provide timely notification of the findings to the requesting party.

Sec. 81. CURRENT USE FOR FISCAL YEAR 2011

In response to current economic conditions, there is a need in the fiscal year 2011 budget to adjust the use value appraisal program to achieve $1,600,000.00 in savings or in increased revenues. Multiple strategies will be considered to achieve this goal, with recommendations to be discussed by the joint fiscal committee at their November 2009 meeting.

* * * Tax Increment Financing * * *

Sec. 82. MILTON; TAX INCREMENT FINANCING DISTRICT

(a) For purposes of the tax increment financing district created in Milton:

(1) The following types of financing, in addition to those included in 24 V.S.A. § 1891(7), shall include conventional bank loans; certificates of participation, approved by the state treasurer; lease-purchase, approved by the state treasurer; and revenue-anticipation notes, approved by the state treasurer.

(2) The education tax increment may be retained for up to 20 years beginning with the initial date of the creation of the district or on the date of the first debt incurred, at the discretion of Milton. The assessed valuation of all taxable real property within the district, as defined in 24 V.S.A. § 1895, shall be recertified if Milton chooses to begin retaining the education tax increment more than five years beyond the initial creation of the district.

(3) The legal voters of Milton may authorize the selectboard to pledge the credit of Milton for all debt obligations pursuant to 24 V.S.A. § 1897(a) in more than one vote.

(b) The provisions of this section shall be retroactive to July 1, 2008.

Sec. 83. BURLINGTON TAX INCREMENT FINANCING

(a) The authority of the City of Burlington to incur indebtedness for its currently-existing tax increment financing district is hereby extended for five years beginning January 1, 2010.

(b) The City of Burlington shall submit to the joint fiscal committee at least ten days prior to its September 2009 meeting a business plan and projection of new incremental education property tax revenue growth to be financed by any indebtedness authorized under subsection (a) of this section, and a proposal for implementation of a payment to the education fund in lieu of tax increment which would approximate 25 percent of the new incremental education property tax revenue and the mechanism for payment by the City to the education fund, including payment dates.

(c) If the joint fiscal committee approves a formula for implementation of a payment to the education fund in lieu of tax increment (the increased revenue generated by the incremental grand list value), and if the City of Burlington incurs new indebtedness under subsection (a) of this section for its currently-existing tax increment financing district, then the city shall pay to the education fund the approved payment in lieu of tax increment as required under the plan approved by the joint fiscal committee.

Sec. 84. VERMONT OPPORTUNITY REDEVELOPMENT SITE IN SPRINGFIELD

(a) The town of Springfield may apply to the secretary of commerce and community development for certification of a redevelopment area known as the "J&L site," which shall include the J&L building and the portion of the

underlying parcel allocable to the building site, and the secretary, upon certification, shall also certify the "redevelopment period," which shall be the seven years beginning with the year of certification of the site.

(b) The site certified under subsection (a) of this section shall be deemed approved by the Vermont Economic Progress Council (VEPC), and subject to such reporting as VEPC shall require, for education property tax stabilization; and the education property tax liability of the site shall remain at its 2009 level for the redevelopment period.

(c) During the redevelopment period, a qualified business or a qualified redeveloper who pays wages and salaries for services performed within the certified site shall be eligible for an income tax credit equal to three percent of the total wages and salaries paid during the taxable year for services performed within the certified site.

(d) Materials and trade fixtures purchased for incorporation into redevelopment of the certified site by the qualified redeveloper during the redevelopment period shall be exempt from sales and use tax, and a purchaser shall apply to the commissioner of taxes for a sales tax exemption certificate, which shall be presented to vendors in order to obtain the tax exemption.

(e) For purposes of this section:

(1) "Qualified business" means any business that intends to locate in or expand into the redevelopment area and will employ at least 10 new full-time employees in positions that are not retail sales within a year of approval; and will pay wages and benefits to all full-time employees that meet or exceed the prevailing compensation level for that particular employment.

(2) "Qualified redeveloper" means any taxpayer that purchases and redevelops the certified site for sale or lease to a qualified business.

(f) Beginning January 15, 2011, the secretary of commerce and community development shall report to the senate committee on economic development, housing and general affairs and the house committee on commerce and economic development the status of the Springfield redevelopment site.

Sec. 85. 10 V.S.A. § 1974(3) is added to read:

(3) An existing building, structure, or campground located on a subdivided lot when the building, structure, or campground is located 500 feet or more from the closest point of the new property boundary line, unless the wastewater system or potable water supply is a failed system or a failed supply at the time of subdivision.

Sec. 86. 13 V.S.A. § 4014 is amended to read:

§ 4014. PURCHASE OF FIREARMS IN ~~CONTIGUOUS~~ OTHER STATES

Residents of the state of Vermont may purchase rifles and shotguns in ~~a~~ another state, ~~contiguous to the state of Vermont~~ provided that such residents conform to the applicable provisions of the Gun Control Act of 1968, and regulations thereunder, as administered by the United States ~~Secretary of the Treasury~~ Bureau of Alcohol, Tobacco, Firearms and Explosives, and provided further that such residents conform to the provisions of law applicable to such purchase in the state of Vermont and in the ~~contiguous~~ state in which the purchase is made.

Sec. 87. 13 V.S.A. § 4015 is amended to read:

§ 4015. PURCHASE OF FIREARMS BY NONRESIDENTS

Residents of a state ~~contiguous to~~ other than the state of Vermont may purchase rifles and shotguns in the state of Vermont, provided that such residents conform to the applicable provisions of the Gun Control Act of 1968, and regulations thereunder, as administered by the United States ~~Secretary of the Treasury~~ Bureau of Alcohol, Tobacco, Firearms and Explosives, and provided further that such residents conform to the provisions of law applicable to such purchase in the state of Vermont and in the state in which such persons reside.

* * * Professional Regulation * * *

Sec. 88. 26 V.S.A. § 1583 is amended to read:

§ 1583. EXCEPTIONS

This chapter does not prohibit:

* * *

(9) The providing of care for the sick in accordance with the tenets of any church or religious denomination by its adherents if the individual does not hold himself or herself out to be a registered nurse, licensed practical nurse, or licensed nursing assistant and does not engage in the practice of nursing as defined in this chapter.

* * * General Permitting * * *

Sec. 89. GENERAL PERMITS; INTENT

It is the intent of the general assembly that general permitting authority of the agency of natural resources be used for classes or categories of discharges, emissions, disposal, facilities, or activities that present low risk to the environment and public health.

Sec. 90. 10 V.S.A. chapter 165 is added to read:

CHAPTER 165. GENERAL PERMIT AUTHORITY

§ 7500. PURPOSE AND DEFINITIONS

(a) This chapter is intended to provide for the protection of human health and the environment while allowing the secretary to utilize general permits as appropriate to streamline permitting processes and gain administrative efficiencies.

(b) When used in this chapter:

(1) "Agency" means the agency of natural resources.

(2) "Commissioner" means the commissioner of the department or the commissioner's duly authorized representative.

(3) "Department" means the department of environmental conservation.

(4) "General permit" means a permit that applies to a class or category of discharges, emissions, disposal, facilities, or activities within a common geographic area, including the entire state or a region of the state. For a class or category to be eligible to be placed under a general permit under this chapter, the class or category must meet each of the following:

(A) The discharges, emissions, disposal, facilities, or activities must share the same or substantially similar qualities.

(B) Those qualities must be such that the requirements of statute and rule applicable to the discharges, emissions, disposal, facilities, or activities can be met and human health and the environment protected by imposition of the same or substantially similar permit conditions on the class or category.

(5) "Individual permit" means a permit that authorizes a specific discharge, emission, disposal, facility, or activity that contains terms and conditions that are specific to the discharge, emission, disposal, facility, or activity.

(6) "Secretary" means the secretary of the agency or the secretary's duly authorized representative.

§ 7501. GENERAL PERMITS

(a) When the secretary deems it to be appropriate and consistent with the purpose of this chapter, the secretary may issue a general permit under the following chapters of this title: chapter 23 (air pollution control) for stationary source construction permits; chapter 37 (water resources management) for aquatic nuisance control permits authorizing chemical treatment by the agency

of natural resources, a department within that agency, or an appropriate federal agency; chapter 56 (public water supply) for construction permits; and chapter 159 (waste management) for solid waste transfer station and recycling certifications and categorical certifications.

(b) A general permit issued under this chapter shall contain those terms and conditions necessary to ensure that the category or class subject to the general permit will comply with the provisions of the statutes and the rules adopted under those statutes applicable to the category or class. These terms and conditions may include providing for specific emission or effluent limitations and levels of treatment technology; monitoring, recording, or reporting; the right of access for the secretary; and any additional conditions or requirements the secretary deems necessary to protect human health and the environment.

(c) This chapter is in addition to any other authority granted to the agency or department.

(d) The secretary may adopt rules to implement this chapter.

§ 7502. ISSUANCE OF GENERAL PERMITS; PUBLIC PARTICIPATION

(a) When, under section 7501 of this title, the secretary determines to issue a general permit, the secretary shall prepare a proposed general permit and shall provide for public notice of the permit in a manner designed to inform interested and potentially interested persons of the proposed general permit.

(1) Notice of the proposed general permit shall be circulated within each geographic area to which the permit would apply and shall include at least all of the following:

(A) Written notice to the clerk of each municipality within the geographic area.

(B) Written notice to each affected Vermont state agency and such other government agencies as the secretary deems appropriate.

(C) Publication of notice of the proposed permit in a newspaper or newspapers that circulate generally within each geographic area to which the permit would apply.

(D) Posting of notice and a copy of the proposed general permit prominently on the web page of the department.

(E) Mailing of notice and a copy of the proposed general permit to any individual, group, or organization upon request.

(F) Mailing of notice and a copy of the proposed general permit to the chairs of the house committees on commerce and economic development, on fish, wildlife and water resources, and on natural resources and energy, and

the senate committees on economic development, housing and general affairs and on natural resources and energy. With this mailing, the secretary shall also include a brief summary of any scientific information on which the proposed rule is based. If the secretary proposes to amend a general permit previously issued under this chapter, the secretary further shall include an annotated text showing changes from the existing permit.

(G) The inclusion in any notice issued under this subsection of a summary of the proposed general permit, including a summary of the activities to which it would apply and its terms and conditions; the deadlines by which comments are to be submitted and a public information meeting requested; the procedure for submitting comments and requesting a public information meeting; the contact information for the agency or department concerning the proposed permit; and a statement of how a copy of the proposed general permit may be obtained.

(2) The secretary shall provide a period of not less than 30 days following the date of publication in a newspaper or newspapers of general circulation during which any person may submit written comments on the proposed general permit.

(b) The secretary shall provide an opportunity for any person, state, province, or country potentially affected by the proposed general permit to request a public informational meeting with respect to the proposed permit.

(1) The deadline for any request under this subsection shall be no earlier than the deadline for submitting written comments set under subdivision (a)(2) of this section. The secretary shall hold an informational meeting if there is a significant public interest in holding a meeting.

(2) The secretary shall provide public notice of any informational meeting in at least the same manner as public notice of the proposed general permit was given under subsection (a) of this section, except that the secretary need not set a new comment deadline or provide, with the notice of the meeting, a copy of the proposed general permit to any person or entity to which the secretary has already provided a copy.

(3) Any person shall be permitted to submit oral or written statements and data concerning the proposed general permit at the informational meeting.

(4) All statements, comments, and data presented at the meeting shall be retained by the secretary and considered in the formulation of the secretary's determinations regarding the final general permit.

(c) Whether or not requested, the secretary may hold a public informational meeting on a proposed general permit at any time prior to final decision on and

issuance of the general permit. The provisions of subdivisions (b)(2) through (4) of this section shall apply to such a meeting.

(d) The secretary may finally adopt a general permit following consideration of any written comments submitted on the general permit and any statements, comments, and data presented at a public information meeting on the permit. Where the secretary decides, in finally adopting a proposed general permit, to overrule substantial arguments and considerations raised for or against the original proposal, the secretary's final adoption of the general permit shall include a responsiveness summary stating the reasons for the secretary's decision.

(e) On final adoption of a general permit, the secretary shall provide notice of the permit's final adoption and an accompanying responsiveness summary in at least the same manner as notice of the proposed general permit was issued under subdivision (a)(1) of this section, except that the secretary need not set or include further deadlines for comment or requesting an informational meeting.

§ 7503. AUTHORIZATION UNDER A GENERAL PERMIT

(a) Any person wishing to discharge, emit, dispose, or operate a facility or engage in activity subject to a general permit under this chapter shall file an application for authorization under the general permit on a form provided by the secretary. Each application shall be accompanied by a fee as specified by section 2822 of Title 3.

(b) For each application under this section, the applicant shall provide notice, on a form provided by the secretary, to the clerk of the municipality in which the discharge, emission, disposal, facility, or activity is located, to the local and regional planning commissions, and to the owners of land adjoining the site of the proposed discharge, emission, disposition, or facility operation. The applicant shall provide a copy of this notice to the secretary, with such confirmation as the secretary deems adequate to demonstrate that the clerk, planning commissions, and adjoining landowners have received the notice. Following receipt of that confirmation, the secretary shall provide an opportunity of at least ten working days for written comment regarding whether the application complies with the terms and conditions of the general permit under which coverage is sought.

(c) The secretary may grant an application for authorization to discharge, emit, dispose, operate a facility, or engage in activity to which a general permit under this chapter applies only after determining that each of the following applies:

(1) The filings required in subsections (a) and (b) of this section are complete.

(2) The discharge, emission, disposal, facility, or activity is eligible for coverage under and will meet the terms and conditions of the general permit.

(d) The secretary may:

(1) Allow a transfer from one person or entity to another of an authorization to discharge, emit, dispose, operate a facility, or engage in activity under a general permit issued under this chapter.

(2) Require notification to the secretary for changes to a discharge, emission, disposal, facility, or activity for which authorization has been issued under a general permit under this chapter.

(3) Under the procedures specified in subsection 814(c) of Title 3, revoke or suspend authorization to discharge, emit, dispose, operate a facility, or engage in activity under a general permit issued under this chapter.

§ 7504. REQUIRING AN INDIVIDUAL PERMIT

The secretary may require any applicant for or permittee authorized under a general permit issued under this chapter to apply for an individual permit. Any interested person may petition the secretary to take action under this section. The secretary may require an individual permit if any one of the following applies:

(1) The discharge, emission, disposal, facility, or activity is a significant contributor of pollution as determined by consideration of each of the following factors:

(A) The location of the discharge with respect to waters of the state of Vermont.

(B) The size and scope of the applicant's or permittee's activities or operation.

(C) The quantity and nature of the pollutants.

(D) Other relevant factors.

(2) The permittee is not in compliance with the terms and conditions of a general permit issued under this chapter.

(3) The application does not qualify for a general permit issued under this chapter.

(4) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of wastes or pollutants applicable to the discharge, emission, disposal, facility, or activity.

(5) Federal requirements have been adopted that conflict with one or more provisions of a general permit issued under this chapter.

§ 7505. REQUIRING AUTHORIZATION UNDER A GENERAL PERMIT

The secretary may require that a discharge, emission, disposal, facility, or activity for which issuance or reissuance of an individual permit is sought be subject to a general permit issued under this chapter if the secretary finds that the discharge, emission, disposal, facility, or activity is eligible for coverage under and will meet the terms and conditions of the general permit and that authorization of the discharge, emission, disposal, facility, or activity under a general permit will protect human health and the environment.

Sec. 91. REPORT AND SUNSET

(a) On April 1, 2011, and again on April 1, 2014, the secretary of natural resources shall submit a report to the senate committees on natural resources and energy and on economic development, housing and general affairs, the house committees on natural resources and energy and on commerce and economic development, and the governor regarding the implementation, compliance, and enforcement of general permits under chapter 165 of Title 10. The secretary's report shall include at least each of the following:

(1) The number of persons seeking coverage under each general permit issued under this chapter.

(2) The number of site visits completed by agency of natural resources personnel to review applications for coverage under and compliance with a general permit issued under this chapter.

(3) The number of and disposition of enforcement actions brought by the agency of natural resources to enforce the requirements of a general permit issued under this chapter.

(b) Chapter 165 of Title 10 shall sunset on July 1, 2014; however, the sunset shall not affect any permit granted prior to July 1, 2014 under chapter 165 of Title 10.

Sec. 92. APPROPRIATION; ARRA; STATE ENERGY PROGRAM, ENERGY EFFICIENCY, AND CONSERVATION BLOCK GRANTS

In fiscal year 2010, funds under the American Recovery and Reinvestment Act (ARRA) of 2009, Pub.L. No. 111-5, consisting of $21,999,000.00 state energy program funds and $9,593,500.00 energy efficiency and conservation

block grant (EECBG) program funds are appropriated to the department of public service in Sec.B.235 of H.441 (2009). These funds shall be transferred and deposited into the clean energy development fund created under 10 V.S.A. § 6523. These funds shall be administered and disbursed as set forth in 10 V.S.A. § 6523 with respect to ARRA funds received by the clean energy development fund.

** * Clean Energy Development Fund * * *

Sec. 93. 10 V.S.A. § 6523 is hereby amended to read:

§ 6523. VERMONT CLEAN ENERGY DEVELOPMENT FUND

(a) Creation of fund.

(1) There is established the Vermont clean energy development fund to consist of all of the following:

(A) ~~the~~ The proceeds due the state under the terms of the memorandum of understanding between the department of public service and Entergy Nuclear VY and Entergy Nuclear Operations, Inc. that was entered under public service board docket 6812; together with the proceeds due the state under the terms of any subsequent memoranda of understanding entered before July 1, 2005 between the department of public service and Entergy Nuclear VY and Entergy Nuclear Operations, Inc.~~; and~~

(B) $21,999,000.00 in funds received by the state under the appropriation contained in the American Recovery and Reinvestment Act (ARRA) of 2009, Pub.L. No. 111-5, to the state energy program authorized under 42 U.S.C. § 6321 et seq.

(C) $9,593,500.00 received by the state under ARRA from the United States Department of Energy through the energy efficiency and conservation block grant (EECBG) program.

(D) ~~any~~ Any other monies that may be appropriated to or deposited into the fund.

(2) Balances in the fund ~~shall be held for the benefit of ratepayers,~~ shall be expended solely for the purposes set forth in this subchapter~~,~~ and shall not be used for the general obligations of government. All balances in the fund at the end of any fiscal year shall be carried forward and remain part of the fund. Interest earned by the fund shall be deposited in the fund. This fund is established in the state treasury pursuant to subchapter 5 of chapter 7 of Title 32.

(b) Definitions. For purposes of this section, the following definitions shall apply:

(1) "Clean energy resources" means electric power supply and demand-side resources, or thermal energy or geothermal resources, that are ~~either~~ "combined heat and power facilities," "cost-effective energy efficiency resources," or "renewable energy" resources.

* * *

(4) "Emerging energy-efficient technologies" means technologies that are both precommercial but near commercialization and that have already entered the market but have less than five percent of current market share; that use less energy than existing technologies and practices to produce the same product or otherwise conserve energy and resources, regardless of whether or not they are connected to the grid; and that have additional non-energy benefits such as reduced environmental impact, improved productivity and worker safety, or reduced capital costs.

(5) "Renewable energy" has the meaning established under 30 V.S.A. § 8002(2), and shall include the following: solar photovoltaic and solar thermal energy; wind energy; geothermal heat pumps; farm, landfill, and sewer methane recovery; low emission, advanced biomass power, and combined heat and power technologies using biomass fuels such as wood, agricultural or food wastes, energy crops, and organic refuse-derived waste, but not municipal solid waste; advanced biomass heating technologies and technologies using biomass-derived fluid fuels such as biodiesel, bio-oil, and bio-gas.

(c) Purposes of fund. The purposes of the fund shall be to promote the development and deployment of cost-effective and environmentally sustainable electric power and thermal energy or geothermal resources, and emerging energy-efficient technologies, for the long-term benefit of Vermont ~~electric customers~~ consumers, primarily with respect to renewable energy resources, and the use of combined heat and power technologies. The general assembly expects and intends that the public service board, public service department, and the state's power and efficiency utilities will actively implement the authority granted in Title 30 to acquire all reasonably available cost-effective energy efficiency resources and for the benefit of Vermont ratepayers and the power system.

(d) Expenditures authorized.

~~(1) This fund shall be administered by the department of public service to facilitate the development and implementation of clean energy resources.~~

~~(2) The department shall assure an open public process in the administration of the fund for the purposes established in this subchapter.~~

~~(3) By January 15 of each year, commencing in 2007, the department of public service shall provide to the house and senate committees on natural~~

~~resources and energy, the senate committee on finance, and the house committee on commerce a report detailing the revenues collected and the expenditures made under this subchapter, together with recommended principles to be followed in the allocation of funds and a proposed five-year plan for future expenditures from the fund.~~ ~~(4)~~Projects for funding may include, and in the case of subdivision ~~(2)~~(E)(ii) of this subsection shall include continuous funding for as long as funds are available, the following:

(A) projects that will sell power in commercial quantities;

(B) among those projects that will sell power in commercial quantities, funding priority will be given to those projects that commit to sell power to Vermont utilities on favorable terms;

(C) projects to benefit publicly owned or leased buildings;

(D) renewable energy projects on farms, which may include any or all costs incurred to upgrade to a three-phase line to serve a system on a farm;

(E) small scale renewable energy in Vermont residences, institutions, and businesses:

(i) generally; and

(ii) through the small-scale renewable energy incentive program;

(F) projects under the agricultural economic development special account established under 6 V.S.A. § 4710(g) to harvest biomass, convert biomass to energy, or produce biofuel;

(G) until December 31, 2008 only, super-efficient buildings; ~~and~~

(H) projects to develop and use thermal or geothermal energy, regardless of whether they also involve the generation of electricity;

(I) emerging energy-efficient technologies; and

(J) effective projects that are not likely to be established in the absence of funding under the program.

~~(5)~~(2) If during a particular year, the ~~department~~ clean energy development board determines that there is a lack of high value projects eligible for funding, as identified in the five-year plan, or as otherwise identified, the ~~department~~ clean energy development board may consult with the public service board, and shall consider transferring funds to the energy efficiency fund established under the provisions of 30 V.S.A. § 209(d). Such a transfer may take place only in response to an opportunity for a particularly cost-effective investment in energy efficiency, and only as a temporary

supplement to funds collected under that subsection, not as replacement funding.

~~(6)~~ (3) ~~The~~ A sum ~~of $20,000.00~~ equal to the cost of the business solar energy income tax credits authorized in subsections 5822(d) and 5930z(a) of Title 32 shall be transferred annually from the clean energy development fund to the general fund ~~to support the cost of the solar energy income tax credits~~.

(e) Management of fund.

(1)~~(A)~~ There is created the clean energy development ~~fund advisory committee~~ board, which shall consist of ~~the commissioner of public service, or a designee, and the chairs of the house and senate committees on natural resources and energy, or their designees.~~ the following nine directors:

(A) Three at-large directors appointed by the speaker of the house;

(B) Three at-large directors appointed by the president pro tempore of the senate.

(C) Two at-large directors appointed by the governor.

(D) The state treasurer, ex officio.

~~(B) There is created the clean energy development fund investment committee, which shall consist of seven persons appointed by the clean energy development fund advisory committee.~~

(2) ~~The commissioner of public service shall:~~

~~(A) by no later than October 30, 2006:~~

~~(i) develop a five year strategic plan and an annual program plan, both of which shall be developed with input from a public stakeholder process;~~

~~(ii) develop an annual operating budget;~~

~~(iii) develop proposed program designs to facilitate clean energy market and project development (including use of financial assistance, investments, competitive solicitations, technical assistance, and other incentive programs and strategies); and~~

~~(iv) submit the plans, budget, and program designs to the clean energy development fund advisory committee for review and to the clean energy development fund investment committee for approval;~~

~~(B) adopt rules by no later than January 1, 2007 to carry out the program approved under this subdivision;~~

~~(C) explore pursuing joint investments in clean energy projects with other state funds and private investors to increase the effectiveness of the clean energy development fund;~~

~~(D) acting jointly with the members of the clean energy development fund investment committee, make decisions with respect to specific grants and investments, after the plans, budget, and program designs have been approved by the clean energy development fund investment committee. This subdivision (D) shall be repealed upon the effective date of rules adopted under subdivision (2)(B) of this subsection.~~

~~(3)~~ During fiscal years after FY 2006, up to five percent of amounts appropriated to the public service department from the fund may be used for administrative costs related to the clean energy development fund ~~and after FY 2007, another five percent of amounts appropriated to the public service department from the fund not to exceed $300,000.00 in any fiscal year shall be transferred to the secretary of the agency of agriculture, food, and markets for agricultural and farm-based energy project development activities~~.

(3) A quorum of the clean energy development board shall consist of five directors. The directors of the board shall select a chair and vice chair.

(4) In making appointments of at-large directors to the clean energy development board, the appointing authorities shall give consideration to citizens of the state with knowledge of relevant technology, regulatory law, infrastructure, finance, and environmental permitting. The at-large directors of the board shall serve terms of four years beginning July 1 of the year of appointment. However, one at-large director appointed by the speaker and one at-large director appointed by the president pro tempore shall serve an initial term of two years. Any vacancy occurring among the at-large directors shall be filled by the respective appointing authority and shall be filled for the balance of the unexpired term. A director may be reappointed.

(5) Except for those directors of the clean energy development board otherwise regularly employed by the state, the compensation of the directors shall be the same as that provided by subsection 1010(a) of Title 32. All directors of the clean energy development board, including those directors otherwise regularly employed by the state, shall receive their actual and necessary expenses when away from home or office upon their official duties.

(6) At least every three years, the clean energy development board shall commission a detailed financial audit by an independent third party of the fund and the activities of the fund manager, which shall make available to the auditor its books, records, and any other information reasonably requested by the board or the auditor for the purpose of the audit.

(7) In performing its duties, the clean energy development board may utilize the legal and technical resources of the department of public service or, alternatively, may utilize reasonable amounts from the clean energy development fund to retain qualified private legal and technical service providers. The department of pubic service shall provide the clean energy development board and its fund manager with administrative services.

(8) By January 15 of each year, commencing in 2010, the clean energy development board shall provide to the house and senate committees on natural resources and energy, the senate committee on finance, and the house committee on commerce and economic development a report detailing the revenues collected and the expenditures made under this subchapter.

(9) The clean energy development board is authorized, to the extent allowable under ARRA, to utilize up to 10 percent of ARRA funds received for the purpose of administration. Half of this amount shall be allocated to the treasurer to retain permanent, temporary, or limited service positions or contractors to administer such funds and the other half of this amount shall be allocated to the oversight of specific projects receiving ARRA funding through the clean energy development fund.

(10) At least quarterly, the clean energy development board shall hold a public meeting to review and discuss the status of the fund, fund projects, the performance of the fund manager, any reports, information, or inquiries submitted by the fund manager or the public, and any additional matters the clean energy development board deems necessary to fulfill its obligations under this section.

(f) Clean energy development fund manager. The clean energy development fund shall have a fund manager who shall be a state employee retained and supervised by the board and housed within the office of the treasurer.

(g) Bonds. The clean energy development board may explore use of the fund to establish one or more loan-loss reserve funds to back issuance of bonds by the state treasurer otherwise authorized by law, including clean renewable energy bonds, that support the purposes of the fund.

(h) All ARRA funds placed in the clean energy development fund shall be disbursed, administered, and accounted for in a manner that ensures rapid deployment of the funds, is consistent with all requirements of ARRA, including requirements for administration of funds received and for transparency and accountability. These funds shall be maintained in a separate account specifically restricted to ARRA funds within the clean energy development

fund. These funds shall be for the following, provided that no single project directly or indirectly receives a grant in more than one of these categories:

(1) The Vermont small-scale renewable energy incentive program currently administered by the renewable energy resource center, for use in residential and business installations. These funds may be used by the program for all forms of renewable energy as defined by 30 V.S.A. § 8002(2), including biomass and geothermal heating. The disbursement to this program shall seek to promote continuous funding for as long as funds are available.

(2) Grant and loan programs for renewable energy resources, including thermal resources such as district biomass heating that may not involve the generation of electricity.

(3) Grants and loans to thermal energy efficiency incentive programs, community-scale renewable energy financing programs, certification and training for renewable energy workers, promotion of local biomass and geothermal heating, and an anemometer loan program.

(4) $2 million for a public-serving institution efficiency and renewable energy program that may include grants and loans and create a revolving loan fund. For the purpose of this subsection, "public-serving institution" means government buildings and nonprofit public and private universities, colleges, and hospitals. In this program, awards shall be made through a competitive bid process. On or before January 15, 2011, the treasurer shall report to the general assembly on the status of this program, including each award made and, for each such award, the expected energy savings or generation and the actual energy savings or generation achieved.

(5) $2 million to the Vermont housing and conservation board (VHCB) to make grants and deferred loans to nonprofit organizations for weatherization and renewable energy activities allowed by federal law, including assistance for nonprofit owners and occupants of permanently affordable housing.

(6) $2 million to the Vermont telecommunications authority (VTA) to make grants for installation of small-scale wind turbines and associated towers on which telecommunications equipment is to be collocated and which are developed in association with the VTA.

(7) $880,000.00 to the 11 regional planning commissions ($80,000.00 to each such commission) to conduct energy efficiency and energy conservation activities that are eligible under the EECBG program.

(8) Of the funds authorized for use in subdivisions (5)-(7) of this subsection, to the extent permissible under ARRA, up to five percent may be spent for administration of the funds received.

(9) The clean energy development board is authorized, to the extent allowable under ARRA, to utilize up to 10 percent ARRA funds received for the purpose of administration. One-half of this amount shall be allocated to the treasurer to retain permanent, temporary, or limited service positions or contractors to administer such funds, and the other half of this amount shall be allocated to the oversight of specific projects receiving ARRA funding through the clean energy development fund.

(i) The treasurer shall consult with the other directors of the clean energy development fund board and the commissioner of public service and adopt rules pursuant to 3 V.S.A. chapter 25 to carry out this section. The treasurer shall adopt an initial set of rules under this subsection no later than July 15, 2009 and may use the emergency rulemaking process provided under 3 V.S.A. § 844 to do so. In adopting the initial set of rules, the treasurer shall consult with any at-large board directors who have been appointed, the chief recovery officer, and the commissioner of public service. Any rules adopted by the treasurer under this subsection shall comply with all of the following:

(1) The rules shall contain those provisions necessary to assure compliance with requirements for any funds received by the fund through ARRA.

(2) The rules shall support efforts to coordinate applications for competitive or other funding opportunities under ARRA from various entities within Vermont.

(3) The rules shall provide reasonable opportunities for small businesses to participate in competitive or other funding opportunities.

(j) The governor shall have the authority within 30 days of approval or adoption to disapprove a project, program, or other activity approved by the clean energy development board to be funded by the clean energy development fund if the source of the funds is ARRA; and any rules adopted under subsection (i) of this section. The governor may at any time waive his or her authority to disapprove any project, program, or other activity or rule under this subsection.

Sec. 94. APPLICATION

Sec. 93 of this act shall supersede and replace any other provisions of law enacted in this legislative session to amend 10 V.S.A. § 6523.

Sec. 95. TRANSITION; POSITION TRANSFER

(a) It is the intent of the general assembly that the seven members of the clean energy development fund investment committee appointed prior to the effective date of this act shall be eligible for appointment as directors of the clean energy development fund board for a full term or until the terms of their original appointments expire.

(b) All at-large directors of the clean energy development fund board shall be appointed within 21 days of passage of this act, and the board shall assume supervision of the clean energy development fund on the initial adoption of rules under 10 V.S.A. § 6523(i) or August 1, 2009, whichever is earlier. Until such time, the clean energy development fund advisory and investment committees enabled under prior law shall continue to exist, and they and the commissioner of public service shall continue to have all authorities as under prior law with respect to the clean energy development fund.

(c) Upon the effective date of this act, the fund manager currently retained for the clean energy development fund shall be deemed the fund manager retained by the clean energy development board pursuant to 10 V.S.A. § 6523(f). Upon assumption of supervision of the fund by the clean energy development board pursuant to subsection (b) of this section, the position occupied by that fund manager shall be transferred to the board and become subject to the board's supervision.

Sec. 96. GENERAL OBLIGATION BONDS FOR CLEAN RENEWABLE ENERGY PROJECTS

(a) The capital debt affordability advisory committee (CDAAC), in addition to submitting its fiscal year 2010 recommendation pursuant to 32 V.S.A. § 1001(c), shall consider, in the context of the size and affordability of net state tax-supported indebtedness and the receipt of federal funds under the American Recovery and Reinvestment Act of 2009 (ARRA) which may be used for tax-exempt renewable energy bonds, the issuance of additional general obligation bonds for clean renewable energy projects. The proceeds from these additional bonds, if any, shall be used to pay for projects authorized pursuant to 10 V.S.A. § 6523.

(b) By September 30, 2009, the CDAAC shall submit to the governor, the members of the joint fiscal committee, and the chairs of the house committee on corrections and institutions and the senate committee on institutions an estimate of the amount of additional long-term net tax-supported debt, in addition to the $69,995,000.00 in general obligation debt previously recommended for fiscal year 2010 for debt issuance to support the state's

capital budget, that prudently may be authorized for additional bonds to support clean renewable energy projects.

(c) The general assembly hereby authorizes for fiscal year 2010 the issuance of general obligation bonds to be dedicated to projects that meet the requirements of 10 V.S.A. § 6523, provided that the total amount issued does not exceed the CDAAC recommendation to be submitted by September 30, 2009, and provided that the total amount is approved by the joint fiscal committee and the governor.

(d) The state treasurer, with the approval of the governor, shall determine the appropriate form and maturity of the bonds authorized in accordance with this section consistent with the underlying nature of the projects to be funded. The state treasurer shall allocate the estimated cost of bond issuance or issuances to the department of public service pursuant to 32 V.S.A. § 954(b).

(e) There is hereby created a clean energy bond fund which shall be a subfund of the clean energy development fund established in 10 V.S.A. § 6523. Monies in the clean energy bond fund shall be used to support projects in accordance with 10 V.S.A. § 6523. It is the intent of the general assembly that debt service for bonds authorized by this section shall be paid from principal and interest paid into the clean energy bond fund by entities receiving loans from the fund. It is also the intent of the general assembly that the treasurer may establish a loan-loss reserve fund to support the bond issuance.

(f) There is appropriated in fiscal year 2010 from the general fund to the treasurer for deposit into the Vermont clean energy bond fund the additional amount recommended by CDAAC and approved by the joint fiscal committee and the governor pursuant to subsection (c) of this section.

Sec. 97. 32 V.S.A. § 5822(d) is amended to read:

(d) A taxpayer shall be entitled to a credit against the tax imposed under this section of 24 percent of each of the credits allowed against the taxpayer's federal income tax for the taxable year as follows: elderly and permanently totally disabled credit, investment tax credit attributable to the Vermont-property portion of the investment, and child care and dependent care credits. A taxpayer shall also be entitled to a credit against the tax imposed under this section of 76 percent of the Vermont-property portion of the business solar energy investment tax credit component of the federal investment tax credit allowed against the taxpayer's federal income tax for the taxable year under Section 48 of the Internal Revenue Code; provided, however, that a taxpayer who receives any grants or similar funding from the clean energy development fund created under 10 V.S.A. § 6523 is not eligible to claim the business solar energy tax credit for that project; and provided, further that, for investments made on or after October 1, 2009, the tax credit

will only apply to project costs not covered by any grants or similar funding from any public or private program that assists in providing capital investment for a renewable energy project. Any unused business solar energy investment tax credit under this section may be carried forward for no more than five years following the first year in which the credit is claimed.

Sec. 98. 32 V.S.A. § 5930z is amended to read:

§ 5930z. PASS-THROUGH OF FEDERAL ENERGY CREDIT FOR CORPORATIONS

(a) A taxpayer of this state shall be eligible for a credit against the tax imposed under section 5832 of this title in an amount equal to 100 percent of the Vermont-property portion of the business solar energy investment tax credit component of the federal investment tax credit allowed against the taxpayer's federal income tax for the taxable year under Section 48 of the Internal Revenue Code; provided, however, that a taxpayer who receives any grants or similar funding from the clean energy development fund created under 10 V.S.A. § 6523 is not eligible to claim the business solar energy tax credit for that project; and provided, further that for investments made on or after October 1, 2009, the tax credit will only apply to project costs not covered by any grants or similar funding from any public or private program that assists in providing capital investment for a renewable energy project.

Sec. 99. 32 V.S.A. § 5822(d) is amended to read:

(d) A taxpayer shall be entitled to a credit against the tax imposed under this section of 24 percent of each of the credits allowed against the taxpayer's federal income tax for the taxable year as follows: elderly and permanently totally disabled credit, investment tax credit attributable to the Vermont-property portion of the investment, and child care and dependent care credits. ~~A taxpayer shall also be entitled to a credit against the tax imposed under this section of 76 percent of the Vermont-property portion of the business solar energy investment tax credit component of the federal investment tax credit allowed against the taxpayer's federal income tax for the taxable year under Section 48 of the Internal Revenue Code; provided, however, that a taxpayer who receives any grants or similar funding from any public or private program that assists in providing capital investment for a renewable energy project is not eligible to claim the business solar energy tax credit for that project~~. Any unused business solar energy investment tax credit under this section may be carried forward for no more than five years following the first year in which the credit is claimed.

Sec. 100. REPEAL

32 V.S.A. § 5930z (related to business solar energy investment tax credits for corporations) is repealed for investments made on or after January 1, 2011.

Sec. 101. TRANSITION RULES

(a) A taxpayer who claimed the 76-percent business solar energy investment tax credit component of the federal investment tax credit pursuant to 32 V.S.A. § 5822(d) prior to January 1, 2011 shall be entitled to carry forward the unused portion of the credit for up to five years.

(b) A taxpayer who claimed the business solar energy investment tax credit pursuant to 32 V.S.A § 5930z prior to January 1, 2011 shall be entitled to carry forward the unused portion of the credit for up to five years.

Sec. 102. Sec. 29 of No. 92 of the Acts of the 2007 Adj. Sess. (2008) is amended to read:

Sec. 29. EFFECTIVE DATE OF BUSINESS ENERGY TAX CREDIT

Secs. 27 and 28 of this act (business energy tax credits) shall apply to ~~carry through and recapture of~~ federal credits, including recapture, related to taxable year 2008 and after.

Sec. 103. 30 V.S.A. § 203a is amended to read:

§ 203a. FUEL EFFICIENCY FUND

(a) Fuel efficiency fund. There is established the fuel efficiency fund to be administered by a fund administrator appointed by the board. Balances in the fund shall be ratepayer funds, shall be used to support the activities authorized in this subdivision, and shall be carried forward and remain in the fund at the end of each fiscal year. These monies shall not be available to meet the general obligations of the state. Interest earned shall remain in the fund. The fund shall contain such sums as appropriated by the general assembly or as otherwise provided by law, in addition to revenues from the sale of creditsunder the RGGI cap and trade program ~~established~~ as provided for under section 255 of this title.

* * *

Sec. 104. 30 V.S.A. § 209(d)(8) is added to read:

(8) Effective January 1, 2010, such revenues from the sale of carbon credits under the cap and trade program as provided for in section 255 of this title shall be deposited into the electric efficiency fund established by this section.

Sec. 105. 30 V.S.A. § 255(d) is amended to read:

(d) Appointment of consumer trustees. The public service board, by rule, order, or competitive solicitation, may appoint one or more consumer trustees to receive, hold, bank, and sell tradable carbon credits created under this program. Trustees may include Vermont electric distribution utilities, the fiscal agent collecting and disbursing funds to support the statewide efficiency utility, or a financial institution or other entity with the expertise and financial resources to manage a portfolio of carbon credits for the long-term benefit of Vermont energy consumers. ~~Proceeds~~ Fifty percent of the net proceeds above costs from the sale of carbon credits shall be deposited into the fuel efficiency fund established under section 203a of this title. These funds shall be used to provide expanded fossil fuel energy efficiency services to residential consumers who have incomes up to and including 80 percent of the median income in the state. The remaining 50 percent of the net proceeds above costs shall be deposited into the electric efficiency fund established under subdivision 209(d)(3) of this title. These funds shall be used by the entity or entities appointed under subdivision 209(d)(2) of this title to help meet the building efficiency goals established under 10 V.S.A. § 581 by delivering fossil fuel energy efficiency services to Vermont heating and process-fuel consumers who are businesses or are residential consumers whose incomes exceed 80 percent of the median income in the state.

Sec. 106. ADDING COMPLIANCE PERSONNEL TO THE DEPARTMENT OF LABOR

(a) In addition to any other funds appropriated to the department of labor in fiscal year 2010, there is appropriated from the general fund to the department $308,212.00 in fiscal year 2010 for the purpose of hiring four full-time limited service employees as workers' compensation fraud staff who will investigate the classification of workers as either contractors or employees and enforce compliance of the proper classification by businesses.

(b) The positions created pursuant to subsection (a) of this section shall not be new state employee positions but instead shall be transferred and converted from the vacant position pool as and only when such positions in the vacant position pool become available.

(c) Notwithstanding any other provision of law, the positions created by this section shall be created as limited service positions and shall not be funded for a period in excess of three years.

* * * Privatization Contract * * *

Sec. 107. 3 V.S.A. § 341(3) is amended to read:

(3) "Privatization contract" means a personal services contract by which an entity or an individual who is not a state employee agrees with an agency to provide services, valued at $20,000.00 or more per year, which are the same or substantially similar to and in lieu of services previously provided, in whole or in part, by permanent, classified state employees, and which result in ~~the~~ a reduction in force of at least one permanent, classified employee, or the elimination of a vacant position of an employee covered by a collective bargaining agreement.

Sec. 108. STATE PLEDGE ON BEHALF OF SMALL BUSINESSES

An amount not to exceed $1,000,000.00 of the full faith and credit of the state is pledged for the support of the activities of the Vermont economic development authority to be used solely for loss reserves for lending in the Vermont small business loan program and the TECH loan program, to be apportioned in a manner deemed appropriate by the authority and the state treasurer.

* * * Full Faith and Credit of the State * * *

Sec. 109. 10 V.S.A. § 221(a) is amended to read:

(a) Upon application of the proposed mortgagee, the authority may insure mortgage payments required to repay loans made by the mortgagee for the purpose of financing the costs of a project, upon such terms and conditions as the authority may prescribe~~,~~; provided, however, that the total principal obligations of all mortgages insured under this subsection and under subsection (c) of this section outstanding at any one time shall not exceed ~~$15,000,000.00~~ $9,000,000.00. Before insuring any mortgage payments hereunder, the authority shall determine and incorporate each of the findings established by this subsection in its minutes. Such findings, when adopted by the authority shall be conclusive:

* * *

Sec. 110. 10 V.S.A. § 223 is amended to read:

§ 223. CREDIT OF THE STATE PLEDGED

The full faith and credit of the state is pledged to the support of the activities of the authority under this subchapter. In furtherance of the pledge, the state treasurer is authorized and directed to transfer to the fund, without further approval, first from the indemnification fund and then from available cash in the treasury or from the proceeds of bonds or notes issued under this section, such additional amounts as may be requested from time to time by the

authority to enable it to perform all insurance contracts punctually and in accordance with their terms. The authority shall request such transfers from time to time as additional amounts are required for such purposes. The treasurer is authorized and directed, without further approval, to issue full faith and credit bonds of the state, from time to time, in amounts necessary to support the activities of the authority under this subchapter and subchapter 8 of this chapter, but not to exceed an aggregate of ~~$35,000,000.00~~ $10,000,000.00 at any one time outstanding, and to borrow upon notes of the state in anticipation of the proceeds of such bonds. Any bonds under this subchapter shall be issued pursuant to the provisions of chapter 13 of Title 32, except that the approval of the governor shall not be required previous to their issuance by the treasurer.

Sec. 111. 10 V.S.A. § 279b(a) is amended to read:

(a) Upon registration by the authority of an eligible loan, the full faith and credit of the state shall be pledged in an amount equal to the reserve premium payment deposited to the fund by the participating bank in connection with such loan. The aggregate amount of the credit of the state which may be pledged pursuant to the provisions of this subchapter shall not exceed ~~$2,000,000.00~~ $1,000,000.00 at any time.

Sec. 112. ARRA APPROPRIATIONS; FULL FAITH AND CREDIT

(a) In fiscal year 2010, of the funds appropriated in Sec. B.1101(b)(1) of H.441 (2009), $3,400,000.00 from the state fiscal stabilization funds available under the American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5, shall be disbursed as follows:

(1) $2,150,000.00 to the entrepreneurs' seed capital fund.

(2) $1,000,000.00 to the Vermont economic development authority to provide interest-rate subsidies in the Vermont jobs fund.

(3) $100,000.00 to the Vermont sustainable jobs fund program for the farm-to-plate investment program as provided in Sec. 35 of this act.

(4) $150,000.00 to the Vermont sustainable jobs fund for start-up capital in the flexible capital fund program.

(b) An amount not to exceed $1,000,000.00 of the full faith and credit of the state is pledged for the support of the activities of the Vermont economic development authority to be used for loss reserves for lending in the Vermont small business loan program and the TECH loan program, to be apportioned in a manner deemed appropriate by the authority and the state treasurer.

(c) In FY 2010, $500,000.00 of ARRA funds are appropriated to the department of tourism and marketing pursuant to Sec. B.1101(b)(3) of H.441 (2009).

(d) In FY 2010, $120,000.00 to the department of tourism and marketing, of which $100,000.00 shall be for a grant to the Vermont convention bureau and $20,000.00 to the Shires of Vermont, pursuant to Sec. B.1101(a)(6) of H.441 (2009).

(e) Legislative intent. Notwithstanding any provision of law to the contrary, in the event no funding from ARRA is appropriated to Sterling College in any act of the 2009 general assembly, then in fiscal year 2010, the amount of $350,000.00 shall be transferred from the general fund to the department of economic development for a grant to Sterling College for student residency and program center costs, as provided in Sec. B.1101(a)(8) of H.441 (2009).

Sec. 113. EFFECTIVE DATE

This act shall take effect upon passage with the following exceptions:

(1) Secs. 97 and 98 (relating to business solar energy tax credits) shall apply to credits related to investments made on or after January 1, 2009; and

(2) Sec. 99 (relating to the repeal of the 76-percent portion of the business solar energy tax credit) shall apply to credits related to investments made on or after January 1, 2011.

VINCENT ILLUZZI
ROBERT M. HARTWELL
HINDA MILLER

Committee on the part of the Senate

WARREN F. KITZMILLER
DAVID L. DEEN
MICHAEL J. OBUCHOWSKI

Committee on the part of the House

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

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

Joint Resolution Adopted on the Part of the Senate

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

By Senator Shumlin,

J.R.S. 35. Joint resolution relating to final adjournment of the General Assembly in 2009.

Resolved by the Senate and House of Representatives

That when the President of the Senate and the Speaker of the House of Representatives adjourn their respective houses on the ninth day of May, 2009 they shall do so to reconvene no later than the fifth day of January, 2010.

Committee Appointed to Inform Governor of Completion of Business

On motion of Senator Shumlin, the President appointed the following five Senators as members of a committee to wait upon His Excellency, James H. Douglas, the Governor, and inform him that the Senate has completed the business of the session and is ready to adjourn to a day certain, January 5, 2010, pursuant to the provisions of J.R.S. 35:

Senator Bartlett
Senator Cummings
Senator White
Senator Nitka
Senator Miller

Report of Committee

The Committee appointed to wait upon His Excellency, the Governor, to inform him that the Senate had, on its part, completed the business of the session and was ready to adjourn to a day January 5, 2010, pursuant to the provisions of **J.R.S. 35**, performed the duties assigned to it and escorted the Governor to the rostrum where he delivered his remarks in person.

Remarks of Governor

The Honorable James H. Douglas, Governor of the State of Vermont, presented his remarks and offered comments on the following subjects:

- Thanked the Senators and the Lieutenant Governor for their efforts and hard work.
- Observed that the voters of Vermont, by electing a Republican governor and a Democratic general assembly, wanted a bi-partisan approach to legislative matters and also wished for the parties to work together to address matters that needed legislation.

- Noted the successful efforts on various topics, including:
- (1) the violent sex offender bill, with particular thanks to the Senate Judiciary Committee and its chair, Senator Sears of the Bennington Senatorial District;
- (2) the enhanced sex offender registry bill;
- (3) the transportation bill, with particular thanks to the Senate Transportation Committee and its chair, Senator Mazza of the Grand Isle Senatorial District;
- (4) the capital bill, with particular thanks to the Senate Institutions Committee and its chair, Senator Scott of the Washington Senatorial District;
- (5) farm loans, captive insurance companies and the wetlands bills.
- Noted that serious challenges remain, with particular emphasis on the economy of the State of Vermont with respect to the effects of the global downturn; the unemployment rate, which has reached heights not seen in almost 25 years; the dramatic shortfall in revenues received by the State from its normal sources; and that there are no easy answers to these challenges.
- Expressed his disappointment that the General Assembly and his administration had not come to agreement on compromising their respective positions on the budget for the forthcoming fiscal year.

The Governor concluded his remarks by again thanking the Senators for their hard work and dedication to the State.

The Committee appointed to escort the Governor then reassembled and escorted the Governor from the Senate chamber.

Secretary Directed to Inform the House of Completion of Business

On motion of Senator Shumlin, the Secretary was directed to inform the House that the Senate has completed the business of the session and is ready on its part to adjourn to a day certain on the fifth day of January, 2010, at ten o'clock in the forenoon, pursuant to the provisions of J.R.S. 35.

Final Adjournment

On motion of Senator Shumlin, at eight o'clock and thirty-five minutes in the afternoon, the Senate adjourned to a day certain, to the fifth day of January, 2010, at ten o'clock in the forenoon, pursuant to the provisions of J.R.S. 35.

Messages received After Final Adjournment

After final adjournment, the following messages were received by the Secretary:

Message from the House No. 89

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

Mr. President:

I am directed to inform the Senate that:

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

H. 12. An act relating to education property tax rates.

And has concurred therein.

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

H. 313. An act relating to near-term and long-term economic development.

And has adopted the same on its part.

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

H. 441. An act making appropriations for the support of government.

And has adopted the same on its part.

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

S. 48. An act relating to marketing of prescription drugs.

And has concurred therein.

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

J.R.S. 35. Joint resolution relating to final adjournment of the general assembly in 2009.

And has adopted the same in concurrence.

Message from the House No. 90

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

Mr. President:

I am directed to inform the Senate that the House has on its part completed the business of the first half of the biennial session and is ready to adjourn until January 5, 2010, pursuant to the provisions of J.R.S. 35.

Message from the Governor

A message was received from His Excellency, the Governor, by Heidi Tringe, Secretary of Civil and Military Affairs, as follows:

Mr. President:

I am directed by the Governor to inform the Senate that on the seventh day of May, 2009, he approved and signed a bill originating in the Senate of the following title:

S. 96. An act relating to unclaimed property.

Message from the Governor

A message was received from His Excellency, the Governor, by Heidi Tringe, Secretary of Civil and Military Affairs, as follows:

Mr. President:

I am directed by the Governor to inform the Senate that on the twelfth day of May, 2009, he approved and signed bills originating in the Senate of the following titles:

S. 69. An act relating to digital campaign finance filings.

S. 111. An act relating to legislative apportionment board appointments.

Message from the Governor

A message was received from His Excellency, the Governor, by Heidi Tringe, Secretary of Civil and Military Affairs, as follows:

Mr. President:

I am directed by the Governor to inform the Senate that on the fourteenth day of May, 2009, he approved and signed bills originating in the Senate of the following titles:

S. 38. An act relating to requiring the Department of Finance and Management to annually publish on its website a report on grants issued by executive branch agencies.

S. 86. An act relating to the administration of trusts.

S. 94. An act relating to licensing state forest land for maple sugar production.

Message from the Governor

A message was received from His Excellency, the Governor, by Heidi Tringe, Secretary of Civil and Military Affairs, as follows:

Mr. President:

I am directed by the Governor to inform the Senate that on the fifteenth day of May, 2009, he approved and signed a bill originating in the Senate of the following title:

S. 70. An act relating to clarifying the procedure for reinstatement of a driver's license based on total abstinence from alcohol and drugs.

Message from the Governor

A message was received from His Excellency, the Governor, by Heidi Tringe, Secretary of Civil and Military Affairs, as follows:

Mr. President:

I am directed by the Governor to inform the Senate that on the nineteenth day of May, 2009, he approved and signed a bill originating in the Senate of the following title:

S. 2. An act relating to offenders with a mental illness or other functional impairment.

Message from the Governor

A message was received from His Excellency, the Governor, by Heidi Tringe, Secretary of Civil and Military Affairs, as follows:

Mr. President:

I am directed by the Governor to inform the Senate that on the twenty-first day of May, 2009, he approved and signed a bill originating in the Senate of the following title:

S. 91. An act relating to operation of vessels on public waters.

Message from the Governor

A message was received from His Excellency, the Governor, by Heidi Tringe, Secretary of Civil and Military Affairs, as follows:

Mr. President:

I am directed by the Governor to inform the Senate that on the twenty-sixth day of May, 2009, he approved and signed bills originating in the Senate of the following titles:

S. 67. An act relating to motor vehicles.

S. 121. An act relating to miscellaneous election laws.

Message from the Governor

A message was received from His Excellency, the Governor, by Heidi Tringe, Secretary of Civil and Military Affairs, as follows:

Mr. President:

I am directed by the Governor to inform the Senate that on the twenty-seventh day of May, 2009, he approved and signed bills originating in the Senate of the following titles:

S. 7. An act to prohibit the use of lighted tobacco products in the workplace.

S. 25. An act relating to the repeal or revision of certain state agency reporting requirements.

S. 42. An act relating to the Department of Banking, Insurance, Securities, and Health Care Administration.

Message from the Governor

A message was received from His Excellency, the Governor, by Heidi Tringe, Secretary of Civil and Military Affairs, as follows:

Mr. President:

I am directed by the Governor to inform the Senate that on the twenty-eighth day of May, 2009, he approved and signed bills originating in the Senate of the following titles:

S. 89. An act relating to stabilization of prices paid to Vermont dairy farmers.

S. 129. An act relating to containing health care costs by decreasing variability in health care spending and utilization.

Message from the Governor

A message was received from His Excellency, the Governor, by Heidi Tringe, Secretary of Civil and Military Affairs, as follows:

Mr. President:

I am directed by the Governor to inform the Senate that on the first day of June, 2009, he approved and signed bills originating in the Senate of the following titles:

S. 26. An act relating to recovery of profits from crime, the disposition of property upon death, transfer of interest in vehicle upon death, homestead exemption, unclaimed property, credit card fee disputes, and patient's privilege.

S. 47. An act relating to salvage yards.

S. 51. An act relating to Vermont’s motor vehicle franchise laws.

S. 125. An act relating to expanding the sex offender registry.

Message from the House No. 91

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

Mr. President:

I am directed to inform the Senate that:

The Governor has informed the House that on May 12, 2009, he approved and signed bills originating in the House of the following titles:

H. 6. An act relating to the sale of engine coolants and antifreeze.

H. 249. An act relating to volunteer nonprofit service organizations and casino nights.

The Governor has informed the House that on May 15, 2009, he approved and signed a bill originating in the House of the following title:

H. 83. An act relating to underground storage tanks and the petroleum cleanup fund.

The Governor has informed the House that on May 18, 2009, he approved and signed bills originating in the House of the following titles:

H. 297. An act relating to approval of the adoption of the charter of the Morristown Corners Water Corporation.

H. 431. An act relating to miscellaneous adjustments to the public retirement systems.

H. 435. An act relating to palliative care.

H. 448. An act relating to codification and approval of amendments to the charter of the village of Swanton.

H. 451. An act relating to the approval of amendments to the charter of the city of Burlington.

The Governor has informed the House that on May 21, 2009, he approved and signed bills originating in the House of the following titles:

H. 80. An act relating to the use of chloramine as a disinfectant in public water systems.

H. 91. An act relating to technical corrections to the juvenile judicial proceedings act of 2008.

H. 171. An act relating to home mortgage protection for Vermonters.

H. 447. An act relating to wetlands protection.

The Governor has informed the House that on May 21, 2009, he did not approve and allowed to become law without his signature a bill originating in the House of the following title:

H. 427. An act relating to making miscellaneous amendments to education law.

Text of Communication from Governor

The text of the communication from His Excellency, the Governor, whereby he returned unsigned and *allowed to become law without his signature* **House Bill No. 427** to the House is as follows:

Communication from the Governor

May 21, 2009

The Honorable Donald G. Milne
Clerk of the House of Representatives
State House
Montpelier, VT 05633-5401

Dear Mr. Milne:

I am letting H. 427, *An Act Relating to Making Miscellaneous Amendments to Education Law*, become law without my signature for the reasons described herein.

In the midst of the current recession, Vermonters are feeling the weight of increasing costs and declining personal revenues. State government is feeling the same pressures. One of the largest expenses that state and local taxpayers bear is the cost of education. Over the past decade, spending on K-12 education has increased rapidly, while our student population continues to decline. These increased costs lead directly to high property taxes and crowd out funding for other important services of state government.

Two years ago, the Legislature and my Administration worked together and passed Act 82 in an effort to curb rising costs and skyrocketing property taxes.

The "two-vote" system for approving school budgets went into effect this year for the first time. In part, this system contributed to holding down school budget increases to 2.2% - far below previous year increases.

While there are many important changes made in H.427, I am concerned that the exemptions to the "two-vote" system contained in section 20 of this legislation begin to roll back the advances we made, just two years ago, in containing school spending. Excluding expenses such as construction and 21st Century Community Learning Centers masks the true cost of education for local voters and will ultimately pass increased spending onto all Vermont taxpayers.

Further, language in the bill to expand a school district's ability to designate a public school as the designated school may, in fact, have the consequence of limiting choice. The provision regarding tuition payments would disadvantage independent schools that serve many Vermont students. I encourage the legislature to revisit the caps placed on tuition payments and to decide on a statistically accurate benchmark to base or cap tuition payments that results in an option that is both affordable and fair and does not unduly discourage school choice.

Because this legislation makes necessary changes to our education laws, including efforts to encourage greater levels of high school completion, I believe H.427 should become law. I cannot, however, attach my signature for those reasons I have described above.

Sincerely,
/s/James H. Douglas
Governor

JHD/dc

The Governor has informed the House that on May 22, 2009, he returned without signature and vetoed a bill originating in the House of the following title:

H. 436. An act relating to decommissioning funds of nuclear energy generation plants.

Text of Communication from Governor

The text of the communication from His Excellency, the Governor, whereby he vetoed and returned unsigned **House Bill No. 436** to the House is as follows:

Communication from the Governor

May 22, 2009

The Honorable Donald G. Milne
Clerk of the House of Representatives
State House
Montpelier, VT 05633-5401

Dear Mr. Milne:

Pursuant to Chapter II, Section 11 of the Vermont Constitution, I am returning H.436, *An Act Relating To Decommissioning Funds of Nuclear Energy Generation Plants*, without my signature because of my objections described herein.

Many Vermonters are struggling as a result of the current recession and all are facing pressure from rising costs. While I do believe there are opportunities for operational improvements at Vermont Yankee, this legislation does nothing to increase protections for Vermonters, ratepayers or our state's economy. Rather, H.436 threatens our economic recovery by unnecessarily increasing electric rates for consumers and businesses. Further, this legislation substitutes an objective process with political calculations, it breaks a promise made by the state of Vermont to a private entity and it exposes taxpayers to certain litigation.

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The safe and reliable operation of Vermont Yankee nuclear power station remains the most important issue surrounding the plant's future. To support that goal, my administration is working diligently with the Nuclear Regulatory Commission (NRC), stakeholders and the plant's owners to ensure the highest standards are achieved. Additionally, in the relicensing case currently underway, the Public Service Department (DPS) has filed a plan to provide funding into the decommissioning fund that adequately protects Vermont interests while not excessively penalizing the owners.

The NRC has completed a lengthy examination and review of the conditions in the plant, and concluded that, subject to some modifications in procedures, it meets the standards necessary to ensure safe operation moving forward.

Similarly, the State of Vermont recently completed a Comprehensive Reliability Assessment of the plant. With the help of consulting experts and under the scrutiny of a Public Oversight Panel, the plant's reliability has been deemed to meet the standards necessary for continued reliable service if the

recommendations of the Comprehensive Reliability Assessment and Public Oversight Panel are carried out by Entergy Nuclear Vermont Yankee.

As we ensure the highest levels of safety and reliability at Vermont Yankee, we must also consider the conditions under which Vermont Yankee is allowed to conduct business. It is critical, therefore, that we consider the financial benefits that are provided by the plant's operations – namely, affordable power, a favorable revenue sharing agreement, and economic support for the region and state.

Finally, we must not lose sight of the fact that Vermont Yankee provides a source of power with relatively low carbon emissions, thus helping to limit our greenhouse gas emissions. Now that the cost of carbon is a part of the price that consumers pay for electricity, losing this source of power from our regional portfolio would likely lead to higher costs for ratepayers.

***

Vernon, Vermont has been home to the Vermont Yankee nuclear power station since 1972, and it currently provides approximately one-third of the state's power. Initially owned by a consortium of Vermont utilities, Vermont Yankee was later sold to Entergy Corporation in 2002 during which time all the financial parameters of the plant's operation until March 21, 2012 in relation to the state were established by order of the Public Service Board (PSB). The plant was sold for $180 million and the output of the plant was sold back to Vermont utilities under an economically favorable long-term power purchase agreement.

It was understood that Entergy, pursuant to an NRC finding of fund adequacy, would not make financial contributions to the decommissioning trust account and that the SAFSTOR method of extended decommissioning was permissible. The PSB ruled that there was significant value to ratepayers by getting a lower price for power as opposed to continued contributions to the fund and in transferring the risk of increased decommissioning costs away from ratepayers.

Beyond the sale and associated benefits to ratepayers, Vermont Yankee supports the region with over 600 high paying jobs, helping to infuse money into the local, state and regional economies, as well as additional tax revenue for the state. The Clean Energy Development Fund receives millions of dollars each year from Entergy to fund renewable projects throughout the state. In addition to local impacts, Vermont Yankee is responsible for providing power to neighboring states through the regional grid.

Our state has one of the greenest and cleanest energy portfolios in the nation. Our forested lands remove more carbon than we produce. Vermont is

a leader in reducing carbon emissions because of our efforts in encouraging energy efficiency and renewable energy production, along with the power purchase agreements with Hydro Quebec and Vermont Yankee.

***

At the end of the last biennium, the general assembly passed S.373, *An Act Relating to Full Funding of Decommissioning Costs of a Nuclear Plant*, which called for the total funding for decommissioning of the Vermont Yankee nuclear power facility by 2012. At that time, I sent the legislation back without approval because the legislation was a substantial deviation from standards observed by nuclear power stations across the nation. It was clear that creating such a requirement for total decommissioning in 2012 would result in a significant increase in rates for consumers, and further threaten our already tenuous economic position.

Unfortunately, H.436 made little attempt to change the fundamental flaws in policy and substance in this iteration. Instead, it has aggravated the situation by creating unnecessarily burdensome financial pitfalls for electric ratepayers today and into the future and placing Vermont at great risk for civil liability. This legislation circumvents the existing quasi-judicial process and shortcuts an established fact-finding process, instead substituting legislative politics in their places.

***

Our reputation as a state is on the line. Our willingness to honor our agreements not only goes to our future business relationships, but speaks volumes of the ethical standard to which we ascribe. During my many years of public service I have seen the consequences when the state attempts to go back on its commitments. I speak of the past power purchase agreements our utilities had with Hydro Quebec, and the attempts to undo them. When all was said and done, the state was required to honor its agreement, but our relationship with a valuable trade partner was damaged, and our motives suspect. It appears the lessons learned from that experience have been forgotten, or worse – ignored. Now I need to step forward and defend the actions of a previous administration that agreed to the use of SAFSTOR as an acceptable decommissioning strategy in the name of honoring the State's commitments.

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This legislation appears to have tried to avoid a breach of contract or franchise claim by making the full funding of the fund take place one day after the current license period ends. This attempt, however, is unlikely to be successful. Making the full funding provision date one day later, even if the

plant shuts down, does not excuse the state from its obligations under the Memorandum of Understanding agreed to by preceding administrations. Attorneys for the State of Vermont have opined that the state will likely face litigation for breach of contract or breach of a franchise by Entergy if this legislation becomes law. Vermont Yankee's owners very likely would claim that, since the Memorandum of Understanding was breached, the current power purchase agreement is no longer valid, which would cost ratepayers up to $356 million.

The full funding language in this legislation, whether as a "balloon payment" or a "parental guarantee," would require substantial financial resources, all at once. This is problematic because the amount Entergy is required to pay into the decommissioning fund may come out of the power price we will receive for consumers from a new power purchase agreement. In other words, ratepayers will get a much less favorable price on the power. The requirements of H.436 severely threaten our goal of retaining the option for Vermont consumers to get the best possible price for power generated by Vermont Yankee, subject of course to regulatory and legislative approval.

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H.436 does not achieve a greater level of accountability for Entergy. Rather, it is the original sale order, the NRC, and the current case on continued operation now before the PSB that are the means to achieve accountability. This legislation' s approach is a direct threat to the Vermont ratepayer and our state's prosperity.

The department's plan currently before the PSB is a far more constructive approach that protects ratepayers. It calls for Entergy to make payments into the decommissioning fund over the course of 20 years instead of immediately. This approach preserves ratepayer benefits by lessening the effect on the power purchase agreement. Further, the department's plan mandates fund review and adjustments every two and a half years, allowing the fund to grow in a steady fashion over the license renewal period.

In contrast to the department's plan, this legislation has purposely removed the authority of the PSB to offer even a preliminary finding in this case. This approach appears designed to prevent the use of a venue that relies on objective fact-based proceedings, replacing it with biases and political consideration.

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It is clear that Vermont Yankee will eventually be decommissioned, whether in 2012 or afterward. How it is decommissioned is a question of great importance. This legislation's approach is to extract money in any way

possible, creating a hostile business environment. I propose that we work together constructively, observe our own laws and procedures, and design a balanced solution that allows for all parties to benefit.

The question of Vermont Yankee's continued operation remains, and that should be decided by the regulatory process and legislative deliberation of the merits of an additional 20 years, not as an indirect result of ill-conceived legislation. Because this legislation threatens ratepayers, increases long-term electric rates, risks potential job losses, and creates unnecessary liability for the state – while failing to adopt a viable, workable solution – I cannot support this legislation and must return it without my signature.

Sincerely,

/s/James H. Douglas
Governor

JHD/hsw

The Governor has informed the House that on May 23, 2009, he approved and signed bills originating in the House of the following titles:

H. 24. An act relating to insurance coverage for colorectal cancer screening.

H. 86. An act relating to the regulation of professions and occupations.

H. 145. An act relating to composting.

H. 453. An act relating to receivership of long-term care facilities.

The Governor has informed the House that on May 26, 2009, he approved and signed bills originating in the House of the following titles:

H. 152. An act relating to encouraging biomass energy production.

H. 405. An act relating to K-12 and higher education partnerships.

H. 452. An act relating to the approval of amendments to the charter of the village of Essex Junction.

The Governor has informed the House that on May 27, 2009, he approved and signed bills originating in the House of the following titles:

H. 443. An act relating to approval of amendments to the charter of the City of South Burlington.

H. 445. An act relating to capital construction and state bonding.

The Governor has informed the House that on May 27, 2009, he did not approve and allowed to become law without his signature a bill originating in the House of the following title:

H. 446. An act relating to renewable energy and energy efficiency

Text of Communication from Governor

The text of the communication from His Excellency, the Governor, whereby he returned unsigned and *allowed to become law without his signature* **House Bill No. 446** to the House is as follows:

Communication from the Governor

May 27, 2009

The Honorable Donald G. Milne
Clerk of the House of Representatives
State House
Montpelier, VT 05633-5401

Dear Mr. Milne:

Pursuant to Chapter II, Section 11 of the Vermont Constitution, I will allow H. 446, *An Act Relating to Renewable Energy and Energy Efficiency,* to become law without my signature.

I fully support the development of renewable energy in Vermont and I have worked hard to encourage this industry. I believe this bill, however, fails to recognize the current viability of renewable energy in a competitive setting and will needlessly increase costs to Vermont consumers so as to subsidize this one favored business sector.

Vermont continues to lead the nation in virtually all aspects of energy market transformation. We are globally recognized for our green ethic and commitment to the environment. Our citizens pay more, per capita, than any other people in the nation for electric efficiency. The highly successful Clean Energy Development Fund provides incentives for renewable energy investments. And Vermont's existing electric portfolio is one of the cleanest in the nation. I believe we can still carry the mantle of energy leadership without unnecessarily increasing rates on Vermonters.

As state government struggles to deal with new fiscal realities and tries to contain costs, we cannot lose sight of the fact that working Vermonters are experiencing the same difficulties. We should not add to the burdens of working families, especially when it can be avoided.

This legislation puts in place a so-called "standard offer," that will establish minimum rates to be paid by electric customers for various renewable sources in long-term fixed price contracts. The rates set out in H. 446 are well beyond the current market price for electricity, and worse, also beyond the price that utilities in Vermont are paying for renewables in the competitive market. If we

want additional renewables in our supply, that can be accomplished at a fraction of the prices set in H.446.

This sort of scheme was done before and we are still feeling the effects of it today. Under federal legislation known as PURPA, utilities were forced to purchase electricity from Independent Power Producers under long-term fixed prices. Vermont consumers to date have paid a premium of more than $400 million for that electricity.

Furthermore, this legislation reverses a long-standing principle that electric rates pay for the cost of providing Vermonters with clean, reliable and affordable electricity at the lowest cost. In addition, any gains in the renewables sector brought about by this legislation may very well be offset by job losses in other sectors due to the increased cost of doing business from higher electric rates.

I remain committed to renewable energy development in Vermont, especially by building on what we have already done through the Clean Energy Development Fund (CEDF). Since it's inception in 2005, the program has distributed $13.2 million in grants and $2.2 million in low interest loans to 84 projects in Vermont, resulting in 9.6 MW of capacity for the state. Based on data from the most recent round of applications for CEDF funding, wholesale electricity produced from projects that get this initial funding will cost less than $.06 per kilowatt hour - after taking into account all credits – almost a 25% reduction in price. This lower, close to the market energy price, demonstrates that the existing incentives can encourage renewable energy without burdening ratepayers.

And significantly, the American Recovery and Reinvestment Act of 2009 (ARRA) provides many exciting new opportunities to affordably develop renewable energy sources in our state. With $30 million in ARRA energy funds available, leveraged with state funds, an estimated $150 million of projects will be made possible. And this investment in renewables is made *without* adding to the electric energy prices paid by Vermonters.

While I have serious reservations about H. 446 as outlined above, I do not believe that the process will be well served by my veto of this legislation. This bill does require that by September 15 of this year the Public Service Board open and complete a noncontested case docket to determine whether or not the standard offer prices constitute a reasonable approximation of the prices required to meet the bill's criteria. If the Board finds the prices are inadequate or excessive, it is required to establish new ones.

Further, no later that January 15 of next year, the Public Service Board is required to set prices for standard offers that take into full account the value of all economic incentives--state, federal, including ARRA funds, and other

funds. I am confident that the Board will implement fair and balanced pricing for the benefit of Vermont's ratepayers.

Even though this bill does set statutory standard offer rates, which I believe is inappropriate, because the Public Service Board must revisit those rates within the next four months and periodically thereafter, I will allow this bill to become law without my signature.

Sincerely,

/s/James H. Douglas
Governor

JHD/sy

The Governor has informed the House that on May 28, 2009, he approved and signed bills originating in the House of the following titles:

H. 15. An act relating to aquatic nuisance control.

H. 136. An act relating to executive branch fees.

The Governor has informed the House that on May 29, 2009, he approved and signed a bill originating in the House of the following title:

H. 438. An act relating to the state's transportation program.

The Governor has informed the House that on May 30, 2009, he approved and signed a bill originating in the House of the following title:

H. 192. An act relating to encouraging use of local foods in Vermont's food system.

The Governor has informed the House that on June 1, 2009, he returned without signature and vetoed a bill originating in the House of the following title:

H. 441. An act making appropriations for the support of government.

Text of Communication from Governor

The text of the communication from His Excellency, the Governor, whereby he vetoed and returned unsigned **House Bill No. 441** to the House is as follows:

Communication from the Governor

June 1, 2009

The Honorable Donald G. Milne
Clerk of the House of Representatives
State House
Montpelier, VT 05633

Dear Mr. Milne:

Pursuant to Chapter II, Section 11 of the Vermont Constitution, I am returning H.441, *An Act Making Appropriations for the Support of Government*, without my signature because of my objections described herein.

The task of building a balanced, responsible and sustainable budget that addresses the needs of Vermonters and their ability to afford their government is the most important duty of the General Assembly. Today, we find ourselves in the midst of a global recession making this task more difficult than in previous years. The path we choose will have a dramatic effect on future years. We cannot and must not sacrifice fiscal prudence and long-term sustainability to patch together a budget that leaves Vermont and Vermonters exposed to the perils of this recession.

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In a few short months my Administration will begin work on the fiscal 2011 budget and by this time next year, legislators will have again cast their votes on a spending plan. According to the Legislature's Joint Fiscal Office (JFO), H.441 will leave a $67 million General Fund deficit that must be addressed at that time. Further, JFO estimates an even greater $141 million deficit for fiscal 2012 – when federal stimulus dollars will no longer be available to help fill the hole. Together, the fiscal 2011 and fiscal 2012 deficits account for a staggering $208 million shortfall if H.441 becomes law.

As early as January, when the American Recovery and Reinvestment Act (ARRA) was being debated in Washington, I warned of the risks of an over-reliance on federal recovery money. While these funds are intended to preserve services and avoid state and local tax increases, we cannot allow them to be an excuse to pass business-as-usual spending plans. Indeed, we are in unusual economic times.

I warned lawmakers that using federal money to pass a budget that keeps spending on an upward trajectory would lead to huge challenges when ARRA funds run out. Unfortunately, H.441 does just that. Under this budget, spending increases by over 3% – well above the current rate of inflation – using one-time federal stimulus money. Spending in human services grows by

nearly $150 million, or 5.6% – though we already have the most generous social safety net in the nation, according to a recent *New York Times* study.

I cannot support a budget that increases spending and, thereby, leaves such large shortfalls in future years, which Vermonters know will have to be filled by deeper cuts, higher taxes or a combination of both. And I cannot support a budget that shifts our challenges to tomorrow, when the consequences of our decisions will be even greater.

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In addition to large deficits, the tax increases contained in H.441 compound the already significant struggles facing the people of our state. Vermonters are among the most heavily taxed people in the nation and it has often been observed that we have little capacity for higher taxes. Vermont native David Hale, a highly respected global economist, said in a recent news report that Vermont should, "… avoid tax increases that would undermine [the State's] ability to compete for jobs, compete for investment, compete for business." Yet, this budget asks Vermonters to contribute over $26 million in higher taxes – $9.3 million in higher income taxes on senior citizens, small business owners, farmers and loggers – from a combination of changes in how we tax capital gains, the elimination of the state and local tax deduction and other measures.

I support a change in our capital gains exemption to treat earned and unearned income the same for tax purposes. However, I have been clear that any proposal must be revenue neutral and used to lower our very high marginal income tax rates – not to support increased government spending. The Legislature's plan fails to meet this test as it does not use every dollar from changes to the capital gains exemption to lower income tax rates. Further, it does not exclude seniors who depend on capital gains in their retirement or farmers and loggers who take capital gains as a course of business. And it makes these changes retroactively, with no advance notice or warning, changing our tax structure after Vermonters have already made decisions about their money.

What is so concerning about these tax proposals is that many of the changes did not receive a public hearing and will result in consequences that many lawmakers, and most Vermonters, do not fully understand. Changes to the capital gains exemption and the elimination of the state and local tax deduction will hit small businesses and farms particularly hard. In fact, more than 2,000 businesses will see an average income tax increase of more than $3,000. At a time when small businesses are struggling to make ends meet, these taxes will be devastating for them and their employees.

Changes to the estate tax are also worrisome. This tax increase will have a dramatic impact on Vermont agriculture. Farmers seeking to pass their farms to their loved ones may be forced to sell a large portion of the farm to pay the higher death tax.

The tax increases in H.441 are counter to Vermont's successful emergence from this recession. These increased taxes hurt those we depend on for a robust economic recovery – farmers, small businesses and working Vermonters. I will not support increased taxes on our people so that state government can grow at an unsustainable rate.

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As Vermont seeks to emerge from this recession it is critical that we make serious investments in economic development. Unfortunately, the Legislature failed to act on important initiatives and investments that are needed to create jobs and ensure a quick and strong recovery. In this economic crisis, there is no greater social welfare program than a good-paying job to give a struggling family hope and economic independence.

Through ARRA, $17.1 million was made available to Vermont for flexible uses from the State Fiscal Stabilization Fund (SFSF). Earlier this year, I proposed spending these funds, over a two-year period, exclusively on economic development initiatives as part of a program called *SmartVermont*. I outlined a plan to spend the maximum amount available for fiscal 2010, $11 million, and the remaining $6 million in fiscal 2011. The SFSF dollars can leverage over $150 million in economic activity and job creation. H.441 dedicates only $4.1 million for job creation and, instead, uses $4.4 million of this one-time money to fund ongoing expenditures of state government – building up base spending that will exacerbate our challenges in the coming years.

As we strive to bolster our economy and compete for jobs in the 21st century, we need a highly educated and trained workforce. In recent years we have made substantial investments to meet this objective. H.441, however, takes us backward in our efforts to provide workforce training and higher education opportunities to the people of our state. This budget reduces workforce training funds, jeopardizing up to $7.2 million in federal stimulus funds, and zeroes out Next Generation scholarships for over 600 Vermont students – tomorrow's nurses, engineers, police officers and inventors. Approximately $500,000 was cut from the Agency of Commerce and Community Development's Vermont Training Program, which will eliminate training opportunities for over 2,200 Vermonters and deny the state an important economic development tool.

H.441 also reduces funding for the Vermont Telecommunications Authority (VTA) by $500,000 – effectively shutting down the VTA by September. I will not support a budget that leaves this important economic development work unfinished. To provide economic opportunities for Vermonters in every corner of our state, we must continue to work toward the goal of universal broadband and cell phone coverage by the end of next year.

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This budget fails to address the significant deficits we face in our Unemployment Insurance (UI) Trust Fund. There is broad consensus that the need to address the downward trajectory of the fund is urgent. While employers are understandably concerned about increased unemployment insurance taxes, especially in these difficult economic times, they recognize that a balanced approach that also makes reasonable adjustments to benefits is in the best long-term interest of all Vermonters. Failure to take action leaves a $160 million deficit in the fund by the end of next year. Vermont will be forced to borrow more money from the federal government that will have to be paid back with interest from the General Fund – placing another burden on the backs of Vermonters and Vermont businesses.

Any plan to address UI must be balanced and comprehensive. It is not enough to raise taxes on businesses and not make a reduction in our incredibly generous benefits structure. While some have suggested that freezing the maximum weekly benefit is a good start, that will not be enough. We must ask benefit recipients to take a modest $16 reduction in their maximum weekly benefit from $425 to $409, helping us begin to bend the curve and shore up this fund.

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H.441 contains language that threatens the separation of powers among the branches of government and unduly burdens the Executive Branch as it carries out its constitutional responsibilities.

One of the most troubling language additions interferes with the relationship between the Administration and the Vermont State Employees Association (VSEA). Legislative micro-management impairs the State's ability to carry out the necessary work that Vermonters demand and deserve of their government.

H.441 prevents the Administration from implementing reductions in force without the approval of a legislative committee of 10, should negotiations be unsuccessful. It is the obligation of the Executive branch and its department heads to use their expertise and familiarity with their departments to manage the workforce and to make reductions in the least disruptive manner possible.

The budget language impedes this responsibility to carry out the Executive's constitutionally-assigned function.

H.441 also requires the Administration to conduct an incredible 40 new studies and reports, more than double the 17 required last year. Each of these reports and studies requires hardworking state employees to take time away from the programs they administer and the people they serve. Additionally, there are 4 legislatively-led studies that will require a minimum of 15 legislators to continue their work into the summer. Not only do these reports and studies take staff away from more pressing work, but they will cost Vermonters tens of thousands of dollars.

In an effort to increase legislative control over the Vermont Housing and Conservation Board, language unrelated to the budget has been added that will change the composition of the board and eliminate economic development involvement. Such a policy change should be vetted through the normal committee process so that all legislators can understand the implications of this action.

Further, within these very sections is a provision that ostensibly became effective "upon passage by the house and senate." This is either a blatant disregard for, or a fundamental misunderstanding of, the Vermont Constitution that requires, "[e]very bill which shall have passed the Senate and House of Representatives shall, before it becomes a law, be presented to the Governor…."

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H.441 is a budget that fails the most basic test: it is not in the best interests of Vermonters. It needlessly increases taxes, it does not adequately address our economic development needs, and, perhaps most importantly, creates a more than $200 million deficit in future years. For those reasons and others, I cannot allow H.441 to become law with or without my signature.

If this veto is overridden, legislative leaders shall carry the responsibility of this bill 's effects squarely on their shoulders. Because my Administration must begin work on the fiscal 2011 budget shortly and because we still must address a more than $200 million deficit in the next two years, I will request from the Speaker of the House and the Senate President Pro Tempore their plan to address these shortfalls.

If this veto is sustained, I will continue to listen to the ideas and concerns of lawmakers so that we can find common ground to craft a compromise budget in the coming days that meets the very real needs of Vermonters.

Sincerely,

/s/James H. Douglas
Governor

JHD/dc

The Governor has informed the House that on June 1, 2009, he approved and signed bills originating in the House of the following titles:

H. 222. An act relating to senior protection and financial services.

H. 313. An act relating to near-term and long-term economic development.

H. 75. An act relating to interim budget and appropriation adjustments.

Message from the House No. 92

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

Mr. President:

I am directed to inform the Senate that:

The Governor has informed the House that on June 2, 2009, he approved and signed bills originating in the House of the following titles:

H. 12. An act relating to education property tax rates.

H. 444. An act relating to health care reform.

Message from the House No. 93

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

Mr. President:

I am directed to inform the Senate that:

The Governor has informed the House that on the June 8, 2009, he approved and signed a bill originating in the House of the following title:

H. 125. An act relating to the sale of unpasteurized milk.

CERTIFICATION

"STATE OF VERMONT

Office of the Secretary of the Senate
Senate Chamber
State House
Montpelier, Vermont 05633

I hereby certify that the foregoing Journal is a true and correct record of the proceedings of the Senate of the State of Vermont for the first year of the biennial session of 2009.

This was the first year of the seventieth biennial session of the General Assembly, beginning Constitutionally on the first Wednesday after the first Monday of January (being the seventh day of January, 2009), and ending on the nineth day of May, 2009.

Attest:

/s/David A. Gibson

DAVID A. GIBSON
Secretary of the Senate"